NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

19. I.A. 386/2022
I.A. 2262/2021
I.A. 1267/2021
I.A. 635/2021
I.A. 240/2021
I.A. 2469/2020
I.A. 2077/2020
IN
C.P.(IB)-3578(MB)/2018

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)
SH. SATYA RANJAN PRASAD, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **07.12.2022**

NAME OF THE PARTIES: Fairdeal International

V/s.

Polylogic International Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional, Mr. Hafeez Patanwala i/b Juris Corp is present through virtual hearing.

I.A. 386/2022

The above application is filed for urgent listing of I.A. 2262/2021. The above matter is taken on board and accordingly, the above I.A. **is disposed of.**

I.A. 2262/2021

Heard the counsel appearing for the Applicant/Resolution Professional. The above application is filed for liquidation of the corporate debtor company. The above application is allowed. Detailed order will follow.

I.A. 1267/2021, I.A. 2077/2020 & I.A. 240/2021

The above applications are filed for extension/exclusion of CIRP process. The above applications have **become infructuous and stands disposed of** in view of allowing liquidation application bearing no. 2262/2021.

List the other pending applications on **08.02.2023.**

Sd/-
SATYA RANJAN PRASAD
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)

--Rajeev--

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

IA. No. 2262 of 2021

IN

C.P.(IB)3578(MB) of 2018

Under Section 33(3), r/w 14 of Insolvency & Bankruptcy Code, 2016

In the matter of

Poly Logic International Private Limited

.... *CORPORATE DEBTOR*

I. A. No. 2262 of 2021

Mr. Mangesh V. Kekre

.... Applicant/Liquidator

Order delivered on 07.12.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Mr. Satya Ranjan Prasad, Member (Technical)

For the Applicant: Mr. Anand Prabhawalkar,(Advocate)
Mangesh V. Kekre, RP

1. The above application I.A. No. 2262/2021 is filed by Resolution Professional, Mr. Mangesh V. Kekere (hereinafter referred to as the "Applicant") seeking liquidation of ***Poly Logic International Private Limited***. (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

a. *That, in view of the aforesaid facts and circumstances of the case, the application for initiation of liquidation of the Corporate Debtor may kindly be allowed;*
b. *That, this Hon'ble Adjudicating Authority may be pleased to pass an order under section 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor M/s Poly Logic International Private Limited;*
c. *That, this Hon'ble Adjudicating Authority may be pleased to pass an order under Section 34(1) of the Code for appointing the Applicant (Mangesh Vitthal Kekre, Resolution Professional of M/s Poly Logic International Private Limited) to act as Liquidator and to make public announcement stating that the Corporate Debtor is in Liquidation, to serve a copy on the Registrar of Companies, Mumbai, to hold and declare that all the powers of the Board of Directors, Key Managerial Persons, as the case may be, shall cease to have effect and be vested in the Liquidator as appointed by the Hon'ble Adjudicating Authority.*
d. *Direct that the personnel of the Corporate Debtor shall extend full co-operation and assistance to the Liquidator in carrying out the liquidation process.*
e. *Any such further Orders may be made and /or direction be given as this Hon'ble Tribunal may deem fit and proper under circumstance of the present case.*

2. **The brief facts of the application are as follows:**

A. The present Application has been filed by Mr. Mangesh V. Kekre (IP Registration No. IBBI/IPA-001/IP-P00539/2017-18/10964, the Resolution Professional of *Poly Logic International Private Limited.* ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, namely Punjab National Bank, Export-Import Bank of India(EXIM Bank) and Canbank Factors Limited has resolved to liquidate the Corporate Debtor.

B. The Applicant submitted that the Application filed by the Operational Creditor had Admitted for initiating CIRP vide order dated 26.05.2020 against M/s Poly Logic International Private Limited.

C. Further that Mr. Santanu T. Ray had appointed as Interim Resolution Professional and invited claims along with proof of claims through Public Announcement in Form A dated 02.06.2020.

D. Pursuant to the Announcement IRP received claims from creditors a Committee of Creditors (COC) was constituted of three Financial Creditors, namely Punjab National Bank, Export-Import Bank of India (EXIM Bank) and Canbank Factors with an voting share of 63.36%, 30.31% and 6.33% respectively.

E. That Pursuant to the provisions of Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,2016, and after following due procedure on 30.07.2020, Registered valuers being two valuers for each class of asset were duly appointed by IRP under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The following are the valuations for the class of assets, as follows:

Assets Class	Name of Valuers	Fair Value (Amount in Rs. Crs.)	Liquidation Value (Amount in Rs. Crs.)
Plant and Machinery	Mr. Manish Pathak	2.04	1.63
	Mr. Bijay Agrawal	1.84	1.55
Average Value (A)		**8.71**	**6.64**
Land and Building	Mr. Pramod Saraf	8.8	6.77
	Mr. Arvind Agarwal	8.61	6.5
Average Value (B)	Mr. Navin Khandelwal	00**	00**
	Mr. Ishwar Kalantri	00*	00**
Average Value (C)		**00****	**00****
Average Total Value (A+B+C)		**10.65**	**8.23**

F. On 06.07.2020, in the first meeting of the Committee of Creditors (hereinafter referred to as the "CoC"), Mr. Santanu T Ray was appointed as Resolution Professional in accordance with provisions of section 22(3)(a) of the IBC-2016.Further the CoC approved the opening of a new bank account in Punjab National Bank, Vashi Branch in the name of the Corporate

Debtor "Poly Logic International Private Limited-CIRP" to be used for payment of the Corporate Insolvency Resolution Process (CIRP) costs and to be operated by the Interim Resolution i.e. Mr. Santanu T Ray.

G. On 30.07.2020, in the 2nd meeting of the CoC, members unanimously decided that Mr. Mangesh Vitthal Kekre an Insolvency Resolution Professional be and is hereby appointed as the Resolution Professional replacing Mr. Santanu T Ray, the present IRP in the CIRP of Corporate Debtor in accordance with the provisions of section 22(3)(b) of the IBC-2016.

H. On 05.08.2021, 9th CoC meeting of the Corporate Debtor in RP informed the CoC members that there have been dues from Prism Flexible on account of rent payments since March 2021. More so, few cheques deposited by them have returned for want of sufficient funds.

Resultantly, RP had issued a notice of vacation to the lessee and got the premises vacated and locked it. RP further informed that electricity charges for the previous month is yet to be paid. CoC members took note of the same.

I. The applicant in the CoC stated that pursuant to the republication of EOI on 02.02.2021, the RP has received expression of interest from two parties named M/s Nanofil Technologies Private Limited and M/s Commercial Syn Bags Limited. Both the PRAs have submitted resolution plan with the RP but have not submitted EMD in full which was required to be submitted with resolution plan. However, both the parties have sent an email to the RP for the withdrawal of their expression of submitting resolution plan for the CD owing to liquidity crunch faced during lockdown imposed (second wave of covid-19).

Presently, there are no PRAs who are willing to participate in the resolution of the CD. RP further informed to members that attempts for resolution have been made twice by going for re-publication of EOI and CIRP period of 180 days has already expired, applications for extension & exclusion are also awaited.

CoC members deliberated on the matter and decided to go ahead with the liquidation of the CD. As no specific agenda for liquidation was proposed in this meeting, CoC decided to pass resolution for the same under item agenda No.5. CoC suggested the RP to be put the matter for approval through e-voting clearly mentioning these facts.

ITEM NO. 5 DDISCUSSION ON THE OTHER MATTERS WITH PERMISSION OF THE MAJORITY OF MEMBERS

- **LIQUIDATION OF THE CORPORATE DEBTOR**

As the members decided to deliberate on the liquidation of the CD, RP read out the provisions of the IBC, 2016 related to the Liquidation and appointment of liquidator thereof.

Section 32(2) states that "*where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass the liquidation order.*"

CoC enquired with the RP if he is willing to act as Liquidator. RP orally assented and proposed for giving his consent to act as liquidator. Therefore, necessary resolution needs to be passed by members through e-voting. Members asked RP that necessary approvals would be required from their higher authorities and hence, to keep the voting window for 10 day's time.

CoC suggested the RP to defer discussion on the estimation of liquidation cost for the next meeting.

J. The Applicant further stated that the CoC members discussed and agreed for the above. Thereafter the following resolution was proposed to be passed:

"RESOLVED THAT the COC hereby proposes the initiation of Liquidation proceedings u/s 33(2) of IBC for the CD-Polylogic International Pvt. Ltd. in absence of any resolution plan despite re-publication of EOI.

RESOLVED THAT the COC hereby approves the appointment of the existing RP Mr. Mangesh Vitthal Kekre to continue as Liquidator for the CD and authorize him to file an application for Liquidation u/s 33(2) before Hon'ble NCLT, Mumbai Bench.

RESOLVED THAT the COC hereby approves the appointment of legal counsel "MVK Legal" for drafting, filing of petition and necessary documents for Liquidation of CD with the Hon'ble NCLT, Mumbai bench at a remuneration of INR 50,000/-.

RESOLVED THAT the CoC hereby approves the Interim Funding of INR 62.00 Lacs by EXIM bank, being first charge holder of the assets of the CD and beneficiary of the liquidation proceeds in the event of liquidation of CD, as mutually discussed and decided by CoC Members, towards payment of CIRP expense and fund of EMD to PRAs.

The above resolution was passed with 93.67 % in favour of the resolution.

K. On 15.09.2021 in the 10th COC meeting, it was discussed as below:

ITEM NO. 4 TO DISCUSS AND DECIDE ON THE CIRP EXPENSES TO BE INCURRED TILL PENDENCY OF LIQUIDATION APPLICATION BEFORE HON'BLE NCLT

- RP apprised the COC that the expenses of routine nature like scrutiny services, RP Fees, application filing fee, if any, will be incurred till the time application for liquidation is decided by Hon'ble NCLT. COC member took note of it.

ITEM NO. 6 DISCUSSION ON THE OTHER MATTERS WITH PERMISSION OF THE MAJORITY OF MEMBERS

- **SALE OF ASSETS OF CD**
  - As the members decided to go ahead with the liquidation of the CD, RP enquired for the recommendation of COC for sale of assets of CD. RP read out the provisions related to regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – Assessment of sale as going concern.
  - COC thereafter recommended RP to first explore the possibilities of sale of CD as going concern under clause (e) of regulation 32 of IBBI (Liquidation Process) Regulations, 2016. RP took note of same.
- **<u>FEE OF LIQUIDATOR</u>**
  - As the undersigned RP has already given his consent to act as Liquidator for the CD, therefore, the fee payable

to him needs to be decided, which will form part of the liquidation cost.
  - RP read out section 34(8) of the Code which provides that "an IP proposed to be appointed as a liquidator shall charge such fee for the conduct of liquidation proceedings and in such proportion to the value of liquidation estate assets, as specified by IBBI under regulation 4 of IBBI (Liquidation Process) Regulations, 2016". RP further read provisions of regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 regarding Fee of the Liquidator.

- **LIQUIDATION COST**
  - RP briefed COC that an estimate of the liquidation cost need to be worked out for the expenses that will be incurred once liquidation order u/s 33 is passed by Hon'ble NCLT. RP read out relevant provision – regulation 39B – Meeting Liquidation Cost.
  - A list of estimated expenses that will be incurred during the Liquidation Process including, but not limited to a Total amounting to Rs. 9,20,000/-(Estimated Amount) as submitted by the Applicant.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 9th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has not agreed to act as Liquidator to carry on the process of Liquidation and not given his consent to act as Liquidator. This bench, therefore

allows the above Interlocutory Application Number 2262 of 2021 and passed the following:

ORDER

1. The above I.A. No. 2262/2021 is Allowed and the Corporate Debtor Poly Logic International Pvt Ltd. is ordered to be **liquidated as a Going Concern.**

a. **Mr. Mangesh V. Kekere**, having Registration No. IBBI/IPA-001/IP-P02409/2021-22/13696 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration shall be as per the chart given in Regulation 4(2) of the IBBI (Liquidation Process) Regulation 2016, subject to minimum fees of RS. 2.50 lakhs plus taxes for the entire liquidation process.

c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 2262of 2021 is hereby allowed and disposed of.

Sd/-	**Sd/-**
Satya Ranjan Prasad	**H.V. Subba Rao**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**