

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (VEDIO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.04.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 279/219 in CP (IB) No. 677/7/HDB/2018
NAME OF THE COMPANY	VMC Systems Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	VMC Systems Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed vide separate orders in IA NO.279/2019.


Member(Technical)


Member(Judicial)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 279 of 2019

In

CP (IB) No.677/07/HDB/2018

In the matter of Liquidation of M/s VMC Systems Limited

Application under Section 33 (1) (a) of I & B Code, 2016

Filed by

Dr. K.V. Srinivas

Resolution Professional

1-8-304 to 307, 4th Floor

Kamala Towers, Patigadda Road

Rasoolpura, Begumpet

Hyderabad – 500003

...Applicant

Date of order: 26.04.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance

For Applicant: Dr K.V. Srinivas, Resolution Professional

Heard on: 01.02.2021

**PER: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

1. This is an Application by the Resolution Professional under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as CODE) seeking orders for liquidation of M/s VMC Systems Limited/ Corporate Debtor.
2. The instant IA No. 279/2019 which is filed seeking order of Liquidation was heard on 02.03.2021 and reserved for passing orders. However in the daily order sheet it was erroneously mentioned as IA No. 205/2020 instead of IA No. 279/2019. Henceforth, it may be read as IA No. 279/2019.
3. This Tribunal vide order dated 19.08.2019 admitted the petition bearing CP (IB) No. 677/07/HDB/2018 under Section 7 of the

Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company and appointed Dr K.V. Srinivas as Resolution Professional. It is alleged the Applicant had relied on the data/information that is available in the public domain for complying the provisions of the Code since there was no co-operation from the side of Directors (Suspended Board) of the Corporate Debtor as such he could not comply with Regulation 35A of CIRP Regulations. Section 35A of CIRP Regulations reads as under:-

“35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board. Page 6 of 9

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.”

4. The CoC through e-voting held on 08.02.2020 voted against extension of CIRP period and resolved to seek liquidation of the Corporate Debtor. Further, the CoC with **51%** votes resolved to appoint the Applicant herein as Liquidator.
5. We have heard the Applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that,

“The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors”.

6. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 72.80% voting share in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (1) (a) of the Code. Therefore, we have no option than to pass an order for liquidation of the Company in the manner laid down in Chapter-III of the Code.
7. When the Application was reserved for passing orders, the Applicant / Resolution Professional filed a memo requesting to appoint Mr. Madasa Kumar, Insolvency Professional to act as Liquidator in place of him. He has filed his consent in Form-2.
8. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, it is found the RP has complied with the procedure laid down under the Code; Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section (1) of Section 33 of the Code for liquidation in the absence of any resolution plan.

ORDER

9. The Application is accordingly allowed with the following directions:-
- (a) The Corporate Debtor i.e M/s VMC Systems Limited shall be liquidated in the manner laid down in Chapter-III of the Code.
- (b) Shri Madasa Kumar having Registration No. IBBI/ IPA-011/ IP-P01590/2019-20/12465, #R/o 4th Floor, Flat No. 48, Road No.4, Pet Basheerabad (V), Quthbullapur Mandal, Medchal-Malkajgiri- District, herein is hereby appointed as Liquidator.
- (c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- (d) The Moratorium declared under Section 14 of the code shall cease to operate here from.
- (e) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate





- Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- (g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (h) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- (i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- (j) This order shall be deemed to be a notice of discharge to the Officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- (k) Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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