

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M. A. No. 307/2020
In
C. P. No. 2660/IB/2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

DENA BANK ... Operational Creditor
V/s.

EMI TRANSMISSION Ltd.

... Corporate Debtor

M. A. No. 307/2020

Mr. Shailesh Bhalchandra Desai

... Applicant/

Resolution Professional

Order delivered on: 14.08.2020

Coram:

Hon'ble Shri Venkata Subba Rao Hari, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mrs. Khushboo Shah Rajani, Advocates, i/b. AKR
Advisors LLP

Mr. Shailesh Bhalchandra Desai, Applicant/
Resolution Professional-in-person

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (EMI Transmission Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *“To consider the present application under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for Liquidation of the Corporate Debtor;*
 - b. *To appoint the resolution Professional as Liquidator of the Corporate Debtor under Section 34(1) of the Code;*
 - c. *To direct the Registry to communicate this order to the registrar of the Companies, Mumbai and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi;*
 - d. *To Consider that this order is deemed to be a notice of discharge to the officer, employees and the workmen of the Corporate Debtor as per Section 33(7) of I&B Code, 2016;*
 - e. *To consider that no suit, prosecution or other legal proceeding shall lie against the Insolvency Professional for anything done or intended to be done in good faith under Section 233 of the Code.”*
2. The Adjudicating Authority vide its order dated 11.04.2019 on a Petition filed by the Operational Creditor under Section 7 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. EMI Transmission Ltd., wherein Mr. Shailesh Bhalchandra Desai, was appointed as Interim Resolution Professional (IRP). Thereafter in the 1st Committee of Creditors (CoC) meeting held on 10.05.2019 Mr. Shailesh Bhalchandra Desai was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench.
 3. The RP submits that the public announcement was made on 15.04.2019, in “The Economics Times” (all India editions) in English and in “Sakal” (Nashik edition) in Marathi, fixing 27.04.2019 as the last date for submitting the claim.
 4. The CoC in its meeting held on 24.06.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
 5. It is further submitted that an advertisement was issued, inviting Expression of Interest (EoI) in Form G on 29.05.2019 fixing 19.06.2019

as last date for submission of Expression of Interest by the Prospective Resolution Applicants and another 2 (EoI) was published. It is submitted that the CIRP period 180 days ended on 08.10.2019 and further extension has been sought for another 90, which ended on 06.01.2020. No Resolution Plan was however received within the stipulated period.

6. The Resolution Professional submits that only one expression of interest was received from Prospective Resolution Applicant from KSE Electricals Pvt. Ltd., but failed to full the eligibility criteria.
7. Hence, The CoC in its 10th meeting held on 02.01.2020, with 100% voting rights passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
8. The Applicant submits that the valuation of the assets of the Corporate Debtor as received from the valuers which are as under:

Valuers	Fair Value	Liquidation Value
Kedar Chikodi	117,36,70,137	83,59,99,748
R K Associates Valuers	114,05,28,341	78,91,48,741
Average	115,70,99,539	81,25,74,245

9. The Applicant/ Resolution Professional Mr. Shailesh Bhalchandra Desai, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
10. 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. The valuation report filed by the valuer has not been disputed by the CoC. 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. Hence ordered;

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. That Mr. Shailesh Bhalchandra Desai, Registration No. IBBI/IPA-001/IP-P00183/2017-2018/10362, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.

- i. 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.
- j. 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.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
VENKATA SUBBA RAO HARI
MEMBER (JUDICIAL)