BIL ENERGY SYSTEMS LIMITED IN LIQUIDATION

(CIN L28995MH2010PLC199691)

Liquidator and Correspondence Address: Madhusudhan Rao Gonugunta, #7-1-285,

Flat No 103 Sri Sai Swapna Sampada Apartments, Balkampet, S R Nagar, Hyderabad-500038

Telangana Mobile No: 9177715558

06-12-2023

To
National Stock Exchange of India Ltd
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E)
Mumbai - 400051

Dear Sir/Madam,

Subject : Intimation commencement of Liquidation process of Bil Energy Systems Limited in Liquidation and appointment of Mr.Madhusudhan Rao as Liquidator.

I hereby intimate to your good office intimation of commencement of Liquidation process of Bil Energy Systems Limited in Liquidation and appointment of Mr.Madhusudhan Rao as Liquidator.

Kindly acknowledge the receipt of this document.

Thanking you,
Yours faithfully,

BIL ENERGY SYSTEMS LIMITED MUMBAI

MADHUSUDHAN RAO GONUGUNTA
Liquidator
IP Regn. No: **IBBI/IPA-001/IP-P00181/2017-18/10360**

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

IA No. 2825 of 2023 and IA. No. 2947 of 2023

In

CP(IB) 4058 (MB)2019

Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IA No. 2825 of 2023

Mr. Mayank Goyal

504, IA Versova Cosmic Tower, New Mahada Complex, Near Lokhandwala Circle, Andheri West, Mumbai - 400063.

... Applicant

V/s.

1. G. Madusudhan Rao

Resolution Professional of the Corporate Debtor (Bil Energy Systems Limited)

7-1-285, Flat No. 103, Sri Sai Swapnasampada Apartments, Balkampet, Sanjeev Reddy Nagar, Hyderabad, Telangana – 500038.

2. State Bank of India

Corporate Center, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai, Maharashtra – 400021.

... Respondents

IA No. 2947 of 2023

Mr. G. Madusudhan Rao

Resolution Professional of the Corporate Debtor

7-1-285, Flat No. 103, Sri Sai Swapnasampada Apartments, Balkampet, Sanjeev Reddy Nagar, Hyderabad, Telangana – 500038.

... Applicant

IN THE MATTER OF

State Bank of India

... Financial Creditor

V/s

Bil Energy Systems Limited

... Financial Creditor

Order delivered on :- 04.12.2023

Coram:

Anil Raj Chellan
Member (Technical)

Kuldip Kumar Kareer
Member (Judicial)

Appearances:

IA No. 2825 of 2023

For the Applicant : Adv. Aniruth Purusothaman

For the Respondent : Adv. Abdullah Qureshi a/w Arjun Sathees

IA No. 2947 of 2023

For the Applicant : Adv. Abdullah Qureshi a/w Arjun Sathees

ORDER

Per: Coram

1. The subject matter in IA. No. 2825 of 2023 and IA. No. 2947 of 2023 is more or less same and as such have been taken up together and being decided by this common order. In IA. No. 2825 of 2023, the challenge is the resolution passed by the Committee of Creditors ('CoC') of the Bil Energy Systems Limited ('the Corporate Debtor') in the 5th meeting of CoC approving the initiation of a liquidation process for the Corporate Debtor and to direct the Resolution Professional (RP) of the Corporate Debtor to facilitate and provide the Request For Resolution Plan ('RFRP') and the Information Memorandum ('IM') to the Applicant therein to enable submission of the Resolution Plan for the Corporate Debtor. In IA 2947 of 2023, the RP of the Corporate Debtor sought passing of an order under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for commencement of liquidation process of the Corporate Debtor and appointment of Resolution Professional ('RP') as liquidator to conduct the liquidation process of the Corporate Debtor.

2. We briefly refer to the facts leading to the filing of the Interim Applications as under:

   (a) On an Application filed by State Bank of India (SBI) a Financial Creditor, under Section 7 of the Code, this Tribunal passed an order dated 09.12.2022 admitting the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Anuj Bajpai as the Interim Resolution Professional (IRP).

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(b) The IRP made public announcement dated 13.12.2022 in "Business Standard" and "Navshakti" newspapers inviting claims whereby the last date for submission of claims by the creditors was 24.12.2022. Pursuant to the claims received, CoC was constituted with SBI as the sole Member. As per the decision of the CoC, Form G was published on 23.03.2023 in newspapers wherein the last date for receipt of Expression of Interest (EoI) was 10.04.2023, and the date for issue of provisional list of Prospective Resolution Applicants ('PRAs') was 12.04.2023. The Form G clarified that the Corporate Debtor is not a going concern for 3 years prior to being admitted to CIRP and most of the assets of the Corporate Debtor are currently untraceable. Further, Form G specified a refundable deposit of Rs. 5 Lakhs along with the EoI and the PRAs to satisfy the minimum net worth criteria of Rs. 1 crore.

(c) Three EoIs were received from the PRAs namely Aruna Kailash Shah, Mayank Goyal and Subhalakshmi Investment Advisory.

(d) One of the PRAs, Mayank Goyal, the Applicant in IA 2585 of 2023 vide his emails dated 30.03.2023 and 31.03.2023 sought sharing of EoI process documents. The IRP shared the provisional list of PRAs on 12.04.2023 which included the Applicant. Thereafter, the Applicant vide his emails dated 24.04.2023 and 11.05.2023 pursued with IRP for sharing RFRP and IM and stated that he had already submitted EoI on 07.04.2023 along with the stipulated Earnest Money Deposit (EMD) of Rs. 5 lakh.

(e) In the meantime, the Respondent No. 1 Shri G Madhusudhan Rao was appointed as Resolution Professional (RP) and the above change was approved by the Tribunal vide its order dated 10.04.2023. The RP agreed to provide documents such as IM, Evolution Matirx and RFRP to the PRAs as the same was not done by the IRP. However, CoC felt that without having clarity on and taking possession of the assets of the Corporate Debtor, the PRAs will not be able to submit an effective Resolution Plan and accordingly, at its meeting held on 03.06.2023 decided against seeking extension of CIRP period of 180 days and decided to initiate liquidation process of the Corporate Debtor with 100% voting.

(f) The Applicant, Mayank Goyal being one of the PRAs challenged the decision of the CoC approving initiation of liquidation process for the Corporate Debtor.

IA No. 2947 of 2023

3. Pursuant to the decision of the CoC, the RP filed the Interim Application for commencement of liquidation process of the Corporate Debtor and to appoint the RP as liquidator.

4. **Submissions of the Applicant (Mayank Goyal, one of the PRAs) in IA No. 2825 of 2023**

(a) The Applicant submitted that though he had responded to the publication of Form G, he was prevented from submitting a Resolution Plan for the Corporate Debtor by the RP, the Respondent No. 1 in violation of Form G which is governed by Regulation 36A of the IBBI (CIRP) Regulations, 2016.

The Applicant further stated that the decision of the CoC requires reconsideration as it is against the tenets of the Code and against the objective of maximisation of value of the assets of the Corporate Debtor.

(b) The reasons cited for initiation of liquidation process are flawed as the Respondent No. 1 could have filed application under section 19(2) of the Code against the erstwhile directors for non-co-operation and for not handing over the assets of the Corporate Debtor.

(c) In order to buttress the submissions of the Applicant, the decision of Hon'ble NCLAT in ***Hero Fincorp Limited vs. M/s Hema Automobile Private Limited through Resolution Professional Shri Vivek Sharma (Company Appeal (AT) (Insolvency) No. 1540/2022)*** and the decision of NCLAT in ***Nikhil Tandon vs. Sanjeev Bindal. Liquidator of Radhey Sham Tandon Manufacturing Private Limited and Committee of Creditors of Radhe sham Tandon Manufacturing Private Limited (Company Appeal (AT) (Insolvency) No. 13/2022)*** were relied upon to show that a judicial review of the decision of CoC in a particular case is not precluded.

5. **Submissions of the Respondent No. 1/RP**

(a) The RP submitted that SBI is the sole member of CoC who enjoys charge on the assets of the Corporate Debtor. Before initiation of CIRP, SBI obtained orders from the District Magistrate dated 19.08.2015 to take enforcement action but could not take possession as entry was denied to the representatives of SBI. RP also could not take possession of

the factory premises as there was no clear demarcation of the factory premises with one M/s Aesthetic Stampings and Laminations Limited ('Aesthetic'). With respect to the registered office of the Corporate Debtor, the IRP informed CoC that the same is situate on a rented premises as is confirmed by 7/12 extract maintained by the Revenue Authorities.

(b) In response to the email dated 04.02.2023 of IRP, Aesthetic informed that no assets of the Corporate Debtor are in their possession.

(c) RP further submitted that the suspended directors did not provide information with respect to the assets of the Corporate Debtor.

(d) RP further submitted that machineries were sold by suspended management long before initiation of CIRP, without even seeking the permissions of charge holder (SBI) and that the Corporate Debtor is not a going concern for 3 years prior to CIRP and most of the assets of the Corporate Debtor are currently untraceable.

(e) The Counsel appearing for the RP/Respondent No. 1 submitted that the decisions relied upon by the Applicant are not applicable in the present case and cited a three judge bench judgment of the Hon'ble NCLAT in Sreedhar Tripathi vs. Gujarat State Financial Corporation and Ors. (Company Appeal (AT) (Ins.) No. 1062/2022), where the decision of the CoC to liquidate a Corporate Debtor was held to be in accordance with the Code and dependent on the facts of each

case.

Analysis and Decision

6. We have heard the submissions of the Ld. Counsels and perused the records.

7. Before we proceed to consider the facts of the case, it is necessary to note the relevant statutory provision regulating the liquidation process under Section 33(2) of the Code which provides 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 a liquidation order. The explanation to Section 33(2) provides further that, for the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

8. Section 33(2) together with the explanation makes it amply clear that CoC is fully empowered to take a decision to liquidate the Corporate Debtor. The decisions relied upon by the Counsels in ***Hero Fincorp (supra),*** and ***Nikhil Tandon (supra)*** consistently took a view that the decision taken by the CoC for liquidation of the Corporate Debtor is open to judicial review by the Adjudicating Authority and Appellate Tribunal and accepting the CoC decision depends on the facts of each case.

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9. In the present case, it is observed that the Corporate Debtor was into the business of manufacturing transformers for electricity production. But the Corporate Debtor had not been doing business since 2020 i.e. almost 3 years prior to Insolvency Commencement date i.e. 19.12.2022. The only traceable asset of the Corporate Debtor is the factory premises, that is in the possession of Aesthetic as there was no clear demarcation of the factory premises of the Corporate Debtor. The registered office of the Corporate Debtor is situate on rented premises as observed from the 7/12 extracts. The machinery owned by the Corporate Debtor appears to have been sold by the suspended management of the Corporate Debtor in 2015. The erstwhile management of the Corporate Debtor had not handed over any assets or accounts or other information relating to the Corporate Debtor nor is co-operating with the IRP/RP. As per the RP, tracing of other assets owned by the Corporate Debtor is a cumbersome exercise and is a long-drawn process. In such a scenario, CoC took a decision to recommend liquidation of the Corporate Debtor mainly to contain the CIRP expenses and costs. Pursuing the CIRP, without any corresponding advantage, in the opinion of CoC is not likely to yield any advantage.

10. It is also pertinent to note that the Applicant has not made out a case by demonstrating how Corporate Debtor is better suited for revival as there is negligible assets, that too, not in the possession of RP and, therefore no valuation could be done. The Corporate Debtor also stopped operation three years prior to the Insolvency Commencement Date.

11. Taking into account the above facts, we are of the view that there is no reason to direct CoC, in exercise of judicial review, to reconsider

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its decision to liquidate the Corporate Debtor. Hence, **IA No. 2825 of 2023 is dismissed.**

12. Having regard to the above, we also consider it appropriate to order liquidation of the Corporate Debtor. The **IA-2947/2023** filed by the RP for Liquidation of the Corporate Debtor **stands allowed on the following terms:**

a. The **Mr. G. Madhusudhan Rao**, holding **Registration No. IBBI/IPA-001/IP-P00181/2017-18/10360**, is appointed as the Liquidator in terms of Section 34 of the Code;

b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.

h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

i. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)

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Certified True Copy
Copy Issued free of cost"
On 14.12.2023
R.S. Sonawane.
Deputy Registrar
National Company Law Tribunal Mumbai Bench