

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

IA(IBC)/293(KB)2023
in
CP(IB)/1237(KB)2018

In the matter of:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

Beni Gopal Singhi, carrying on business under the name of BG Associates of Chowringhee Mansion, A/2D, Kyd Street, Kolkata 700016;

....Operational Creditor

-Versus-

EMC Limited, CIN: U70100WB2010PLC151197, having its registered office at 51, Canal (East) Road, Kolkata 700085;

....Corporate Debtor

And

In the matter of:

Kannan Tiruvengadam, Resolution Professional of EMC Limited;

....Applicant

And

IA(IBC)/842(KB)2023
in
CP(IB)/1237(KB)2018

In the matter of:

An application under section 33(2) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Beni Gopal Singhi, carrying on business under the name of BG Associates of Chowringhee Mansion, A/2D, Kyd Street, Kolkata 700016;

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IN THE NATIONAL COMPANY LAW TRIBUNAL
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IA(IBC)/293(KB)2023
&
IA(IBC)/842(KB)2023
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And

In the matter of:

Kannan Tiruvengadam, Resolution Professional of EMC Limited;

....Applicant

Order reserved on: 21/07/2023

Order pronounced on: 21/11/2023

Coram:

Shri Rohit Kapoor

: **Member (Judicial)**

Shri Balraj Joshi

: **Member (Technical)**

Appearances (through hybrid mode):

For RP

: Mr. Joy Saha, Sr. Adv.
Mr. Saptarshi Mandal, Adv.

For Applicant in IA/1008/2022

: Mr. Bhaskar Prosad Banerjee, Adv.

For CGST & Cx, Vijayawada Divn.

Mr. Tapan Bhanja, Adv.

In IA/913/2022 for Power Grid

: Mr. Aritra Basu, Adv.

Corporation of India

Mr. Saptarshi Mukherjee, Adv.

Mr. Tirthankar Nandi, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **Brief facts of the case are given below: -**

(a) *Vide* an order dated 12/11/2018, this Adjudicating Authority, on a petition filed under section 9 of the IBC filed by one Beni Gopal Singhi, the Operational Creditor, had ordered initiation of the Corporate Insolvency Resolution Process (“CIRP”) against EMC Limited, the Corporate Debtor. The Applicant was appointed as the Resolution Professional of the Corporate Debtor *vide* an order dated 06/02/2019 following which the Applicant

performed the duties in terms of the IBC including publication of Form G on 09/04/2019.

(b) In response to Form G, a resolution submitted by one Almas Global Opportunity Fund SPC (“Almas”) was approved by the Committee of Creditors (“CoC”) and subsequently approved by this Adjudicating Authority *vide* an order dated 21/10/2019. However, Almas did not implement the approved resolution plan within the timelines mentioned in the approved resolution plan. As such the Applicant, then in his capacity as Chairman of the Monitoring Committee of the Corporate Debtor filed an application being IA(IBC)/1275(KB)2020 seeking directions for inter alia cancellation of Almas’ resolution plan and commencing fresh CIRP of the Corporate Debtor.

(c) *Vide* order dated 20/04/2022 in IA(IBC)/1275(KB)2020, this Adjudicating had passed the following orders: -

- (i) *The entire Performance Bank Guarantee of Rs.30 crore submitted by the SRA on 08 January 2021 which was invoked by the Applicant/Chairman of the Monitoring Committee, on 13 November 2020 shall stand forfeited in favour of the Corporate Debtor immediately, since there is knowing and wilful contravention of the approved Resolution Plan.*
- (ii) *Additionally, the SRA and its officers responsible be proceeded against for contravention of the approved resolution plan in terms of section 74(3) read with section 236 of the Insolvency & Bankruptcy Code, 2016. To facilitate this, a copy of this shall be sent to the Insolvency & Bankruptcy Board of India (IBBI) and the Secretary, Ministry of Corporate Affairs, who are the agencies authorised in terms of section 236(2) *ibid* to initiate appropriate complaint before the Special Court as envisaged under section 236(1) *ibid*.*
- (iii) *The Corporate Debtor is a viable going concern with about 400 employees and workmen. There is every chance of a successful resolution of the Corporate Debtor. Therefore, to facilitate this, the entire period consumed in the CIRP commencing from the first date of issue of Form G inviting Expression of Interest till the date of passing of orders in this application is excluded. This will grant*

sufficient time for a limited reboot of the CIRP from the stage of issue of Form G.

- (iv) *The Chairman of the Monitoring Committee shall discharge the functions of Resolution Professional of the Corporate Debtor with immediate effect and until further orders are passed by this Adjudicating Authority.”*

3. **IA(IBC)/293(KB)2023**

- (i) This application has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) read with rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant seeking the following reliefs:

- (a) *Pass an order extending the corporate insolvency resolution process of EMC Limited by a further period of 30 (thirty) days from 16th January, 2023; and*
- (b) *Pass any other order or orders which this Hon’ble Tribunal may deem fit in the facts and circumstances of the case in the interest of equity, justice and good conscience.*

The application is supported by an affidavit duly affirmed by the RP and filed on the e-portal on 16/01/2023.

- (ii) Vide the aforesaid order (supra) dated 20/04/2022, this Adjudicating Authority directed the Applicant to act as the Resolution Professional of the Corporate Debtor.
- (iii) Form G was first issued on 09/04/2019 by the Applicant, i.e., on the 149th day of the CIRP of the Corporate Debtor. Therefore, there was only 31 days left within which the CIRP of the Corporate Debtor had to be concluded.
- (iv) In the aforesaid circumstances, the Applicant had filed an application u/s. 12(3) of the IBC being IA(IBC)/492(KB)2022 seeking extension of CIRP

period by 90 days. This Adjudicating Authority *vide* its order dated 17/06/2022 had allowed the said application, thereby the 270 days CIRP period had ended on 18/08/2022.

- (v) Since none of the Prospective Resolution Applicants (“PRAs”) were able to submit their resolution plans on or before 21/07/2022 and the several of the PRAs requested the Applicant for extension of time period for submission of resolution plan, the CoC at its 16th meeting held on 26/07/2022 with 88.18% voting share extended the timeline for submission of resolution plan to 16/08/2022 and also recommended extension of CIRP period by a further period of 60 days in the event of any resolution plan received from any of the PRAs. Following the receipt of a resolution plan from one of the PRA, an application being IA(IBC)/899(KB)2022 was filed by the Applicant seeking extension of time of the CIRP period till 18/10/2022. This Adjudicating Authority *vide* its order dated 13/09/2022 had allowed the said application, thereby the CIRP period was extended to 18/10/2022.
- (vi) However, as more time was required, the Applicant had filed before this Adjudicating Authority an application being IA(IBC)/1300(KB)2022 seeking some more time for completion of CIRP. This Adjudicating Authority *vide* its order dated 03/11/2022 allowed the application and passed the following orders :

“3. In view of the position noted herein above, with a view to enable the RP to complete CIRP, we enlarge the period of completion of CIRP by 90 days”

Hence, the enlarged CIRP period would come to an end on 16/01/2023.

- (vii) At the 22nd CoC meeting held on 22/12/2022, the CoC by a voting percentage of 69.72% has resolved that *“the corporate insolvency resolution process be further extended by a further period of 30 days from 16/01/2023 either by way of an extension or by way of exclusion”*.

Copies of the minutes of the 22nd CoC meeting and the voting results published on 28/12/2022 form **Annexure “A”**¹ to the application.

- (viii) The CoC could only conclude voting on the resolution plan submitted by the PRA on 10/03/2023 and voting results were published on 11/03/2023. While the members of the CoC having 53.75% voting shares voted in favour of approving the resolution plan, members having 46.24% voting shares in the CoC rejected the resolution plan and members having 0.01% voting shares abstained from voting, thereby the resolution plan of the SRA failed
- (ix) In the aforesaid circumstances, an application being IA(IBC)/842(KB)2023 was filed seeking liquidation of the Corporate Debtor. The said IA was taken up on 11/05/2023 wherein a resolution of the CoC resolution passed by the committee of creditors of the Corporate Debtor resolving to liquidate the Corporate Debtor, was not found attached in the IA. Accordingly, a supplementary affidavit dated 06/06/2023 had been filed annexing minutes of the CoC meeting held on 23/05/2023 being **Annexure ‘A’**² along with voting results being **Annexure ‘B’**³.
- (x) Thereafter, the aforesaid IA(IBC)/842(KB)2023 was reserved for orders on 08/06/2023 and matter came up on 10/07/2023 seeking clarifications on the point “.....*how the RP could conduct the 26th CoC meeting without obtaining any extension/exclusion, if any, granted by the Adjudicating Authority*”.
- (xi) The Applicant has duly filed a supplementary affidavit affirmed on 20/07/2023 and submitted that since the application being IA No.293(KB)2023 seeking extension of corporate insolvency resolution

¹ At pages 21 to 65 of the application

² At pages 7 to 29 of the supplementary affidavit affirmed on 06/06/2023

³ At page 30 of the supplementary affidavit affirmed on 06/06/2023

process (CIRP) period of the Corporate Debtor by 30 days from 16/01/2023 is still pending for consideration before this Adjudicating Authority, this Adjudicating Authority may allow and dispose of the said application by extending the CIRP period till 23/05/2023⁴.

(xii) We have heard the Ld. Counsel for the Applicant and perused the documents annexed with the application and the supplementary affidavit filed by the Applicant. We, therefore, enlarge the time of the CIRP period till 23/05/2023.

(xiii) The application bearing **IA(IBC)/293(KB)2023** is disposed of accordingly.

4. **IA(IBC)/842(KB)2023**

(i) This is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **EMC Limited**, the Corporate Debtor, praying for passing of a liquidation order of the Corporate Debtor. This application is supported by an affidavit⁵ duly affirmed by Mr. Kannan Tiruvengadam, the RP.

(ii) This Adjudicating Authority, on a petition filed u/s. 9 of the IBC read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Beni Gopal Singhi, the Operational Creditor, *vide its* order dated 12/11/2018 in CP(IB)/1237(KB)2018, had ordered initiation of CIRP against EMC Limited, the Corporate Debtor. The Applicant was appointed as the Resolution Professional of the Corporate Debtor vide an order dated 06/02/2019.

(iii) In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Form

⁴ Para 11 at page 7 of the supplementary affidavit affirmed on 20/07/2023

⁵ At pages 308 to 312 of the application

G was published. In response to Form G, a resolution submitted by one Almas Global Opportunity Fund SPC (“**Almas**”) was approved by the Committee of Creditors (“**CoC**”) and subsequently approved by this Adjudicating Authority vide its order dated 21/10/2019. However, Almas did not implement the approved resolution plan within the timelines mentioned in the approved resolution plan. As such the Applicant, then in his capacity as Chairman of the Monitoring Committee of the Corporate Debtor filed an application being IA(IBC)/1275(KB)2020 seeking directions for inter alia cancellation of Almas’ resolution plan and commencing fresh CIRP of the Corporate Debtor.

- (iv) Vide order dated 20/04/2022 in IA(IBC)/1275(KB)2020, this Adjudicating due to contravention of the approved resolution plan by the SRA had granted a limited reboot of the CIRP from the stage of issue of Form G including exclusion of entire time period consumed in the CIRP commencing from the first date of issue of Form G inviting Expression of Interest till the date of passing of orders in this application, i.e., 20/04/2022 with directions upon the Chairman of the Monitoring Committee to discharge the functions of the Resolution Professional of the Corporate with immediate effect and until further orders are passed by this Adjudicating Authority.
- (v) Out of total nine Expression of Interests (“**EoI**”) received from Prospective Resolution Applicants, only one PRA, Riddi Siddhi Bullions Limited, had submitted Resolution Plan. However, the final resolution plan submitted by the said Riddi Siddhi Bullions Limited, the PRA, has failed to pass the muster of the CoC. While the members of the CoC having 53.75% voting shares voted in favour of approving the resolution plan, members having 46.24% voting shares in the CoC rejected the resolution plan and members having 0.01% voting shares abstained from voting. The voting result was communicated by the Applicant to the CoC

on 11/03/2023. Copies of the said communication along with the details of the voting results form **Annexure “J”**⁶ collectively.

- (vi) As no resolution plan u/s. 30(4) read with section 30(6) of the IBC was approved by the CoC, the CoC at its 26th meeting held on 23/05/2023 CoC with 79.77% voting share has agreed to liquidate the Corporate Debtor.⁷ The voting result forms **Annexure “B”**⁸ and its records as follows: -

“The proposed voting agenda *“To resolve that, the Corporate Debtor be liquidated under Section 33 of the Insolvency & Bankruptcy Code, 2016, in view that the Resolution plan was not approved by CoC under Section 30(4) read with Section 30(6)”* has obtained the approval of a majority of the members of the CoC, collectively possessing a consolidated voting right of 79.77%.”

- (vii) The Applicant has given his written consent⁹ along with AFA to act as the Liquidator of the Corporate Debtor subject to confirmation by this Adjudicating Authority.
- (viii) It is to be noted here that after taking into consideration of exclusion, extension and enlargement of times of CIRP, the CIRP period has ended on 23/05/2023.
- (ix) Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting

⁶ At pages 303 to 305 of the application

⁷ Averments in para (4) at page 5 of the Supplementary Affidavit affirmed on 06/06/2023

⁸ At page 30 of the Supplementary Affidavit affirmed on 06/06/2023

⁹ Annexure J at pages 306 and 307 of the application

share to liquidate the Corporate Debtor.

- (x) A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
- (xi) This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/842(KB)2023 filed by Mr. Kannan Tiruvengadam, RP of EMC Limited, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
- b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint Mr. Raj Singhania (Reg. No. IBBI/IPA-001/IP-P00188/2017-18/10367) having e-mail i.d. rajsinghania_ca@yahoo.co.in, mobile no. 9830227678 as given at Sl.No.5 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to December 31,2023 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d. Public Notice shall be issued in two National Newspapers in addition to the newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, 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.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, West Bengal**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal**.
5. The application bearing **IA(IBC)/842(KB)2023** shall stand disposed of in accordance with the above directions.
6. **CP(IB)/1237(KB)2018** is to come up for filing of Periodical Progress Report on **04/01/2024**.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court I)

IA(IBC)/293(KB)2023
&
IA(IBC)/842(KB)2023
in CP (IB)/1237(KB)2018

7. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
8. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 21st day of November, 2023.

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