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IA(IBC)/139/KOB/2021 in IBA/04/KOB/2020

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA (IBC)/ 139/ KOB/ 2021
in
IBA/ 04/ KOB /2020
(Under Section 33(2) of the IBC, 2016)

In the matter of:
UNION BANK OF INDIA
V.
M/s MATHSTRAMAN MANUFACTURERS AND TRADERS
PRIVATE LIMITED
Date of Order: 21.12.2021

Applicant: K. Easwara Pillai (Resolution Professional)

Coram:

Hon'ble Shri Ashok Kumar Borah, Hon'ble Member (Judicial)
Hon'ble Shri Anil Kumar B, Hon'ble Member (Technical)

Parties/Counsel Present (through Video Conference)

For applicant :Shri. K. Easwara Pillai
(Resolution Professional)
Along with Advocate Muralikrishnan

ORDER

Per :Ashok Kumar Borah, Member (Judicial)

1. This Application has been filed under Section 33(2) of the I&B Code,2016 by Mr. Easwara Pillai, Resolution Professional in the matter of UNION BANK OF INDIA Versus M/s. MATHSTRAMAN MANUFACTURERS & TRADERS PRIVATE LIMITED for initiation of



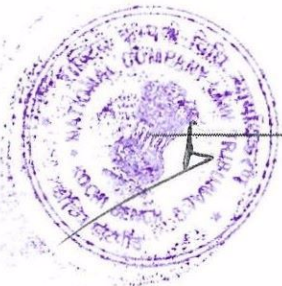
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Liquidation Process of the Corporate Debtor and to appoint the Resolution Professional as the Liquidator of the Corporate Debtor.

2. The brief facts are: -

This Tribunal vide order dated 20.11.2020 admitted the application filed by the Financial Creditor UNION BANK OF INDIA against the Corporate Debtor M/s. MATHSTRAMAN MANUFACTURERS & TRADERS PRIVATE LIMITED, initiated Corporate Insolvency Resolution Process (CIRP) and appointed the Applicant herein as the Interim Resolution Professional to carry out the Corporate Insolvency Resolution Process. The Applicant published a Public Announcement in Newspapers in Form A and verified the claims received and also formed the Committee of Creditors (CoC).

3. It is also stated that the Applicant, convened the 1st Meeting of the CoC on 16.12.2020 wherein, a Resolution was passed by the members of CoC by a voting share of 100% confirming the applicant as the Resolution Professional of the Corporate Debtor. Pursuant to the same, this Tribunal, vide Order dated 21.01.2021 in I.A. No. 20 of 2021 approved the appointment of IRP as the Resolution Professional of the Corporate Debtor.



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4. The Applicant further stated that he has convened the 2nd Meeting of the CoC on 22.02.2021 whereby discussions were held on the CIRP Costs incurred by the Applicant during the CIRP of the Corporate Debtor and further, an agenda was discussed to publish Form G inviting Expression of Interest (hereinafter referred to as the "EOI") from the Prospective Resolution Applicants. A Resolution was passed by the members of the CoC to publish Form-G as per Regulation 36A of the CIRP Regulations.

5. Thereafter the 3rd Meeting of the CoC was convened on 26.03.2021 whereby the Applicant apprised the members of the CoC that the Resolution to publish Form- G as discussed during the 2nd Meeting of the Committee of Creditors on 22.02.2021 was approved only on 18.03.2021 and was decided to publish Form-G on 24.03.2021. However, Form- G could not be published on 24.03.2021 as the approval on the publication cost as quoted by Geetna Advertising was not able to be accorded before 24.03.2021 and was finalized by the members of the CoC only on 26.03.2021. Pursuant to the same, the Applicant published Form -G on 29.03.2021 inviting EOIs from the Prospective Resolution Applicants with the last date to submit the EOI as 13.04.2021.



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6. The applicant further stated that this Tribunal vide its Order dated 09.07.2021 in I.A No. 38/KOB/2021 declared the transactions as fraudulent and directed the Respondents to make good the losses caused to the creditors of the Corporate Debtor holding that Respondents are personally liable for such deliberate and wilful default.
7. During the 4th Meeting of the Committee of Creditors held on 02.06.2021, the Applicant apprised the members that the applicant is not in receipt of any Expression of Interest or Resolution Plan for the revival of the Corporate Debtor and sought permission of CoC for putting the Form G again. However, the Committee of Creditors informed that the Financial Creditors were not interested in republishing of Form G (Expression of Interest) as there is no response for any resolution plan in this matter to the earlier publication. Hence, in that meeting a resolution was passed for liquidation of the Corporate Debtor in terms of Section 33 (2) of the Code with 100 percentage voting right and to appoint the Applicant herein as the liquidator of the Corporate Debtor.
8. We have heard the learned counsel for the Applicant and the Resolution Professional, who appeared, through video conferencing



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and had gone through the records placed before us. It appears from the records that the 4th CoC with 100% voting right approved for filing this application for liquidation of the Corporate Debtor. We have gone through the minutes of the 4th meeting of the Committee of Creditors held on 02.06.2021 in which as item No.7 (other matters) the following resolution has been passed: -

"RESOLVED THAT in pursuant to Section 33(2) of IBC, 2016 and the rules made thereunder, the consent of the members of the COC be and is hereby accorded to approve the initiation of liquidation of Corporate Debtor and to appoint the existing RP, who also has given consent to act as liquidator, as the liquidator of the CD."

"RESOLVED FURTHER THAT, the estimate of the liquidation cost other than liquidator fee, be and is hereby approved, in case the liquidation order passed by Hon'ble National Company Law Tribunal and COC, the Committee of Creditors will make contribution towards the estimated Liquidation Cost."

"RESOLVED FURTHER THAT the members of COC shall fix and approve the fees which would be payable to the liquidator in accordance with 4(2)(b) of Regulation 39B of the IBBI (liquidation Process) Regulations, 2016."



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"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

9. Section 33 (2) of the I&B Code, 2016 empowers this Tribunal for ordering Liquidation of the Corporate Debtor. Section 33 (2) of the I&B Code,2016 is as under: -

"(2) 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 as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)"

10. During the hearing on 04.10.2021, the learned Resolution Professional was directed to file an affidavit with regard to the estimated cost of the liquidation process approved by the CoC. The same has been filed on 21.10.2021, where the Resolution Professional swear and affirmed that:



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"the liquidation cost estimated as per amended regulation 39 (B) read with Section 5 (16) (e) of IBC, 2016 has been placed before the CoC meeting held on 02/06/2021 and the same has been approved by CoC members as Resolution Number 3 with 100% vote. The e-voting on the said meeting was conducted on 02/08/2021."

He has produced the details of the same as Exhibit No. III. We have gone through the same and find that the best estimate of the amount required to meet Liquidation cost other than fee payable to Liquidator will be 26.12 Lakhs.

11. Hence, this Tribunal pass the following:

ORDER

- (i) M/s. Mathstramen Manufactures & Traders (p) Limited is hereby put under liquidation with immediate effect under Section 33 (1) of I&B Code, 2016.
- (ii) Shri. K. Easwara Pillai, with Registration No. IBBI/IPA-C01/IP-P00448/2017-2018/10791, having email id : keaswaran@gmail.com and address Vijayakumar & Easwaran Chartered Accountants 6th Floor, Amrita Trade Towers S.A Road Pallimukku, Kochi ,Kerala ,682016is appointed as the Liquidator of the Corporate Debtor subject



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to submission of written consent under Section 34 (1) of the I&B Code, 2016 in the prescribed form within three days from the date of receipt of this order.

- (iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
- (iv) The Liquidator shall initiate the liquidation process as envisaged under Chapter-II of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (v) Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered Office of the Company is incorporated.
- (vi) Public Notice shall be issued in two newspapers, viz., one in English and another in Kannada language, stating that the Corporate Debtor is in liquidation, as required in terms of Section 33(1) of the Code;



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- (vii) All the powers of the Board of Directors and the key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth be vested with the Liquidator.
- (viii) 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.
- (ix) 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 proceedings 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.
- (x) 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.



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- (xi) The Deputy Registrar/Assistant Registrar shall forward a copy of this Order to :
- i) the Liquidator and (ii) the Registrar of Companies, Kerala, immediately upon pronouncement of this Order; for updating the Master Data of the Corporate Debtor.
- (xii) The fee payable to the Liquidator shall be in compliance with Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

Dated this, the ^{21st} day of December 2021

sd/-
(Ashok Kumar B)
Member (Technical)

Certified to be True Copy

Ashok Kumar B
Deputy Registrar

National Company Law Tribunal
Kochi Bench

sd/-
Ashok Kumar B
Member (Technical)

24/12/2021

Memo No. IA(IBC)/139/KOB/2021 in IBA/04/KOB/2020

Date: 23.12.2021

To

1. Shri. K. Easwara Pillai, with Registration No. IBBI/IPA-001/IP-P00448/2017-2018/10791, Vijayakumar & Easwaran Chartered Accountants, 6th Floor, Amritha Trade Towers, S A Road, Pallimukku, Kochi -682 016.
2. The Registrar of Companies, Company Law Bhawan, BMC Road, Thrikkakara, Kochi – 682 021.

