

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV

19. IA 5405(MB)2023
IN
C.P. (IB)/976(MB)2020

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **30.01.2024**

Name of the Party: AMC Chemicals Private Limited
Vs
PJM Minerals and Industries Private
Limited

Section 9, 33(1) (b) (i) to (iii) r/w 33(3) of Insolvency and Bankruptcy Code,
2016

ORDER

IA 5405(MB)2023

1. Mr. Devul Dighe, Ld. Counsel for the Liquidator present through virtual.
2. This is an Application filed by Mr. Yatinkumar Sumatilal Shah, Resolution Professional of the Corporate Debtor seeking liquidation of **PJM Minerals and Industries Private Limited** under Section 33 of Insolvency and Bankruptcy Code, 2016 (hereinafter called as the "Code").
3. The facts leading to the case in hand are as follows:
 - a. Ld. Counsel for the Applicant stated that vide an order dated 28.04.2023, in Company Petition bearing C.P.(IB)/976(MB)2020 filed under Section 9 of the Code, by **AMC Chemicals Private Limited** (hereinafter referred to as the "Operational Creditor"), admitted the Petition and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor i.e. *PJM Minerals and Industries Private Limited* [CIN: U14100MH2017PTC297645] (hereinafter called as the "Corporate Debtor"). Mr. Yatinkumar

Sumatilal Shah was appointed as Interim Resolution Professional by this Tribunal vide order dated 28.04.2023 and confirmed as a Resolution Professional in the first CoC meeting held on 31.05.2023.

- b. Ld. Counsel for the Applicant stated that the Form-A was published on 05.05.2023 for Invitation of claims under Regulation 6(1) of the Code and the last date for submission of claim i.e. on 18.05.2023.
- c. That the Applicant was published FORM-G on 05.08.2023 in the two daily leading newspapers, the Applicant informed that the two Expression of Interest were received.
- d. Ld. Counsel for the Applicant stated that in 6th meeting of the CoC held on 20.10.2023, the sole Member of the CoC i.e. Cholamandalam Investment & Finance CO. Ltd. (GIFCL) informed that is in the process of assigning debt to AMC Chemcials Private Limited and therefore, sought some time as they do not want to contribute to the CIRP cost of the Corporate Debtor. As per request of sole CoC Member, the meeting of CoC was adjourned to 23.10.2023. On 23.10.2023, wherein the sole CoC member did not participate in the meeting, therefore, the CoC meeting again was adjourned to 25.10.2023.
- e. Ld. Counsel for the Applicant further stated that the 6th meeting of CoC held on 25.10.2023 have resolved to liquidate the Corporate Debtor on account of the fact that there was no Plan was received from the PRAs on or before the last of submission date and the CoC was of the view that not to further extent the CIRP process and therefore, apply for the liquidation of the corporate debtor before the Adjudicating Authority. The Resolution to initiate Liquidation proceedings was passed with 100% voting of the CoC. The same are reproduced below:

“RESOLVED THAT consent of members of CoC be and is hereby accorded to approve the Liquidation of the Corporate

Debtor u/s 33 (2) of the Insolvency and Bankruptcy Code, 2016 and any other applicable provisions.”

“RESOLVED FURTHER THAT the Committee of Creditors be and is hereby authorized to apply and intimate to Hon'ble Adjudicating Authority decision of the Committee of Creditors to liquidate the Corporate Debtor and obtain the order of liquidation.”

“RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to take such steps as shall be necessary, in relation to the above, to the extent required and to settle all matters arising out of and incidental thereto sign and execute all applications, documents and writings that shall be required and generally to do all acts, deeds and things that shall be necessary, proper, expedient or incidental for the purpose of giving effects to the aforesaid resolution.”

4. This Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for, and in the absence of any Resolution Plan on the table, the order of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code.
5. In that view of the matter, having considered the submissions and on perusal of averments made in the present Interlocutory Application; this Bench is satisfied and is of the considered opinion that the present Interlocutory Application is in consonance with Section 33(2) of the Code. Accordingly, this Authority has left with no option except to pass an order for Liquidation of the Corporate Debtor Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans for the Corporate Debtor. Accordingly, this Bench orders that:

- a) This Bench also directs that the CIRP cost incurred by the Resolution Professional, which has already been approved/ratified by the CoC in its 6th CoC meeting dated 25.10.2023 be released to the RP.
- b) The Application be and the same is allowed. The Corporate Debtor, i.e. ***PJM Minerals and Industries Private Limited***, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- c) It is to be noted that, as per IBBI vide its circular no. LIQ-12011/214/2023-IBBI/840 dated 18.07.2023 in the exercise of its powers conferred u/s 34(4)(b) of the Code had recommended that an IP other than RP/ IRP may be appointed as a liquidator in all the cases where the Liquidator (read liquidation) order is passed henceforth. In view of this circular of IBBI, we hereby appoints **Mr. Rakesh Nathwani**, having Registration No. **IBBI/IPA-001/IP-P-02058/2020-2021/13190** as the Liquidator to conduct liquidation process of the Corporate Debtor as provided under Section 34(4) of the Code.
- d) 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.
- e) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- f) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- g) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- h) **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.

- i) 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.
 - j) 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 the Liquidation Process Regulations.
 - k) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
 - l) 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.
 - m) The Liquidator shall submit Progress Reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and shall apprise the Bench about the Liquidation Process of the Corporate Debtor.
 - n) **The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.**
 - o) Registry shall furnish a copy of this Order to:
 - i. **Insolvency and Bankruptcy Board of India, New Delhi;**
 - ii. **Regional Director (Western Region), Ministry of Corporate Affairs;**
 - iii. **Registrar of Companies & Official Liquidator, Maharashtra;**
 - iv. **Registered Office of the Corporate Debtor; and**
 - v. **Liquidator, Mr. Rajkumar Feru Gupta.**
6. With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 5405 of 2023, stands disposed of as **Allowed**.

7. There would however be no order as to costs. Ordered Accordingly.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

/Dubey/

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)