

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 117/JPR/2019
in
CP(IB) No. 601(ND)/2018
TA No. 69/2018

**UNDER SECTION 33(2) OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016**

Pankaj Mahajan

Resolution Professional of
Emgee Cables And Communications Limited
808, Padma Tower I, Rajendra Place, New Delhi-110008

...APPLICANT

IN THE MATTER OF:

M/s. Packwell (India) Pvt. Ltd.

Registered office: C-49052,
Industrial Estate Bias Godam, Jaipur-302006

...OPERATIONAL CREDITOR

VERSUS

Emgee Cables And Communications Limited

Registered Office: F-75/76,
Udyog Vihar, Jaitpura-Jaipur

...CORPORATE DEBTOR

For the Applicant:

Anubha Singh, Adv.
B.D Upadhaya, AGM, Bank of Baroda

For the Respondent(s):

Amol Vyas, Adv. for R-1 to R-3

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Aishwarya Sharma, Adv. for R-18 & 19
Sarvesh Jain, Adv. for R-14
Ankit Sareen, Adv. for R-8 to 13
Daksh Pareek, Adv.

Order Pronounced On: 18.09.2019

ORDER

1. This IA/117/JPR/2019 is filed by the Resolution Professional under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for initiation of Liquidation Proceedings against M/s. Emgee Cables and Communications Limited, Corporate Debtor herein, as approved by the Committee of Creditors ('CoC').
2. Earlier, an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was filed by **M/s. Packwell (India) Private Limited** (Operational Creditor) against **M/s. Emgee Cables and Communications Limited** (Corporate Debtor). This Tribunal admitted the insolvency petition on 27.07.2018 and appointed one Mr. Sandeep Kumar Jain as Interim Resolution Professional ('IRP') in relation to the affairs of the Corporate Debtor.
3. The IRP complied with the provisions of the Code and constituted the

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CoC. The first meeting of the CoC was held on 24.08.2018, wherein the CoC unanimously resolved to replace the IRP i.e. Mr. Sandeep Kumar Jain. Consequently, Mr. Pankaj Mahajan was appointed as Resolution Professional ('RP') by this Adjudicating Authority vide its order dated 31.08.2018.

4. The Resolution Professional invited expression of interest ('EOI') on 09.10.2018, pursuant to which no resolution plan was received. Thereafter, on 30.10.2018, the RP again published Form G and called for EOI. Pursuant to the fresh EOI, a resolution plan was received from the consortium of Mr. Kapil Mantri and Kineta Global Limited.
5. RP convened second meeting of CoC on 12.02.2019, to discuss the plan in detail and to seek the vote of the COC members on the plan. After discussion and deliberation, it was decided by the COC members that the plan is not acceptable and the Resolution Applicant should be called upon to improve the terms of the plan. Subsequently, the resolution plan was revised two times but the same was rejected by the COC through e-voting held between 11.04.2019 to 16.04.2019. The votes against/abstentions aggregated to 89.43% of the total voting share. The Reasons stated by the CoC for rejections of plan are as follows:

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- a) Major source of funds are “Realization of Loans and advances” (Rs. 6.55 crores) and friends/family, relative and associates (Rs. 4.50 Crores). Hence, source of funds seems not reliable.
- b) The NPV of the average fair value of the assets charged to our bank is 6.93 crores, which is higher than the amount to our bank under the Resolution Plan i.e. Rs. 5.94 crores. *(As per view expressed by Bank of Baroda, a key constituent of the CoC)*
6. In the 10th meeting of CoC dated 20.04.2018, it was brought to the knowledge of the CoC members that the Resolution Plan was rejected and the 270 days period was going to expire on 22.04.2019. There was no possibility of resolution taking place in Emgee Cables and Communications Limited. Therefore, the CoC unanimously passed a resolution to liquidate the Corporate Debtor. The operative part of the said Resolution is reproduced below:-

“Resolved that as per Chapter III of Part II of Insolvency and Bankruptcy Code, 2016, the business of the corporate debtor is hereby approved to be liquidated and Resolution Professional is authorised to file the application for seeking order of liquidation with the Hon’ble Adjudicating Authority”

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7. It is further seen that the RP had also filed Application vide IA No. 72/JPR/2019 against One Mr. Shripal Choudhary and 22 others praying for declaration of certain transactions as preferential, undervalued and fraudulent and to direct the recovery of amounts from the respondents and for directions under Section 67 of the Insolvency and Bankruptcy Code, 2016 to the related respondents.
8. IA No. 185/JPR/2019 was filed by Equitas Small Finance Bank Ltd praying for condonation of delay of 182 days in the filing of their claim before the IRP, and to set aside the decision dated 14.02.2019 of the RP of rejection of the proof of claim and further to direct the RP to accept/admit the proof of claim of the applicant bank.
9. IA No. 215/JPR/2019 was filed by Resolution Applicant praying that the RP be directed to present the proposed resolution plan before the CoC for reconsideration.
10. IA No. 236/JPR/2019 was filed by the Resolution Applicant with the prayer that Bank of Baroda may be added as necessary party in the array of the respondents.
11. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33(2) of the Insolvency and

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Bankruptcy Code, 2016 can be contextually seen and are reproduced as follows:

“(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 creditor 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-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)”

12. In view of the forgoing circumstances and taking into consideration the provisions of law as well as relevant facts, this tribunal is constrained to order for liquidation of the corporate debtor and in such background the corporate debtor stands liquidated with the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 and more particularly as given in Chapter III of the Insolvency and Bankruptcy Code, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

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- a. **Mr. Suresh Chand Garg**, Resolution Professional holding Registration No. IBBI/IPA-001/IP-P00489/2017-18/10877, is hereby appointed as Liquidator, as the CoC in its meeting on 20.04.2019 has not proposed any person's name.
- b. Mr. Suresh Chand Garg is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Registry is directed to communicate this Order to the Registrar of Companies, Jaipur and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation
- e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its

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effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- f. This order is 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;
- g. 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 regulations.
- 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 operational creditor, corporate debtor and the Liquidator for taking necessary steps.
- j. The pending IAs viz, IA No./236/JPR/2019, IA No./215/JPR/2019, IA No./185/JPR/2019 and IA No./72/JPR/2019, as they have bearing on the issues in

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liquidation, are directed to be listed along with the IB No. 601(ND)/2018, TA No. 69/2018 while the liquidation proceedings are placed before this Tribunal.

Sd—

Sd—

SHRI RAGHU NAYYAR,
MEMBER (Technical)

DR. POONDLA BHASKARA MOHAN
MEMBER(Judicial)

VISHNU

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in
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In the National Company Law Tribunal, Jaipur

Item No. 5

IA No. 322/JPR/2019

IA No. 236/JPR/2019

IA No. 215/JPR/2019

IA No. 185/JPR/2019

IA No. 72/JPR/2019

IB No. 601(ND)2018

TA No.69/2018

UNDER SECTION 9 OF IBC, 2016

In the matter of:

M/s Packwell (India) Pvt. Ltd.

.....Applicant/Petitioners

VS.

Emgee Cables and Communication Ltd.

.....Respondent

Order delivered on 25.09.2019

**Coram: DR. POONDLA BHASKARA MOHAN, JUDICIAL MEMBER
SH. RAGHU NAYYAR, TECHNICAL MEMBER**

For Petitioner (s)

: Anubha Singh, Adv.

For Respondent(s)

: Aishwarya, Adv.

Samay Maheshwari, Adv.

Saumil Sharma, proxy counsel for

Amol Vyas, Adv.

ORDER

IA No. 322/JPR/2019

This is an IA filed by the former RP in CP No. IB- 601(ND)/2018, TA No. 69/2018 seeking replacement of Mr. Suresh Chand Garg, the present Liquidator with Sh. Satyendra Prasad Khorania having Registration No. IBBI/IPA-002/IP-N0002/2016-17/10002 as a Liquidator. It is pleaded by the learned counsel appearing for the former RP that earlier this Tribunal ordered liquidation in IA

Shakti



No. 117/JPR/2019 on 18.09.2019 and named Mr. Suresh Chand Garg as the Liquidator. However, she submits that earlier vide Diary No. 989/2019, it was put forth before this Tribunal the name of Sh. Satyendra Prasad Khorania having Registration No. IBBI/IPA-002/IP-N0002/2016-17/10002 as the Liquidator which was approved by the CoC. In the circumstances stated in this IA, this Tribunal hereby replaces Mr. Suresh Chand Garg as the Liquidator and appoints Sh. Satyendra Prasad Khorania having Registration No. IBBI/IPA-002/IP-N0002/2016-17/10002 to act as the Liquidator.

Accordingly, this IA is allowed.

Sd-

(RAGHU NAYYAR)
TECHNICAL MEMBER

Sd-

(DR. POONDLA BHASKARA MOHAN)
JUDICIAL MEMBER