

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA 677 in C.P. 1076/I&BP/2017

Under section 33(2) & 34(1) of the IBC, 2016

In the matter of  
ESSKAY MOTORS PVT. LTD.

Rajeev Mannadiar  
Resolution Professional  
.... Applicant

Order delivered on 08.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Applicant : Rajeev Mannadiar  
Resolution Professional

*Per V. Nallasenapathy, Member (Technical)*

**ORDER**

1. Mr. Rajeev Mannadiar, the Resolution Professional of Esskay Motors Pvt. Ltd. filed this Application under section 33(2) of the Insolvency & Bankruptcy Code (the Code), praying for liquidation of the company based on the resolution passed by the complete majority of the Committee of Creditors on 2.11.2017, along with another prayer for appointment of him as the Liquidator for the purpose of liquidation of the company under section 34(1) of the Code.

2. The Corporate Debtor M/s. Esskay Motors Pvt. Ltd. was put on in Insolvency Resolution process, on a Petition filed by HDFC Bank Ltd. under section 7 of the Code, by an Order of this Adjudicating Authority dated 29.6.2017. The Applicant herein was appointed as Interim Resolution Professional, he has made a public announcement of insolvency resolution process in two newspapers and on the website of Insolvency and Bankruptcy Board of India (IBBI). In the first meeting of the Committee of Creditors (CoC) held on 31.8.2017,

wherein the representative of Financial Creditors, Mr. C. K. Prasad Ex-CMD of Esskay Motors Pvt. Ltd., and Mr. Sanjaya Pradhan, Auditor of Esskay Motors Pvt. Ltd. participated, the Applicant was confirmed as Resolution Professional, Mr. C. K. Prasad who was asked to come forward with concrete proposals for revival of the company failing which, the CoC may consider liquidating the company.

3. The Applicant submitted that the claim of Central Bank of India was admitted for ₹12,23,31,711/- and the claim of HDFC Bank was admitted for ₹1,56,25,200/-, thus the total claim filed by the Financial Creditors works out to ₹13,79,56,911/-. The Applicant has also prepared the information Memorandum of the Corporate Debtor.

4. The second meeting of the CoC was held on 12.9.2017 wherein the representatives of both the Financial Creditors, the Ex-CMD and the Auditor of the Corporate Debtor participated, they discussed about the information Memorandum prepared by the RP, the list of claims received by the RP, the Valuation Report submitted by M/s. Delta valuers and Appraises LLP who had submitted a Liquidation value of ₹9,22,000/-, another Valuation Report submitted by M/s. VK & Associates wherein the liquidating value was ₹9,15,000/- and the proposal of Mr. C.K. Prasad for starting a new division of Esskay Motors Pvt. Ltd. – namely Esskay Luxuria in association with M/s. Craftsvilla for selling their designer clothes line and TBZ for the jewellery range of items, for which he sought time and after discussion the CoC decided to grant three weeks' time to Mr. C. K. Prasad, Ex-CMD of the Corporate Debtor to submit the revival proposal and another 10 days' time to finalize the funding arrangement for the revival of the company.

5. The third CoC meeting was held on 3.10.2017, wherein all the stakeholders have participated and finally the CoC after due deliberations decided to go ahead with winding-up of the company since the proposal given by Mr. C. K. Prasad for revival of the Corporate Debtor is not acceptable.



6. The fourth CoC meeting was held on 2.11.2017, here also all the stakeholders have participated, wherein an email sent by Mr. C.K. Prasad Ex-CMD on 10.10.2017 stating that the proposal of M/s. Craftsvilla could not be concluded and discussions were also held on the proposal submitted by the Ex-CMD for assignment of debts to M/s. Invent ARC Pvt. Ltd. was rejected by the CoC on the ground that CoC did not have a policy of assignment of debts. Subsequently, the Ex-CMD raised an issue that the RP did not invite bids from interested parties but the CoC felt that it would only prolong with the process of resolution and will not yield any fruitful result as the company is not a going concern. Then the Ex-CMD proposed to pay the liquidation value of the company which was also rejected by the CoC. Finally, the CoC unanimously resolved that the Corporate Debtor shall be liquidated and requested the RP to initiate necessary proceedings under the Code. Hence this Application.

7. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code r/w Regulations of CIRP, for the valuation report filed by the valuer has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order as mentioned under sub-section 2 of section 33 of the Code and accordingly, the Corporate Debtor is ordered to be liquidated.

8. Consequently, the RP/Applicant herein is appointed as the Liquidator as provided under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator;

9. This Bench hereby directs the personnel of the corporate debtor to extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

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10. Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction shall 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.

11. This 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 business the Corporate Debtor carrying.

12. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation Process) Regulations, which forms part of the liquidation cost.

13. The Liquidator appointed herein is directed to issue public announcement stating that the Corporate Debtor is in liquidation and also required to send the copy of this Order to the concerned Registrar of Companies as required under section 33(1) of the Code.

14. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Code 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations 2016.

**Sd/-**

**V. NALLASENAPATHY**  
Member (Technical)

**Sd/-**

**B. S.V. PRAKASH KUMAR**  
Member (Judicial)