

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

C.P(IB) No.65/BB/2017

**IN THE MATTER OF
SECTION 33 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016
AND
EOLANE ELECTRONICS BANGALORE PVT. LTD.**

Order delivered on 20.12.2017

Eolane Electronics Bangalore Pvt. Ltd.
Plot No.16, Survey No.42 (P)
Electronics City, Phase II
Bangalore 560 100

Petitioner/Corporate Debtor

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

For the Petitioner(s) : Shri Perikal K Arjun, J Sagar Associates, Advocates

Per: Hon'ble Shri Ashok Kumar Mishra, Member Technical - Author

Heard on : 31.07.2017, 04.08.2017, 07.08.2017, 09.08.2017, 16.08.2017, 31.08.2017
13.09.2017, 10.10.2017, 23.10.2017, 13.11.2017, 04.12.2017 and 11.12.2017

ORDER

This Company Petition was filed by Eolane Electronics Bangalore Private Limited on behalf of the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Code 2016 read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process.

The Corporate Debtor has in default for four years for a total sum of Rs. 144,99,49,809/- to the Creditors as stated in the petition. This Bench on perusal of the documents and averments made in the Petition passed vide Order dated 31st August, 2017 admitted the application and declared Moratorium under Section 14 of the Insolvency and Bankruptcy Code 2016 and appointed Shri Gorur N




Venkataraman, bearing Registration No. IBBI/IPA-003/IP-N00075/2017-18/10585, residing at No.8, First Floor, Behind Rameswara Temple, 4th Main, Chamarajpet, Bengaluru 560 018, email : gnvmail@gmail.com, as Interim Resolution Professional (IRP), directing him to take necessary action in accordance with the relevant provisions of the Insolvency and Bankruptcy Code.

The said IRP has submitted the report on 20.09.2017 enclosing the list of Creditors along with the amount claim verified as required under I&BC and Regulation. He has also filed a copy of paper publication as required under Section 13 of the Code for having taken advertisement on 02.09.2017 one in "Deccan Herald" (English Newspaper) and one in "Vijaya Karnataka" (Regional Language).

The last date of submission of claims from the Creditors was mentioned as 13.09.2017. IRP also informed in the report that he appointed two Registered Valuers after exploring the list of 13 Valuers through local Valuers Association and after holding discussion with them to assess their capacity, he finalised two Registered Valuers available in Bangalore and issued letter on 06.09.2017 to take up valuation and give their Report on Liquidation value after physically examining the value of the assets in accordance with the provisions of existing law.

IRP also asked the Auditors regarding last two years' transactions and two years' bank accounts including related party transaction, creditor transaction if any and disposal of assets during the last two years with valid explanations and proof. As per the Report, the Auditors have clarified that no such transactions have occurred in the Company and that there was no financial debt or any security interest created by Corporate Debtors and as such there is no financial creditors and no claims have been received from them.

IRP appointed by this Tribunal has filed his Report dated 28.09.2017 certifying the constitution of Committee of Operational Creditors as per Section 21 read with Regulation 16 of the IBBI (of IRPC 2016). It is stated in the report that IRP has



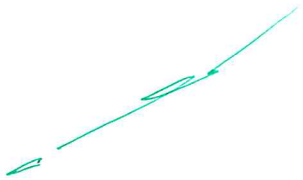

submitted all the claims as on 26.09.2017 comprising of 18 Creditors with a total operational creditors value being Rs. 5,24,45,114/ and has not considered group companies who are related parties in the Committee of Creditors. It is also stated in the report that three workmen's claim in form 'D' who were not represented in the Committee, but their claims admitted by IRP which amounts to Rs. 9,49,870/-. It is also stated in the report, that he has also included the claim of other 13 employees with a value of Rs. 55,65,130/-.

As per Regulation 22(1) of IBC Code, IRP submitted the Minutes of the 1st Meeting of Committee of Operational Creditors on 04.10.2017 wherein it is stated that out of 16 Operational Creditors of the Committee of Operational Creditors including authorised representative of Workmen Shri K Devaraj (134 Workers) and authorised representative of Employees Shri Muniraju N (13 Employees) totally 15 members attended the meeting wherein the present IRP Shri Gorur N Venkatarman was unanimously elected as RP with a voting percentage of 98.97%. It is also stated that in the Minutes of the 1st Meeting that one member M/s. Mouser Electronics (Hong Kong) Ltd., confirmed his inability to attend the meeting.

IRP also submitted the Resolution approving the IRP to continue as Resolution Professional for carrying out the Corporate Insolvency Resolution process of Corporate Debtors M/s. Eolane Electronics Bangalore Pvt. Ltd.

Further, IRP has filed letter dated 07.10.2017 before this Tribunal praying for confirming him as RP.

The said Interim Resolution Professional has conducted the first meeting of Operational Creditors on 4th October, 2017 wherein he was elected him as Resolution Professional (RP) and this Tribunal vide order dated 10th October, 2017, confirmed the appointment of Shri Gorur R Venkataraman, as RP.



In the meantime, IA 120/2017 was filed by the General Secretary, Shri K Devaraj of the Employees Trade Union of Workmen, for which RP filed his objection and the said IA has been disposed of vide a separate order. Further, IA 161/2017 was filed by one of the Operational Creditors M/s. JAS Telecom Pvt. Ltd., a Landlord of Corporate Debtor where RP has filed his objections which has also been separately disposed of.

RP has also submitted to this Tribunal, vide his letter dated 08.12.2017 enclosing a copy of the information memo advise dated 16.10.2017 sent to all Creditors for preparing a Resolution Plan as per Section 29 of the I&B Code.

RP has also submitted vide his letter dated 11.12.2017 to this Tribunal that in the meeting of the Committee of Creditors held on 01.12.2017, the Committee of Creditors are of the view that there is no point in waiting further, as no Resolution Plan has come and there is no possibility of any other investors submitting the Resolution Plan in the near future. They have also communicated to RP to communicate the state of affairs of CIRP and further time will amount to deterioration of assets value of Corporate Debtor and suggested this Tribunal to order early liquidation as provided in IBC Code since there is no other alternative left to CoC.

The Minutes of the Committee of Creditors meeting as circulated by RP is produced at Annexure-2 of the memo dated 11.12.2017.

RP has also stated in the meeting of Committee of Creditors held on 01.12.2017 about the Expression of Interest (EoI) in the meeting calling for Resolution Plan from the interested investors and last date was 24.11.2017 given in the English Newspaper "Deccan Herald" on 10.11.2017 and at the request of Committee of Creditors time was extended by another one week i.e., upto 01.12.2017. RP also informed that he has sent EoI to the Director, STPI, Bengaluru Office and also requested them to send to Director General, STPI, New Delhi to be circulated among all STPI in India. He



also further informed that in spite of reminders from RP on 17.11.2017 to all the Members to send email to interested parties, no response has come from anyone so far.

The extract from Section 33 of I&BC are given hereunder:

1. *Where the Adjudicating Authority,*
 - a. *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast tract corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
 - b. *rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

It shall –

 - i) *pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
 - ii) *issue a public announcement stating that the corporate debtor is in liquidator; and*
 - iii) *require such order to be sent to the authority with which the corporate debtor is registered.*
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 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).*
3. *Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
4. *On receipt of an application under sub section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
5. *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.*
Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.
6. *The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by Central Government in consultation with any financial section regulator.*
7. *The order for liquidation under this section 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.*

Further, since no Resolution Plan is submitted as per details enumerated above, this Tribunal has to pass order of Liquidation under section 33 and hereby appoint RP as liquidator who shall exercise all powers and discharge all functions as per Chapter III of the Insolvency & Bankruptcy Code.

In the circumstances as stated, we are of the view that, there are sufficient grounds to initiate liquidation process and to pass the following liquidation order.

- i) That the Resolution Professional appointed by the Committee of Creditors shall act as Liquidator in pursuant to Section 34(1) of Insolvency and Bankruptcy Code, 2016.
- ii) The Liquidator shall vest all powers of the Board of Directors, Key Managerial Personnel of the Corporate Debtor, as the case may be, shall cease to have effect and shall vest with the Liquidator.
- iii) The Corporate Debtor shall extend all existence and co-operation to the Liquidator in managing the affairs of the Corporate Debtor as may be required by the Liquidator.
- iv) Issue a public announcement stating that the Corporate Debtor is in liquidation within 5 days of receipt of certified copy of this Order.
- v) The Liquidator appointed shall discharge his functions pursuant to the powers and duties conferred under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016.
- vi) The fee of the Liquidator shall be proportionate to the liquidation estate assets as specified by the Board and it shall be paid from the proceeds of the liquidation estate under Section 53 of the Code.


(ASHOK KUMAR MISHRA)

MEMBER, TECHNICAL


(RATAKONDA MURALI)

MEMBER, JUDICIAL