

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 2758/2021

In

C.P. No. (IB) 1319/MB/C-III/2017

Under Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016

Mr. Rajat Mukherjee)
Liquidator of Enviiro Bulkk Handling)
Systems Private Limited) **... Applicant/Liquidator**

IN THE MATTER OF

Elecon Engineering Company Limited

... Operational Creditor

Vs

Enviiro Bulkk Handling Systems

... Corporate Debtor

Order pronounced on: 01.05.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Liquidator : Adv. Kunal Kanungo a/w Adv. Tanushree Sagai &
Adv. Adithay Jain

For the Successful Bidder : Adv. Aarti Suvarna

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. This I.A. is filed by Mr. Rajat Mukherjee, the Liquidator of Envirro Bulkk Handling Systems Pvt. Ltd. (**Corporate Debtor**) under Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**IBBI Liquidation Regulations**) seeking following reliefs:
 - a. *To allow the present application filed with respect to closure of the liquidation process period of the Corporate Debtor as a going concern;*
 - b. *To take on record the compliance certificate in Form-H in compliance of Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
 - c. *To take on record the final report in compliance of Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

Commencement of CIRP

2. This Tribunal vide order dated 04.12.2017 in CP(IB)/1319/2017 initiated Corporate Insolvency Resolution Process (**CIRP**) of Envirro Bulkk Handling Systems Pvt. Ltd. (**Corporate Debtor**) and Mr. Rajmal Labhchand Mogra was appointed as the Interim Resolution Professional (**IRP**). The 1st Committee of Creditors (CoC) Meeting was held on 16.07.2018 wherein the CoC unanimously resolved to appoint Mr. Vipul Kantilal Choksi as the Resolution Professional (**RP**).

Initiation of Liquidation Process

3. Upon failure of the Resolution Process, the CoC, in its 10th meeting dated 08.03.2019, resolved to liquidate the Corporate Debtor. Accordingly, application no. 1096/2019 was filed seeking liquidation of the Corporate Debtor. The Tribunal vide order dated 27.03.2019 initiated liquidation process of the Corporate Debtor and Mr. Rajat Mukherjee (**Applicant**) was appointed as the Liquidator.

4. Pursuant to the Liquidation order, the Applicant/Liquidator made public announcement on 01.04.2019 in Form B of Schedule 2 of the IBBI (liquidation Process) Regulations, 2016, thereby inviting claims from the stakeholders to submit their claims on or before 26.04.2019. The public announcement was made in the following newspapers:
- i) Financial Express (*English*)
 - ii) Navrashtra (*Marathi*)

List of Stakeholders

5. The Liquidator prepared the list of stakeholders and constituted the Stakeholders Committee (**SCC**) on 26.05.2019 in accordance with Regulation 31A of the IBBI (liquidation Process) Regulations, 2016. The list of stakeholders was filed before the Adjudicating Authority on 24.06.2019.
6. The list of stakeholders of the Corporate Debtor consisted of 2(two) secured financial creditors aggregating to Rs.1,34,57,20,968.35/- in value, 55 operational creditors (excluding employees and workmen) aggregating to Rs. 10,62,83,979/- in value and 96 operational creditors being employees aggregating to Rs.83,85,284/- in value. It is submitted that the Corporate Debtor has no workmen.

Assets of the Corporate Debtor

7. The Liquidation Estate of the Corporate Debtor consisted of the following assets:
- i) Property located at 2nd Floor, Vijay Market, Plot No. F/12 at Village Chinchwad, Haveli No. 14, Pune – 411033.
 - ii) Flat No. 5, 2nd Floor, Aditya Heights Apartment Condominium, S. no. 164/7, Plot no. 22, CTA no. 2462, Indira Nagar, Chinchwad Village- Chinchwad, Taluka- Haveli, Dist. Pune – 411033.
 - iii) Plot Nos. 1 to 12, Gut No. 1605, Village Chikhali, Taluka Haveli, Dist. Pune

- iv) Plant & Machinery located at above factory place.
- v) Stock located at above factory place.

8. It is pertinent to note here that the Average Fair Value and Average Liquidation Value of the Corporate Debtor, as submitted by the appointed Valuers, is Rs.18,29,71,000/- and Rs. 14,21,77,000/- respectively.

Sale of Corporate Debtor as a Going Concern

9. On 21.09.2019, the first auction notice was published, however, the said auction was unsuccessful as no buyers came forward to purchase the Corporate Debtor as a going concern. Thereafter, in March 2020, nation-wide lockdown was imposed due to the prevalence of Covid-19 pandemic.
10. The Liquidator filed an application bearing no. 2131/2020 on 18.11.2020 seeking permission of this Tribunal to sell the identified non-assets of the Corporate Debtor for the purpose of maximum realization of the value of assets. The Ex-promoters filed intervention application no. 2/2021 in the abovesaid application seeking approval of their bid of Rs. 15.30 crores for purchasing the Corporate Debtor as a going concern.
11. The Tribunal vide order dated 26.02.2021 directed the Liquidator to issue fresh auction notice and also allowed the ex-promoters to participate in the said auction subject to payment of Rs. 75,00,000 in the Corporate Debtor's Liquidation account.
12. Subsequently, the 9th Stakeholders Consultation Committee (SCC) was held on 01.03.2021 wherein Rs. 15,25,00,000 was fixed as the Reserve Price for sale of the Corporate Debtor as going concern.
13. The Liquidator published the e-auction on 03.03.2021, inviting bids for sale of Corporate Debtor as going concern, in two newspapers namely

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Financial Express and *Navrashtra*. It is submitted that prospective bidders submitted Expression of Interests (**EoI**) along with 5% upfront payment of Rs. 76,50,000. The e-auction was held on 18.03.2021.

14. Mrs. Janhavi Milind Dixit, the suspended board director of the Corporate Debtor in consortium with Mr. Dinesh Suryakant Waghmare, Proprietor – Hi-Tech Services, had submitted a bid amount of Rs. 15,30,00,000 and emerged as the successful bidder. It is to be noted that the Corporate Debtor is an MSME and in view of the same, the suspended director is not ineligible under section 29A of IBC. Further, the Liquidator has placed on record an affidavit under section 29A of IBC confirming the eligibility of the successful bidders.
15. The successful bidder paid the entire sale consideration of Rs. 15,30,00,000/- to the Liquidator. Accordingly, the Liquidator issued a Sale Certificate dated 08.04.2021. The amount was distributed under section 53 of IBC amongst the stakeholders. The details of distribution made to the stakeholders is as under: -

Section 53(1)	Stakeholders under section 53(1)	Amount Claimed (in Lakhs)	Amount Admitted (in Lakhs)	Amount Distributed (in Lakhs)	%
(a)	Provident Fund + Interest	49.59	37.15 + 12.44	49.59	100%
(a)	CIRP Costs	20.47	20.47	20.47	100%
(a)	Liquidation Costs	28.04	28.04	28.04	100%
(b)(i)	Workmen Dues	-	-	-	-
(b)(ii)	<u>Secured Financial Creditors</u> Invent ASR Pvt Ltd Saraswat Bank	13462 9746 3716	13457.21 9742 3716	1,442.21 1044.00 398.21	10.72%
(c)	Employees Dues	112.40	83.12	<i>Nil</i>	0%
(d)	Unsecured	-	-	-	-

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	Financial Creditors				
(e)(i)	Government Dues	2,079.87	2,079.87	Nil	0%
(e)(ii)	Other Financial Creditors	-	-	-	-
(f)	Operational Creditors	1,524.53	687.83	Nil	0%
(g)	Preferential Shareholders	-	-	-	-
(h)	Equity Shareholders	60	60	Nil	0%
	Total	17,336.90	16,466.13	1,540.31	

16. Thereafter, the Liquidator made a post-sale public announcement on 01.05.2021 in three newspapers namely, *Financial Express* (English language), *Loksatta* (Marathi language) and *Navrashttra* (Marathi language).
17. The successful bidder had moved an application no. 741/2021 seeking reliefs and concessions from this Tribunal and the same was allowed vide order dated 21.06.2021. In the said order, the Tribunal directed the secured creditors to handover the title documents of the properties covered under the auction sale process, free from all encumbrances. Accordingly, the two secured financial creditors, viz., Invent Assets Securitisation & Reconstruction Private Limited and Saraswat Cooperative Bank Limited, had issued letter dated 19.07.2021 and 26.07.2021 respectively, acknowledging release of charge on the properties covered under the auction sale process.
18. In the meantime, the Liquidator moved an application bearing no. 1279/2021 seeking exclusion of time period of 69 days from the Liquidation process period and the same was allowed by this Tribunal vide order dated 20.07.2021.

Filing of Necessary Reports

19. The Liquidator intimated the Registrar of Companies (RoC) about the initiation of Liquidation Process of the Corporate Debtor and submitted INC-28 with the RoC.
20. The Liquidator had filed the Preliminary Report and the Asset Memorandum Report on 24.06.2019 under Regulation 12 and Regulation 34(4), respectively, of the Liquidation Regulations.
21. We note that in compliance with Regulation 36 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator prepared and issued an Asset Sale Report.
22. Further, in compliance with Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator filed Quarterly Progress Reports. The details of the progress reports are as follows:

Progress Report	Period	Date of filing
1 st	27.03.2019 – 30.06.2019	15.07.2019
2 nd	01.07.2019 – 30.09.2019	15.10.2019
2 nd suppl	01.07.2019 – 30.09.2019	30.10.2019
3 rd	01.10.2019 – 31.12.2020	16.01.2020
4 th	01.01.2020 – 31.03.2020	22.07.2020
5 th	01.04.2020 – 30.09.2020	01.11.2020
6 th	01.10.2020 – 31.12.2020	30.03.2021

23. It is submitted that the Liquidator has also updated the audited Financial Statements of the Corporate Debtor. Thus, the books and accounts and Audited Financial Statements for the Financial Years 2018-19, 2019-20, & 2020-21 were maintained and updated by the Liquidator on behalf of the Corporate Debtor.
24. The Final Report as per Regulation 45 of the IBBI Liquidation Regulations, 2016 is submitted by the Liquidator along with this Application. Further, the compliance certificate in Form H field under

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Regulation 45(3) of the said Liquidation Regulation is also annexed to this Application.

Completion of Liquidation Process of the Corporate Debtor

25. The Liquidator submits that a contingency reserve in the form of two Fixed Deposits (FDs) was created in IndusInd Bank on 21.06.2021 & 29.07.2021 respectively for the miscellaneous expenses incurred during the closure of liquidation process of the Corporate Debtor. The details of the 2(two) Fixed Deposits as provided is reproduced hereinbelow:

Sr. No.	Details	Date of FD	Amount of FD
1	FD 1	21.06.2021	Rs. 99,00,000/-
2	FD 2	29.07.2021	Rs. 3,26,000/-
3	Interest on both FDs		Rs. 10,31,204/-
Total			Rs. 1,12,57,204/-

26. It is submitted that pursuant to the sale of the Corporate Debtor as a going concern, the aggregate FD amount of Rs. 1,12,57,204/- was distributed in the following manner:

Sr. No.	Date	Amount	Payment made to
1	28.06.2021	Rs. 6,90,282	Saraswat Co-op Bank (SCC Member)
2	28.06.2021	Rs. 18,09,718	Invent ASR (SCC Member)
3	09.09.2021	Rs. 12,22,154	EPFO for its claim u/s 7Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
4	29.03.2022	Rs. 21,50,380	Invent ASR (SCC Member) pursuant to NCLAT order dated 26.11.2021 in CA No. 709/2019
5	29.03.2022	Rs. 8,20,220	Saraswat Co-op Bank (SCC Member) pursuant to NCLAT order dated 26.11.2021 in CA No. 709/2019
6	24.03.2024	Rs. 27,14,813	Invent ASR (SCC Member) pursuant to this Tribunal's order dated 28.02.2024 passed in IA/2428/2021 preferred by EPFO
7	24.03.2024	Rs. 10,35,447	Saraswat Co-op Bank (SCC Member) pursuant to this Tribunal's order dated

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			28.02.2024 passed in IA/2428/2021 preferred by EPFO
8	24.03.2024	Rs. 8,14,190	Liquidation expenses including legal expenses
Total		Rs. 1,12,57,204	

27. It is also submitted that no PUFEE transactions were determined by the Liquidator/stakeholders and hence, no such applications are pending before this Tribunal.

ORDER

28. Heard the Counsel for the Liquidator and perused the records.

29. At this juncture, it is relevant to quote Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016:

“45. Final report prior to dissolution.

(1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor’s assets have been liquidated.

(2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for—

- (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or***
(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).”

(Emphasis Provided)

30. From the perusal of the Application along with the final report and the Compliance Certificate filed in Form-H by the Liquidator, it is seen that the Corporate Debtor has been successfully sold as a going concern to the successful bidder.

31. In view thereof, we are inclined to allow the present application under Regulation 45(3)(a) of the Liquidation Regulations, 2016.

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32. Accordingly, we hereby order closure of liquidation proceedings of the Corporate Debtor i.e. **Envirro Bulkk Handling Systems Private Limited** with the following directions:
- i) Liquidation proceedings of the Corporate Debtor stands closed from the date of this order.
 - ii) The Liquidator, Mr. Rajat Mukherjee, is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.
 - iii) The Liquidator and the Registry are directed to forward a copy of this Order to the concerned authorities and the Registrar of Companies having jurisdiction and also to the IBBI, within 7 (seven) days from the date of receipt of this order, for further necessary action as prescribed under Law.
33. In the result, IA No. 2758 of 2021 is hereby **allowed and disposed of** and C.P.(IB) – 1319 (MB)/2017 is hereby **closed**.

“Files to be consigned to records.”

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Lakshmi Gurung
Member (Judicial)

Uma, LRA