

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 22

CP (IB)3653/MB/2018 IA 216/2020 IA 2810/2021 IA 159/2022 IA 1555/2022

CORAM:

SH. PRABHAT KUMAR
HON'BLE MEMBER (T)

JUSTICE SH. VIRENDRASINGH BISHT(Retd.)
HON'BLE MEMBER(J)

ORDER SHEET OF THE HEARING ON **24.08.2023**

NAME OF THE PARTIES: - **EMBEE SOFTWARE PVT LTD V/S MACTORES
INNOVATIONS PVT LTD**

Rule 11, Section 9 of the IBC, 2016

ORDER

Adv. Saurabh Gandhi appeared for the Liquidator in IA Nos. 1555/2022, 2810/2021, 216/2021 & 159/2021.

Adv. Mitali Bhatta i/b AKR Advisors LLP appeared for the Applicant.

IA No. 1555/2022 –

1. The present application is filed by Mr. Mahesh Surekha, Liquidator of Mactores Innovations Private Limited under Section 54 of the Insolvency and Bankruptcy Code, 2016 and Regulation 45(3) of IBBI (Liquidation Process) Regulations, 2016 for dissolution.
2. The Corporate Debtor was admitted under CIRP vide Order dated 09.10.2019 and Applicant herein, Mr. Mahesh Surekha was appointed as the Interim Resolution Professional.
3. Thereafter, in the 1st meeting of the CoC dated 07.11.2019 the Interim Resolution Professional was appointed as the Resolution Professional in the matter.
4. Subsequently, in the attempt to resolve stressed assets of the Corporate Debtor, the publication of an Expression of Interest (EOI) was made in the Newspapers.
5. In response to the said EOI published on 16-12-2019, no Prospective Resolution Applicant (PRA) came forward to submit its intent under the EOI. Since, there was no application from any person in the resolution

process, another Form G was published on 23-01-2020. Yet, no response was received.

6. The main assets owned by the Corporate Debtor are Software licenses. The member of the Suspended Board did not provide any information to value the assets of the Corporate Debtor, which had stopped the work of all valuers and auditors. In the 6th CoC meeting held on 24.06.2020 it was decided to apply for liquidation of Corporate Debtor. It was also decided that appointed liquidator would try to sell the Corporate Debtor as going concern in the first 3 months.
7. Mr. Mahesh R. Sureka, the Applicant was appointed as the Liquidator as provided under Section 34(1) of the Code vide order dated 14.10.2020.
8. List of Stake Holders was submitted to AA on 27.11.2020 and first stakeholder consultation committee meeting was held on 14.12.2020, where the member of the Suspended Board of Directors were asked to provide all details, and also details of software, as certain persons were identified as being interested in purchase of the Corporate Debtor as going concern. The member of the Suspended Board of Directors had promised to do so, but thereafter, no response was received. This wasted the entire period which was allotted for exploring the sale of the Corporate Debtor as going concern.
9. The Forth meeting was held on 15.01.2022. No response from the Promoters was received even then.
10. Since, there was no response from Promoters, the Liquidator is relying on the applications filed before this Bench for direction against the promoters for preferential transaction under IA No. 216/2020. The application is for unauthorised withdrawal of fund and siphoning of funds by transferring all assets to related parties and showing unreasonable expenses along with sale of assets as scrap without any evidence. This Application is pending.
11. The Liquidator has also filed application for exclusion of liquidation of period from 14.04.2021 to 31.08.2021 by IA No. 2810/2021.

12. The Liquidator further submits that subject to the IA No. 2810/2021 being allowed by this Bench, the liquidation period would get over on 01.06.2022.
13. The Liquidator has refunded the liquidation expenses contribution to financial creditor along with interest. The Liquidator has been able to auction the available one asset, and has received all income tax refunds. Further proceeds may only come from the decision in IA No. 216/2020 filed with Adjudicating Authority, if this Bench decides to direct the promoter to refund the amount in terms of the order. Further, Applicant has distributed the amount under Section 53 and thereafter there is no balance left with him.
14. This Bench finds that the Applicant has filed form H, however the bank statement of account maintained with IDFC and account statement reflects the balance of Rs. 500,488.30 as on 16.03.2022. The intimation to the Income Tax Department is also not on record. Further, the application seeking dissolution does not clarify, who shall pursue the avoidance application in IA no. 216/2020 pending before this Bench. Further, the minutes of the 5th Stakeholder Consultation Committee held on 11.04.2022 only states that *“As on today, the balance available with the Liquidator is Rs. 261339.40. As the Liquidator would be filing the closure report and the case for misappropriation of fund has to be dealt. So, after talking to legal consultant, the Liquidator will disburse the balance amount under Section 53 of IBC Code”*.
15. In view of aforesaid discussion, the Liquidator is directed to place on record evidence of closure of account, intimation to the Income Tax Department and deal with the unclaimed amount in terms of Regulation 46 of IBBI Liquidation Process, 2016.

IA No. 216/2020 – The present application is filed for non-cooperation. It becomes **infructuous** and **disposed of**, as the Liquidator has already filed an application for dissolution which is pending consideration.

IA No. 2810/2021 – The present application pertains to the extension of liquidation period. This application was filed on 14.09.2021 seeking

extension of liquidation period from 14.04.2021 to 31.08.2021, and to pass such order as is appropriate in the fact and circumstances of the case. This Bench finds that this application is pending, and as specified in para 15 of this order, few clarifications are required from the Liquidator to dispose of the dissolution application. In view thereof, this Bench considers it appropriate to allow the present application. The Liquidator is at liberty to file appropriate application for regularization of steps taken by him after the expiry of extended period. This IA is allowed and disposed of.

IA No. 159/2022 – The present application is filed by Pegasus Assets Reconstruction Pvt. Ltd. under provisions of Section 42 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 of the Code seeking direction from this Bench to Liquidator to admit the claim of the Applicant and condone the delay of 7 days in filing present application. The Liquidator has filed an application of dissolution claiming the distribution of all proceeds. Accordingly, the present **Interlocutory Application No. 159/2022** is allowed condoning the delay. Since, the proceeds have already been distributed, the claim of the department shall be considered against any further proceeds, which is realised till the dissolution.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE VIRENDRASINGH BISHT
Member (Judicial)

Sapna