

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
27-03-2024 AT 10:30 AM**

CP(IB)No. 339/10/HDB/2021

And

IA (IBC) 306/2023 in CP(IB)No. 339/10/HDB/2021

u/s. 10 of IBC, 2016

IN THE MATTER OF:

M/s. Myind Med Tech Innovations Pvt Ltd

...Petitioner

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 306/2023

Orders pronounced. In the result, **this application is dismissed. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD**

IA (IBC) No. 306/2023

In

Company Petition IB No. 339/10/HDB/2021

[u/s. 54(1) r/w section 60(5) of IBC, 2016 and rules 11 of NCLT rules, 2016]

**IN THE MATTER OF MYIND MEDTECH INNOVATIONS PRIVATE
LIMITED:**

Between:

Anjaneyulu Sadhu,
Resolution Professional,
Myind Medtech Innovations Private Limited,
Regd. No. BBI/IPA-001/IP-P00963/2017-2018/11584

**...Applicant/
Resolution Professional**

Vs

1) Employees State Insurance Corporation,
H.No. 5-9-23, Hillfort Road, Adarshnagar,
Hyderabad- 500063.

2) Employees Provident Fund Organization,
3-4-763, Bhavisha Nidhi Bhawan,
Barkathpura Chaman, Hyderabad- 500027.

...Respondents

Date of Order: 27.03.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Y. Suryanarayana, Advocate

For Respondent no. 1 : Venkateshwarlu Gummadavelly, Advocate

For Respondent no. 2 : E. Venugopal, Advocate

**PER: BENCH
ORDER**

1) This application is filed under Section 54(1) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as “CODE”) and rules 11 of NCLT rules, 2016 by the Resolution Professional appointed for Myind Medtech Innovations Private Limited, seeking dissolution of the Corporate Debtor (Myind Medtech Innovations Private Limited).

2) **Brief of averment in the Application:**

2.1. This Tribunal vide order dated 26.09.2022 admitted the Company Petition CP IB No. 339/10/HDB/2021 filed under Section 10 of the Code by Corporate Applicant and ordered initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor Myind Medtech Innovations Private Limited and appointed the Applicant herein as Interim Resolution Professional (IRP) who was subsequently confirmed as Resolution Professional in the 1st COC meeting held on 01.11.2022.

2.2. It is averred that subsequent to the public announcement dated 03.10.2022, the claims of the Respondents were admitted and taken on record vide 1st COC meeting held on 01.11.2022 with Employee

State Insurance Corporation (Operational creditor) as the Sole CoC member and 2nd COC meeting held on 08.12.2022 respectively, the re-constituted of CoC is as mentioned below:

S.No	Name of the Creditor	Claim submitted	Claim admitted	Voting %
1.	Employees State Insurance Corporation	2,24,455	2,24,455	10.21
2.	Employees Provident Fund Organisation	19,74,420	19,74,420	89.79
Total		21,98,875	21,98,875	100%

2.3. It is averred that subsequent to the examination of financial statements and records, it was observed that the Corporate Debtor ran into accumulated losses of Rs.5.05 crores and has almost no assets. Further, there were no business or bank transactions from the year 2019. That in the 2nd COC meeting a direct for dissolution of the Corporate Debtor was proposed as the resolution/ revival of the Corporate Debtor was not possible. The members of the CoC informed that they would discuss the same with their legal department and get back on the decision at the ensuing meeting and proposed to convene 3rd COC meeting proposed to be on 13.12.2022.

2.4. It is averred that the 3rd COC Meeting was re-scheduled on five occasions despite which the representative of EPFO failed to attend the meeting, as on every occasion the representatives have cited some reason for rescheduling of the meetings. It is further averred that the

3rd COC meeting couldn't be held as the EPFO with the majority voting rights is not interested in the CIRP of the Corporate Debtor. That while considering the financial and operational position of the Corporate Debtor based on the audited balance sheet as on 31st March 2020, it is given to understand that the company does not have any fixed assets and company had to shut down.

2.5. It is averred that the Corporate Debtor has nil fixed assets and had run into huge losses and going into the process of liquidation shall incur additional expenditure and the liquidation period (if commenced) would only prove futile as the Corporate Debtor is not in a feasible condition to revive. The Applicant placed reliance on the NCLT, Bengaluru bench's judgement in *M/s Synew Steels Private Limited*

3) In reply to the Application, the Respondent no. 1 averred in brief:

3.1. It is averred that the respondent herein is a Social Security Organisation established for providing Medical, Cash and certain other Benefits to the employees. The ESI Scheme runs with the aid of the contributions paid by the employees and employers in the ratio 0.75:3.25 respectively, there is no external aid or grant from any other sources.

3.2. It is averred that the employer M/s Myind Medtech Innovations private limited has defaulted in payment of contributions, Interest and Damages. As such the ESIC has raised the notices claiming an amount of Rs.2,24,455/-. Subject to the paper notification for claims in relation to Resolution process, the respondent submitted its claim on 14.10.2022.

3.3. It is averred that the ESIC's dues should be given priority over other claims, as the ESIC consists of both employees share of contribution and employers share of contributions. While agreeing with the Resolution professional's submission that there are no fixed assets and the corporate debtor had run into huge losses and further stated that, the process of liquidation shall incur additional expenditure and liquidation would only prove futile and not feasible to revive the establishment. It is averred that the dues of ESIC shall be treated on par with wages of the employees/workmen.

4) The Resolution Professional filed his final report on 24.01.2024, wherein it was stated that as per the audited balance sheet of the Corporate Debtor as on 31st March, 2020 and Provisional Financials as on commencement of CIRP i.e., 26th September, 2022, the corporate debtor has no fixed assets and the operations of the company has been shut down from the mid of 2019. Due to the above-mentioned reason the operations could not be

revived during CIRP, that the liquidation of the Corporate Debtor will only prove futile and incur additional costs. Stating the above, the resolution professional prayed that the corporate debtor be dissolved directly from CIRP.

- 5) As per the directions vide order dated 20.02.2023, notice was ordered to the respondents and to the Registrar of Companies {ROC (Hyderabad)} and has filed proof of service of notice. However, none appeared for RoC (Hyderabad). Further vide order 02.06.2023 fresh notice to the Respondent no. 2 was directed and the same was served, thought time was sought for filing counter, no such counter is filed on behalf of the Respondent no. 2.
- 6) In the light of the facts as above mentioned the point for our consideration is

“Whether the petitioner satisfies the requirements under Section 33(2) of IBC, 2016? If so, for what order?”
- 7) We heard the Ld. Counsel for the Resolution Professional Mr Sachin Sharma and Ld. Counsel for Respondent no. 1 Mr. Akhil and perused the record.
- 8) Applicant/Resolution Professional, submitted that the Corporate Debtor is unable to continue its business operations, neither does the company have any assets which could help in its revival. As there is not a thing left to

recover it is a futile exercise to put the company into liquidation. Stating the above the resolution professional has put forth the balance sheets of the corporate debtor as on date 26.09.2022 showing the balance as only Rs.1,02,931/-, and he also submitted independent auditor's report in accordance with Section 143(10) of the Companies Act, 2013. Both the balance sheet and independent auditor's report shows that there are no assets. Hence, the present prayer.

9) Section 33(2) of the Code reads "*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 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-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)*".

10) Therefore, as provided in the above Section decision to liquidate/dissolve the corporate debtor maybe taken by the COC during the CIRP process after coming to a conclusion that to dissolve the Corporate Debtor fulfils the objectives of the Code, instead to go for CIRP/liquidation. Only then the resolution professional can approach this tribunal seeking dissolution of the corporate debtor backed by the Resolution of the COC. But here in this case COC has not passed any

resolution to dissolve the corporate debtor and Resolution Professional at its own approached this Tribunal seeking dissolution of the corporate debtor which is not supported by provisions as contained in IBC, 2016.

11) Therefore, since in the case on hand RP has unilaterally approached this Tribunal for dissolution of the corporate debtor. Hence this Application is not maintainable and is liable to be dismissed. However, this order is not precluding the RP from following the procedure laid down under Section 33(2) of IBC, 2016 and if COC passes any resolution seeking dissolution of the corporate debtor in terms of Section 33 of the IBC, in approaching this Tribunal.

12) Hence this Application is dismissed. However, without costs.

SD
CHARAN SINGH
MEMBER (TECHNICAL)

SD
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)