



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

**I.A.3077 OF 2023
in
C.P.(IB)117/MB/2021**

Under Section 33 r/w 60(5) of
Insolvency and Bankruptcy Code,
2016

Filed by:
Avinash Ambikaprasad Shukla
Resolution Professional of
AMW Commercial Vehicle
Applications Limited
... Applicant

In the matter of
**SREI equipment Finance
Limited**

...Petitioner

Versus

**AMW Commercial Vehicle
Applications Limited**

...Corporate Debtor

Order Delivered On: 25.10.2024

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)



Appearance:

For the Applicant: Adv. Bhanu Chopra (PH)

ORDER

The present application has been preferred by the RP of AMW Commercial Vehicle Applications Limited i.e. Corporate Debtor for Liquidation of the Corporate Debtor. The relevant facts requiring consideration are as under:-

1. SREI Equipment Finance Limited, the Financial Creditor filed the Company Petition against the Corporate Debtor for initiation of CIRP under Section 7 of IBC. The said petition was filed for default on the part of the Corporate Debtor in discharging its obligation of payment of dues to the Petitioner/Financial Creditor. The CD was admitted to CIRP vide order dated 11.07.2022 by the Hon'ble Tribunal and the Applicant was appointed as the IRP for commencement of CIRP in respect of the CD.
2. The case of the Applicant is that in terms of Sections, 13 & 15 of the IBC read with CIRP Regulations of 2016, Public Announcement in Form -A was made on 28.07.2022 intimating about the commencement of CIRP against AMW Commercial Vehicle Applications Limited and also calling upon the Creditors to submit their claims along with the requisite documents. In response to the said public announcement, the



Applicant received one claim from Financial Creditor and one from the Operational Creditor. Initially, the CoC comprising of single Financial Creditor was formed on 12.08.2022. Subsequently, another claim was received on 08.02.2023 from the Joint Development Commissioner, Kandla Special Economic Zone for an amount of Rs. 82,83,69,596/- in the capacity of an Operational Creditor. The Operational Creditor later on revised its claim to Rs. 87,62,80,280.85/-.

3. The first meeting of the CoC was held on 23.08.2022 in which the applicant was appointed as the RP of the Corporate Debtor. In the second CoC meeting held on 23.09.2022, resolution for publishing Form-G was approved. Pursuant to the same, the Applicant published Expression of Interest through form-G on 24.09.2022 in *Navshakti (Marathi)* and *Free Press Journal (English)* and also in *Sandesh (Gujrati)*. The last date for receipt of EoI was on 10.10.2022. The Applicant received EOIs from two Prospective Resolution Applicants namely *Nakshtra Corporates Advisors Limited* and from *Shanti G D Ispat and Power Private Limited*.

4. As has been submitted in the preceding para that the CoC was comprising of a sole Financial Creditor, the Financial Creditor addressed an email dated 28.10.2022 to the Applicant stating that PRAs do not seem to be from the similar industry as that of the Corporate



Debtor. Therefore, it was stated that we should explore more applicants and thus, suggestion was made to re-issue Form-G and invite more Applicants to maximize the value.

5. As per the revised Form-G published on 02.11.2022, the Applicant published the Request for Resolution Plans (RFRP) on 28.11.2022. The sole Resolution Applicants M/s Triton Electric Vehicles LLC submitted their plan along with payment of earnest money deposit as prescribed in RFRP on 27.12.2022. The Resolution Plan submitted by the Resolution Applicant was placed before the CoC in the 7th meeting held on 30.12.2022. The Applicant sought time to evaluate the resolution plan. In the 8th CoC meeting held on 20.01.2023, it was resolved to seek extension of CIRP time from the Hon'ble Tribunal which was granted vide order dated 20.02.2023 extending the period of CIRP till 21.04.2023.
6. Subsequently, in the 9th meeting of CoC held on 24.01.2023, the CoC requested the Resolution Applicant to improve and revise their offer. The Resolution Applicant vide letter dated 24.03.2023 informed the Applicant/RP that due to their failure to implement the approved Resolution Plan for some other CD, they were barred from participating in the IBC proceedings in terms of law and requested for refund of EMD of 10 lacs deposited by them. In view of the fact that, there was no



further response from the RA, ultimately, in the 11th CoC meeting on 19.04.2023, it was resolved to liquidate the Corporate Debtor. Hence the present application.

7. In terms of the above stated submissions of the Applicant and after having gone through the documents placed on record, it is evident that CoC in its 11th meeting held on 19.04.2023 forfeited the EMD deposited by the Resolution Applicant and approved the liquidation of the Corporate Debtor. The CoC also approved the appointment of M/s Nikhil Shinde & Associates as the Statutory Auditors for the term of 5 years. The decision to forfeit the EMD deposited by the Resolution Applicant and to go in for liquidation in terms of Section 33 (1)(a) of IBC was approved with 100% voting in favour of the Resolution. In view of the fact that the Financial Creditor is the sole CoC member and being the only CoC member, all the decisions taken are approved with 100% voting. Subsequently, an Additional Affidavit dated 18.09.2024 was placed on record by the Applicant enclosing the minutes of all the CoC meetings for the appreciation of the Hon'ble Court.
8. From the perusal of all the minutes of meetings of the CoC placed on record, it is evident that the decisions taken during the CoC proceedings were well thought of and well considered. The said fact is evident from the minutes of 10th CoC meeting held on 05.04.2023. Item Agenda No.



A-6 in the meeting was to discuss the letter received from the Resolution Applicant informing its inability to participate in CIRP of CD. The CoC members responded that the Ahmedabad Bench had given another opportunity to SRA of AMWML i.e. Triton Electric Vehicles LLC to make the payment towards the Resolution Plan submitted by them and considered the SRA to continue. The liquidation cost and the expense incurred by the RP were taken note of and also the transaction audit and appointment of advocates for filing the requisite applications were approved. In view of the inability to continue expressed by the Resolution Applicant, ultimately, the decision was taken to move ahead for filing an application seeking liquidation of the CD which was approved in the 11th CoC meeting. Thus, the Applicant moved the present application. The Applicant/RP has already filed an application under Section 19(2) of IBC against two vendors of the CD in whose premises tools and dies owned by CD are lying. IA has also been filed against M/s Mahindra CIE. Keeping in view the totality of circumstances and in view of the fact that the statutory applications for payment of fee to the liquidator and the filing of annual returns with the RoC etc. having been taken care of, we are of the considered opinion that the decision of the CoC to file for liquidation is in terms of law. Hence in view of the fact that the said decision has been approved with



100% voting in his favour, we deem it appropriate to allow the present application seeking approval for liquidation of the CD.

ORDER

- a. The above I.A. 3077 of 2023 is “**allowed**” and the Corporate Debtor/ **AMW Commercial Vehicle Applications Limited** is ordered to be liquidated as a going concern.
- b. Mr. Avinash Ambikaprasad Shukla (IBBI/IPA-003/IP-N00243/2019-2020/12839), having office at: Level - 3, Padma Palace, Plot No.79, Sector- 28, Vashi, Navi Mumbai- 400703, having email id avinashshukla1708@gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees P.M. of Rs.1,00,000/-.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed 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 with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate



Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- i. This liquidation 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 the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 3077 of 2023 is hereby **allowed and disposed of.**

Sd/-

MADHU SINHA
Member (Technical)

//Avdhesh//

Sd/-

REETA KOHLI
Member (Judicial)