

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT-II)

IA No. / 722 / AHM / 2021

IN

C.P. (I.B.) No. / 243 / NCLT / AHM / 2019

[Under Regulation 44(1), 45(1), and 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 read with NCLT Rule 11 for closure of the Liquidation Process]

IN THE MATTER OF:

Mr. Nimai Gautam Shah

Liquidator of

M/s Mehta & Associates Fire Protection Systems Pvt. Ltd.

...Applicant

IN THE MATTER BETWEEN:

Tyco Fire & Security India Pvt. Ltd

..Operational Creditor

Vs.

M/s Mehta & Associates Fire Protection Systems Pvt. Ltd

....Corporate Debtor

Order Pronounced on: 03.03.2023

CORAM:

**DR. MADAN B. GOSAVI,
HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IN THE MATTER OF:

Mr. Nimai Gautam Shah

Liquidator of

M/s Mehta & Associates Fire Protection Systems Pvt. Ltd.

...Applicant

Appearance:

For the Applicant: Mr. Kamil Lokhandwala, Adv.

ORDER

1. The present application is filed by Mr. Nimai Gautam Shah, Liquidator of M/s Mehta & Associates Fire Protection Systems Pvt. Ltd., Corporate Debtor (hereinafter referred to as **CD**), under Regulation 44(1), 45(1), and 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 (**for brevity ‘Liquidation Regulations’**) for closure of Liquidation process on the ground that the CD, i.e., M/s Mehta & Associates Fire Protection Systems Pvt. Ltd., is sold as a going concern.
2. The brief facts of the case are as under:-

- a) The Operational Creditor, i.e., M/s. Tyco Fire & Security India Pvt. Ltd. had filed an application under section 9 of the IB Code, 2016 for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of M/s Mehta & Associates Fire Protection Systems Pvt. Ltd. Vide order dated 16.12.2020, the said application was admitted and Mr. Nimai Gautam Shah was appointed as an Interim Resolution Professional (hereinafter referred to as “IRP”) and thereafter confirmed as RP.
- b) The committee of creditors (for the brevity of ‘CoC’) in the 1st meeting held on 11.01.2021 passed a resolution with 100 % voting for liquidation of the CD.
- c) This Adjudicating Authority passed the liquidation order dated 12.02.2021 and appointed the present applicant as the Liquidator of the CD.
- d) The Liquidator made necessary public announcements in the leading newspaper, inter alia, inviting claims from all stakeholders and Creditors of the CD.
- e) The Liquidator had handled and run the business of the CD as a going concern and also earned a profit of Rs. 6,00,000/- from the business of the CD which was paid to the Sole Stake holder, i.e., Bank of Baroda after meeting Liquidation Costs. The Statement of receipts and payments for the Liquidation period of 12.02.2021 to 28.08.2021 is attached to the application.

- f) It is further submitted that the CD had two assets, one being Immovable Property, i.e., an office building and the other Financial Asset, i.e., Contract on hand. Two valuation reports each for an office building and financial assets of the CD are filed by the liquidator. The said above-mentioned assets of the CD have been sold to the two separate Successful bidders via E-auctions, i.e., M/s. Om Synergy Spacelink Pvt. Ltd. and Mr. Dharmesh Manilal Patel respectively. The realized value of the office building is Rs. 93,00,000/- and the realized value of the financial assets is Rs. 48,35,500/-(including interest of Rs. 85,500 for extension of payment date). The Sale Reports dated 28.08.2021 of the said assets are attached with the application
- g) The Liquidator closed the Bank Account which was opened for liquidation. In compliance with the order dated 10.03.2022 the liquidator filed a copy of the bank account statement, a copy of the minutes of the Stakeholders Consultation Committee, a copy of the asset memorandum as well as two valuation reports each for the office building and financial assets of the CD.
- h) In compliance with Regulation 45 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator has filed the Final report dated 28.08.2021.
- i) In compliance with Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator has also filed the Compliance Certificate in Form H dated 22.08.2021 wherein the liquidator did not mention the fair value for the reason that the valuation was not done during the CIRP period, and the liquidation value of the liquidation estate was declared as Rs.1,16,83,087/-.

However, the total realised amount from the sale of the liquidation estate is Rs. 1,40,50,000/-. The liquidator distributed the total amount received to stakeholders as per section 52 or 53 of the Code as:

(Amount in Lakhs)

Sr. No	Stakeholders	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)
1.	a.CIRP Costs	1.2	1.2	1.2	100 %
2	b.Liquidation Costs	5.53	5.53	5.53	100.0%
3.	b.(i)Secured Financial creditors	556.34	556.34	134.52	24.20%
4.	b. (ii)	-	-	-	-
5.	(c)Operational creditors	123.67	123.67	0	0 %
	Total	686.74	686.74	141.35	20.58 %

j) In compliance with clarification orders dated 20.09.2022 and 01.11.2022, the liquidator filed an affidavit along with a copy of the declarations under section 29A of the Code with the following submissions in response to queries raised by this bench herein below:

- In response to clarification no.1, it is submitted that both Successful bidders who had purchased the properties of the

CD through auctions were eligible to be Resolution Applicants in regards to section 29A of the Code. Both the bidders had filed their respective declarations before the purchase of the assets of the CD.

- In response to clarification no. 2, it is submitted that the entire amount so realized during the liquidation process was paid to the sole financial Creditor of the CD i.e. Bank of Baroda.
- In response to clarification no. 3 regarding the employees of the CD, it is submitted that the CD is in the business of installation/maintenance of Fire Protection systems in factories and buildings. Its major business projects were being carried out in the State of Uttaranchal and other north Indian states and not in Gujarat. Further, the CD used to hire contractors for its business through agencies located in such states. Hence there are no employees of the CD, apart from the two ex-directors, who were looking after the business of the CD
- It is further submitted that the CD was facing financial issues due to non-receipt of its receivables. The Liquidator, while managing the CD as a going concern, had continued the business of the CD, made a significant turnover and earned a profit of INR 6,00,000/- during the CIRP and Liquidation process. This fact itself supports the contention that the CD is a going concern and the business is still ongoing. By Sale as a going concern, the principal object of the code i.e. maximization of assets and protecting the interests of the stakeholders is achieved.

- Further submitted that the business contracts were the major financial assets of the CD and without selling the business as a going concern, this asset of the CD would not have realized anything. However through the said sale as agoing concern the Liquidator was able to realize INR48,35,500/- (INR Forty Eight Lakhs Thirty-Five Thousand Five hundred only) which was in the best interests of the stakeholders of the CD. The said amount is also reflected in the asset sale report on page no.24 of the application. The company at present has obtained major orders and contracts and is a going concern. In the humble submission of the Liquidator, the object of the Code is not dissolution but the revival of the Company, and the said object has been rightly achieved in an utmost successful manner in this present case. The entire amount has already been deposited by the successful bidder in the account of the Applicant for more than a year now and the distribution of the said amount is also carried out as per the provisions of the IB Code.
- k) Having satisfied to the full extent that no further assets were to be utilized and/ or disposed of for recovery of dues of the Stakeholders and that no further proceedings remain to be conducted in the Liquidation Process of the CD, the instant application is filed by the Liquidator for closure of the Liquidation process, since the business of the CD is sold as a going concern and for passing appropriate order/directions under Regulation 45(3)(a) of the Liquidation process.

3. In view of the above circumstances and documents placed on record, in the exercise of the powers conferred under Regulation 45(3)(a) of the Liquidation process, we hereby order for closure of the liquidation process of the CD viz., M/s Mehta & Associates Fire Protection Systems Pvt. Ltd. from the date of this order and the liquidation process of the CD stands closed. It is further observed that the business of the CD is being sold as a going concern.
4. Consequently, the Liquidator Mr. Nimai Gutam Shah is discharged from the duties and responsibilities of acting as the Liquidator of the CD.
5. The Liquidator and the Registry are directed to send a copy of this order within 7 days from the date of this order to the IBBI, New Delhi and concerned parties for their record and file the compliance report.
6. Application is allowed in terms of the above order and stands disposed of.

S/d-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

S/d-

**DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

RAHUL/LRA