

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

IA (IB) No. 431/KB/2021  
in

CP (IB) No. 23/KB/2019

Under section 33(1)(a) of Insolvency & Bankruptcy Code, 2016

*In the matter of*

Asset Reconstruction Company (India) Limited

... Financial Creditor

Versus

Corporate Power Limited

... Corporate Debtor

*-And-*

*In the matter of:*

Pankaj Dhanuka,

Resolution Professional of Corporate Power Limited

... Applicant

Order reserved on: 23.08.2021

Order pronounced on: 08.10.2021

***Coram:***

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

***Appearances (through video conferencing):***

**For the Applicant**

Mr. Avishek Swaroop, Advocate

Mr. Dwaipayan Basu Mallick, Advocate

Mr. Palash Agarwal, Advocate

Mr. Naman Jamdar, Advocate

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Resolution Professional

Mr. Pankaj Dhanuka

ORDER

**Per: Harish Chander Suri, Member (Technical)**

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Corporate Power Limited [CIN: U27106WB2006PLC150110], on the ground that the CIRP period has expired and no resolution plan was approved by the Committee of Creditors ('CoC'). The Applicant has sought for the following reliefs:
  - a. *Allow the present Application, and*
  - b. *Pass an order directing liquidation of the Corporate Debtor in the manner as laid down in Chapter III of the Code;*
  - c. *Pass an order directing all the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.*
  - d. *Pass an order directing the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, in proportion to the financial debts owed to them by the Corporate Debtor in terms of Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
  - e. *Pass any other order which this Hon'ble Tribunal may deem fit in the facts and circumstance of the case.*

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3. This Adjudicating Authority *vide* its order dated 19.02.2020 on a Petition filed by the Asset Reconstruction Company (India) Limited ('*financial creditor*') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('*the Code*') directed initiation of the Corporate Insolvency Resolution Process ('*CIRP*') against the Corporate Debtor and appointed Mr. Pankaj Dhanuka as the Interim Resolution Professional ('*IRP*'). The IRP was appointed as the Resolution Professional ('*RP*').
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 22.02.2020, in Financial Express (English) and Sanmarg (Hindi) (Jharkhand edition) and Morning India (English) and Aajkal (Bengali) (Kolkata edition) newspapers, fixing 05.03.2020 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.
5. The Committee of Creditors (CoC) was duly constituted with eight financial creditors and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 16.03.2020.
6. The first meeting of the CoC was held on 20.03.2020 wherein the CoC confirmed the appointment of the IRP as the RP. The Applicant states that the publication for invitation of EoIs in Form G was done on 27.06.2020 in Financial Express (English) and Sanmarg (Hindi) (Jharkhand edition) and Morning India (English) and Aajkal (Bengali) (Kolkata edition) newspapers. Form G was re-published on 07.08.2020, 29.08.2020 and 23.09.2020. The last date of submission of EOI was 08.10.2020.
7. It is submitted that the RP received seven EOI's and issued a list of prospective Resolution Applicants on 18.10.2020 and a final list of prospective Resolution Applicants was issued on 02.11.2020.

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8. It is further submitted that this Adjudicating Authority *vide* order dated 11.11.2020 excluded 90 days from the CIRP period and extended a period of 90 days in the CIRP period in view of the Covid-19 pandemic.
9. One Resolution Plan was received from Vedanta Limited, which was presented and opened before the CoC in its 7<sup>th</sup> CoC meeting held on 15.01.2021.
10. It is submitted that in the 9<sup>th</sup> CoC meeting held on 08.04.2021, the RP apprised the CoC that the Resolution Plan was non-compliant of the provisions of the Code and hence the Resolution Plan could not be put to vote.
11. Hence, the RP has filed an application under section 33(1) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
12. The learned Counsel on behalf of the Applicant submits that an appeal has been preferred against the order of admission, registered as C.A. (AT) (Ins.) No. 385 of 2020. The Hon'ble NCLAT *vide* order<sup>1</sup> dated 11.01.2021 passed an interim order as under  
  
*“..... the approval of Resolution plan is subject to outcome of this appeal.”*  
  
The appeal has not been decided till date.
13. The Applicant/Resolution Professional, Mr Pankaj Dhanuka [Reg. No. IBBI/IPA-001/IP/P-01205/2018-2019/11911], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency

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<sup>1</sup> Pp. 361-362 of I.A.

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Professional Agency (IPA) of which he is a professional member, which is valid till 28.12.2021.

14. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
15. Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process does not receive a resolution plan under sub-section (6) of section 30.
16. This Bench, therefore, hereby orders as follows: -
  - a. Prayers as sought for in I.A. (IB) No. 431/KB/2021 filed by Mr. Mr. Pankaj Dhanuka, RP of Corporate Power Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
  - b. **Mr Pankaj Dhanuka [Reg. No. IBBI/IPA-001/IP/P-01205/2018-2019/11911]**, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code ,
  - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
  - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, Financial Express (English) and Sanmarg (Hindi) (Jharkhand edition) and Morning India (English) and Aajkal (Bengali) (Kolkata edition), stating that the Corporate Debtor is in liquidation.

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- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, 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.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

17. The application bearing **IA (IB) No. 431/KB/2021** shall stand disposed of in accordance with the above directions.

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18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
19. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
20. List the main **CP (IB) No. 23/KB/2019** for reporting progress on \_\_\_\_\_.\_\_\_\_\_.2021.

**[Harish Chander Suri]**

**[Rajasekhar V.K.]**

**Member [Technical]**

**Member [Judicial]**

*08.10.2021.*

GGRB[LRA]