

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
01.09.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE.

IA (IBC) 462/2021 in CP (IB) No. 421/7/HDB/2018
U/s 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

... Financial Creditor

Vs

M/s. Suryachakra Power Corporation Ltd

... Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 462/2021:-

Orders passed and recorded vide separate sheets. In the result, IA no.462/2021, is allowed, Corporate Debtor is put under CIRP, subject to condition mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

**IA No.462 OF 2021
in
CP (IB) No.421/7/ HDB/2018**

In the Matter of

1. **M/s Suryachakra Power Corporation Limited**
Rep. Anup Kumar Singh
Resolution Professional &
Chairman of Monitoring Committee
Having its registered office at
Surya Chakra House
Plot No.304-L-III
2nd Floor, Road No.78
Jubilee Hills,
Hyderabad – 500 096.

2. **Anup Kumar Singh**
Resolution Professional &
Chairman of Monitoring Committee
162/ D/ 702
Lake Gardens, Kolkata
West Bengal – 700045.

.. Applicants
[No.1 : Corporate Debtor
No.2: Former RP/
Present Chairman of Monitoring Committee]

VERSUS

M/s Vamana Bhagya Private Limited
H. No.12-35, FCI Colony, Vasanth Nagar
Sarpavaram, Kakinada
East Godavari.

... Respondent/
Successful Resolution Applicant

APPLICATION UNDER SECTION 33(4) OF
I&B CODE, 2016.

Date of order : 01.09.2022

Coram:

**HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH
NANDULA, MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / Counsels Present:

For applicant : Shri VVSN Raju, Advocate.

PER BENCH

The present Application is filed by under sections 33(4) of the I&B Code, 2016, through the Resolution Professional & Chairman of the Monitoring Committee, *inter-alia*, praying to:

“(a) Pass an order/ direction for liquidation of the assets of the Corporate Debtor.

(b) Hold respondent responsible and liable for the loss likely to be caused to the stakeholders on account of the failure of the respondent with exemplary cost.”

2. It is stated that vide order dated 03.10.2018 (ANNEXURE –A) passed in CP (IB) No.421/7/HDB/2018 this Tribunal has admitted the petition, triggering Corporate Debtor to Corporate Insolvency Resolution

Process (CIRP) under section 7(5) of the I&B Code, 2016, and appointed Shri Anup Kumar Singh, as Interim Resolution Professional (IRP). The said IRP has later been appointed as Resolution Professional by the CoC in its First Meeting dated 02.11.2018.

3. The Successful Resolution Applicant/ Vamana Bhagya Pvt Limited/ the respondent herein has submitted Resolution Plan and the same has been approved by the CoC in its 8th Meeting of the Committee of Creditors held on 09.07.2019. Minutes of said Meeting are at Annexure-B. The same has been ratified by this Tribunal vide order dated 30.10.2019 in IA No.608 of 2019 (Annexure-C, page 35).

4 The first tranche of the Resolution Fund amounting to Rs.1,92,67,106.27 was payable within 90 days from the date of receipt of the order. Though the certified copy was received on 18.12.2019, the same was not released by the petitioner. In the meantime the following events have taken place:

16.03.2020 This Tribunal has granted status quo with regard to invoking Bank Guarantee given by the SRA vide order in IA No.273 of 2020.

23.04.2021 The Bank Guarantee dated 24.06.2019 (Annexure 'D') furnished by the Successful Resolution Applicant, issued by Indus Ind Bank in favour of Corporate

Debtor for Rs.75,00,000/- has expired on 23.04.2021.
Whereas, the claim expiry date was 23.05.2021.

- 26.04.2021 This Tribunal noted that the respondent had failed to make payment of first tranche and to furnish extended Bank Guarantee for implementation period and directed the SRA to provide extended Bank Guarantee for a sum of Rs.75,00,000/- for the period from 23.04.2021 to 22.10.2021 vide order at Annexure 'F' (page 58).
- 19.05.2021 The respondent/ SRA provided extended Bank Guarantee (Annexure 'H', page 61).
- 15.07.2021 This Tribunal has directed in its order dated 15.07.2022 that,

" This Tribunal in one of the IAs filed by the Successful Resolution Applicant has stopped Resolution Professional from invoking bank guarantee. In fact such matters are to be disposed of as expeditiously as possible. We direct RP if the plan is not implemented, he may take steps under section 33(4) of IBC within a week."
- 23.07.2021 Fifth Meeting of the Monitoring Committee held to deliberate on implementation of approved Resolution Plan.
- 27.07.2021 Sixth Meeting of the Monitoring Committee held. Revised offer of Rs.3.25 crores sent by the SRA vide email dated 26.07.2021 (Annexure 'N') was considered and shared with all the FCs of the CoC

for the Corporate Debtor. In the said meeting it was resolved that the applicant is authorised to file an application with the NCLT for liquidation of the Corporate Debtor. This was approved by a **voting share of 81.09%**. Minutes of Sixth Meeting of Monitoring Committee is at Annexure ‘O’, page 86.

The composition of Sixth CoC and its voting percentage are as under:

| Sl. No. | Financial Creditors | Voting Percentage |
|----------------|--|--------------------------|
| 1. | State Bank of India, SBI Global Factors Limited, SREI Equipment Finance Ltd. | 81.9% |

5. It is stated that Sixth Meeting of Monitoring Committee held on 27.07.2021, it was decided that since the SRA has contravened the provisions for the Resolution Plan as approved by this Tribunal and an application for liquidation of the Corporate Debtor be filed. Copy of Minutes of Sixth Meeting of the Monitoring Committee is at Annexure ‘O’, page 86.

6. In the light of the above, the Point that emerges for consideration by this Tribunal is;

POINT:

- **Whether an order to liquidate the assets of the corporate debtor can be passed in this case?**

7. We have heard Shri. VVSN Raju, Ld. Counsel for the Liquidator and perused the record.

8. Section 33 of the I&B Code, which is as below provides for the grounds for initiating proceedings for Liquidation.

Section 33. Initiation of Liquidation.

“(1) Where the Adjudicating Authority, –

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) 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 ¹[approved by not less than sixty-six per cent. 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).

²*[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]*

3) Where the resolution plan approved by the Adjudicating Authority ³[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided *that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,*

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.”

Admittedly, this Adjudicating authority has not received any resolution plan on or before the expiry of the maximum time permitted for CIRP. The monitoring Committee in its sixth meeting held on 27.07.2021 with the requisite voting share has decided seek dissolution of the corporate debtor as the SRA has breached the terms of the resolution plan which has been approved by this Adjudicating Authority.

9. Therefore, in exercise of the powers conferred under Sub-Clauses (i), (ii) and (iii) of Sub- Section (i) of Section 33 of I&B Code, 2016 we proceed to pass the following order.

(A) This Adjudicating Authority hereby orders for liquidation of M/s Suryachakra Power Corporation Limited, the Corporate Debtor herein, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

(B) This Adjudicating Authority hereby appoints **Shri Anup Kumar Singh** as Liquidator, IBBI/IPA-001/IP-P00153/2017-2018/10322. His AFA is valid upto 30.12.2022. He has given Written Consent to act as Liquidator (Form AA) dated 10.08.2021 to act as Liquidator in the present case and has also filed Authorisation for Assignment dated 31.12.2021. Said consent and AFA have been filed by the RP vide Memo dated

30.07.2022. The Liquidator shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(C) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

(D) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(E) It is made clear that clause (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(F) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(G) All the 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 in the Company Liquidator viz., Shri Anup Kumar Singh.

(H) In addition to this, the Company Liquidator shall exercise powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(I) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(J) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.

(K) The Company Liquidator shall be entitled to charge such fee for conducting the liquidation proceedings in such a proportion to the value of

the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

(L) Copy of this Order shall be sent to the concerned Registrar of Companies, Regional Director, Official Liquidator, Registered Office of the Corporate Debtor and Company Liquidator viz., Shri Anup Kumar Singh for information and compliance.

(M) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

10. In terms of the above, IA No.462 of 2021 in CP (IB) No.421/7/HDB/2018 filed by the Resolution Professional under Section 33(2) of the I&B Code, 2016, for initiation of Liquidation Proceedings against the Corporate Debtor viz., M/s Suryachakara Power Corporation Limited stands disposed of.

Sd/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

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