

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (EXERCISING THE POWERS OF ADJUDICATING AUTHORITY
 UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016)**

**CA No. 137/2018
 IN
 CP (IB) NO.39/Chd/Pb/2017
 Under Section 33 (2) and 34
 (1) of the Insolvency &
 Bankruptcy Code, 2016**

In the matter of:

Sunrise 14 A/S Denmark.Financial Creditor.

Vs.

Muskaan Power Infrastructure Ltd.Corporate Debtor.

And

In the Matter Of:

Jalesh Kumar Grover,
 Resolution ProfessionalApplicant.

And

In the matter of:

M/s Muskaan Power Infrastructure Ltd.Corporate Debtor.
 Sua Road, Industrial Area C,
 Dhandari Kalan, Ludhiana 141014.

Order delivered on: 11.12.2018

**Coram: HON’BLE MR. JUSTICE R.P. NAGRATH, MEMBER (JUDICIAL)
 HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Resolution Professional: Mr. G.S.Sarin, Practising Company Secretary.

Per: R.P. Nagrath, Member (Judicial):

ORDER (Oral)

By a separate detailed order of even date, CA No.127/2018 and
 CA No.224/2018 have been disposed of.

We now proceed to take up CA No.137/2018, which was to be listed along with CA Nos.127/2018 and 224/2018 for today i.e. 11.12.2018.

CA No.137/2018:

This is an application filed by the Resolution Professional under Section 33 (2) and 34 (1) of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') read with IBBI (Liquidation Process) Regulations, 2016 (for brevity the 'Regulations').

2. The petition filed by Financial Creditor Sunrise 14 A/S Denmark under Section 7 of the Code against Muskaan Power Infrastructure Limited, corporate-debtor bearing CP (IB) No.39/Chd/Pb/2017 was admitted on 28.07.2018 and Mr.Jalesh Kumar Grover, Resolution Professional was appointed as the Interim Resolution Professional with necessary directions vide order dated 03.08.2017. After that public announcement was made the claims were collated and Committee of Creditors was constituted. Mr.Jalesh Kumar Grover, Interim Resolution Professional was confirmed as the Resolution Professional in the first meeting of the Committee of Creditors (CoC). Thereafter the information of memorandum as required by Regulation 36 (1) (a) of IBBI (CIRP) Regulations, 2016 was presented in the 6th meeting of the CoC held on 28.02.2018. The delay in preparing the information memorandum was the non-co-operation of the directors of the suspended Board of Directors, for which the applications were also filed under Sections 19 (2) & 19 (3) of the Code read with Regulation 30 of IBBI (CIRP) Regulations, 2016.

3. It is further stated that the order of admission passed by this Tribunal was set aside by the National Company Law Appellate Tribunal, New Delhi (NCLAT) in Company Appeal (AT) (Insolvency) No.141 & 146 of 2017 by its Judgment dated 06.12.2017. The Hon'ble Supreme Court vide order dated 03.08.2018 set aside the judgment and order of Hon'ble NCLAT and restored that of this Tribunal.

4. In the meanwhile, however, the insolvency resolution process against the corporate debtor continued after the interim stay granted by the Hon'ble Supreme Court on 14.12.2017. All the matters were being placed in various meetings of the CoC by the Resolution Professional.

5. It is further stated that the initial period of 180 days as prescribed under Section 12 (1) of the Code was expiring on 24.01.2018 and a decision was taken in the 5th meeting of the CoC held on 19.01.2018 seeking extension of time and authorising the Resolution Professional to apply to the Tribunal. Vide order dated 13.03.2018 in CA No.25 of 2018, the period for completion of the insolvency resolution process was extended by another 90 days. Copy of the said order has been attached with this application as Annexure P-17.

6. Thereafter the Resolution Professional-applicant invited eligible persons to submit the resolution plan in respect of the corporate debtor on 06.03.2018 and again on 12.04.2018 by publishing notice in the newspapers Economic Times and Punjabi Jagran in accordance with Section 25 (2) (h) of the Code, but no response was received from the perspective resolution applicant except from Ravi Mahajan, a member of the suspended Board of Directors. The copies of the publication clippings are at Annexure P-20

attached with this application. Resolution plan was submitted by Ravi Mahajan, the promoter director of the suspended Board of Directors on 16.04.2018. In the meantime, Ravi Mahajan aforesaid had also made a representation that the application may be moved to the Tribunal for seeking extension of time beyond 270 days because a lot of time was consumed during the litigation. Still Ravi Mahajan submitted the resolution plan.

7. In the 8th meeting of the CoC held on 21.04.2018, it was resolved that since Ravi Mahajan was ineligible to submit the resolution plan by virtue of Section 29 A of the Code and in the absence of any other prospective resolution applicant forthcoming, the CoC resolved by 80.61% of the voting share in the CoC to liquidate the corporate debtor and recommend the Resolution Professional, Mr.Jalesh Kumar Grover as the Liquidator subject to his willingness and consent to act as Liquidator and rest of the financial creditors are said to have abstained from the voting and the minutes of the 8th meeting of the CoC held on 21.04.2018 are at page 271 to 298 of the paper book. The e-voting result is at page 303-B of the paper book. Accordingly, the instant application has been filed by Mr.Jalesh Kumar Grover, Resolution Professional.

8. We have heard the authorised representative for the Resolution Professional and carefully perused the record.

9. CA No.127/2018 was filed by Mr.Ravi Mahajan aforesaid before this Tribunal with the main basic prayer for seeking extension of time for completion of the insolvency resolution process beyond 270 days because so many days being consumed in the litigation during the CIRP process. CA

No.224/2018 was also filed by one Parminder Singh, a prospective resolution applicant. Reply to both the applications were filed and after hearing the parties, by a detailed order of even date, both these applications have been dismissed.

10. Considering the provisions of the Code after expiry of 180 days or 270 days, in case extension of 90 days is granted and no resolution plan is approved by CoC, the only recourse is to initiate the liquidation process as provided in Chapter III of the Code. Section 33(1) & (2) reads as under:-

“33. (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 [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 clause (i), (ii), and (iii) of Clause (b) of sub-section (1).

11. The learned counsel for the Resolution Professional also referred to Section 34(1) of the Code which provides that the resolution professional appointed shall act as a Liquidator unless replaced by the Adjudicating Authority under sub-section (4).

Sub-section (1) of Section 34 of the Code read as under:-

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under[Chapter II, shall subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4)].

12. The authorized representative of the Resolution Professional submits that this application has been filed by the Resolution Professional on the basis of the resolution of the CoC recommending the Resolution Professional as Liquidator and a reference is made to the resolution to this effect at page 298 of the paper book. The instant application was filed on 07.05.2018. Thereafter the amendment was made in Section 34 (1) of the Code w.e.f. 06.06.2018 that the Resolution Professional has to furnish his

written consent in Form AA, but since the application was filed earlier to the amendment, it is submitted that the written consent was not required, otherwise the Resolution Professional has filed the application himself on the basis of the resolution of the CoC, that itself would satisfy the requirement of his consent.

13. In view of the above, we order the liquidation of the corporate debtor M/s Muskaan Power Infrastructure Limited and appoint Mr.Jalesh Kumar Grover, Resolution Professional as the Liquidator for the purposes of liquidation of the corporate debtor in terms of Section 33 (2) of the Code. His appointment as such will be with effect from the date of receipt of copy of this order.

14. It is further observed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings 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;

- (ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceeding in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

- (iii) That this order of liquidation under Section 33 of the Code 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;
- (iv) That 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 liquidator; and
- (v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

15. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

16. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

- “(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*

- (b) *on the website, if any, of the corporate debtor; and*
- (c) *on the website, if any, designated by the Board for this purpose.”*

17. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

18. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

Copy of this order be supplied to the authorised representative of the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately. Registry is also directed to send copy of this order to the Liquidator at e-mail address.

Consequently, CA No.137 of 2018 stands disposed of.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

December 11, 2018.
Ashwani