

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court -II)  
KOLKATA**

IA(IBC)/616(KB)2023  
in  
CP(IB)/2030(KB)2019

*Under section 33(2) of the Insolvency & Bankruptcy Code, 2016*

*In the matter of:*

**Punjab National Bank**

.... Financial Creditor

*Versus*

**Prithvi Energy Limited  
(U40105WB2005PLC104912)**

.... Corporate Debtor

*And*

*In the matter of:*

Pinaki Sircar,  
Resolution Professional of Prithvi Energy Limited

... Applicant

**Order reserved on: 23/08/2023**

**Order pronounced on: 25/08/2023**

*Coram:*

<b>Smt. Bidisha Banerjee</b>	<b>:</b>	<b>Member (Judicial)</b>
<b>Shri Arvind Devanathan</b>	<b>:</b>	<b>Member (Technical)</b>

*Appearances (through hybrid mode):*

For RP	<b>:</b>	Mr. Rahul Auddy, Adv. Mr. Aditya Gooptu, Adv.
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For R-1 to R-3 in IA/617/2023	<b>:</b>	Ms. Manju Bhuteria, Adv. Ms. Uma Bagree, Adv.
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For R-4 & R-5 in IA/617/2023 : Mr. Pradeep Kumar, Adv.  
Ms. Muskan Bangani, Adv.

## **ORDER**

***Per: Arvind Devanathan, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/616(KB)2023** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Prithvi Energy Limited**, the Corporate Debtor, praying for initiation of liquidation proceeding against the Corporate Debtor. This application is supported by an affidavit<sup>1</sup> duly affirmed by Ms. Pinaki Sircar, the RP.
3. This Adjudicating Authority, on a petition filed u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Punjab National Bank, the Financial Creditor, *vide* order dated 01/11/2022 in CP(IB)/2030(KB)2019, had ordered initiation of CIRP against Prithvi Energy Limited, the Corporate Debtor. Mr. Pinaki Sircar was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Public Announcements<sup>2</sup> in **Form A** was published on 03/11/2022 in “*The Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claims from the creditors.
5. In response, claims were received from the creditors. Committee of Creditors (“**CoC**”) was constituted on 24/11/2022 comprising of two secured Financial Creditors and one unsecured Financial Creditor as follows<sup>3</sup> :

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<sup>1</sup> At pages 14 and 16 of the application

<sup>2</sup> Averments in para 2 at page 9 of the application

<sup>3</sup> Averments in para 4 at page 9 of the application

Name of the Financial Creditor	Voting percentage	Secured/Unsecured
Punjab National Bank	51.03%	Secured
Bank of Baroda	47.25%	Secured
Woodstock Exports Pvt. Ltd.	1.72%	Unsecured

6. At the 1<sup>st</sup> CoC meeting held on 30/11/2022, the IRP was confirmed as Resolution Professional (“**RP**”) by the CoC and the same was recorded in the minutes of the 1<sup>st</sup> CoC meeting. IRP informed the CoC that the nature of business of the Corporate Debtor as an Investment Company. Upon enquiry, the authorised representative of the suspended board informed that the Corporate Debtor was formed for EPC contract. However the same could not be carried out. In the year 2009, only one EPC contract was executed and thereafter no such contract was done. The representative of the suspended board further informed that the Corporate Debtor had invested Rs.15 Crores in Prithvi Ferro Alloys Pvt. Ltd. and the last business activity was carried out till March, 2021. The only assets of the Corporate Debtor are Security Deposits and Loans, which seem to be not realisable. Copy of the minutes of the 1<sup>st</sup> CoC meeting forms **Annexure – ‘A’**<sup>4</sup>.
7. 2<sup>nd</sup> CoC meeting was held on 03/01/2023 wherein the publication of Form G was discussed. Copy of the minutes of the 2<sup>nd</sup> CoC meeting forms **Annexure – ‘B’**<sup>5</sup>.
8. In compliance of regulation 36A(1) of the CIRP Regulations, **Form G**<sup>6</sup> was published on 04/01/2023 in “*Business Standard*” (English) and “*Aajkal*” (Bengali) inviting Expression of Interest (“**EoI**”) from the prospective resolution applicants (“**PRA**”) stipulating last date of submission of EoI as 26/01/2023. In response, no EoI was received from any PRA.
9. 3<sup>rd</sup> CoC meeting was held on 25/01/2023. Since, no EoI was received in response to publication of Form G till the stipulated last date, members of the CoC

<sup>4</sup> At pages 17 to 26 of the application.

<sup>5</sup> At pages 27 to 32 of the application

<sup>6</sup> Annexure ‘C’ at pages 33 to 35 of the application

discussed regarding liquidation of the Corporate Debtor and the agenda for the said liquidation of the Corporate Debtor was put for e-voting. The e-voting took place from 30/01/2023 till 27/02/2023. Only Bank of Baroda having 47.25% voting shares voted in favour of liquidation of the Corporate Debtor. However, Punjab National Bank, due to some technical errors could not vote during the e-voting process, which the Punjab National Bank had duly intimated to the RP vide e-mail dated 28/02/2023. A copy of the minutes of 3<sup>rd</sup> CoC meeting forms **Annexure 'D'**<sup>7</sup>. A copy of the e-mail of the Punjab National Bank dated 28/02/2023 forms **Annexure 'E'**<sup>8</sup>

10. The 4<sup>th</sup> CoC meeting was held on 16/03/2023. At the said 4<sup>th</sup> CoC meeting the agenda for liquidation of the Corporate Debtor was again put for voting through physical voting, i.e., Ballot Paper and the Resolution to liquidate the Corporate Debtor was approved with 98.28% voting share. The resolution passed at the said 4<sup>th</sup> CoC meeting for liquidation is as follows:

*“RESOLVED THAT the consent of the CoC be and is hereby accorded to liquidate M/s. Prithvi Energy Limited and the RP to file necessary application for initiation of liquidation process of the CD with Hon’ble NCLT”.*

A copy of the minutes of the 4<sup>th</sup> CoC meeting forms **Annexure 'F'**<sup>9</sup>.

11. As per regulation 39(4) of the CIRP Regulations, RP has duly annexed Compliance Certificate in **Form H**<sup>10</sup>.
12. Mr. Pinaki Sircar, Resolution Professional has stated in paragraph 11 of the application that *“he does not wish to continue as the Liquidator of the Corporate Debtor and as such humbly requests the Hon’ble Adjudicating Authority to appoint someone else as the Liquidator of the Corporate Debtor. As such, the Applicant is also not annexing the Consent to act as the Liquidator of the Corporate Debtor and the Form AFA”.*
13. It is to be noted here that the 180 days’ CIRP period had ended on 29/04/2023.

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<sup>7</sup> At pages 36 to 51 of the application

<sup>8</sup> At page 52 of the application

<sup>9</sup> At pages 53 to 62 of the application

<sup>10</sup> Annexure 'G' at pages 63 to 70 of the application

14. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
15. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
16. This Bench, therefore, hereby orders as follows: -
  - a. IA(IBC)/616(KB)2023 filed by Mr. Pinaki Sircar, RP of Prithvi Energy Limited, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
  - b. Since the RP has not given his consent to act as the Liquidator of the Corporate Debtor and in view of direction of the IBBI contained in Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Swarup Ghosh (Reg. No. IBBI/IPA-003/IP-N00438-C01/2017-2018/11661) having e-mail i.d. swarupghosh1@yahoo.co.in, mobile no. 91430 91430** as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

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., in “*Business Standard*” (English) and “*Aajkal*” (Bengali) stating that the Corporate Debtor is in liquidation.

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**, 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**.

17. The application bearing **IA(IBC)/616(KB)2023** shall stand disposed of in accordance with the above directions.

18. **CP(IB)/2030(KB)2019** is to come up for filing of Periodical Progress Report on **16/10/2023**.
19. 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.
20. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Arvind Devanathan**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on this, the 25<sup>th</sup> day of August, 2023.

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