



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.

IA/811(AHM)2022 in CP(IB) 231 of 2021

Order under Section 60(5)(c) IBC, 2016 r.w. Rule 11 of NCLT, 2016

IN THE MATTER OF:

Ms. Prajakta Menezes IRP of
Nana Layja Power Company Limited

.....Applicant

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

Order Under Rule 154 of NCLT Rule, 2016

Date:13.01.2023

In the order of this Adjudicating Authority dated 11.01.2023, IA No.811(AHM)2022 in CP(IB) 231 of 2021 inadvertently in page No. 3, para-1 of the order instead of 'Interim Resolution Professional' it is mentioned as 'Resolution Professional'. Further, in page no.14 in para-(ii), it is mentioned as 'Resolution Applicant' instead of 'Interim Resolution Professional' and 'liquidation' instead of 'liquidator'.

Hence, by invoking provisions under Rule 154 of the National Company Law Tribunal Rules, 2016 the aforesaid correction is carried out and the amended/corrected order be uploaded.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA/811(AHM)/2022
IN
CP (IB) 231(AHM)/2021**

IA/811(AHM)/2022

(An application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016)

Ms. Prajakta Menezes

Interim Resolution Professional of
Nana Layja Power Company Ltd.

Having Office at: 416, Crystal Paradise,
Dattaj Salvi Road, Off. Veera Desai Road,
Andheri (W), Mumbai – 400 053

..... Applicant/IRP

In the matter of:

Nana Layja Power Company Limited

.....Corporate Applicant

Order delivered on 11th January, 2023

**Amended under Rule 154 of NCLT
Rule, 2016 on 13th January, 2023**

Coram: **Dr. Madan B. Gosavi, Member (Judicial)**
Kaushalendra Kumar Singh, Member (Technical)

Appearance:

Mr. Nipun Singhvi, Advocate a.w. Ms. Pragati Tiwari, Advocate
for the Applicant.



ORDER

1. This instant application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (**'IB Code'**) r.w. Rule 11 of the National Company Law Tribunal Rules, 2016 by Ms. Prajakta Menezes the Interim Resolution Professional of M/s. Nana Layja Power Company Limited for passing an order of Liquidation to initiate the Liquidation Proceeding against the Corporate Applicant.

2. The averments made by the Applicant in its application and as argued by the learned counsel for the Applicant are summarized as under:

(i) The Corporate Applicant was incorporated on 19th November, 2010 for the purpose of setting up of 400 MW coal based thermal power plant 2000 MW gas based combined cycle power project, 60 million liters per day desalination plant and 2.5 MTP Liquefied Natural Gas Terminal along with associated facilities at Kutch, Gujarat. However, since inception, the Corporate Applicant did not commence any business, as project could not get clearances, and there have been no operations in the company. The Board of Directors of the Corporate Applicant in their meeting held on 24th



December, 2020 accorded their approval for filing an application for initiation of CIRP under Section 10 of IB Code.

(ii) The Corporate Applicant is wholly own subsidiary of IL&FS Energy Development Company Limited (“IEDCL”) which in turn is a subsidiary of IL&FS. In pursuant of the above Special Resolution, the Board of Directors of IEDCL vide resolution dated 4th January, 2021 granted their approval to the decision of the Board of Directors of the Corporate Applicant for filing requisite applications for the proposed CIRP process.

(iii) The Board of IL&FS in its meeting dated 9th January, 2021 accorded its consent to the decision of the Board of Directors IEDCL for filing requisite application before the appropriate judicial forum as may be necessary for the initiation of CIRP with respect to the Corporate Applicant under the relevant provisions of law. The said resolution dated 15th January, 2021 resolved further that the said application for winding up would be subject to the approval of Hon’ble Justice (Retd.) D K Jain appointed by the Hon’ble NCLT, in view of the orders dated 15th October, 2018 and 8th



August, 2019 of the National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) No. 347 of 2018.

(iv) It is relevant to note that the Hon'ble Justice (Retd) D K Jain granted approval for initiation of the CIRP proceedings vide letter dated 11th February, 2021 addressed to Managing Directors, IL&FS, subject to the following condition among others i.e. the proposal of CIRP being presented before the Hon'ble National Company Law Tribunal for its approval.

(v) The proposal for initiating CIRP of the Corporate Applicant under Section 10 of the IB Code, 2016 was accordingly, presented before the Adjudicating Authority by IL & FS Group and the same has been approved vide order dated 15th September, 2021 rectified as on 22nd October, 2021 in the matter titled infrastructure Leasing & Financial Services Limited V/s. Union Bank of India (CA No.136 of 2021) in Company Petition No. 3638/MB/2018.

(vi) Accordingly, the Corporate Applicant was admitted into Corporate Insolvency Resolution Process ('**CIRP**') vide order dated 20.06.2022 passed by this Adjudicating Authority in an application filed by the Corporate Applicant under Section 10 of the IB Code. This Adjudicating Authority further



appointed Ms. Prajakta Menezes the Resolution Professional as an Interim Resolution Professional (“**IRP**”) for conducting the CIRP Process.

(vii) In view of the aforesaid order of this Adjudicating Authority the Applicant made a public announcement in Form-A under Rule 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) r.w. Section 13 of the IB Code on 24.06.2022 in “Business Standard” English Newspaper and in “Jai Hind” Gujarati Newspaper of Ahmedabad Edition. The Applicant also publish in “Kutch Uday” Gujarati Newspaper, Bhuj Edition.

(viii) The Applicant sent an E-mail dated 24.06.2022 to the directors of the Corporate Applicant regarding intimation of admission of the Corporate Applicant in CIRP and also intimated the Financial Creditors and the Operational Creditors through E-mail dated 02.07.2022 and 05.07.2022 respectively. The copy of intimation to the directors the Financial Creditors and the Operational Creditor regarding admission of the Corporate Applicant in CIRP have been placed on record.



(ix) In response to the aforesaid publication the Applicant received two claims of the Financial Creditors, namely, IL&FS Energy Development Company Limited (IEDCL) for an amount of Rs.1,47,47,94,143/- and M/s. IL&FS Financial Services Limited for an amount of Rs.18,73,80,54,076/-. However, both the Financial Creditors are related parties in terms of Section 5(24) of the IB Code. Hence, both the Financial Creditors have no right of representation, participation or voting in the meeting of the Committee of Creditors, in view of the first proviso of Section 21(2) of the IB Code.

(x) The Applicant also received claim from Four Operational Creditors. The details of the Operational Creditors who have filed their claim are as under:-

Claim received from Operational Creditors					
Sr. No.	OC Name	Total Amount	Amount Admitted	Amount Rejected	Remark
1.	A Prasad & Associates	47,200	-	47,200	Claim not admitted since the amount became due post CIRP date i.e. 20 th June, 2022
2.	IL&FS Energy Development Company Limited (IEDCL)	16,14,825	16,14,825	-	Related Party in terms of Section 5(24) of the IBC, 2016



3.	Mayekar & Associates	29,605	-	-	E-mail dated 14.07.2022 and 30 th August, 2022 sent to SBOD of Corporate Debtor for supporting documents and details. No Reply Received.
4.	Patil Corporate Solutions	32,200	-	-	E-mail dated 14.07.2022 and 30 th August, 2022 sent to the SBOD of the SBOD of Corporate Debtor for supporting documents and details. No reply received.

(xi) The Applicant could not admit the claim of any of the Operational Creditor as IL&FS is a related party and the claim filed by A Prasad & Associates was due after initiation of CIRP i.e. 20.06.2022. The claim filed by Mayekar & Associates and Patil Corporate Solutions was not admitted by the Applicant for the reason that as per the books of the Corporate Applicant there is no outstanding amount against both the Operational Creditors. Thereafter, the Applicant requested both the Operational Creditors vide E-mail dated 21.07.2022



to submit the relevant supporting documents and the Applicant also requested the Accounts Department and Suspended Board of Directors (SBOD) of the Corporate Applicant to check and reconcile the outstanding amount and to provide the supporting documents of the claim vide e-mail dated 14.07.2022 and 30.08.2022 but no response has been received till date.

(xii) Since, no claim of the Operational Creditor could be admitted and there are no workmen, employees and Financial Creditors (other than related parties claim of the Financial Creditor), the Applicant could not constitute the CoC.

(xiii) As per the books of account of the Corporate Applicant as on CIRP date i.e. 20.06.2022, the Corporate Applicant has an asset of Rs. 2,09,60,203/- and liability of Rs. 2,71,66,42,876/-. The details of assets and liability are reproduced hereunder:-

A. LIABILITIES	
Non-Current Liabilities	
Long Term Borrowings	250,18,45,860
Current Liabilities	
Short-Term Provisions	52,200
Trade Payables	13,67,02,331
Other Current Liabilities	7,80,42,485
Total Liabilities	271,66,42,876



B. Assets	
Current Assets	
Cash and Cash Equivalents	200
Short Term Loans & Advances	1,94,00,000
Other Current Assets	15,60,003
Total Assets	2,09,60,203

(xiv) The Applicant is relying on the judgment of the Coordinating Bench NCLT Hyderabad in the matter of **Sarthak Gupta and Dolly Gupta vs MLP Developers and Promoters Private Limited** wherein in same scenario, the Coordinating Bench has taken the following views:-

“It is seen that admittedly other than the claims of the petitioners in the CP, who are the directors and related parties of the corporate debtor, not even a single claim is received against the corporate debtor.

In the circumstances, even if the COC is constituted and the process of CIRP is undergone, the claimants would be the petitioners in the CP only. Therefore, we are of the considered view that no useful purpose would be served by constituting the COC and by proceeding with the CIRP process. Hence, we treat this IA as an IA filed under Section 33(1) and direct that the Corporate Debtor be



liquidated as per the provisions of the Code and Regulations made thereunder.”

(xv) The reliance has been placed by the applicant in the similar matter bearing No. **IA 435/2020 in CP(IB) NO. 96/BB/2020, Mr. Mandar Wagh Interim Resolution Professional of M/s. Synew Steel Private Limited**, an application was filed for passing an appropriate order in term of Section 60(5) of the Code by exercising the inherent powers conferred under the Code r.w. Rule 11 of the NCLT Rules, wherein coordinating NCLT, Bengaluru Bench has passed the order of liquidation. The relevant paras of the aforesaid matter are as under:

“In terms of Section 60 of the Code, the Adjudicating Authority shall be the NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case justify that no purpose would be served to keep the Corporate Debtor under



regular CIRP proceedings and, thereafter, under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.”

3. Heard the learned counsel for the Applicant and perused the material on record. It is noted that the Corporate Applicant was admitted in CIRP on 20.06.2022 by this Adjudicating Authority in an application filed by the Corporate Applicant under Section 10 of the IB Code. Thereafter, following the applicable provisions of IB Code and rule framed thereunder, the IRP published Form-A in “Business Standard” English Newspaper and “Jai Hind” Gujarati Newspaper of Ahmedabad Edition where the Registered Address of the Company is situated. The Applicant also published in “Kutch Uday” Gujarati Newspaper of Bhuj Edition.

4. It is also noted that the two Financial Creditors, namely, IL&FS Energy Development Company Limited (IEDCL) and IL&FS Financial Service Limited are a related party under Section 5(24) of the IB Code. The Operational Creditor (IEDCL) is also the related party. Hence, their claim was not admitted by the Applicant. The two other Operational Creditors who have filed their claims of Rs.



61,805/- have not responded to the request of the IRP for providing the supporting evident and even the IRP following the due diligence requested to the accounts department and suspended board of director to provide the details but till date no response has been received. Moreover, till date no objection has been raised by any of the Creditors (Financial or Operational), either with respect to not admission of claim or opposing to admit this application.

5. The Corporate Applicant was admitted in CIRP on 20.06.2022 and this application for liquidation order was filed 26.09.2022 meaning thereby, the liquidation application, after 180 days. Hence, considering the above fact, we have not find any reason not to pass the order of liquidation under the IB Code, if company not resolved or revive second option is dissolution. Accordingly, we allow this application and pass the order of liquidation with following directions:-

ORDER

(i) We pass the order for initiation of liquidation of Corporate Applicant in terms of provision of section 33(4) and 33(5) of IBC, 2016 read with regulations made there-under which shall be effective from the date of this order.



(ii) We appoint **Mr. Ramchandra Dallaram Choudhary** having Registration No. **IBBI/IPA-001/IP-P00157/2017-2018/10326** and email address **rdc_rca@yahoo.com** as a liquidator as IRP has shown her unwillingness to act as a liquidator in present application.

(iii) All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Applicant, hereafter, cease to exist. All these powers henceforth, vest with the Liquidator.

(iv) The personnel(s) of the Corporate Applicant are directed to extend all co-operations to the Liquidator as required by him in managing the liquidation process of the Corporate Applicant.

(v) That once Liquidation process initiated, by virtue of section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Applicant save and except the liberty to the liquidator to institute suite or other legal proceeding on behalf of the Corporate Applicant with prior approval of this Adjudicating Authority as mentioned in section 33(5) of the IBC, 2016.

(vi) The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation process.



(vii) The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Applicant, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under section 33(5) of the Code.

(viii) This Liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Applicant /Resolution Applicant except to the extent of the business of the Corporate Applicant continued during the Liquidation process by the Liquidator.

(ix) It is directed to the Liquidator to first explore the sale of the Corporate Applicant as a going concern as envisaged under Regulation 39C of the IBBI (Insolvency Resolution Process for the Corporate Persons), Regulations, 2016.

(x) It is also directed to the Liquidator to take into consideration the liquidation value of Corporate Applicant as per the valuation report. Liquidation cost may be taken from the sale proceed of the Corporate Applicant.

(xi) The present I.A. No. 811 of 2022 is allowed directing the appointed Liquidator to initiate and complete Liquidation process as envisaged under Chapter – III of the Code by following the



Liquidation process as specified in the Insolvency and Bankruptcy Board of India (liquidation process) Regulations, 2016.

(xii) The Registry is directed to upload this order on the official website within maximum two working days from the date of this order. The authenticated copy of this order be also sent by the registry to the Operational Creditor, Corporate Applicant/Resolution Applicant, Registrar of the Company, Resolution Professional cum Liquidator by speed-post within one week from this order

(xiii) Accordingly, the present **I.A. No. 811 of 2022 in CP (IB) 231 of 2021** is allowed and stands disposed of.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Swetambary/Ramashish

-SD-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)