

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.129/2021
In
CP(IB)No.616/07/HDB/2018

In the matter of
ATHENA CHHATTISGARH POWER LIMITED

M/s. Athena Chhattisgarh Power Limited
Regd. Office: 7-1-24/1/RT, G-1, B- Block,
Roxana Tower Greenland, Begumpet,
Hyderabad – 500016, Telangana, India.
(Rep. by Mr. C. Bala Mouli, RP)

...Applicant/Corporate Debtor

Date of Order: 13.05.2021

Coram: Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/ Counsels Present:-

For the Applicant:

Mr. C. Bala Mouli, RP along with Mr. Ravi Charan and Ms.
Niharika Agarwal, Advocates

[Per Bench]

ORDER

1. The present Application bearing IA No.129/2021 in CP(IB)No.616/07/HDB/2018 is filed by Mr. C. Bala Mouli, RP of M/s Athena Chhattisgarh Power Limited, U/s.33 Read with Section 34(1) of the IB Code, 2016 inter-alia praying as under:
 - a) To pass order for liquidation of the Corporate Debtor i.e. Athena Chhattisgarh Power Limited under Section 33 of the Insolvency

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and Bankruptcy code, 2016 in accordance with the resolution passed by Committee of Creditors with 86.65% voting at its meeting held on 22nd December 2020.

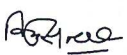
- b) To appoint liquidator for Corporate Debtor under section 34(1) of the Insolvency and Bankruptcy Code, 2016.
2. That the CP(IB) No. 616/7/HDB/2018 was filed by State Bank of India under Section 7 of the Code and was admitted for CIRP by this Adjudicating Authority vide order dated 15.05.2019. Mr. C. Bala Mouli was appointed as Interim Resolution Professional and thereafter was confirmed as the Resolution Professional.
 3. That on 29.07.2019, the RP has published Form G for Corporate Debtor and Expression of Interest were received from Adani Power Limited and Sterlite Power Transmission Limited. However, on 13.08.2019 i.e., the last date for submission of EoI, the same was extended and EOI from two other Resolution Applicants namely Vedanta Limited and Megha Engineering & Infrastructure Limited were received and both of them were found eligible.
 4. In 6th CoC meeting, CoC Discussed plan submitted by Vedanta Limited and decided that Vedanta Limited would re-submit Resolution Plan. Post deliberation with CoC, the Vedanta Limited had agreed to submit the Resolution Plan.
 5. In 8th CoC meeting, the majority of CoC members with 89.53% rejected resolution plan submitted by Vedanta Limited. Further, CoC members holding 88.54% voting share, approved the resolution for publication of revised Form- G.
 6. The RP received 2 EoI's from viz. Andhra Pradesh Power Generation Corporation Limited (APGENCO) and Vedanta Limited.
 7. That before the last date of submission of Resolution Plan i.e. 16.03.2020, only Vedanta Limited submitted the Plan and APGENCO by its letter dated 20.03.2020 sought 90 days of time.

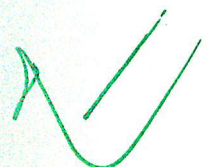




8. Discussions were held on observations of Resolution Plan submitted by Vedanta limited and the plan was placed before the CoC for Consideration.
9. Proposed Resolution Plan was amended from time to time and the resolution seeking approval of the Resolution Plan was discussed in 21st CoC Meeting conducted on 22.12.2020 and e-voting platform was kept open for CoC members to vote. Accordingly, the members of CoC casted their votes on the Resolution Plan submitted by Vedanta Limited and rejected the Resolution Plan with 86.65% vote share.
10. Thus, considering the completion of CIRP of the Corporate Debtor on 09.01.2021 and that there was only one resolution plan of Vedanta Limited on the table and the CoC has voted against the resolution plan with majority of 86.65% voting, the Corporate Debtor is required to be liquidated in terms of the Code and CoC has authorized the recommended liquidator to take all such steps as may be required in this regard.
11. The Resolution Professional in 21st CoC meeting held on 22.12.2020 also presented the estimated liquidation cost of the Corporate Debtor.
12. The CoC members were requested to note the same in purview of Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
13. The Resolution Professional in purview of Regulation 39D of the CIRP Regulations presented liquidation fee for the liquidation process of Corporate Debtor. It was indicated that liquidation fee has been provided considering all assets of Corporate Debtor will be sold off and the receipts are distributed as per waterfall mechanism provided under Section 53 of Code.
14. The Resolution Professional after discussing about the liquidator fee, kept the liquidator fees for e-voting for consent of CoC

- members. The CoC members have approved the resolution for fixation of liquidation fees with majority of 66.72% of vote.
15. The Resolution Professional also informed CoC in 21st CoC Meeting that Corporate Debtor is not a going concern as the Corporate Debtor had not gone into any commercial operation and still in installation stage, therefore, it cannot be sold as going concern. The CoC members took note of the same and suggested that they would prefer to sell it, as it is, instead of completing the installation of the plant.
 16. That the members of the CoC while approving the resolution for liquidation of the Corporate Debtor under Section 33 of the code have also deliberated on appointment of Mr. Kumar Rajan as Liquidator and said resolution was put to vote. The said resolution was approved by majority of 67.62%. Thus, written consent by Mr. Kumar Rajan to act as liquidator is attached.
 17. The instant Application is bona-fide and in due compliance of the provisions of the Code and Rules and Regulations made therein.
 18. Heard and perused the record.
 19. In view of the facts and circumstances as recorded by RP in IA No.129 of 2021 filed in CP(IB) No. 616/7/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016. Therefore, this Adjudicating Authority deems it proper to allow the Application bearing IA No. 129/2021 as prayed for. Accordingly, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—
 - (i) This Adjudicating Authority hereby order for Liquidation of M/s. Athena Chhattisgarh power Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;





- (ii) This Adjudicating Authority hereby appoint Sri Kumar Rajan, as approved by CoC and who has also given his written consent dated 08.01.2021 to act as Liquidator in the present case. He has also stated that he holds Authorisation for Assignment (AoA) from 03.12.2020 to 02.12.2021 in his written consent. He is directed to file the copy of the same within 7 days from date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
- (iii) 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;
- (iv) 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.
- (v) We make it clear that para (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.
- (vi) 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.
- (vii) 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., Sri Kumar Rajan. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code,

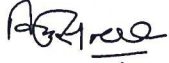
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2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

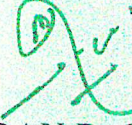
- (viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board 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.
- (x) 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.
- (xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Sri Kumar Rajan for information and compliance.
- (xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

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20. Accordingly, Application bearing IA No. 129/2021 stands disposed off.



DR. BINOD KUMAR SINHA
MEMBER TECHNICAL



MADAN B. GOSAVI
MEMBER JUDICIAL