NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

17. I.A. 966/2022
I.A. 2744/2021
IN
C.P.(IB)-3844(MB)/2019

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SMT. ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **14.07.2022**

NAME OF THE PARTIES: State Bank of India

V/s

Bilpower Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Rahul Gaikwad a/w Adv. Nikita Abhyankar i/b Gravitas Legal for the Applicant, Mr. Anuj Bajpai, counsel appearing for the RP, Mr. Prashant Pandit, counsel appearing for the Respondent Nos. 3 to 11 are present through virtual hearing.

I.A. 966/2022

Heard the arguments of counsel appearing for the RP and the above Interlocutory Application is **allowed. Detail order follow:**

List this matter on **20.09.2022**

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	H.V.SUBBA RAO
Member (Technical)	Member (Judicial)

SKS

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

I.A. 966 OF 2022

IN

CP (IB) – 3844/IBC/MB/2019

Under Section 33 (1) of the Insolvency & Bankruptcy Code, 2016

Filed by

Mr. Anuj Bajpai

Resolution Professional for:

Bilpower Limited

...Applicant

In the matter of

State Bank of India

...Financial Creditor

Versus

Bilpower Limited

...Corporate Debtor

Order delivered on: 14.07.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Rahul Gaikwad, Advocate and Mr. Anuj Bajpai, Resolution Professional

1. The above application I.A. No. 966/2022 is filed by Resolution Professional, Mr. Anuj Bajpai (hereinafter referred to as the "Applicant") seeking liquidation of Bilpower Limited (hereinafter

referred to as the "Corporate Debtor") under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

a. *This Hon'ble Tribunal be pleased to pass an Order under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 to liquidate the assets of the Corporate Debtor.*
b. *This Hon'ble Tribunal be pleased to appoint Mr. Anuj Bajpai, (IBBI/IPA-001/IP-P00311/2017-2018/10575) Resolution Professional herein, as the Liquidator of the Corporate Debtor.*
c. *This Hon'ble Tribunal be pleased to pass any such other further orders as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. The brief facts of the application are as follows:

A. The Applicant mentions that this Tribunal vide its order dated 07.09.2021 in Company Petition No. 3844/IBC/MB/2019 admitted the petition under Section 7 of the Code, filed by State Bank of India (hereinafter referred to as the "Financial Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.
B. It is further stated by the IRP that on 18.09.2021 a public announcement was made inviting claims from the Creditors of the Corporate Debtor in 5 (five) different newspapers having country wide circulation as well as specific circulation in Mumbai, Baroda and Dehradun for the attention of the Creditors of the Corporate Debtor.

C. On 16.10.2021, the 1st meeting of the Committee of Creditors (hereinafter referred to as the "CoC") took place wherein the Applicant was appointed as the RP of the Corporate Debtor by the CoC.

D. In the 4th CoC dated 29.01.2022 the CoC in Item no. 5 discussed as follows:

*"**Item No. 5 – To decide on the way forward in the ongoing CIRP Process –***

The RP stated that, pursuant to the publication of Form G dated 1st December 2021, he has not received any formal EoI. He further stated that he received interest from few parties which had visited the Vadodara Unit. The RP shared with the following feedback received after interaction from these parties;

- *The parties informed that on account of manufacturing process since past about 6 years, the condition of the machines has deteriorated completely. Barring few machineries, others are not even in a working condition. Hence, restarting the operations of the CD be very difficult.*
- *The locations of the two premises of CD one at Vadodara and the other at Haridwar is also posing difficulties, as any Resolution Applicant will be required to give a Resolution Plan for the entire assets, without excluding any of the assets/properties.*
- *Hence the few parties that the has visited the unit were only interested in one or more selective assets of the CD and not the entire assets. Hence, they had decided not to give an EOI under the CIRP process.*

The RP stated that in view of the feedback received from a few parties it will be difficult to attract any Resolution Applicant. The RP further informed that the period left n the CIRP (180 day *being 16th Mar 2022) still allows for a fresh round of EoI & RFRP and shared the timelines. He however, informed that, eventually, the decision whether to proceed with the CIRP or call for liquidation of the CD lies in the ambit of commercial wisdom of the CoC. The CoC may explore the options guided by the objective to maximise the value of the assets.*

The CoC stated that they will reflect on the information provided and confirm their decision in due course. The RP stated that based such decision of CoC, he will issue the notice to the next CoC accordingly. CoC took note of the same."

E. In the 5th CoC dated 21.02.2022 the CoC in Item no. 5 discussed as follows:

Item No. 5 – To decide on the Liquidation of the Corporate Debtor:

RP informed the CoC members that he had published Form G in various newspapers on 1st December 2021, but no response was received for the same. As per Section 33(2) of IBC, CoC members discussed to pass a resolution for taking the Corporate Debtor to Liquidation as deliberated in the last CoC Meeting. Since no response was received to the EOI released by the RP, hence, Liquidation was the only logical outcome. The CoC suggested that, in order to maximise the value for all stakeholders, selling the entire company or any part thereof, as "a-going-concern" should be tried in the very first attempt, during liquidation of the corporate debtor, as per Regulation 39(C) of CIRP and if it fails, then sale by other methods should be tried. The Resolution Professional noted the same.

The RP then requested the CoC to approve the liquidation vide Resolution No. 1 which will be put through e-voting. CoC *took note of the same and requested a time of around three (3) weeks to complete the e-voting process."*

F. The Applicant further states that in the 5th CoC meeting dated 21.02.2022 the CoC with 100% voting decided to opt for Liquidation as a going concern for the first attempt of the Liquidation and if it fails, then sale by other methods should be tried under the Liquidation of the Corporate Debtor as well as appointing the Applicant as the Liquidator of the Corporate Debtor. The relevant extract of the resolution is reproduced herein below for ready reference:-

Resolution No. 1 – To approve the liquidation of Bilpower Limited:

*"**RESOLVED THAT** pursuant to Section 33(2) of the Insolvency & Bankruptcy Code, 2016 and Rules & Regulations made thereunder, the CoC hereby decides to conclude the Corporate Insolvency Resolution Process of the Corporate Debtor, Bilpower Limited and take the Corporate Debtor under Liquidation."*

Resolution No. 2 – To appoint and fix the remuneration payable to the liquidator of Bilpower Limited:

*"**RESOLVED THAT** pursuant to Section 34 of the Insolvency & Bankruptcy Code, 2016 and other relevant rules and regulations made thereunder, the CoC Members hereby approves the appointment of Mr. Anuj Bajpai having IBBI Registration Number IBBI/IPA-001/IP-P00311/2017-18/10575 to act as the liquidator of Bilpower Limited in line with the Regulation 4(2)(b) of IBBI Liquidation Regulations, 2016"*

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 5th CoC meeting that the CoC with 100% voting decided to liquidate the Corporate Debtor as a going concern for the first attempt and if it fails, then sale by other methods should be tried. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 966 of 2022 and passed the following:

ORDER

1. The above I.A. No. 966/2022 is allowed and the Corporate Debtor Bilpower Limited is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.
    a. **Mr. Anuj Bajpai**, having Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10575, having office at: C/o. Headway Resolution & Insolvency Services Pvt Ltd, 708, 7th Floor, Raheja Centre, Nariman Point, Mumbai – 400021, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
    b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
    c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. The Liquidator appointed under section 34(1) of the Code. All 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 with the liquidator.
e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
g. That on having liquidation process initiated, 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.
h. 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.

With the above directions, this application i.e. I.A. No. 966 of 2022 is hereby allowed and disposed of.

Sd/-	Sd/-
Anuradha Sanjay Bhatia	**H.V. Subba Rao**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**