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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA/243/CHE/2022 in IBA/1353/2019

*(Filed under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the NCLT Rules, 2016)*

In the matter of ***Techno Power Combines Private Limited***

Mr.Narayanaswamy Nageswaran

Interim Resolution Professional of
Techno Power Combines Private Limited
No.71/1, 1st Floor, Hari Krupa,
Mc Nicholas Road, Chetpet,
Chennai – 600 031

... Applicant

Order Pronounced on 22nd July 2022

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : *T.Deenadhayalan, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an application filed under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 read with Rule of the NCLT Rules, 2016) seeking relief as follows:

- (i) To pass an order of Liquidation of the Corporate Debtor as per Section 33(1) (a) of the Code and
- (ii) To pass any or further orders according to the facts and circumstances of the present case.

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated on 02.09.2021 and the Applicant herein was appointed as. As no Resolution Professional (RP) is appointed, the Applicant is performing the duties of the RP.

3. It was submitted by the Learned Counsel for the Applicant that the applicant had placed the following dates and events which happened during the CIRP period as follows:

a) On 2nd September 2021, the CD was admitted into CIRP and the applicant was appointed as the Interim Resolution Professional by this Tribunal.

b) On 8th September 2021 the Applicant issued public announcement (Annexure II).

c) On 28th September 2021 the Applicant filed the Report certifying the constitution of Committee of Creditors under section 21(1) of the insolvency and bankruptcy code, 2016 before this Tribunal as under (Annexure III):

S.No	Name of the Financial Creditor	Claimed	Admissible	Under Verification	Voting share
1	Bank of Baroda	35,05,692	27,74,127	7,31,565	100%

d) The list of Creditors, after verification of claims received, was filed on 28.09.2021 as per Reg. 13(2) (d) of IRPCP Regulation 2016.

e) On 04th October 2021, the 1st COC meeting was held wherein the appointment of Resolution Professional (RP) was discussed. Whereas the applicant informed the COC that he is not willing to continue as RP. Further, the applicant acceded, after discussions with the COC, to act as RP till appointment of RP u/s 22 of the Code and hence the Applicant performed the duties of the RP. The relevant extract/minutes are placed at Annexure IV of the typed set filed along with the application.

f) On 11.01.2022, the 2nd CoC meeting was held wherein the applicant informed the CoC about the operations of the CD and non-cooperation of the Directors. The relevant extract/minutes are placed at Annexure V of the typed set filed along with the application.



g) On 25.03.2022 the 3rd CoC meeting was held wherein it was decided to liquidate the CD for the reasons recorded in the meeting. The relevant extract/minutes are placed at Annexure VI of the typed set filed along with the application and the resolutions are reproduced below:

05 Initiation of Liquidation

RP re-presented the tentative timeline to CoC and information that the 180 day from the of commencement of insolvency resolution process falls on 1 March 2022 RP further added that he was not able to access the information in relation to the assets of the CD, which was conveyed to CoC in all the CoC meetings held and also recorded in the minutes. The sole CoC member recommended and approved for liquidation of the CD and the following resolution was passed in the meeting with 100% voting. As the decision was unanimous, there was no requirement for e-voting.

"RESOLVED THAT the Corporate Debtor Techno Power Combines Private Limited is voted for liquidation and the committee of creditor hereby recommends sale of the corporate debtor as a going concern under clause (e) or sale of the business of the corporate debtor as a going concern under clause (f) of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016."




RP added that according to the provision of the Code, he has supposed to present the Estimated Liquidation cost and explained fee table to the CoC member. He said that as there is no information are available in relation to the assets of the CD. He is not in a position to place an record the details which are supposed to be presented to the CoC vide regulation 39B, 39C & 39D of IBBI (IRPCP) regulation, 2016. The CoC took note of the same.

RP had communicated to the CoC that he was not willing to continue as the Liquidator of the Corporate Debtor. Hence, he would file an application with NCLT, Chennai for initiation of Liquidation, however, he would not be giving his consent to act as Liquidator. The CoC took note of the same.

h) On 26th February 2022, an application under Section 66 of the code has been filed vide NCLT Transaction No. 3300550078312022 as informed to the COC in the 3rd COC meeting on the PUFEE transactions. The relevant extract/minutes of the meeting are placed at Annexure VII of the typed set filed along with the application.

4. It was further averred in the application that the following fact which are leading the Corporate Debtor to liquidation are as follows;

a) The Director, key managerial person of the Corporate Debtor is reportedly paralyzed and Bedridden and lost 70% memories and he is on continues treatment.

- b) As per the instatements year ended March 2019 of the Corporate Debtor there are no physical assets available and this was confirmed by the lender of the Corporate Debtor.
- c) The Applicant cannot appoint any valuers to estimate the fair value of liquidation of the Corporate Debtor due to non-availability of information regarding assets of the Corporate Debtor.
- d) Due to the reasons stated above, the information memorandum was not prepared and hence no EOI on FORM G was published and no Request for Resolution Plan (RFRP) was issued.
- e) As a result, no Resolution Plane was received and hence the COC decided to liquidate the company as per section 33 of the Code.
5. It is seen from the application that the applicant had annexed Form-H and the same is placed at Annexure X of the Application.
6. It is seen that though RP alleges non-cooperation from Suspended Board of Directors, no application under Section 19(2) was ever filed by RP.
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7. It is seen that the loan was sanctioned by the Sole Financial Creditor under CGTMSE Scheme of the Central Government through which a guarantee is provided by the Central Government to lending bank. Taking shelter of the said scheme, the Financial Creditor decided to not to pursue CIRP and push this Company to Liquidation which is very unfortunate.

8. As per the Provision of Insolvency and Bankruptcy Code, 2016, Commercial wisdom of CoC is to be followed in such matters. We bow down to the "commercial wisdom".

9. Thus, as a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. As per the latest list provided by the IBBI for the period from July 2022 to December 2022, we hereby appoint **Mr. Varun Agarwal**, with Reg. No. **IBBI/IPA-001/IP-P02179/2020-2021/13340 (E-Mail Id: ipvarunagarwal@gmail.com) (AFA is valid up to 27.04.2023)** as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy

(Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.



- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

10. The Registry of this Tribunal is directed to mark a copy of this Order to IBBI.

11. Accordingly, IA/243/CHE/2022 filed for Liquidation of the Corporate Debtor stands **allowed**.

-Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd -

Justice (Retd) S.RAMATHILAGAM
MEMBER (JUDICIAL)

SriramAnanth.V