

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA (IBC)/427/2021 in CP (IB) No. 13/7/HDB/2020

Under Section 33 (1) (a) of the Insolvency and
Bankruptcy Code, 2016.

Filed by,

Simhapuri Energy Limited
Through its Resolution Professional
Mr. Anish Niranjana Nanavaty
2A-208, Raheja Classique
New Link Road, Andheri (W)
Mumbai-400053

... Applicant/Resolution Professional

In the matter of

State Bank of India
Central Office at State Bank Bhavan
Madame Cama Road, Mumbai-400021

... Financial Creditor

VERSUS

Simhapuri Energy Limited
R/o. Madhucon Greenlands
6-3-866/2, 3rd Floor, Begumpet,
Hyderabad, Telangana-500016

... Corporate Debtor

Date of order: 06.10.2021

Coram:

Shri Madan Bhalechandra Gosavi, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

[Signature]

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Appearance:

For Applicant: Shri. Tarun Reddy, Advocate

Heard on: 13.08.2021 & 22.09.2021

PER: BENCH

1. This instant application is filed by the Resolution Professional of Simhapuri Energy Limited (hereinafter referred to as "Corporate Debtor") under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") for initiation of liquidation of the Corporate Debtor due to non-receipt of resolution plan.
2. The Insolvency Petition was filed by the Financial Creditor i.e., State Bank of India under Section 7 of the Code vide CP (IB) No. 13/7/HDB/2020 and this Tribunal vide order dated 26.06.2020 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Shri. Anish Niranjana Nanavaty was appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor.
3. The Applicant made public announcement as prescribed in Form-A as per the Regulations for calling for submissions of claims and published the same in newspapers. As per Form-A the last date of submission of claims was on 10.07.2020.
4. In the 1st CoC meeting the members resolved to appoint AAA Valuation Professional (I) LLP and RBSA Valuation Advisors LLP as the registered valuers for determining the liquidation value and fair value as per the Regulations 27 and 35. In the 7th CoC meeting the Applicant proposed to appoint a third registered valuer because the valuation report submitted by the earlier two valuers were starkly different. Hence, CoC resolved to appoint Adroit Appraisers & Research Private Limited to obtain another opinion in valuation.



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5. The Applicant issued Form-G of the CIRP Regulations in compliance with Section 25 (2) (h) of the Code on 07.09.2020 in newspapers inviting Expression of Interest ("EOI") for submission of resolution plans from prospective resolution applicants and fixed the last date of submission of EOI on 28.09.2020. In 4th CoC meeting the last date of submission of EOI was extended by 7 days and corrigendum to Form-G was published in newspapers.
6. The Applicant had received 15 EOIs and out of them two were later declared as disqualified on account of non-eligibility as per Section 29A of the Code. The CoC were extending the last date of submission of EOIs from time to time and in 6th CoC meeting, the CoC resolved to seek an extension of CIRP.
7. The details of applications filed by the Resolution Professional under various provision of the Code are as follows:

Sl No.	Application filed by RP	Date of Order	Order Passed
1.	IA No. 1184/2020 for extension of CIRP period by 90 days.	06.01.2021	Allowed extension of 90 days.
2.	IA (IBC)/128/2021 for exclusion of 60 days from the period of CIRP on the ground of lockdown.	28.04.2021	Exclusion of 60 days granted and the applicant was directed to complete CIRP by 23.05.2021.
3.	IA (IBC)/231 & 295/2021 for exclusion of 30 days and 40 days respectively from the CIRP period.	30.06.2021	Excluded 70 days from the total period of CIRP and directed applicant to complete the process within the extended period.
4.	IA (IBC)/258/2021 for calling upon other members of CoC to contribute to CIRP expenses.	30.06.2021	Directed SREI and IFCI to contribute to the CIRP expenses.

5.	IA (IBC)/129/2021 for avoidance transactions involving the Corporate Debtor under Sections 25 (j), 43 to 51 r/w 66 and 60 (5) of the Code.	Pending for adjudication	Pending for adjudication
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8. The applicant in concurrence with the CoC has appointed BDO India LLP as the Transaction Review Auditors to review the transactions of the Corporate Debtor during the period 01.01.2017 to 26.06.2020 to determine if any of the said transaction qualifies to be avoidable under the applicable provisions of the Code. The Auditors filed their report on 09.03.2021 and the same was put forth before the CoC and on 10th CoC meeting they resolved to file an avoidance application before this Tribunal and the same is numbered as IA (IBC)/129/2021 and its pending for adjudication.

9. It is averred that two resolution applicants namely, M/s. Rescom Mineral Trading FZE and M/s. SREI Multiple Asset Investment Trust submitted their resolution plans and after reviewing the said plans they found out that the commercial offers made by the Resolution Applicants to be lower than expected. Hence, in 9th CoC meeting, the CoC resolved to allow the applicants to revise their bids and present revised plans.

10. In 16th CoC meeting, by majority of 95.69% and 91.95% rejected both the resolution plans respectively. Due to the non-receipt of resolution plans in the said CoC meeting they resolved to liquidate the Corporate Debtor as a going concern as per Regulation 32 (c) and they resolved the fees payable to the Liquidator at 60% of the fees provided in Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 and decided to appoint Mr. G V N Rao having IP Registration No. IBBI/IPA-003/IP-N00093/2017-2018/10893 as the Liquidator and his consent to act as the Liquidator is also attached with the application.



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11. We have heard the Applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that,

"The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors".

12. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (1) (a) of the Code. Therefore, we have no option than to pass an order of liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

13. The Application is accordingly allowed with the following directions:-



- A. The Corporate Person i.e., Simhapuri Energy Limited shall be liquidated in the manner laid down in Chapter-III of the Code.
- B. Mr. G V N Rao having IP registration no. IBBI/IPA-003/IP-N00093/2017-2018/10893, is appointed as Liquidator.
- C. He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- D. The Moratorium declared under Section 14 of the Code shall cease to operate here from.
- E. Subject to Section 52 of the code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- F. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- G. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) regulations, 2016.
- H. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- I. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- J. This order shall 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.
- K. Copy of the Order shall be furnished to IBBI, Regional Director, Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator, Hyderabad, Registered Office of the Corporate Debtor and the Liquidator.



VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)

Vismaya (LRA)

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad B.

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JAN 10/21
PAGE NO. 13/7/HDB/2020
DATE OF JUDGEMENT 6/10/2021
DATE FROM FROM FROM FROM
DATE MADE READY ON 11/10/2021