

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI- MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.08.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 1189/2020 in CP (IB) No.187/ 7/HDB/2019
NAME OF THE COMPANY	Ind-Barath Power Gencom Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Ind-Barath Power Gencom Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

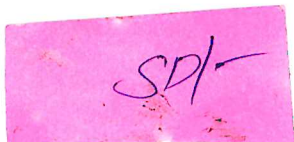
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA 1189/2020 in CP(IB) No.187/7/HDB/2019 is listed for orders.
Orders pronounced vide separate orders.


MEMBER (T)

Syamala


MEMBER(J)

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

IA No. 1189 of 2020
In
CP (IB) No. 187/7/HDB/2019

Application under Section 33 (2) and 34 (1) of IBC, 2016

In the matter of **Axis Bank Limited** versus **M/s Ind-Barath
Power Gencom Limited**

Filed by

Mr. Rajesh Chillale
Resolution Professional for
Ind-Barath Power Gencom Limited

...Applicant/
Resolution Professional

Date of order: 13.08.2021

Coram

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

Appearance

For Applicant: Shri V.V.S.N, Raju, Advocate

PER: BENCH

1. This is an Application by the Resolution Professional under Section 33 (2) and 34 (1) of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as CODE) seeking orders for liquidation of M/s Ind-Barath Power Gencom Limited/ Corporate Debtor.
2. This Tribunal vide order dated 13.11.2019 admitted the petition bearing CP (IB) No. 187/7/HDB/2019 under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company. Shri Rajesh Chillale, the Applicant herein is appointed as Resolution Professional. This Tribunal granted 90 days extension of CIRP period with effect from 20.08.2020
3. During the period of CIRP, two resolution plans were received by the Applicant, which were placed before the CoC. After due deliberations, the same were rejected by the CoC in the 11th CoC

meeting held on 17.11.2020 as the plans were not commercially viable and the CoC with 81% voted in favour of liquidation of the Company and further the CoC with 100% votes resolved for appointing the Applicant herein, the RP as Liquidator of the Corporate Debtor. The minutes of the 11th CoC meeting is annexed and marked as Annexure-E.

4. It is stated the COC in its commercial wisdom has rejected the resolution plans submitted by two Resolution Applicants by a voting share of 98.9% and 79.9 respectively in the 10th CoC Meeting.
5. During the hearing of the instant IA, the Learned Counsel appearing for Ex-Management raised objections in this IA. This Tribunal granted liberty to the Learned Counsel to file his written objections. The objections are filed by Ex-Management of Corporate Debtor by way of written submissions. He submits that the Corporate Debtor was supplying electricity to Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO"). As on 30.06.2017, TANGEDCO owes the Corporate Debtor INR 157,85,71,585. The deposit of approximately Rs. 36 crores in fixed deposit under garnishee orders by TANGEDCO did not improve the financial position of the Corporate Debtor.
6. The Learned Counsel appearing of Ex-Management further submits that the first leg of initiation of CIRP of Corporate Debtor was ordered by the Tribunal on 07.09.2018. Aggrieved by the order of admission, an appeal was preferred by the promoters of CD. They were permitted to settle the dues with all the Creditors by Hon'ble NCLAT vide order dated 19.12.2018 and the appeal was set aside by Hon'ble NCLAT by an order dated 30.01.2019. When the settlement proposal remained inconclusive, it resulted in the initiation of second leg of CIRP by this Adjudicating Authority vide order dated 13.11.2019. The Learned Counsel further pointed out that there were certain lackadaisical approach for the preservation of plant during CIRP that resulted in substantial damage to the plant.
7. The main objection raised by the Learned Counsel is that the CoC took an arbitrary decision in rejecting the resolution plans

only on the ground of expiry of 270 days CIRP period contradicting the order of Hon'ble Supreme Court in Suo Moto writ No.3/2020 wherein extension of limitation was granted.

8. We 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”.

9. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not accept any of the resolution plans/proposal for revival of the Company. The CoC in its wisdom has resolved with 81% voting share 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 for liquidation of the Company in the manner laid down in Chapter-III of the Code.
10. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, it is found the RP has complied with the procedure laid down under the Code; Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the Code for liquidation in the absence of any resolution plan.

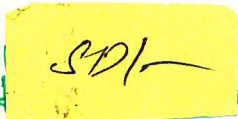
ORDER

11. The Application is accordingly allowed with the following directions:-
- (a) The Corporate Debtor i.e M/s Ind-Barath Power Gencom Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

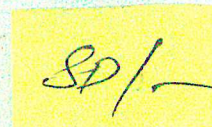
SD/-

SP/-

- (b) The Applicant Mr. Rajesh Chillale, presently RP of M/s Ind-Barath Power Gencom Limited 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.
- (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 & 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 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.
- (k) Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.



(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)