

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.420 of 2019 in
C.P. No.256 of 2016 (T.P. No.107 of 2017)
U/s 33(2) and 34(1) of IBC, 2016

In the matter of:

Shri Kanekal Chandrasekhar
On behalf of Committee of Creditors
Resolution Professional
6, Shree, 9th Cross,
Bhuvaneshwari Nagar,
Hebbal Kempapura, HA Farm Post,
Bengaluru – 560 024.

- Applicant/R.P.

Between:

M/s. Cummins Generator Technologies
India Private Limited
Regd. Off: Cummins India Office Campus,
Tower-A, 6th Floor,
Survey No.21, Balewadi,
Pune – 411 045.

- Petitioner/Operational Creditor

Versus

M/s. RA Power Gen Engineers Pvt. Ltd.
No.53, 3rd Floor, Shree Chambers,
Subbarama Chetty Road,
Netkalappa Circle,
Bangalore – 560 004.

- Respondent/Corporate Debtor

Date of Order: 23rd September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Chandrashekar P. Patil
R.P. : Shri Kanekal Chandrasekhar

ORDER

Per: Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

1. I.A. No.420 of 2019 in C.P. No.256 of 2016 (T.P. No.107 of 2017) is filed by Shri Kanekal Chandrasekhar (hereinafter referred to as 'Applicant/Resolution Professional') on behalf of the Committee of Creditors of the Corporate Debtor herein under Sections 33(2) and 34(1) of the IBC, 2016 by inter alia seeking to consider and approve the proposal stated in the resolution passed by the Committee of Creditors dated 22.08.2019 for liquidation of M/s. R.A. Power Gen Engineers Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') and appointment of Shri Kanekal Chandrasekhar, present RP as Liquidator for liquidation of Corporate Debtor, etc.

2. Brief facts of the case, as mentioned in the instant Application, are as follows:

- (1) The application for Corporate Insolvency Resolution Process was filed by M/s. Cummins Generator Technologies India Private Limited u/s 9 of the IBC, 2016 r/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016 was admitted by this Adjudicating Authority vide order dated 27.03.2019 by appointing Ms.Manjula B.S. having Regn.No.IBBI/IPA-003/IP-N000111/2017-2018/11213 as an Interim Resolution Professional and imposed moratorium, etc.
- (2) Subsequently, the Committee of Creditors was constituted under the leadership of IRP, and in the 3rd meeting of the CoC dated 17.05.2019 Shri Kanekal Chandrasekhar was appointed as Resolution Professional as required under Section 22(1) of the Code.



- (3) It is stated that after appointment of Resolution Professional by the CoC an I.A. No.288 of 2019 was filed before the Adjudicating Authority for change of Resolution Professional and the said application was allowed vide order dated 19.06.2019 and Shri Kanekal Chandrasekhar was appointed as RP to take over the charge.
- (4) It is stated that the RP has participated in the 5th CoC meeting held on 24.06.2019 and in the said meeting, CoC instructed the RP to get the provisional Accounts for the year 2018-19 audited, before taking the decision to publish Form No. G, inviting Expression of Interest from the prospective Resolution Applicants.
- (5) Accordingly, the RP issued notice to the Corporate Debtor to furnish the Assets and Liabilities, Statement of Accounts, Balance Sheet and other financial statements with Schedules, etc., for completion of CIRP. Even RP has visited the factory of the Corporate Debtor located at Mudigere Plantation, Channapatna. But the factory was locked and there were no one present in the factory premises. Subsequently, RP visited the office of the Corporate Debtor at Hanumanthnagar on five occasions and could not meet the Corporate Debtor Shri S.N. Suyameendra, Director. However, RP contacted the said Director on his mobile and impressed upon him for cooperation in completing the CIRP process of the Corporate Debtor. However, the Corporate Debtor has been avoiding to meet the RP and has been giving very evasive replies and reasons, in spite of several calls and emails by the RP for extending cooperation and submission of Balance Sheet and financial statements with Schedules as on 31.03.2019.
- (6) It is also stated that RP has also contacted the Statutory Auditor of the Corporate Debtor and requested him for providing the



audited Balance Sheet and financial statements with necessary Schedules as of 31.03.2019. After discussions, the Auditor has informed that the Corporate Debtor has not yet submitted the financial data in spite of several reminders for completing the Audit.

(7) It is further stated that RP has made all efforts to contact Corporate Debtor Shri S.N. Suyameendra in order to get Audited Balance Sheet and financial statements with necessary Schedules as on 31.03.2019. However, he has not responded and also not submitted the financial data and other information requested. In the absence of the above information, it is not possible for further progress of the CIRP process.

(8) it is stated that when all efforts of RP were in vain in getting relevant information from the Corporate Debtor, the CoC in its 7th meeting held on 22.08.2019 resolved to refer the Corporate Debtor herein for the Liquidation and also recommended to this Adjudicating Authority to appoint Shri Kanekal Chandrasekhar as the Liquidator of M/s. RA Power Gen Engineers Pvt. Ltd under Section 33(2) and 34(1) of the Code. Quorum of the 7th CoC meeting was 100% as the Union Bank of India is the sole Financial Creditor of the CoC. The resolution to refer the Corporate Debtor for the Liquidation is approved by 100% voting share, which is much higher than the required voting share of 66% as per Section 33(2) of the Code. Hence, the present application.

3. Heard Shri Kanekal Chandrasekhar, Resolution Professional and Shri Chandrashekar P. Patil, learned Counsel for the RP. We have carefully perused the pleadings of the party and the extant provisions of the Code.



4. Since the Committee of Creditors in its 7th meeting held on 22.08.2019, has already resolved for taking the matter for liquidation by 100% voting which is more fully mentioned in the paragraph 2(8) above. Hence, we are inclined to pass the liquidation order of the said Company.
5. In the result, the Adjudicating Authority, by exercising powers conferred under Section 33 of the I&B Code, 2016, I.A. No.420 of 2019 in C.P. No.256 of 2016 (T.P. No.107 of 2017) is disposed of with the following directions:
 - (1) We have reached the conclusion that there is a need for an order requiring the Corporate Debtor namely M/s. RA Power Gen Engineers Private Limited to be liquidated in the manner as laid down in the I&B Code, 2016 and related Regulations;
 - (2) That **Shri Kanekal Chandrasekhar** holding **Registration No.IBBI/IPA-002/IP-N00642/2018-19/11964**, the Resolution Professional appointed for CIRP is appointed as Liquidator for the purpose of liquidation pursuant to Section 34(1) of Insolvency & Bankruptcy Code, 2016.
 - (3) The provisions of IBBI (Model Bye-laws & Governing Board of Insolvency Professional Agencies) Regulations, 2016 shall apply.
 - (4) The Liquidator is directed to issue a Public announcement stating that the Corporate Debtor is in liquidation one in English language and one in Vernacular language in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
 - (5) The order of moratorium 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 Bankruptcy Code shall commence;



- (6) That 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 Liquidator;
- (7) That the Personnel of Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor;
- (8) Liquidator is also directed to send a copy of this order to the concerned authority whoever is the regulator of the Corporate Debtor by RPAD;
- (9) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor;
- Provided that a suit or other legal proceeding may be instituted by the liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority in accordance with Section 33(5) of the Insolvency and Bankruptcy Code, 2016;
- (10) The provisions of sub-section (5) of Section 33 shall 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 in accordance with Section 33(6) of the Insolvency and Bankruptcy Code, 2016;
- (11) The Liquidator appointed shall discharge his functions pursuant to powers and duties conferred under Section 35 and other relevant provisions of the IBC, 2016;
- (12) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the IBC, 2016 and in accordance with relevant Regulations;



- (13) The fee of the Liquidator shall be proportionate to the liquidation estate assets as specified by the Board, and it shall be paid from the proceeds of the liquidation estate u/s 53 of the Code;
- (14) Liquidator is directed to follow all extant provisions of IBC, 2016 and Rules framed by the IBBI from time to time;
- (15) The order for liquidation under this Section 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 in accordance with Section 33(7) of the IBC, 2016;
- (16) Committee of Creditors is directed to review the expenditure incurred by the Resolution Professional until the date of this order and verify the same through perusal of relevant documents;
- (17) The Liquidator shall submit a preliminary report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- (18) Copy of this order be sent to the financial creditor, corporate debtor and the liquidator for taking necessary steps;
- (19) The Liquidator is directed to send copy of this order to the Registrar of Companies, State of Karnataka and other authorities connected with Corporate Debtor;
- (20) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India;
- (21) The Liquidator is directed to conclude the Liquidation process, as expeditiously as possible, by initiating expedite steps, and




promptly report progress of liquidation process to the Adjudicating Authority from time to time;

(22) Post the CP for report of the Liquidator on **25th October, 2019**.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna