

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.11.2020 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.963/2020 in CP(IB) No. 81/7/HDB/2020
NAME OF THE COMPANY	Hindupur Bio-Energy Pvt Ltd
NAME OF THE PETITIONER(S)	KSK Energy Electricity Financing India Pvt Ltd
NAME OF THE RESPONDENT(S)	Hindupur Bio-Energy Pvt 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

The matter is listed today for pronouncement of orders. The order is pronounced through video. The application is allowed and the Corporate Debtor is ordered to be liquidated.


**MEMBER
(TECHNICAL)**


**MEMBER
(JUDICIAL)**

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

I.A. No.963 of 2020.

In

CP (IB) No.81/7/HDB/2020

*Application filed under Section 33 (2) of IBC, 2016 R/w IBBI
(Liquidation Process) Regulations, 2016*

IN THE MATTER OF

**M/s KSK ELECTRICITY FINANCING INDIA PRIVATE LIMITED
VERSUS HINDUPUR BIO-ENERGY PRIVATE LIMITED**

Mrs. Narala Varalakshmi
Resolution Professional for M/s. Hindupur Bio-Energy Private Limited
1-8-588/29/A, Achhainagar Achhainagar,
Baghlingampally, Backside RTC Kalyana Mandapam,
Hyderabad, Telangana -500044.

**...Applicant/
Resolution Professional.**

Date of order: 10.11.2020

Coram:

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant: Shri M. Maharshi Viswaraj and Ms M. Sruthi,
Advocates

Heard on: 28.10.2020

**PER: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

1. Under consideration before us is the interlocutory application filed under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 read with IBBI (Liquidation Process) Regulations, 2016 by Resolution Professional, seeking order of liquidation in respect of Hindupur Bio-Energy Private Limited.



2. AVERMENTS IN THE APPLICATION:

The averments apropos to the Application in brief are:-

- 2.1 That this Tribunal vide order dated 16.03.2020 in CP (IB) No. 81/07/HDB/2020 admitted the petition under Section 7 of Insolvency and Bankruptcy Code,2016 filed by M/s. KSK Electricity Financing India Private Limited / financial creditor Corporate Insolvency Resolution Process against Corporate Debtor was ordered to be initiated by appointing the Applicant herein as Interim Resolution Professional.
- 2.2 On assuming charge of Interim Resolution Profession, the Applicant herein issued Public Announcement in FORM-A on 18.03.2020 in Financial Express English Daily News Paper and Mana Telangana Telugu Daily News Paper inviting claims from the creditors and the last date for submission of claims as per Public Announcement was 30.03.2020. Pursuant to above notification, the Resolution Professional is stated to have received only one claim from the Financial Creditor claiming an amount of Rs. 5,38,47,177/- and subsequently, the Resolution Professional constituted Committee of Creditors as per Section 21(1) of the I & B Code,2016 Read with Regulation 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and submitted the report certifying the constitution of committee before this Tribunal.
- 2.3 The Applicant avers, in the First CoC Meeting held on 16.07.2020, the Applicant was confirmed as Resolution Professional in terms of Section 22(3)(a) of the Insolvency and Bankruptcy Code, 2016 and same was communicated to this Tribunal. It is further averred that on account of slowdown in the power sector, the Corporate Debtor was not in a position to carry on any business operations and that it does not have any Immovable Assets.
- 2.4 The Applicant stated, the CoC deliberated on the possibility of reviving the Corporate Debtor in the 3rd Committee of Creditors





meeting held on 18th September, 2020. However, the CoC with 100% voting share was of the view that there is no scope for revival of Corporate Debtor and resolved to liquidate the Company. Further, the CoC with 100% voting share further resolved to appoint the Resolution Professional/Applicant herein as Liquidator. The Resolutions passed in the 3rd CoC meeting is reproduced below:-

“RESOLVED THAT with the approval of members of committee of creditors with 100% voting thereon be and is hereby accorded to authorize the Resolution Professional to file an application as per Section 33 of Insolvency and Bankruptcy Code,2016 to the Adjudicating Authority to Liquidate the Corporate Debtor.”

“RESOLVED THAT the liquidation proceedings be initiated against the Corporate Debtor and the Resolution Professional Mrs. Narala Vara Lakshmi, be and is hereby authorized to file the requisite application with Adjudicating Authority proposing for Liquidation as per Section33 of Insolvency and Bankruptcy Code,2016”

“RESOLVED THAT with the approval of members of committee of creditors with 100% voting thereon be and is hereby accorded to recommend the appointment of Mrs. Narala Varalakshmi, Resolution Professional appointed for CIRP of CD as Liquidator in accordance with Section 34(1) of I& B Code,2016....”

- 2.5 The Applicant relied on Section 33 (2) of the Code, which provides ***“at any time during CIRP if the Committee of Creditors by not less than sixty-six percent of the voting share approved to liquidate the Corporate Debtor, this Adjudicating Authority shall pass the order of Liquidation”.***
- 2.6 The Applicant further averred, in compliance to Section 34 (1) of Insolvency and Bankruptcy Code, 2016, she has given her written consent for acting as Liquidator. Hence, prayed this Tribunal to pass order of liquidation in respect of M/s Hindupur Bio-Energy Private Limited.



3. We heard the Counsel for Resolution Professional. The present Application is filed by the Resolution Professional under Section 33 (1) of IBC, 2016 seeking initiation of liquidation process of M/s HINDUPUR BIO-ENERGY PRIVATE LIMITED/ Corporate Debtor.
4. The Counsel for Resolution Professional/ Applicant herein informed the Tribunal that the members of CoC in its 3rd CoC meeting held on 18.09.2020 had deliberated on the possibility of reviving the Corporate Debtor but came to a conclusion that there is no scope for revival and as such CoC with 100% voting share approved in favour of liquidating the Corporate Debtor.
5. Section 33 (2) of Insolvency and Bankruptcy Code, 2016 reads as follows:-

33 (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]
6. Since the CoC with 100% voting share decided to liquidate the Company for the reason cited supra, we see no other alternative except passing an order of liquidation requiring the Corporate Debtor/Hindurpur Bio-Energy Private Limited to be liquidated in the manner laid down in Chapter 3 of Part 2 of the Insolvency and Bankruptcy Code, 2016.
7. As per Section 34(1) of the Code, after passing the order of liquidation of Corporate Debtor, the Resolution Professional appointed for CIRP Process shall act as Liquidator for





conducting Liquidation Process. Accordingly as per Section 34 (1) of IBC, Mrs Narala Varalakshmi bearing Registration No. IBBI/IPA-002/IP-N00629/2018-2019/11980 is appointed as Liquidator. The proposed Liquidator has given her consent for appointing her as Liquidator.

8. As a sequel to above, the Application is allowed and Corporate Debtor / M/s Hindupur Bio-Energy Private Limited is ordered to be liquidated.
9. The Liquidator is directed to proceed with the process of liquidation in manner laid down in Chapter III of Part 2 of the Insolvency and Bankruptcy Code, 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations, 2016.
10. 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 in the Liquidator.
11. The Liquidator is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.
12. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect.
13. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Code.
14. Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in Section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction shall not apply to legal proceedings in relation to such transactions

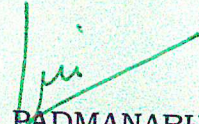


as may be notified by the Central Government in consultation with any financial sector regulator.

15. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation process) Regulations, which forms part of the liquidation cost.
16. The Liquidator shall submit a Preliminary Report within 75 days from the Liquidation Commencement date as per Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016.

The Application is disposed of accordingly.


(VEERA BRAHMA RAO AREKAPURI)
MEMBER (TECHNICAL)


(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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