

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
31-03-2023 AT 10:30 AM**

IA (IBC) 1423/2022 in CP(IB) No.745/7/HDB/2019
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank

...Financial Creditor

VS

Ind Baraath Thermal Power Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 1423/2022

Orders in company petition pronounced, recorded vide separate sheets. In the result, this petition is allowed and the Corporate Debtor is ordered to be liquidated as per the procedure laid down in Chapter-III of the Code accordingly, this petition is allowed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

**I.A. No.1423/2022 in
C.P. (IB) No. 745/7/HDB/2019
Under Section 33 of the IB Code, 2016**

In the matter of

**PUNJAB NATIONAL BANK
VERSUS
M/s IND BARATH THERMAL POWER LIMITED**

Filed by

Mr. Deepak Maini,
Resolution Professional
Ind Barath Thermal Power Limited

...Applicant
Resolution Professional

Date of order: 31.03.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member
(Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Counsel present:

For Applicant : Shri Shashank Agarwal, Advocate

Per: Bench

O R D E R

1. The Resolution Professional (for short RP) appointed by this Tribunal pursuant to our order dated 18.04.2022 has filed this application under Section 33 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as “Code”) praying this Tribunal to pass order of liquidation of the Corporate Debtor i.e. Ind Barath Thermal Power Ltd.
2. To put concisely, the Company Petition filed by the Financial Creditor u/s 7 of the Code was admitted by the Adjudicating Authority vide Order Dated 30.12.2021 and ordered commencement of initiation of CIRP against it by appointing Shri Sreekakulam Vamsi Krishna as Interim Resolution Professional (IRP). Corrigendum of CIRP order dated 30.12.2021 was issued and Mr. Sudip Bhattacharya was appointed as the IRP in place of Shri Sreekakulam Vamsi Krishna. The IRP was subsequently replaced by the Applicant herein as Resolution Professional vide the order dated. 18.04.2022.
3. On his taking over charge as IRP/RP, the Form G was also published in accordance with regulation 36A for inviting Expression of Interest (EOI) pursuant to which two resolution plans were received. However both the plans were rejected by the CoC in the 4th CoC meeting.

4. Pursuant to publication of Form-G dated 27.05.2022, two EOIs were received from resolution applicants namely Jindal Power Limited and Saghi Equity and Limited.
5. In the meantime, the first extension of the term of CIRP by 90 days beyond the statutory period of 180 days was granted on 16.06.2022 vide orders passed in IA No. 558 and further excluded 56 days from the CIRP period.
6. Pursuant to publication fresh EOI dated 29.06.2022, the Applicant received four EOIs from the Prospective resolution applicants (“PRAs”) i.e. Jindal Power Limited, Manikaran Power Limited, Trimex Industries Private Limited and Dickey Asset Management Private Limited.
7. Pursuant to the 11th COC meeting the applicant received one resolution plan from JPL, which the RP evaluated in accordance with the provisions of the Code and the regulations and the CoC requested JPL to enhance their offer and submit the revised resolution plan by 17.09.2022.
8. However, in the 13th COC meeting the Resolution Plan submitted by M/s Jindal Power Limited was deliberated upon and the plan was put for e-voting with effect from 29.09.2022 to 11.11.2022 but the CoC rejected the plan and on the other hand the COC had approved, *inter alia*, the following resolutions.
 - i. Resolution under regulation 39B of the CIRP Regulations regarding estimated liquidation costs and contributing to the same;

- ii. Resolution under regulation 39C of the CIRP Regulation regarding the liquidation of the Corporate Debtor by way of sale;
 - iii. Resolution under regulation 39BA of the CIRP Regulations thereby COC resolving to explore compromise or arrangement under regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with sections 230-232 of the Companies Act, 2013.
9. It was apprised in the 14th COC meeting held on 15.11.2022, that since the CoC has rejected the Resolution Plan of Jindal Power Limited and that the CIRP period was coming to an end on 21.11.2022, the CoC directed the RP to move an application for liquidation of Corporate Debtor before NCLT as per decision taken by the CoC at Agenda Point E of 14th CoC Meeting.
- “(1) The committee while considering the liquidation of the corporate debtor may consider factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of nay intangible assets to factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature.*
- (2) Such consideration may be recorded and submitted in the application for liquidation submitted by the resolution professional to the Adjudicating Authority.”*
10. Thus submitting, Resolution Professional prayed the Adjudicating Authority to pass a liquidation order.
11. In the light of the above the point that emerges for our consideration is:

Whether the liquidation process against the Corporate Debtor herein can be ordered?

12. We have heard the Shashank Agarwal Learned Advocate for the Resolution Professional and perused the record.

Point:

Whether the liquidation process against the Corporate Debtor herein can be ordered?

13. As seen from the records, the resolution plan submitted by one of the Prospective Resolution Applicants was rejected by the COC.
14. In terms of section 33 (1) (b) if the resolution plan is rejected, the Tribunal shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III. Therefore, this petition for liquidation of Corporate Debtor is liable to be allowed.
15. We are fully conscious of the fact that the primary object of IBC is resolution and liquidation is the last resort. At the same time keeping the timelines prescribed under the IBC is paramount, lest asset value gets deteriorated. Therefore, taking into consideration the provisions of law as well as the documents on record, this Adjudicating Authority is of the view that since the efforts to obtain resolution of the Corporate Debtor have failed and the only option left, under the circumstances being early liquidation process, we allow this petition, directing the liquidation of the Corporate Debtor.
16. Before we part with, we would like to refer to the ruling of Hon'ble Supreme Court in Innoventive Industries Limited Vs ICICI Bank

& Anr in Civil Appeal No. 8337-8338 of 2017, wherein it has been held as follows :-

“From the viewpoint of creditors, good realization can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realization is lower when there are delays. Hence, delays cause value destructions. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay”

17. We therefore hope that the Liquidator whom we have appointed would sincerely endeavour to sell the Corporate Debtor as a going concern without delay however, by observing the relevant provisions contained in IBC as well as in IBBI (Liquidation Process) Regulations and thus ensure that one of the objects of the IBC viz. maximization of the assets of the Corporate Debtor is not diluted.

ORDER

18. The Application is accordingly allowed with the following directions:-
- (a) The Corporate Debtor i.e M/s Ind Barath Thermal Power Limited shall be liquidated in the manner laid down in Chapter-III of the Code.
 - (b) The Applicant Mr. Deepak Maini, presently RP of M/s Ind Barath Thermal Power 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.

Sd/-

(Charan Singh)

HON'BLE MEMBER (TECHNICAL)

swapna

Sd/-

(Dr. N.Venkata Ramakrishna Badarinath)

HON'BLE MEMBER (JUDICIAL)