NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 22.02.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 685/2020 in CP (IB) No. 681/7/HDB/2018
NAME OF THE COMPANY	Sri Guruprabha Power Ltd
NAME OF THE PETITIONER(S)	Punjab National Bank
NAME OF THE RESPONDENT(S)	Sri Guruprabha Power Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Praveen Kumar Jain	Advocate	praveen@[illegible]	9951609064

Counsel for Respondent(s):

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

ORDER

IA 685/2020 in CP(IB) 681/7/HDB/2018 is listed today for orders.

Orders pronounced vide separate orders.

MEMBER (T)

MEMBER(J)

Syamala

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

IA No. 685 of 2020
In
CP (IB) No. 681/7/HDB/2019

Application under Sections 33 (2) of IBC, 2016

In the matter of Sri Guruprabha Power Limited

Filed by:

Naga Bhushan Bhagwati
Resolution Professional
M/s Sri Guruprabha Power Limited
H.No. 1-1-380/38, Ashok Nagar Extension
Hyderabad – 500020

...Applicant/
Resolution Professional

Date of order: 22.02.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance (Via videoconference)

For Applicant : Mr Naga Bhushan Bhagawati, Resolution Professional

Heard on: 08.02.2021

PER: SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

1. This is an Application filed by the Resolution Professional under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 (herein after referred to as CODE) seeking orders for liquidation of M/s Sri Guruprabha Power Limited / Corporate Debtor and further to exclude period of lockdown of 129 days from 25.03.2020 to 31.07.2020 from the CIRP period.

2. This Tribunal vide order dated 20.09.2019 admitted the petition bearing CP (IB) No. 681/7/HDB/2018 under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company and appointed the Applicant herein as Interim Resolution Professional (IRP). The IRP constituted the Committee of Creditors (CoC) with Punjab National Bank as its sole member and its 1st meeting was conducted on 23.10.2019. The CoC in its 1st meeting appointed the IRP as the Resolution Professional (RP) of the Corporate Debtor Company. The CoC in its 2nd meeting on 07.12.2019 approved the Expression of Interest (EOI) inviting Prospective Resolution Applicants (PRAs). In response to the second public announcement on 11.01.2020, the Resolution Professional had received six Expression of Interest (EoI). Pursuant to which, the Applicant had issued Request for Resolution Plan (RFRP) and Evaluation Matrix on 20.01.2020. At the request of two Resolution Applicants, following the decision of CoC in its 4th meeting held on 18.02.2020 time for submission of Resolution Plans was extended up to 29.02.2020.

3. The Resolution Plan received from Resolution Applicant viz Sri Chandrakali Prasada Enterprises Private Limited, Bhimavaram was placed before the CoC at its 5th Meeting held on 06.03.2020. After deliberations in the 6th CoC meeting held on 11.03.2020, the Resolution Applicant agreed to revise the offer from Rs. 850 lacs to Rs. 950 lacs to be paid over a period of 30 months and the CoC directed to revise the offer by 16.03.2020. In the meantime extension of CIRP by 30 days was also granted by the Adjudicating Authority vide order dated 18.03.2020 as 180th day of CIRP came to an end on 17.03.2020. The Resolution Professional on 03.06.2020 received the final proposal for Rs. 975 lakhs payable in a phased manner over a period of 37 months with a couple of new conditions. Further the new Resolution Plan submitted the Prospective Resolution Applicant was not in line with RFRP and requested the

CoC to consider the same in view of change in the economic situation on account of covid pandemic.

4. However, the CoC in its 8th meeting held on 12.08.2020 deliberated upon the final Resolution Plan and observed that the proposed plan does not comply with the requirement of RFRP documents so the plan is not in compliant with IBC, 2016 and therefore, the CoC unanimously voted in favour of Liquidation of the Company and proposed the name of Shri G. Madhusudhan Rao to act as Liquidator as the Resolution Professional, the Applicant herein has expressed his inability to continue as Liquidator.

5. The other relief sought for by the Applicant is exclusion of 129 days covid induced lockdown from 25.03.2020 to 31.07.2020 from the CIRP period as the factory area of the Corporate Debtor is located in containment zones till 31.07.2020 by relying on Regulation 40C of CIRP Regulations, 2016 and Hon'ble NCLAT New Delhi Suo-Moto order dated 30.03.2020 and accordingly CIRP period to end on 19.08.2020 and hence requested this Tribunal to condone the delay in filing the instant application.

5. We have heard the Applicant in the matter. This Application is filed seeking initiation of Liquidation proceedings of Corporate Debtor. 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".

4. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not approve any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 100% 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.

ORDER

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

(a) The period of lockdown of **129 days** (w.e.f. 25.03.2020 to 31.07.2020) stands excluded from the CIRP period

(b) The Corporate Debtor i.e **M/s SRI GURUPRABHA POWER LIMITED** shall be liquidated in the manner laid down in Chapter-III of the Code.

(c) Shri G. Madhusudhan Rao, Insolvency Professional is appointed as Liquidator.

(d) He shall issue public announcement stating that the Corporate Debtor is in liquidation.

(e) The Moratorium declared under Section 14 of the code shall cease to operate here from.

(f) 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.

(g) 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.

(h) 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.

(i) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

(j) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

(k) 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.

(l) 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.

22/02/24

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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