

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Company Petition (IB) No. 1721/ND/2019
(IA-4482/2020)**

In the matter of :

**Mr. E N Saktidharan Menon,
Puthiyedath House, Kundur,
Near Siva Temple,
Thirumukkulam, Thrissur,
Kundur, Kerala - 680734**

....Operational Creditor

VERSUS

**M/s Tecpro Infra-Projects Limited,
106, Vishwadeep Tower,
Plot No. 4, District Centre, Janak Puri,
Delhi 110 058**

....Corporate Debtor

SECTION: 9 of IBC, 2016

ORDER DELIVERED ON: 25.11.2021

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Avinash K. Srivastava, Hon'ble Member (Technical)

PRESENT:

For the Applicant :Ms. Bhavana Duhoon, Adv, Mr. Anshul Syal, Adv with
Ms. Satyadevi Alamuri, RP

For the Respondent :

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. By filing this application the applicant has made the following prayers:-

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- i). To liquidate the M/s Tecpro Infra-projects Limited in accordance with the provisions of Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016;
 - ii) To approve the appointment of Mrs. Satyadevi Alamuri, the existing RP as liquidator of the Corporate Debtor and payment of fees as per the decision of the Committee of Creditors and
 - iii). Any other directions this Hon'ble Tribunal may deem fit;
2. Heard the Ld. Counsel appearing for the applicant and perused the averments made in the application.
 3. Ld. Counsel appearing for the applicant submits that in this matter, the CIRP was initiated on 27.09.2019, which was further extended for 90 days on 24.03.2020. She further submits that after excluding the period of lockdown, the period of CIRP had come to end on 30.08.2020. But before that the CoC in its meeting dated 27.08.2020 resolved to liquidate the Corporate Debtor on the ground that no resolution plan was accepted by the CoC.
 4. She further submits that by filing additional affidavit on 23.11.2021, the applicant has produced the voting sheets and the minutes of the CoC meeting dt. 27/08/2020. She further referred to the page 6 of the additional affidavit and submits that the following members of the COC/ their Representative had participated in the meeting :-
 - (1) Ms. CS Satyadevi Alamuri, Resolution Professional
 - (2) Ms. Jayashree Iyer, CS, IP & Registered Valuer - Team of RP
 - (3) Mr. M.V. Ramakrishna, Chief Manager, SAMB, Bank of Baroda, Chennai
 - (4) Mr. Baskaran, Chief Manager, Bank of Baroda, Chennai
 - (5) Mr. Rajeev Kumar Jha, DGM NMG, IDBI Bank Limited, Chennai 600015
 - (6) Mr. Anoop Mishra, AGM, NMG, IDBI Bank Limited, Chennai 600015



(7) Mr. T. Adithya Varma, AGM, SBI, SAMB, Chennai

(8) Mr. Arunkumar S, Manager, SBI, SAMB, Chennai

5. She further submits that the E-voting was conducted and the voting sheet of E-voting is at page 14 of the additional affidavit and approved the resolution by 66.77 percent of the voting share . She further submits that although the State Bank of India had not participated in the E-voting but they have given their consent to liquidate by making an endorsement that E-voting is not required. She further submits that the separate voting sheet of Bank of Baroda is at page 19, voting sheet of Standard Chartered Bank at page 20 and voting sheet of SBI is at page 23 and except SBI both the banks have given their consent. She further submits that the RP has also given her consent to act as liquidator which is at page 23 of the application.
6. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33 of the IBC and the same is reproduced below:-

Section 33: Initiation of liquidation.

***33. (1) Where the Adjudicating Authority, —**

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or



(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(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 subsection (1).



2[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.]

(3) Where the resolution plan approved by the Adjudicating Authority 3[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).



(5) 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.

(6) The provisions of sub-section (5) 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.

(7) 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.

7. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the insolvency resolution process period;
- ii. maximum period permitted for completion of the corporate insolvency resolution process under section

12 or the fast track corporate insolvency resolution process under section 56, as the case may be;

iii. if does not receive a resolution plan under sub-section (6) of section 30.

8. On the basis of the averments made in the application and submissions made on behalf of the applicant in course of hearing, it is seen *resolution plan received was incomplete and does not comply with the requirement of IBC, 2016 and hence it could not be placed before the CoC for their approval in accordance with the provisions of IBC, 2016 and the CoC with 66.77 per cent of the voting share has approved the resolution of liquidation. And apart from that the SBI State Bank of India had not participated in the E-voting but they have given their consent to liquidate by making an endorsement that E-voting is not required. The relevant resolution is reproduced below:-*

Item No.8-Resolution No.4

Resolved That in accordance with Section 33(2) and other applicable provisions of IBC, 2016, the Corporate Debtor, Tecpro Infra Projects Limited under CIRP be and is hereby liquidated as the resolution plan received is incomplete and does not comply with the requirement of IBC, 2016 and hence could not be placed before the CoC for their approval in accordance with the provisions of IBC, 2016 and Mrs. Satyadevi Alamuri. IP be and is hereby authorized to file an application to NCLT, Delhi Bench in this regard.

Further Resolved that since the existing RP Mrs. Satyadevi Alamuri has not given her consent for appointment as Liquidator, the CoC would identify a Liquidator and an application will be made to NCL'T, Delhi Bench in this regard.



Voted for: BoB-45.60%, SCB.22.17% Total 66.77%

Voted Against: NIL

Abstained for voting: NIL The resolution has been passed with requisite majority

9. We further notice that even after excluding the period of CIRP on ground of lockdown and extension of 90+60 the CIRP has come to end on 30.08.2020. Therefore, in view of Section 33(1)(a) of IBC, 2016, if the CIRP is not completed within the maximum period provided under Section 12 of IBC, 2016 then the Adjudicating Authority have no option but to pass an liquidation order.
10. Accordingly, by exercising our power under Section 33 sub-Section (1)(a) pass the following order: -
- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.
 - ii. Since the RP has given her consent to act as liquidator, therefore, CS Satyadevi Alamuri is hereby appointed as liquidator.
 - iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
 - iv. The Provision of Section 33 sub-Section 5, 6 and 7 IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section



33(5) of the Insolvency and Bankruptcy Code shall commence;

- v. This Order shall be 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 Insolvency and Bankruptcy Code, 2016;
- vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- vii. The Registry is directed to communicate a copy of the Order to the the Corporate Debtor immediately;
- viii. A copy of this Order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- ix. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-
Srivastava

(AVINASH K. SRIVASTAVA)
MEMBER (T)

Sd/-
25.11.2021

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)