

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 28

IA 1723/2023 IA 2552/2022 IA 629/2023 In CP(IB)3887/MB/2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 12.03.2024

NAME OF THE PARTIES: RELIANCE COMMERCIAL FINANCIAL
LTD V/s USHER ECO POWER LTD.

Section 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

Aakash Sinha i/b SD Israni Law Chambers for Respondent No.3 in IA/2552/2023.

IA No. 1723/2023 –

1. Mr. A. R. Ajgaonkar, Advocate appeared for the Applicant.
1. Ms. Mitali Bhat, Advocate appeared for the Financial Creditor/Respondent.
2. Learned Counsel for the Financial Creditor has placed on record affidavit of service dated 10.02.2020 taking out paper publication in two news paper as well as affidavit of service dated 20.11.2019 stating that service letter dated 05.11.2019 was served at the Registered office of the Corporate Debtor by courier service which was returned on 13.11.2019 with the

reason as “Party shifted”. Thereafter, the Advocate for the Applicant attempted to serve a copy of the Company Petition to the Corporate Debtor along with service letter dated 12.11.2019 by hand delivery on 12.11.2019 at registered office address of the Corporate Debtor. But the same could not be served since the office of the Corporate Debtor was not there, which was confirmed on 13.11.2019.

3. In view of this paper publication was taken out. Accordingly, this Bench is of the consideration for paper service was effective at the available address of the Corporate Debtor by way of paper publication and the Suspended Board cannot take advantage of their own wrong in not updating the details of Corporate Debtor office with the MCA.
4. Accordingly, we do not find any merit in the contention of the Applicant seeking set-aside of the ex-parte order dated 14.03.2022 and admission order dated 27.06.2022. **IA No. 1723/2023 is dismissed.**

IA No. 629/2023 -

- 1) This is an Interlocutory Application filed by the Resolution Professional **Shri. Manoj Kulshreshtha** under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against **Usher Eco Power Ltd.** (Corporate Debtor).
- 2) The facts leading to the case in hand are as follows: .. 3 ..

- a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated **27.06.2022** upon admission of a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) and the Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor qua the Corporate Insolvency Resolution Process of the Corporate Debtor.
- b. It is submitted that following the same order of the Bench appointing Shri. Manoj Kulshreshtha, the Applicant herein as the Interim resolution Professional of the Corporate Debtor to carry out the Function as mentioned under Insolvency and Bankruptcy Code, 2016.
- c. The Applicant further states that the Committee of Creditors 1st meeting was held on 26.07.2022. The 5th Meeting of the Committee of Creditors was held on **02.02.2023**, on which date, the members of the Committee of Creditors passed a resolution with 71.13% to Liquidate the Assets of the Company i.e. the Corporate Debtor.
- d. The Applicant further states that, liquidation cost of Rs.70,31,500/- was approved by the CoC Members. It was also resolved that the present applicant shall be appointed as the Liquidator of the Corporate Debtor.

- 3) It is submitted that Applicant has published the FORM G on 10.09.2022 for invitation of expression of interest (Under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution process for Corporate Persons) Regulations, 2016. It is submitted that 14 Prospective Resolution Applicants (hereinafter refereed as “PRAs” for short) had submitted their Expression of Interest and the Applicant had issued a provisional list.
- 4) The last date for submission of a Resolution plan was 09.11.2022 but till the last date of filing the resolution plan, no plan was received from any PRAs’ and some of PRAs’ requested to extend the date and allow extra time to file resolution plan with RP. Accordingly, the COC resolved to reissue Form G during the 4th COC meeting held on 21.11.2022. It is further submitted that 180 days of the CIRP period ended on 26.12.2022. The CoC has, in the 4th COC meeting resolved to extend the CIRP period by a further period of 180 days. Accordingly, vide order dated 10.01.2023 the Extension application was allowed by extending the CIRP period for 90 days till 26.03.2023.
- 5) To buttress his argument, the Applicant submits that this Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for and in the

absence of any Resolution Plan on the table, the order of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code, which reads as under:

“(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 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)”.

- 6) Further, it is brought to notice of this Bench that in the 5th CoC meeting it was resolved that current RP will act as the Liquidator and accordingly written consent is also on record. However, this Bench may consider to appoint any Insolvency Professional as the Liquidator of the Corporate Debtor because as per the new circular of Insolvency and Bankruptcy Board of India, incumbent Resolution Professional cannot be continued as the Liquidator of the Corporate Debtor.
- 7) This Authority is left with no option but to accept and to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans in another round also. Hence ordered.

ORDER

- a) The Application be and the same is allowed. The Corporate Debtor, **Usher Eco Power Ltd.**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Fanendra Harakchand Munot** having Registration No. **IBBI/IPA-001/IP-P00515/2017-18/10916** is appointed as Liquidator of **Usher Eco Power Ltd.**
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavor to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.

- g) 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.
- h) 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.
- i) 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 the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- 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) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor;** and the Liquidator, **Mr. Fanendra Harakchand Munot**, having E-mail ID fhmunot@gmail.com.

8) With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 629 of 2023**, stands disposed of as Allowed.

9) There would however be no order as to costs. Ordered Accordingly.

IA 2552/2022 –

1. The present application is filed to place on record Status Report of Corporate Debtor Usher Eco Power Limited from the period 27.06.2022 to 26.07.2022 by Mr. Manoj Kulshrestha Insolvency Resolution Professional under the IB Code, 2016.
2. Accordingly, it is submitted and taken on record.
3. In view of the aforesaid, **IA No. 2552/2022** is **allowed** and **disposed of**.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)