

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 210
IB-356/ND/2021
IA-4049/2022

IN THE MATTER OF:
Fidus Finance Pvt. Ltd.

... **Applicant/Petitioner**

Versus

Elena Power And Infrastructure Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 12.06.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:

For the RP

: Adv. Abhishek Anand, Adv. Mohak Sharma, Adv.
Sajal Jain, Adv. Supriyo Banerjee

ORDER

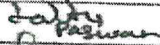
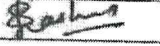
IA-4049/2022: The Applicant has preferred the present application under Section 33(2) of IBC, 2016. Having drawn our attention to the Resolution dated 26.07.2022 passed by the CoC, Ld. Counsel appearing for the RP submitted that the CoC has taken a decision to liquidate the CD and has also passed a resolution to appoint Mr. Ashok Arora, RP as Liquidator. There is no appearance on behalf of the Respondent, despite service of notice. The relevant excerpt of Resolution passed by CoC including the indication of the voting share cast in favour of the resolution reads thus:

AGENDA ITEM NO. A of Part 3

Liquidation of Elena Power and Infrastructure Limited

"RESOLVED THAT pursuant to Section 33 (2) of the Insolvency and Bankruptcy Code, 2016, the decision of Committee of Creditors to go for Liquidation of Elena Power and Infrastructure Limited is be and hereby approved.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorised to file applications for liquidation before Hon'ble NCLT and to initiate/take all necessary steps/actions in this regard."

COC MEMBER NAME	VOTING PERCENTAGE	VOTE YES OR NO	SIGNATURE	NAME OF SIGNATORY
Fidus Finance Private Limited	84.72%	YES		Mr. Lattu Paswan
Anthelia Engineers Pvt Ltd.	15.28%	YES		Mr. Sanjeet

As has been provided in Section 33(2) of IBC, 2016 on being informed about the decision of CoC to liquidate the CD, this Adjudicating Authority should



pass order as provided in Section 33(1) of IBC, 2016, liquidating the CD. Section 33(1) and (2) of IBC, 2016 read thus:

- “(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 percent 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 purposes 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.”

In the wake of the above, the CD is ordered to be liquidated. Accordingly, **Mr. Ashok Arora** with **Reg. No: [IBBI/IPA-003/ICAI-N-00279/2020-2021/13170]** (e-mail ID: **ashok.arora79@yahoo.com**) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions inter alia:


- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) 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.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.



j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation, as the case may be.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

With this, the present IA stands allowed.



**(L. N. GUPTA)
MEMBER (T)**



**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**