

326

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

IA/1202/CHE/2021 in CP No 1254 of
2018 filed under Sections 33 (2) of the
Insolvency and Bankruptcy Code, 2016

In the matter of **EMPEE POWER COMPANY (INDIA) LIMITED**

Mrs. R. Lalitha
Resolution Professional of
Empee Power Company (India) Limited
Flat- F, hanumanthpuri Apartments
No 2, Bharthi Colony, Thirunagar,
Valasaravakkam,
Chennai- 600 087.

... Applicant/ Resolution Professional

Order pronounced on **21st March 2022**

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Subharanjani Ananth, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application IA/1202/CHE/2021, is filed under Section 33
(2) of IBC, 2016 by the Resolution Professional of the Corporate
Debtor herein Viz., Empee Power Company (India) Limited seeking
the following reliefs:-

- a) Pass an order of Liquidation of the Corporate Debtor -
Empee Power Company (India) Limited under section 33
(1) (a) of the Code;

- b) Permit/ Appoint this Resolution Professional to Continue and act as the Liquidator to inter alia carry on the duties of Liquidation under Chapter-III of the Code;
- c) Pass orders directing the CoC to deposit the sum of Rs. 10, 60, 640/- as Liquidation Costs in the Liquidation Account of the Corporate Debtor on presentation of bill as resolved in the Minutes of the Meeting dated 07.12.2020;
- d) Pass Orders fixing the remuneration of the Liquidation as set out under Regulation 4 (2) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and ;
- e) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of equity and in the circumstances of this case and thus render justice.

2. The Corporate Debtor herein was admitted to the Corporate Insolvency Resolution Process vide this Tribunal order dated 31.12.2019 and the Applicant was appointed as the IRP. Further in the First CoC meeting held on 24.01.2020 it was resolve for the Applicant herein to continue as the Resolution Professional.



3. It is averred in the Application that the Corporate Debtor was not a going concern at the time of appointment of the IRP and the same was recorded duly in the minutes of the First COC meeting held on 24.01.2020 and the same is placed as Annexure A in the Application Typeset.

4. The relevant dates since the initiation of the Corporate Insolvency Resolution Process as averred in para 4 of the Application is extracted hereunder:-

S. No	DATE	EVENT
1.	(a) Date of CIRP initiation	31.12.2019
	(b) Date of receipt of order of Tribunal by IRP	04.01.2020
2.	Date of Constitution of CoC	24.01.2020
3.	Date of Appointment of RP	12.03.2020
4.	Date of issue of Invitation for EOI	19.03.2020 and 26.07.2020
5.	Date of Final list of Eligible Prospective Resolution Applicants	23.09.2020 (NIL)
6.	Date of Expiry of days of CIRP	15.01.2021

5. It is submitted by the Ld. Counsel for the Applicant that, as per the resolution passed in the 3rd (Third) CoC meeting held on 12.03.2020, EOI dated 19.03.2020 was published in the 'Financial Express' in English, 'Hindu' in 'Tamil' and 'Andhra Jyothi' in 'Telugu' and the same is placed in the Application typeset as 'Annexure B'.



6. Further, the Ld. counsel for the Applicant submitted that, in view of the COVID-19 Lockdown imposed by the central government and the state governments and Regulation 40C of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 and the Hon'ble NCLAT order dated 30.03.2020, 37 days was excluded from the CIRP and EOI was reissued on 26.07.2020. Irrespective of reissuance of the EOI no resolution plan was received by the Applicant. The Ld Counsel submitted that prospects of revival of the Corporate Debtor was bleak thus in accordance to the 11th COC meeting it was resolved to place

the Corporate Debtor under liquidation. The 11th COC meeting minutes are placed as 'Annexure -D' to the Application typeset.

7. The Ld. Counsel for the Applicant submitted that as no resolution plan had been received by the Applicant during the Corporate Insolvency Resolution Process period it was unanimously resolved in the 11th COC meeting dated 07.12.2020 to file an application for liquidation of the Corporate Debtor under Section 33 of Insolvency and Bankruptcy Code, 2016.

8. The Applicant has also filed Form- H dated 06.01.2021 under Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same is placed as Annexure F of the Application typeset. Further, the Applicant in the 11th COC meeting dated 07.12.2020 has been authorized to act as the Liquidator of the Corporate Debtor and the written consent to that effect is placed as Annexure C of the Application typeset.

9. Heard the submissions of the Learned Applicant Counsel. It can be seen from the minutes of 11th COC meeting dated 07.12.2020 the COC has unanimously voted to place the Corporate Debtor for Liquidation.

10. Apropos, it can be seen that it satisfies the mandate of 66% voting share under Section 33 (2) of the IBC, 2016. The Section 33 (2) of the IBC, 2016 is extracted hereunder:-

Section 33 (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)."

11. It is also seen from the records that the Applicant herein has accorded the written consent, Form AA to act as the Liquidator of the Corporate Debtor and further the Applicant has also placed on record the Authorization for Assignment (AFA) issued by the Insolvency Professional Agency of Institute of Cost Accountants of India.

12. In the circumstances, **Mrs. R. Lalitha with Reg. No. IBBI/IPA-001/IP-P00779/2017-2018/11352** (email id: **lalitharca@gmail.com**) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions:-

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

- 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 suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to 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 that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- 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 report 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 co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.



13. Thus, IA/1202/CHE/2021 stands **allowed** with the aforesaid directions.

Certified to be True Copy

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Varshini

Shweta
23/3/22
ASST. REGISTRAR / DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR,
29, RAJAJI SALAI, CHENNAI - 600 001.