NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.07.2022 AT 11.00 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)No.27/7/AMR/2020	IA(IBC)/60/2022	33(1) of IBC	K. Sivalingam (RP) (in the matter of Pratyusha Resources and Infra Private Limited)

Counsel for Petitioner(s):
Ries

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

Counsel for Respondent(s):
Ries

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

ORDER

IA(IBC)/60/2022 is allowed, vide separate orders.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

*** *** ***

IA No. 60/2022
IN
CP (IB) No. 27/7/AMR/2020

Under Section 33(1) & 34(1) of the Insolvency and Bankruptcy Code, 2016 Read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

In the matter of
M/s. PRATHYUSHA RESOURCES & INFRA PRIVATE LIMITED

Between:

Mr. K.Sivalingam,
Resolution Professional for
M/s. Prathyusha Resources & Infra Private Limited,
R/o. Flat No.1603, Tulive Horizon Residencies,
Arunachalam Road, Saligramam,
Chennai -600093.

... **Applicant/ Resolution Professional**

Date of Pronouncement of Order: 04.07.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant: Mr. M.Sridhar, Advocate.

Per: Justice Telaprolu Rajani, Member Judicial

S.d/-

ORDER

1. This is an Application filed by the Resolution Professional under Section 33 & 34(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for Liquidation of the Corporate Debtor i.e. M/s. Prathyusha Resources & Infra Private Limited and for appointment of Mr.K.Sivalingam, Resolution Professional as Liquidator.

2. The brief facts of the Application are that:

   I. The NCLT, Amaravati vide order dated 03.11.2021 admitted the Petition i.e., CP (IB) No.27/7/AMR/2020 under Section 7 of the Insolvency Bankruptcy Code, 2016 initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Prathyusha Resources & Infra Private Limited and appointed Mr. K.Sivalingam, as the Interim Resolution Professional (IRP) and directed him to take charge of the Corporate Debtor and take necessary steps in furtherance of CIRP.

   II. The Interim Resolution Professional has issued Public Announcement on 06.11.2021. On receiving the claim from one Financial Creditor, the IRP has constituted Committee of Creditors on 24.11.2021 and filed a report before the Hon'ble NCLT.

S.d/-

III. In the 1st CoC meeting held on 03.12.2021, regarding activities undertaken during the CIRP, liquidity position of the Corporate Debtor and funding requirement, it was resolved to continue Mr. K.Sivalingam as Resolution Professional(RP), to appoint Legal Counsel and Registered Valuers and the same was communicated to this Tribunal vide Minutes of Meeting dated 03.12.2021.

IV. In the 2nd CoC meeting held on 27.12.2021 the pending compliances, CIRP expenses, for corpus funding were done and undertaking was obtained from the promoters regarding operative bank accounts and existence of fixed assets at various location of the Corporate Debtor. The CoC approved corpus funding of Rs.41 Lakhs though e-voting conducted on 03.01.2022.

V. In the 3rd CoC meeting held on 12.01.2022 eligibility criteria was looked into and Expression of Interest (EoI) was invited from prospective Resolution Applicants by publishing Form-G in the newspapers with last date for submission of Resolution Plan as 01.02.2022. Further, the RP appraised the CoC regarding the status of valuation and Information Memorandum, being delayed due to pending reconciliation of tangible assets and closure of financial statements for the Financial Year 2020-2021.

S/d/-

VI. No EoIs were received. Hence, the Applicant called for the 4th CoC meeting held on 08.02.2022 to deliberate further course of action pursuant to non-receipt of EoI. The CoC advised the Applicant to publish EoI once again by reducing the eligibility criteria, to enable the wider participation and to approach the promoters and initiate suitable discussion for revival of the Corporate Debtor. On 10.02.2022 the Resolution Professional has invited EoIs from Prospective Resolution Applicants by publishing the invitation in Form-G in newspapers. The last date for submission of Resolution Plan was 26.02.2022. In response to the invitation, no Resolution Plan was received on or before the last date.

VII. In the 5th CoC meeting held on 03.03.2022, it was resolved to liquidate the Corporate Debtor and continue Mr. K.Sivalingam as Liquidator.

VIII. In the 6th CoC Meeting was held on 14.03.2022 to decide on other modalities with respect to the liquidation process, wherein RP placed an estimated liquidation cost of Rs.15 Lakhs which shall be over and above the corpus funding of Rs.41 Lakhs approved by the CoC during the CIRP. Further, the CoC recommended the RP to effect the sale of Corporate Debtor on going concern basis under Regulation 39C of the CIRP Regulations are hereunder:

S-d/-

"**39C. <u>Assessment of sale as a going concern</u>**.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

S.d/-

IX. In the same CoC meeting, the CoC fixed the liquidator fee of Rs.1,50,000/- per month for the purpose of going concern sale for a period of 90 days from the liquidation commencement date, failing which the Liquidator shall be entitled to his fee as per Regulation 4(2)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

3. Hence the Applicant came up with this application and prayed to appoint him as Liquidator.

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 receive any viable proposal for revival of the Company. The CoC in its wisdom has resolved with 100% voting share in favour of the Liquidation of the Corporate Debtor as a going concern.

ORDER

5. Heard. In view of the facts stated in the Application, this Tribunal allows the Application with the following directions.

a) Mr. K.Sivalingam (IBBI/IPA-001/IP-P-01597/2018-2019/12430), Flat No.1603, Tulive Horizon Residencies, Arunachalam Road, Saligramam, Chennai - 600093, email:**siva.k220353@gmail.com,** Mobile No. 9963744255 is appointed as the Liquidator. No disciplinary proceeding is pending against him as per the IBBI website.

S.d/-

b) He shall issue public announcement stating that Corporate Debtor is in Liquidation.

c) The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate here from.

d) Subject to section 52 of the IBC 2016 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.

e) 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.

f) 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 and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

g) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

h) The Liquidator fee of Rs.1,50,000/- per month approved by the CoC for the purpose of going concern sale for a period of 90 days from the liquidation commencement date, failing which the Liquidator shall be entitled his fee as per Regulation

S.d/-

4(2)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

i) 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.

j) Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Andhra Pradesh, the Registered Office of the Corporate Debtor; and the Liquidator.

S.d/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu