

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

IA (IB) 358/KB/2021

in

CP (IB) 1106/KB/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

An application under section 33 of the Insolvency and Bankruptcy Code, 2016

And

In the matter of:

Nuetech Solar System Private Limited

... Operational Creditor

Versus

Environ Energy Corporation India Private Limited

... Corporate Debtor

And

In the matter of:

Rakesh Agarwal, Resolution Professional of Environ Energy Corporation India Private Limited.

... Applicant

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For Applicant : 1. Mr. Rishav Banerjee, Advocate

: 2. Mr. Supriyo Gole, Advocate

Date of hearing: 07.04.2021

Date of pronouncement of Order: 19.05.2021

ORDER

Per Harish Chander Suri, Member (Technical)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, **Environ Energy Corporation India Private Limited** [CIN:], on the ground that no resolution plan has been received.
3. This Adjudicating Authority *vide* its order dated 16.03.2020 on a Petition filed by Nuetech Solar System Private Limited (*operational creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Pankaj Kumar Tibrewal as the Interim Resolution Professional (IRP).
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 20.03.2020, in Financial Express (English) and Ekdin (Bengali) of Kolkata Edition of the said newspapers, fixing 30.03.2020 as the last date for submitting the claim.

5. The Committee of Creditors (CoC) was duly constituted on 07.08.2020 with two Financial Creditors, and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.
6. The first meeting of the CoC was held on 20.08.2020 wherein *inter alia* resolution was passed to appoint the Applicant herein, Mr. Rakesh Agarwal as the Resolution Professional (RP) and the Adjudicating Authority passed an order appointing the Applicant as the Resolution Professional on 29.09.2020.
7. At its sixth meeting held on 12.01.2021, the CoC noted that despite publication of invitation of EOIs on 20.10.2020, 10.11.2020, 11.12.2020, no resolution plan had been received. Therefore, the CoC resolved that the Corporate Debtor should be liquidated. The proposal was approved with 100% voting in favour. The minutes of the said meeting and the voting results have been placed on record at **Annexure 'E'** to the IA.
8. The Applicant/Resolution Professional, Mr. Rakesh Kumar Agarwal [Reg. No.IBBI/IPA-001/IP-P00443/2017-2018/10786], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
9. We have considered the submission made by the Applicant/RP in person and perused the record.
10. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
11. This Bench, therefore, hereby orders as follows: -
 - a. IA No. 358/KB/2021 filed by Mr. Rakesh Kumar Agarwal, RP of Environ Energy Corporation India Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. Mr. Rakesh Kumar Agarwal [Reg. No. IBBI/IPA-001/IP-P00443/2017-2018/10786], the Applicant/RP herein, is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject to submission of a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Ekdin* (Bengali) of Kolkata Edition, stating that the Corporate Debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the

Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata

12. The application bearing **IA (IB) No. 358/KB/2021** shall stand disposed of in accordance with the above directions.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
15. List the main **CP (IB) No.1338/KB/2018** for reporting progress on **20.07.2021**.

[Harish Chander Suri]

Member [Technical]

[Rajasekhar V.K.]

Member [Judicial]

19th day of May, 2021.

GGRB[LRA]