

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 02**  
**(IB)-76(PB)/2018**

**IN THE MATTER OF:**

Oriental Bank of Commerce

.... Petitioner/Applicant

v.

M/s. Pellet Energy Systems Pvt Ltd.

.... Respondent

**IN THE MATTER OF IA-2479/2021**

Under Section 33 read with Section 60(5)  
of IBC And Rule 11 of NCLT Rules, 2016

Ms. Reshma Mittal

Chairperson, Monitoring Committee

.... Applicant

v.

Punjab National Bank

.... Respondent No. 1

M/s. Abelleon Clean Energy Ltd

(Resolution Applicant)

.... Respondent No. 2

Bharat Sharma (Joint Resolution Applicant)

.... Respondent No. 3

**IN THE MATTER OF IA-5985/2021**

Under Section 60(5) of IBC read with  
Rule 11 of NCLT Rules, 2016

Suzlon Synthetic Limited &

Anand Buildtech Pvt. Ltd.

.... Applicant

v.

Ms. Reshma Mittal, RP

.... Respondent No. 1

Oriental Bank of Commerce

.... Respondent No. 2

**IN THE MATTER OF IA-1151/2022**

Under Section 60(5) of IBC read with  
Rule 11 of NCLT Rules, 2016

Bharat Sharma, Resolution Applicant

.... Applicant

v.

Ms. Reshma Mittal, RP

.... Respondent

**IN THE MATTER OF IA-2457/2020**

Under Rule 11 of NCLT Rules, 2016

Ms. Reshma Mittal, RP

.... Applicant

v.

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M/s. Abellon Clean Energy Ltd.  
Bharat Sharma

.... Respondent No. 1  
.... Respondent No. 2

**Order Under Section 7 of Insolvency & Bankruptcy Code (CIRP)**

**Order delivered on 26.08.2022**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant

Mr. Anurag Ojha & Mr. Deepak Jomani, Advs.  
in IA-5985/2021

For the RP

Mr. Karan Kohli, Adv. in IA-1151/2022  
Mr. Lalit Mohan, Mr. Videh Vaish & Ms.  
Aakansha Sharma, Advs. with Ms. Reshma  
Mittal, Monitoring Professional

For the Respondent

Ms. Dyuti Ghai, Proxy Counsel for Mr. S.K.  
Sharma, Adv. for R-1

For the Resolution Applicant

Mr. Rahul Arya & Mr. Ashish Choudhary,  
Advs.

**ORDER**

**IA-2479/2021**

This is an application filed by Chairperson of Monitoring Committee for seeking following reliefs:-

- "a) BE PLEASED to allow the instant application and pass an order under Section 33 of the Code initiating the liquidation of the Corporate Debtor as a going concern for such period as this Hon'ble Tribunal may deem fit and proper;*
- b) BE PLEASED to appoint Ms. Reshma Mittal (bearing IBBI registration number IBBI/IPA-001/TP-00297/2017-18/10541) as liquidator of the Corporate Debtor as per the provisions of the Code for undertaking the liquidation process of the Corporate Debtor as a going concern;*
- c) BE PLEASED to direct Respondent No. 2 and 3 i.e. the Resolution Applicants to make payment towards CIRP Expenses*

*(as detailed in Annexure-F) on account of non-implementation of the Resolution Plan dated 20.09.2019 approved vide order dated 20.08.2020.*

*d) BE PLEASED to forfeit the amount of EMD deposited by the Respondent No. 2 and 3 i.e. the Resolution Applicants on account of non-implementation of the Resolution Plan dated 20.09.2019 approved vide order dated 20.08.2020.*

*e) BE PLEASED to pass order and other relief(s) as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."*

2. Prayer 'c & d' is not pressed for which endorsement is made by Ms. Reshma Mittal, Chairperson, Monitoring Committee and Mr. Lalit Mohan, Ld. Counsel (vakalatnama not on record). This application has been filed by Ms. Reshma Mittal, Chairperson of Monitoring Committee seeking to pass an order under Section 33 of IBC to initiate Liquidation of the Corporate Debtor as a going concern, in the light of the minutes of the 3<sup>rd</sup> meeting of the Monitoring Committee held on 29.05.2021, agenda 2 at page 81 & 82 which reads as follows:-

### **"Agenda 2**

#### **To discuss about the next step to be taken if Resolution Applicants are not interested in implementing the Resolution Plan**

*Representative of PNB informed to chairperson that since more than 9 months have been passed to approved resolution plan by Adjudicating Authority but resolution applicants are not implementing the resolution plan, therefore they are left with only one option i.e. Liquidation under IBC. They directed Monitoring Professional to file the application u/s. 33 with the Adjudicating Authority. Chairperson asked from MC about the way they intent to sell the assets of corporate debtor, MC discussed about it*

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*and arrived at a decision to sell the assets of the corporate debtor as a going concern.*

***“Resolved that Monitoring Professional shall file an application u/s 33 with Adjudicating Authority and to get necessary directions from Adjudicating authority and to do all such acts, deeds, authorization as may be required for the aforesaid purposes including but not limited to engaging advocates, consultants, instruct and brief the advocates.***

***“It is further resolved that asset of corporate debtor is to be sold as a Going Concern.”***

3. The reasons for taking such a step is that a resolution plan was submitted by Respondent Nos. 2 & 3 combined. The plan was approved but they could not implement the plan and as a result the Tribunal by order dated 01.07.2021 rejected the plan. Since the plan was not effectuated by the proponent, the present application has been filed under Section 33 (3) of the IBC to proceed further in the matter. **Section 33(3)** reads as under:-

***“Section 33 (3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”***

4. In the light of the above and in continuation of order passed on 01.07.2021, we hereby, allow this application under Section 33 of the Code initiating the liquidation of the Corporate Debtor as a going concern. We appoint **Ms. Reshma Mittal** (bearing IBBI

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registration number **IBBI/IPA-001/TP-00297/2017-18/10541**) as liquidator of the Corporate Debtor as per the provisions of the Code for undertaking the liquidation process of the Corporate Debtor as a going concern. In case liquidation as a going concern fails, then Liquidation, in consultation with the stakeholders committee, is directed to proceed further as per law.

### **IA-1151/2022**

This is an application filed by Bharat Sharma for seeking following reliefs:

*“a) Allow the present application; and*

*b) Issue appropriate direction to the Respondent/Resolution Professional to forthwith convene a meeting of the Committee of Creditors and place the Applicant’s Resolution Plan submitted on 23.10.2021 before the CoC for its consideration in terms of the provisions of the Code for resolution of the Corporate Debtor;*

*c) Pass such other order as this Hon’ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the instant case.”*

This applicant was earlier a joint proponent of a resolution plan in the CIRP proceedings which was approved by the CoC. The plan was approved by the Adjudicating Authority but later rejected on account of non-implementation and set aside by order dated 01.07.2021. The present application is filed by **Bharat Sharma**, who is one of the two proponents of the earlier plan. In this situation, since we have already passed order in **IA-2479/2021**, the applicant is entitled to participate in the Liquidation process. Since

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the applicant has abandoned the earlier plan, his participation will be subject to such objection as may be permissible in law.

Accordingly, **IA-1151/2022** stands **disposed off**.

### **IA-5985/2021**

This is an application filed by prospective resolution applicant for seeking following reliefs:

*“a. Allow the resolution plan dated 23.10.2021 submitted by the Applicant with the Resolution Professional/ Respondent No. 1 of the Corporate Debtor to be placed before the CoC for its consideration;*

*b. Extend the time-period for completion of CIRP of the Corporate Debtor by 90 days or such time period as this Hon’ble Tribunal may deem fit; Or in the alternate issue appropriate directions to the Resolution Professional and/or the CoC, as the case may be, for the purposes of preferring an application for seeking extension of time-limit as may be required;*

*c. Direct the liquidation application under Section 33 of the Code to be kept in abeyance till consideration of the resolution plan filed by the Applicant;*

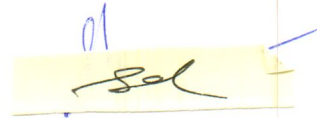
*d. Pass any other such reliefs this Hon’ble Tribunal may deem fit in the facts and circumstances of the present case.”*

This application is filed for seeking to submit a plan on the basis of observation made by this Tribunal on 01.07.2021. However, **Ms. Reshma Mittal, Chairperson of Monitoring Committee** failed to inform the Tribunal that on 29.05.2021, the meeting of the Monitoring Committee had already taken a decision to go for Liquidation of the Corporate Debtor as a going concern and if those proceedings had been brought to the notice of the Tribunal,

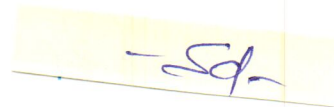
*Rs*

such order would not be passed and therefore, on account of her dereliction of duty of not bringing the decision of Monitoring Committee regarding liquidation of CD as a going concern to the attention of the Bench, no relief can be granted in this application on an observation made by the Bench that any plan can be submitted to the Bench. The provisions of Section 33(3) of IBC mandate the further proceedings on rejection of approved plan.

In view of above, the present application is **disposed off** with liberty to applicant to participate in the further proceedings in accordance with law.

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**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

A handwritten signature in blue ink, appearing to be 'A. Srivastava', is written on a yellow rectangular background.

**(AVINASH K. SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

26.08.2022  
Ritu Sharma