

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI**

CA No. 316/ND/2019

IN

Company Petition No. (IB)-803(ND)/2018

In the matter of:

Tractebel Engineering Private Limited

Applicant/ Resolution Professional

Versus

Patnazi Power Limited

Corporate Debtor

*Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation
of the corporate debtor*

Judgment delivered on: 21.01.2020

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
SHRI PRADEEP R. SETHI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Ankit Kishore Sinha, Resolution Professional

ORDER

Dr. Deepti Mukesh, Hon'ble Member (J)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the “Code”**) for issuance of directions for liquidation of the corporate debtor, Patnazi Power Limited.
2. The facts in brief are that the operational creditor, Tractebel Engineering Private Limited had filed an application bearing no. IB 803(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 28.01.2019 and Mr. Ankit Kishore Sinha appointed as Interim Resolution Professional (IRP) of Patnazi Power Limited.
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A in ‘The Pioneer’ (English Hindi Edition). The Public announcement was also uploaded in the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The RP invited Expression of Interest (**EOI**) from prospective resolution applicants in compliance of Regulations 36 A of IBBI regulations, 2016 by publishing Form G on 10th April 2019 in English and Hindi Edition of newspaper 'The Pioneer' circulated in New Delhi.
5. In pursuant to invitation for submission of expression of interest and after taking into consideration by COC in its 2nd meeting held on 21st May 2019, RP released list of prospective resolution applicant comprising one resolution applicant i.e. Mr. N Shridhar, requesting him to submit resolution plan. The resolution applicant thereafter withdrew and informed that he will not submit resolution plan and also will not participate in process further.
6. In 3rd COC meeting held on 02nd July 2019, COC took note of non-receipt of resolution plan and further deliberated to explore resolution options to save the corporate debtor from liquidation.
7. In 4th COC meeting held on 09th July 2019, COC decided to apply for CIRP extension as the CIRP period was expiring on 27.07.2019 and hence had authorized RP Ankit Kishore Sonha for the same. The extension was granted by 90 days from expiry of 180 days of CIRP period vide order dated 29.07.2019. RP published Form G in Financial Express (English) daily and Jansatta (Hindi Daily) in the NCT of Delhi.

RP published Form G also in state of J& K (as corporate debtor secured techno economic clearance from Jammu and Kashmir State Power Development Corporation, J&K for its Hydro Power Project) in newspaper Greater Kashmir (English Daily) on 4th August 2019 and in Kashmir Ujma (Urdu Daily) on 03rd August 2019.

8. It is submitted that RP did not received any EOI by last date i.e. 21st August, 2019. Thereafter, in 5th COC meeting held on 28.08.2019, it was noted by COC that Form G had already been published twice but no resolution plan are forthcoming till date. COC considered the current status and discussed about possible options but thought fit to take company into liquidation. Thereafter COC decided to liquidate the corporate debtor by passing following resolution:

“Resolved That pursuant to section 33(2) and other applicable provisions of the I&B Code 2016, read with relevant regulations of IBBI regulations 2016, COC, comprising of only one COC member ‘Tractebel Engineering Private Limited’, carrying 100% voting share, represented by Mr. Tarun Agarwal, do hereby decide to liquidate the corporate debtor.

Further Resolved That pursuant to applicable provisions of the I&B Code, 2016, COC do hereby authorize Mr. Ankit Kishore

Sinha, Resolution Professional of company, to file/sign necessary application/petition/documents before adjudicating authority and do all such acts and deeds with regard to above-mentioned resolution for liquidation of corporate debtor.”

9. Due to non-receipt of a Resolution Plan within the period of CIRP, as per the provisions of IBC, 2016, COC’s only option is to seek the liquidation mode as provided under the provisions of section 33 of IBC, 2016 of which the relevant sub-section 1 of section 33 is reproduced hereunder ;

“33. (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.”

10. Ld. RP represents that two valuation reports as required under the provisions of IBC, 2016 from the registered valuers in relation to the fair value and liquidation value of the assets of the corporate debtor, are obtained and placed on record. The fair value and liquidation value of the assets as per 28.01.2019 are Rs.1,92,64,734/- and Rs.18,14,043/- respectively.

11. This Tribunal is of the view that as per the record and submissions made, COC and RP has made all endeavours to resolve which has failed to bring results, leading to liquidation of the corporate debtor M/S Patnazi Power Limited.

12. We hereby order that the corporate debtor M/S Patnazi Power Limited stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017. Mr. Ankit Kishore Sinha, present RP is appointed

as liquidator by COC in its 5th meeting dated 28.08.2019 who has consented to act as liquidator. Minutes of COC meeting and consent Form AA are annexed with the application. Therefore, we order and give following directions:

- a. Mr. Ankit Kishore Sinha Professional holding registration no. IBBI/IPA- 002/ IP-N00416/2017-18/ 11230, is appointed as Liquidator in terms of Section 34(1) of the Code;
- b. Mr. Ankit Kishore Sinha directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in relation to other fiscal and regulatory authorities which governs the Corporate

Debtor, the Liquidator shall also duly intimate about the order of liquidation.

- e. 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;
- f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- 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 and in accordance with the relevant regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

C.A. 316(ND) /2019 is allowed, as a consequence IB 803(ND)/ 2018 stands disposed of in terms of above order.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER