

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH, CHENNAI**

**MA/695/2019  
IN  
CP/250/IB/2018**

*Application filed under sections 33(2) of the IBC, 2016*

**In the matter of M/s. Winwind Power Energy Private Limited**

**Mr. Radhakrishnan Dharmarajan, RP**  
*For M/s. Winwind Power Energy Private Limited*

**--- Applicant**

**Vs**

**Committee of Creditors**

**---Respondent**

**Order delivered on: 08.08.2019**

**CORAM:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)  
ANIL KUMAR. B, MEMBER (TECHNICAL)**

For the Applicant : *Shri. T. Ravichandran, Advocate*  
*For Shri. Radhakrishnan Dharmarajan, RP*

**ORDER**

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in Open Court on 07.08.2019**

It is an MA moved by Resolution Professional (RP) under the Insolvency & Bankruptcy Code, 2016 ("the Code") for approval of the Resolution Plan on the proposal made by CoC through

Resolution passed on 28.06.2019 with 91% voting for liquidation of the Company.

2. On perusal of this Application, it appears that this case was admitted on 28.09.2018 for initiation of CIRP. In pursuance of the same, IRP was appointed and he issued public announcement in **Indian Express** and **Dinamani** on 20.10.2018 for inviting claims against the Corporate Debtor. Then on the claims received by IRP, he has collated the same, which has come to ₹754 Crores as payable to the Financial Creditor and ₹4.54 Crores as payable to the Operational Creditors. Soon after collation of claims, the IRP on 30.11.2018 had constituted CoC by simultaneously appointing 2 valuers. Thereafter, on the liquidation value provided by the valuers appointed in this case, the RP determined the liquidation value of the Company as ₹79 Crores. Soon, thereafter, Information Memorandum was prepared, basing on the information available in the records of the Corporate Debtor Company, when expression of interest was published on 21.01.2019, since two prospective Applicants came forward with their Resolution Plans, out of these

two, one Resolution Plan being eligible to be considered, the same was placed before 6<sup>th</sup> meeting of the CoC held on 12.03.2019. In the said meeting, when CoC had asked the said prospective Resolution Applicant to revive the Resolution Plan, the Resolution Applicant has requested time for revision of the Plan. Since thereafter, this prospective Resolution Applicant has not come forward with a modified Resolution Plan, the CoC having noticed that the value of the Resolution Plan eligible for consideration being much below the liquidation value of the Company and the same not being revised by that Applicant, most of the CoC members wanted to reject the plan, but whereas one of the Financial Creditors viz., IBBI Bank Ltd., insisted for e-voting on the Resolution Plan submitted. On being insisted to conduct e-voting, the RP has conducted the e-voting by keeping it open for voting from 26.06.2019 to 28.06.2019. Soon after closure of the voting, the e-voting result disclosed rejection of the Resolution Plan with 91% of voting share of the CoC with a proposal for continuation of the present RP as liquidator. In the meeting of

the CoC held on 26.06.2019 the following resolution has been passed:-

*“The CoC then directed the RP to file for liquidation under Section 33 (2) of the IBC based on the CoC approval for liquidation as per the above resolution.*

*Some of the CoC members also queried the RP, if he can sell the assets of the CD as a going concern in a liquidation and RP should consider expedite the sale through that route. RP replied that it will all depend on the approval of the Adjudicating Authority, and the timing and sale can only be decided post approval of the liquidation by the Adjudicating Authority, including appointing the RP as a liquidator.”*

3. It is pertinent to mention that when CIRP could not be completed within 180 days, this Bench has extended it for another 90 days as contemplated under Section 12 of the I&B, Code, 2016. As no viable and feasible plan did not come forth before the CoC all through, CoC in its 7<sup>th</sup> meeting passed a resolution to liquidate the Corporate Debtor as per Section 33 (2) of the I&B Code, 2016 with a voting of 91% in favour of the liquidation and 9% abstained from voting, with this direction from the CoC, the RP has filed this Application.

4. As to remuneration of the RP is concerned, the CoC shall pay the remuneration for the period of CIRP to the RP, as to liquidation cost, the RP is entitled to receive the same as mentioned in Regulation '4' of the Liquidation Regulation.
5. To find out any possibility for reviving the Company, when this Bench queried the Resolution Professional as to whether it is possible to try for takeover or to sell it as going concern, he has stated that this Company remained defunct for the last four years but it has assets.
6. Therefore, since it has been satisfied that this is a case fit for liquidation, we hereby suggest RP, who is going to be appointed as a liquidator, to put his efforts to find out the possibilities for takeover or sell it as a business to maximize the value of the Company, so that all stakeholders can be benefited out of it. With this direction, we hereby order for **liquidation** with directions as follows:-

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the liquidator to send this order to ROC with which this company has been registered.
- b) The Resolution professional viz Mr. Radhakrishnan Dharmarajan is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and

Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of the Code.


- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of section 33 of the Code.
- d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and

Bankruptcy Code, 2016 and also Insolvency and Bankruptcy  
Board of India (Liquidation Process) Regulations, 2016.

7. Accordingly, this MA/695/2019 filed in CP/250/IB/2018 is  
hereby allowed.



**(ANIL KUMAR. B)**  
**MEMBER (Technical)**



**(B. S.V. PRAKASH KUMAR)**  
**MEMBER (Judicial)**

GHK/TJS