

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.01.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1931/2023 in CP (IB) No.23/7/HDB/2018
NAME OF THE COMPANY	East Coast Energy Pvt Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation Ltd
NAME OF THE RESPONDENT(S)	East Coast Energy Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1931/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A. No. 1931/2023 in
C.P. (IB) No. 23/7/HDB/2018

u/s. 35(1)(n) of the IBC, 2016
r/w. Regulation 33(2)(d) & Part II of
Schedule 1 of IBBI (Liquidation
Process) Regulations, 2016

In the matter of

M/S. EAST COAST ENERGY PRIVATE LIMITED

Mr. Devendra Prasad,
Liquidator of M/s. East Coast Energy Private Limited,
No.201, Nirmitee's Landmark,
Road No.12, MLA Colony, Banjara Hills,
Hyderabad – 500 034.

.... Applicant/Liquidator

Between:

Power Finance Corporation Limited

.... Financial Creditor

Vs.

M/s. East Coast Energy Private Limited,
H.No.7-1-50, Flat No.203, Myneni Apartments,
Dharam Karam Road, Ameerpet,
Hyderabad – 500 016.

.... Corporate Debtor

Date of Order: 12.01.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant : Mr. Varun Ambati, Advocate

Heard on : 02.01.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This Application is filed by the Liquidator of the Corporate Debtor (CD) M/s. East Coast Energy Private Limited under Section 35(1)(n) of the Insolvency & Bankruptcy Code, 2016 Read together with Regulation 33(2)(d) and Part II of Schedule 1 of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016, seeking to allow the Liquidator to conduct '**private sale**' of the Township and the Miscellaneous Assets of the CD to Arka Infra Developers based on the terms of its offer contained in Offer Letter 3 dated 17th November 2023.

Brief facts of the Application:

2. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD by virtue of the Order of this Tribunal dated 03.04.2018 and appointed the Applicant as the Interim Resolution Professional and subsequently, the Applicant was unanimously confirmed as the Resolution professional (RP).
3. As no Resolution Plan has been received during the CIRP period, the CoC members by a unanimous vote of 100%, decided to liquidate the CD in accordance with Section 33 of the IBC. The appointment of the RP as the Liquidator, was approved, subject to the orders of this Tribunal.
4. Thereafter, an Order dated April 22, 2019 was issued by this Tribunal for liquidation of the CD and appointed the Applicant as the Liquidator. In compliance with the IBC, the Liquidator took custody and control of

all the assets and property of the CD and is statutorily required to take measures to protect and preserve these assets and properties.

5. Section 35 of the IBC empowers the Liquidator to sell the immovable and movable property and actionable claims of a Company in liquidation by public auction or private contract, with the authority to transfer such property to any person or body corporate or sell it in parcels as specified. Additionally, Chapter VI of the Liquidation Regulations, read with Schedule I thereof, provides for the realization of assets and the mode of sale for such assets in liquidation.
6. Based on the Stakeholders suggestions, the Liquidator invited Expressions of Interest (EoI) for sale of the CD as a going concern through an advertisement dated July 26, 2019. The deadline for Application submission was initially set for August 26, 2019. However, as no EoIs were received, the deadline was extended to September 27, 2019, but no EoIs were received even after the extension.
7. In the interim period from September 2019 to March 2020, the Liquidator actively engaged with various potential buyers for the sale of the CD as a going concern. Despite these efforts, no conclusive agreements could be reached. Consequently, the Liquidator made the decision to pursue the sale of assets on a piecemeal basis. To facilitate this process, the Liquidator, following due process, appointed two Registered Valuers on March 13, 2020, for a fresh valuation of the Assets. The need for a new valuation arose, as the previous assessment took place in August 2018 during the CIRP of the CD.
8. However, before the valuation exercise could commence, a complete lockdown was imposed by central and state governments in response to the spread of Covid-19. As a result, site visits for inspection by the

valuers were only possible in September 2020, and the Valuation Report was subsequently submitted in December 2020.

9. Following the valuation, the Liquidator promptly initiated an invitation on December 24, 2020 for EoIs for the purchase of CD's Assets. Interested parties were invited to submit their EoIs by January 14, 2021. The assets were categorized into distinct lots, including:
 - (a) Land and Plant site measuring 2060.75 acres, including 10.75 acres for the pipeline.
 - (b) Land measuring 40.37 acres, including built-in township and construction (**Township**).
 - (c) Plant & Machinery.
 - (d) Miscellaneous Assets, including land at District Raigad, Maharashtra, measuring 176 sq. meters (**Miscellaneous Assets**)
10. As of the present date, the Liquidator has successfully sold the following Assets and distributed the proceeds received from these sales to the Stakeholders:
 - (a) Land and Plant site measuring 2060.75 acres, including 10.75 acres for the pipeline.
 - (b) Plant & Machinery.
11. The Liquidator conducted multiple auctions for the sale of the Township and the Miscellaneous Assets; however, none of the auctions proved successful. Faced with the repeated failure of the auctions, the Liquidator, in consultation with the stakeholders, decided to reevaluate the Township. A surveyor was appointed, revealing that the available land in the Township was 36.37 acres instead of the previously presumed 40.37 acres. Based on this revised information, the Valuation

Report was adjusted, and a fresh invitation for EoIs¹ was published on July 24, 2023, for the auction of the Township, setting the reserve price at Rs.23,96,00,000.

12. Despite receiving an EoI from Arka Infra Developers, the auction failed, as they failed to submit the Earnest Money Deposit (EMD). Subsequently, another invitation for EoIs was published on August 23, 2023, for the auction of the Township with a revised reserve price of Rs.23,36,00,000. However, this too yielded no EoIs, resulting in another unsuccessful auction.
13. Following the failure of the last two auctions, a stakeholder's meeting² was convened on September 11, 2023, to discuss the sale of the Township. During the meeting, the Liquidator informed the stakeholders about an offer received from Arka Infra Developers for the sale of the Township and the Miscellaneous Assets amounting to Rs.15,11,55,000 vide letter³ dated September 10, 2023 (**Offer Letter 1**). After thorough deliberation on various options, the stakeholders decided to conduct more auctions with a 10% reduction in the reserve price from the Last Auction. Additionally, the option of a private sale, as per the provisions of the Liquidation Regulations, was considered, involving negotiations with Arka Infra Developers and other potential buyers.
14. Based on the stakeholders' discussions, the Liquidator decided to conduct two more auctions and published fresh invitations for EoIs⁴ on September 14, 2023, and October 18, 2023, for the sale of the Township and the Miscellaneous Assets. The reserve prices for the Last Auction on October 18, 2023, was set at Rs.18,92,00,000 for the Township and Rs.7,00,000 for the Miscellaneous Assets. These Two auctions conducted

¹ Pg 18-51 of the Application (Annexure I).

² Pg 52-54 of the Application (Annexure II).

³ Pg 55-57 of the Application (Annexure III).

⁴ Pg 58-91 of the Application (Annexure IV).

subsequently also proved unsuccessful. Following these failures, the Liquidator convened the 24th meeting⁵ with stakeholders on November 7, 2023, to determine the course of action for the sale of the assets. During this meeting, the Liquidator informed stakeholders of an improved offer received from Arka Infra Developers amounting to Rs. 15,31,55,745 for the Township and the Miscellaneous Assets vide letter⁶ dated November 5, 2023 (**Offer Letter 2**).

15. The Liquidator apprised stakeholders that the original reserve price for these assets was set at Rs.38,20,00,000 in December 2020. With 14 unsuccessful auctions, the reserve price had decreased to Rs.18,92,00,000. Another proposed auction would further reduce the reserve price by 10%, bringing it down to approximately Rs.17,00,00,000. Considering these circumstances, stakeholders deliberated on the future course of action and decided to publish a sale notice in newspapers for a private sale, exploring the possibility of receiving better offers from other parties.
16. Based on the stakeholders' decision, the Liquidator published a notice⁷ for private sale in Business Standard newspaper and Sakshi newspaper dated November 9, 2023. Subsequent to the publication of the notice, the Liquidator received two offers:
 - (a) Rs.10,10,10,000 from M/s White Collars Enterprising Pvt. Ltd. for the Township, as per the letter⁸ dated November 17, 2013, and
 - (b) Rs.15,41,34,745 from Arka Infra Developers for the Township and the Miscellaneous Assets vide letter⁹ dated November 17, 2023 (**Offer Letter 3**). The payment terms of the offer include;

⁵ Pg 94-96 of the Application (Annexure VI).

⁶ Pg 92-93 of the Application (Annexure V).

⁷ Pg 97-98 of the Application (Annexure VII).

⁸ Pg 99-100 of the Application (Annexure VIII).

⁹ Pg 101-103 of the Application (Annexure IX).

- An advance payment of 5% towards the EMD within 3 days of the Liquidator's acceptance.
 - Payment of 5% within 3 days of receiving approval for the private sale from the Tribunal.
 - Remaining payment of 90% within 4 months from the date of approval for the private sale from the Tribunal.
17. The offer presented by Arka Infra Developers was found to be superior to the offer from White Collars Enterprising Pvt Ltd. Consequently, the Liquidator officially declared Arka Infra Developers offer as the winning bid and communicated this decision to them through an email¹⁰ dated November 23, 2023.
18. Following this declaration, Arka Infra Developers deposited an amount of Rs.77,07,750 into the Bank Account of the CD on November 27, 2023. The Liquidator acknowledged the receipt of this sum through an email ¹¹ sent to Arka Infra Developers on November 28, 2023.
19. It is highlighted that the Township and the Miscellaneous Assets constitute the only remaining assets yet to be sold in the liquidation of the CD. Although the offer from Arka Infra Developers vide Offer Letter 3, is less than the reserve price set in the Last Auction by the Liquidator, given the repeated failures of auctions, the Liquidator adopts a pragmatic view. Considering the time value of money and the current offer for private sale, it is believed to be in the best interests of all stakeholders to proceed with the private sale based on the received offer, rather than opting for another auction for these assets. Additionally, it's noteworthy that the time period for liquidation as extended by this

¹⁰ Pg 104-108 of the Application (Annexure X).

¹¹ Pg 109-115 of the Application (Annexure XI).

Tribunal through an order¹² dated October 12, 2023, is scheduled to conclude on January 18, 2024.

20. The Liquidator, therefore, proposes to execute the sale of the Township and the Miscellaneous Assets of the CD through a private sale under Regulation 33(2) of the Liquidation Regulations. The Liquidator seeks the permission of this Tribunal in this regard.

Grounds for this Application:

“Regulation 33(2) of the Liquidation Regulations outlines the circumstances under which assets can be sold through private sale. These circumstances include situations where:

- (a) the asset is perishable;
- (b) the asset is likely to deteriorate in value significantly if not sold immediately;
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or
- (d) the prior permission of the Adjudicating Authority is obtained for such sale.

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- a) a related party of the corporate debtor;
- b) his related party; or
- c) any professional appointed by him.”

21. According to the aforementioned regulations, a private sale can be conducted only if the assets are sold at a price higher than the reserve price of a failed auction. In cases where a private sale is sought to be conducted at a price lower than the reserve price of the failed auction, prior permission of the Adjudicating Authority is required.

¹² Pg 116-117 of the Application (Annexure XII).

22. The Applicant asserts that all reasonable efforts have been made to fulfill duties aimed at maximizing value for stakeholders and completing the liquidation process efficiently. Despite conducting 14 auctions to date for the sale of the Township and the Miscellaneous Assets, none have proven successful. The current offer from AID, as per Offer Letter 3, represents the highest bid received for these assets.
23. Therefore, the Liquidator seeks the permission of the Hon'ble Tribunal to execute the private sale of the Township and the Miscellaneous Assets of the CD to Arka Infra Developers at a price of Rs.15,41,54,745, in accordance with the terms and conditions outlined in Offer Letter 3.

Decision on the Application:

24. We have perused the contents of the Application and heard the Counsel appearing for the Liquidator. A few facts may be referred. The CD M/s East Coast Energy Private Ltd was admitted into CIRP on 03.04.2018. Since no Resolution Plan was received, the Committee of Creditors recommended liquidation, which was approved on 22.04.2019. The Appellant who was appointed Liquidator initiated the process of sale of the CD as going concern, but did not receive any EOI. Thereafter, with revised valuation, attempt was made to sell the assets of the CD in four lots, two of which were successfully sold. The asset identified as 'Township' and 'Miscellaneous assets' have found no takers in the multiple auctions. The reserve price after 14 failed auctions came down to Rs18.92 crores for the 'Township' and Rs 0.07 crores for the 'Miscellaneous Assets. At this stage the stakeholders decided to explore the option of 'private sale'. Consequently, the Liquidator published notice to this effect in the newspapers, and received two responses of Rs 10,10,10,000 and Rs 15,41,54,745 respectively. The higher bid of Rs 15,41,54,745 by M/s Arko Infra Developers has been declared as the winning bid, who have also deposited 5% as EMD. The bid of Arko Infra Developers is awaiting approval from this Authority.

25. Considering the difficulty being faced by the Liquidator in selling the Assets in question even after multiple auctions, the option of private sale to the willing buyer who has made the higher bid is not unreasonable.

The Applicant Liquidator is therefore allowed to sell the remaining assets, i.e. the 'Township' and the 'Miscellaneous Assets' by way of the private sale as proposed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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