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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI K ANANTHA PADMNABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA – MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.12.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 778 & 106 ³ /2019 in CP(IB) NO. 314/7/HDB/2018
NAME OF THE COMPANY	Konark Power Projects Ltd
NAME OF THE PETITIONER(S)	Shri Perna Krishna
NAME OF THE RESPONDENT(S)	Konark Power Projects Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V. Balasobramanian	R.P.	bala_v99@yahoo.com 9848019990	V. P. [Signature]

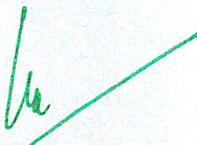
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced in open court. IA for Liquidation allowed vide separate order.


MEMBER TECHNICAL


MEMBER JUDICIAL

AS

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.1063/2019 and 778/2019

In

CP(IB)No.314/7/HDB/2018

In the matter of:

Konark Power Project Limited
94, 7th Floor, Minerva Complex,
SD Road, Secunderabad – 500003.
(Rep. by its RP, Mr.V.Balasubramanian)

**...Applicant/
Corporate Debtor**

Order pronounced on: 20.12.2019

**Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/ Counsels Present:-

Mr.V.Balasubramanian, RP

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. The present Application bearing IA No.1063/2019 in CP(IB)No.314/7/HDB/2018 is filed by Resolution Professional U/s. 33 of the IB Code, 2016 inter-alia praying to:
 - a. Allow the instant Application;
 - b. Allow for liquidation of the Corporate Debtor under section 33(1)(a) of the I&B code, 2016 and pass necessary orders.
 - c. To appoint the Resolution Professional as Liquidator U/s.34(1) of I&B Code, 2016 as RP filed his consent to act as Liquidator for the Corporate Debtor.





- d. Direct the Committee of Creditors for payment of all the Insolvency Resolution Process Costs as per Regulation 31 of the “Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016” including the IRP and RP fee till date of order of liquidation and reimbursement of expenses on security of plant and the cost of various advertisement incurred for publication of Form A for CIRP announcement, Form G for EoI and Form G for extension of time for EoI.
2. It is stated that the application under Section 7 of Insolvency and Bankruptcy Code, 2016(IBC) was filed by the Financial Creditor i.e., Mr.Perna Krishna through his constituted SPA holder Mr.B.Srinivas, for initiation of Corporate Insolvency Resolution Process of Corporate Debtor.
 3. This Adjudicating Authority vide order dated 28.08.2018 admitted the Application filed by the Financial Creditor and appointed the Applicant herein as the Interim Resolution Professional in the instant case.
 4. It is stated that the CoC decided to continue the Applicant as RP for the CIRP. The 2nd CoC meeting was held on 09.11.2018 to approve publication of Invitation for Expression of Interest in Form G, as required Under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 5. The Invitation for Expression of Interest (EoI) in “Form G” was published on 12th November, 2018, in English and Telugu newspapers in Hyderabad and in English and Kannada newspapers in Bengaluru with last date for submission of EoI as 03.12.2018.

6. In the 3rd CoC meeting held on 03.12.2018, CoC approved extension of last date for submitting of EoI and approved publication of Revised Invitation for Expression of Interest in Form G.
7. The revised Invitation for Expression of Interest (EoI) in "Form G" was published on 05.12.2018 for extension of last date for submission of EoI to 24.12.2018 and last date of submission of Resolution Plan to 08.02.2019.
8. The revised Expression of Interest were received from two potential resolution applicants as mentioned below:
 - a. M/s. Balaji Molasses and Sugar Private Limited
 - b. M/s. Tavasya Ventures Partners Private Limited
9. It is stated that the last date for the submission of Resolution Plan was 08.02.2019. The last date for the completion of the CIRP was due to expire on 23.02.2019. The CoC in its meeting held on 13.02.2019, resolved to make request for extension of CIRP beyond 180 days by an additional 90 days.
10. It is stated that RP made an application requesting for an extension of CIRP by 90 days and the same was allowed by this Adjudicating Authority vide order dated 01.03.2019 and extended the period of CIRP by 90 days to 24.05.2019.
11. Since the RP did not receive any Resolution Plans till 20.04.2019, he called for a 5th CoC meeting on 26.04.2019, to be held on 02.05.2019. The said meeting was postponed to 06.05.2019 due to non-availability of CoC members on 02.05.2019.
12. The 5th CoC meeting was held on 06.05.2019 and the CoC decided to give time till 24.05.2019 to the two potential Resolution Applicants to give their Resolution Application. However, the potential Resolution


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Applicants did not submit any Resolution Plan till the end of May 2019.

13. The RP informed the same to the CoC members and also called for a 6th CoC meeting to discuss the further course of action for liquidation of the Corporate Debtor. The 6th CoC meeting was held on 28.06.2019. In the 6th CoC meeting also the CoC did not decide and conclude on the liquidation of CD or on steps to be taken further by RP.
14. It is stated that as the time frame of 270 days had expired on 24.05.2019 and also the time frame of 330 days expired on 24.07.2019 and till date no resolution plan was received and the CoC members were also not taking any firm decision as regards the future course of action, RP approached this Adjudicating authority for directions for liquidation of the Corporate Debtor on 30.08.2019 vide IA No.778/2019.
15. It is stated that this Adjudicating Authority gave time till 22nd October, 2019 for the CoC to make the final decision.
16. On 06.11.2019, this Adjudicating Authority directed the RP to place the resolution for liquidation as passed by CoC before it and posted the matter to 14.11.2019.
17. It is stated that RP conducted the 7th COC meeting on 13.11.2019 and the CoC passed the resolution unanimously for Liquidation of the Corporate Debtor. RP filed the minutes of the 7th CoC meeting on 14.11.2019 before this Adjudicating Authority with unanimous resolution for liquidation of the Corporate Debtor.
18. Heard the RP and perused the records.

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19. In view of the facts and circumstances recorded by RP in IA No.1063 of 2019 filed in CP(IB) No. 314/7/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 before the expiry of maximum period for completion of CIRP envisaged U/s. 12 of the Code. Therefore, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

- (i) This Adjudicating Authority hereby order for Liquidation of M/s. Konark Power Project Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- (ii) This Adjudicating Authority hereby appoint Mr.V.Balasubramanian who has given his consent letter to act as Liquidator in the present case. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
- (iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
- (iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.


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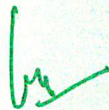
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- (vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
- (vii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr.V.Balasubramanian. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.
- (x) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016.

Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

- (xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr.V.Balasubramanian for information and compliance.
- (xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.
- (xiii) In terms of the above, IA No. 1063 of 2019 filed in CP(IB) No. 314/7/HDB/2018 by the RP under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Konark Power Project Limited, stands **disposed off**.
- (xiv) In view of orders in IA No.1063, IA No.778/2019 stand closed being infructuous.


20-12-19
Dr.BINOD KUMAR SINHA
MEMBER (TECHNICAL)


K.ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

Alekhyas/SKRathi