

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
AT NEW DELHI**

**C.A. 569 (PB) /2019**

**IN**

**Company Petition No. (IB)-540(PB)/2017**

In the matter of:

Mr. Rajiv Chakraborty

Applicant/Resolution Professional

AND

In the matter of:

Su Kam Power Systems Limited

Corporate Debtor

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

***Judgment delivered on: 03.04.2019***

**Coram:**

**CHIEF JUSTICE (RTD.) M.M.KUMAR  
Hon'ble President**

**S. K. MOHAPATRA  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Jayant Mehta, Mr. Siddhant Kant &  
: Ms. Srishti Khare, Advs.  
For CoC : Ms. Anannya Ghosh, Adv.  
For HDFC : Mr. Chetan Joshi, Adv.



## **ORDER**

**S. K. Mohapatra, Member**

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, M/s. Su Kam Power Systems Limited.
2. The facts in brief are that State Bank of India, Financial Creditor had filed application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor M/s. Su Kam Power Systems Limited. The said application bearing no. IB-540(PB)/2017 filed under Section 7 of the Code, was admitted vide order dated 05.04.2018 and Sh. Rajiv Chakraborty was appointed as Interim Resolution Professional in respect of the corporate debtor.
3. In terms of Section 22(1) of the Code, the Committee of Creditors in its meeting held on 11.05.2018 resolved to appoint the Interim Resolution Professional as the Resolution Professional for the corporate debtor and the



appointment of Sh. Rajiv Chakraborty as Resolution Professional was confirmed by this Tribunal vide order dated 7<sup>th</sup> June, 2018.

4. It is stated in the application that the advertisement inviting expressions of interest (“EOI”) in accordance with the provisions of Section 25(2)(h) of the Code was published by the Applicant on 4<sup>th</sup> June, 2018 inviting EOIs for the submission of resolution plans for the Corporate Debtor.

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The last date for the submission of EOI was 18<sup>th</sup> June, 2018 which was further extended to 25<sup>th</sup> June, 2018.

5. Thereafter, in accordance with the provisions of the Code, the Applicant had issued the request for resolution plans on July 19, 2018 (“RFRP”) in terms of Section 25(2)(h) of the Code, read with Regulation 36A(5) of the Insolvency and Bankruptcy (Insolvency Resolution for Corporate Persons) Regulations, 2016 (“CIR Process Regulations”). The date of submission of the resolution plan was initially fixed for 10 August 2018, which was extended to 31 August, 2018, 28<sup>th</sup> September 2018, 31<sup>st</sup> October 2018, and was finally set for 15<sup>th</sup> November 2018. It is contended that the last date for submission of resolution plans was extended



from time to time to ensure that prospective applicants had sufficient time to conduct diligence, on-site visits, etc, of the Corporate Debtor, and accordingly submit most beneficial resolution plan.

6. Since one hundred and eighty (180) days period of the CIR process was scheduled to expire on 2<sup>nd</sup> October 2018, an application was filed before this Tribunal seeking extension of the CIR Process. Accordingly, vide order dated 05.09.2018 the time-period of the CIR Process was extended by another ninety (90) days till 31 December 2018.
7. On 15<sup>th</sup> November 2018, one resolution plan was received from the consortium comprising of M/s. Phoeniz ARC Limited and Mr. Kunwer Sachdev ("Consortium"). Subsequently, the said Consortium was asked to revise its resolution plan to bring it in conformity with the provisions of the Code. Accordingly, it is stated that the Consortium submitted its revised plan on 6<sup>th</sup> December, 2018.
8. The resolution plan was considered by CoC in its 10<sup>th</sup> meeting held on 13<sup>th</sup> December, 2018. Committee of Creditors unanimously decided that the consortium resolution applicant is ineligible in terms Section 29A (h) of





the Code, as personal guarantees executed by Mr. Kunwer Sachdev in favour of financial creditors of the Corporate Debtor, though invoked, had remained unpaid.

9. The said decision was challenged by Mr. Kunwer Sachdev in CA-58(PB)/2019 with the prayer to set aside the decision declaring the applicant ineligible under Section 29A(h) of the Code and for a direction on the CoC to consider the resolution plan of the consortium. The Company Application (CA-58(PB)/2019) was however dismissed vide reasoned order dated 02.04.2019.
10. Since no compliant resolution plan for the Corporate Debtor was received, the applicant had filed an application seeking exclusion of certain period from the CIR Process. The said application was allowed by this Tribunal excluding the period prayed for and consequently the CIR Process period stood extended up to 27 March, 2019.
11. In the 10<sup>th</sup> meeting of the CoC as no compliant resolution plan was forthcoming, it was decided to issue a fresh advertisement and accordingly, a fresh bidding process with the request for submission of resolution plan was advertised with last date 21.12.2018.



12. However, no resolution plan was received on 21<sup>st</sup> December, 2018. Thereafter at the 11<sup>th</sup> Meeting of the Committee of Creditors, it was decided that another fresh bidding process would be initiated, and that the last date for accepting this bidding process would be 28 February 2019. But, yet again no resolution plan was received as on 28 February 2019.

13. At the 12<sup>th</sup> Meeting of the Committee of Creditors held on 20 February 2019, it was considered that since the last date of expiry of the CIR Process was 27 March 2019, the requisite filings for the approval of the resolution plan before the Tribunal if any, would have to be done by 12<sup>th</sup> March, 2019. However, the fact remains that despite various steps having been initiated for submission of resolution plans, only a single binding resolution plan was submitted, which was turned to be ineligible.

14. The Committee of Creditors in the 13<sup>th</sup> Meeting, has resolved to appoint Mr. Raj Kumar Ralhan as the new resolution professional in place of the applicant for the duration of the remaining CIR Process. However, at this stage when the application filed by the Resolution



Professional under Section 33 (1) of the Code for issuance of directions for liquidation is under consideration, no fruitful purpose would be served in changing the resolution professional.

15. It is pertinent to note that Sh. Raj Kumar Ralhan, new resolution professional proposed by CoC in place of the applicant, has given his consent to act as a liquidator in respect of the corporate debtor.

16. In the factual scenario applicant resolution professional has sought for an order for liquidation of the Corporate Debtor in terms of mandate of Section 33(1)(a) of the Code, on account of the fact that no compliant resolution plan for the Corporate Debtor has been received within the statutory prescribed maximum period permitted for completion of the corporate insolvency resolution process.

17. In the facts and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order in conformity with the prayer for liquidation of the corporate debtor under Section 33(1)(a) of the Code.



18. In the result the application is allowed by ordering liquidation of the corporate debtor, namely Su Kam Power Systems Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a. As proposed by CoC, Mr. Raj Kumar Ralhan holding registration no. IBBI / IPA- 001/ IP-P00981 / 2017-18/ 11614, is appointed as Liquidator in terms of Section 34(1) of the Code;
- b. Mr. Raj Kumar Ralhan is 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. 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;

- e. The Liquidator shall explore the possibility to continue the business of the corporate debtor during the liquidation process and to sell the business of the corporate debtor as a going concern.
- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- g. The liquidator may identify and recover the assets of the corporate debtor, if any, lost in irregular transactions. The liquidator shall also follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (1) of the Code.
- h. The liquidator shall follow up the pending company applications, if any, for its disposal during the process of liquidation.



- i. 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.
- j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k. C.A. 569 (PB) /2019 filed in IB-540 (PB)/ 2017 is disposed of in the aforesaid terms.

03.04.2019

Sdl-  
**(M.M.KUMAR)**  
**PRESIDENT**

Sdl-  
**(S.K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**