

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

**IA No.146/2019
In
CP(IB)No.132/09/HDB/2018**

**In the matter of AVANI ENERGY SOLUTIONS PRIVATE
LIMITED**

M/s. PHILIPS LIGHTING INDIA LIMITED
Registered Office situated at:
Mangalam Business Centre,
22, Camac Street,
Block B, 6th Floor,
Kolkatta-700016.

....Operational Creditor

Vs

M/s. AVANI ENERGY SOLUTIONS PRIVATE LIMITED
Registered Office situated at:
Andhra Pradesh Industrial Infrastructure Corporation,
Industrial Area Locality,
Plot No. B2-3, Tirupati,
Cuddapah,
Andhra Pradesh-517520.
Rep by its Resolution Professional,
Mr. AVS Krishna Mohan.

...Corporate Debtor

Order pronounced on: 01.05.2019

Parties/ Counsels Present

Counsels for the Applicant: AVS Krishna Mohan, RP

Counsels for the
Financial Creditor(UBI Bank): V.SethuMadhav Rao, Advocate

Counsel for SVCL: A.LakshmiKantham, Advocate



PER: K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

ORDER

1. The present Application bearing IA No.146/2019 is filed u/s.33 of IBC, 2016, by Resolution Professional of M/s. Avni Energy Solutions Pvt Ltd i.e., Corporate Debtor herein, interalia praying to pass an Order of liquidation of the Corporate Debtor herein.
2. It is Stated that this Adjudicating Authority on 11th May, 2018 vide Order No. CP(IB)No.132/09/HDB/2017, admitted the Petition filed by Philips Lighting India Limited, Operational Creditor against the Avni Energy Solutions Private Limited, under section 9 of the I&B Code, 2016.
3. It is Stated that this Adjudicating Authority appointed Mr. Sreenivasa Rao Ravinuthala as IRP vide its order dated 18th May 2018. In the CoC meeting held on 30.07.2018, CoC passed resolution for appointing MR. AVS Krishna Mohan as RP and IRP was replaced by RP vide order dated 17th September 2018.
4. It is stated that the public announcement was made on 19.05.2018. The RP followed up with some of the debtors of the company for recovery of the receivables, as per data available in the statements stated by the company to the Bank and the tally data provided by the Directors.
5. It is stated that, since the books of accounts were not available and the assets of the Company were yet to be traced, the RP sought extension of CIRP period for 90

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beyond the initial period of 180 days, and the same was approved by the CoC members with voting rights of 65.22% further, Union Bank of India, the CoC member with voting rights of 34.78 % has voted against the extension. The RP filed IA No.527/2018 on 12.11.2018 with this Adjudicating authority seeking extension of CIRP. Subsequently, Union Bank of India filed consent memo on 04.01.2019, consenting for extension of the CIRP. This Adjudicating authority passed order on 09.01.2019 extending the CIRP period by 90 days from 14.11.2018 upto 12.02.2019.

6. The RP issued notices to 17 debtors with outstanding dues of Rs.14.79 crores. In response as on date, 11 debtors accounting for notice amount of Rs.9.54 crores denied liability and response from 6 debtors accounting for notice amount of Rs.5.25 crores is yet to be received.
7. It is stated that the RP called for the 8th CoC meeting on 06.02.2019, appraising the developments in the CIRP and to decide the future course of action as the extended CIRP period was expiring on 12.02.2019. The meeting was participated by representatives of Union Bank of India, with voting share of 34.78% and Sidbi Venture Capital Ltd (SVCL) with voting share of 65.38%. Veepoint Commerce Pvt Ltd with voting share of 1.64% has not participated in the meeting. The RP requested the CoC members to approve the estimated expenditure to enable the RP to complete the exercise. However the same was not approved by the CoC as Sibdi Venture Capital Ltd, with

voting share of 63.58% abstained from voting on approval of the expenditure.

8. The RP requested the approval of CoC members for expenditure to be incurred for payment of transportation, godown rent and other charges for shifting and holding the stock till disposal on actual basis. However, the same was not approved by the CoC as Sibdi Venture Capital Ltd, with voting share of 63.58% abstained from voting on approval of the expenditure.
9. The Resolution Professional appraised the CoC members of the progress of CIRP and requested CoC to take decision on Liquidation of the company.
10. The Resolution Professional opined that there is no valuable resolution to continue the company as going concern and hence consider for approving Liquidation of the company.
11. The representative of the Union Bank of India (voting share 34.78%) voted in favour of Liquidation of the Corporate Debtor and appointment of RP as Liquidator. The representative of Union Bank of India also consented for fixation of Liquidation fee under the Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016, i.e., the Liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs and of the amount distributed. The representative of SVCL sought time for conveying their decision. The RP informed that the minutes of the meeting are to be circulated within 48 hours of the meeting as per Regulations and requested the representative



of SVCL to expedite its decision. Subsequently, the representative vide mail dated 08.02.2019 conveyed the decision of SVCL that they are abstaining from voting in the matter.(Voting Share of SVCL-63.58%). later, the counsel for SVCL filed memo accepting the decision of Liquidation and further stated that they are not ready to pay any amount that are incurred as expenditure during CIRP.

12. heard and perused the record.

13. As per the IB Code, 2016 and Rules & Regulations contemplated there under, the Financial Creditor is duty bound to pay the expenditure incurred during the CIRP period and the same shall be paid to him in priority as per Sec.53 of IBC, 2016. Therefore, this Adjudicating Authority directs the SVCL to make payment to RP towards CIRP cost.

14. Further, In view of the facts and circumstances recorded by RP in IA No.146 of 2019 filed in CP(IB) No. 132/9/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30. 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, I proceed to pass Order as follows:—

(i) I hereby order for Liquidation of the Corporate Debtor viz., M/s. Avni Energy Solutions Private 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.AVS Krishna Mohan, **as proposed by CoC**, who has given

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his consent letter to act as Liquidator in the Present Case who 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) I 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.
- (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., MrAVS Krishna Mohan 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 Company Liquidator shall be entitled to charge such fee for the conduct of the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as may be specified by the Board. Accordingly, the fees of the conduct of the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.
- (x) 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.AVS Krishna Mohan for information and compliance.
- (xi) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator
- (xii) In terms of the above, IA No. 146 of 2019 filed in CP(IB) No. 132/9/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. Avni Energy Solutions Private Limited, stands **disposed off**.



K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL