

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

IA No.103 of 2019

In

CP(IB)No.23/07/HDB/2018

**In the matter of:- East Coast Energy Private
Limited**

Power Finance Corporation Limited

...Financial Creditor

Vs

M/s. East Coast Energy Private Limited
Registered Office is situated at:
H.No.7-1-50, Flat No.203,
Myneni Apartments, Dharam Karam Road,
Ameerpet, Hyderabad,
Telangana- 500016.

...Corporate Debtor

Order Pronounced on: 22.04.2019

Parties/Counsel Present:

For the Petitioner:

D.Narendar Naik, Advocate

D.Rajashekar, Advocate



Per: K.ANANTHA PADMANABHA SWAMY, MEMBER
JUDICIAL

ORDER

1. The present Application bearing IA No.103/2019 is filed by M/s. Power Finance Corporation Limited seeking to pass an Order liquidating the Corporate Debtor and appointing a Liquidator to the Corporate Debtor.
2. It is stated that State Bank of India and Power Finance Corporation Limited had filed company petitions bearing CP(IB) No.22/7/HDB/2018 and CP(IB)No.23/7/HDB/2018 respectively ("Insolvency Petitions") against the Corporate Debtor for non-payment of outstanding debt under Section 7 of the IBC. This Adjudicating Authority by its common order dated 03.04.2018 admitted the Insolvency Petitions initiating the CIRP in respect of the Corporate Debtor and appointed the Applicant herein as the IRP.
3. It is stated that IRP made public announcements in Times of India and Andhra Bhoomi (Hyderabad and Vizag), in Form-A in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") on April 7, 2018 calling for submissions of claims from creditors of the Corporate Debtor by April 18, 2018.
4. It is stated that the IRP and his team visited the Registered Office and IRP found that the said premise was being used as a residential accommodation. The IRP along with the

representative of SBI visited the Principal Office and was surprised to find that the premise was also not being used by the Corporate Debtor and that some other third party had occupied the same.

5. It is stated that, in accordance with Regulations of the CIRP Regulations, the IRP constituted a CoC in relation to the Corporate Debtor and convened its first meeting on 02.05.2018 (1st CoC Meeting).

6. The Resolution Professional thereafter convened and conducted the meetings of the CoC each of the following dates:

2nd CoC Meeting: June 04, 2018

3rd CoC Meeting: July 04, 2018

4th CoC Meeting: July 30, 2018

5th CoC Meeting: September 17, 2018

6th CoC Meeting: December 14, 2018

7. It is submitted that in the 1st COC Meeting, the Resolution Professional informed the members of the COC *inter alia* about the visit of the IRP and his team to the Registered Office and Principle Office, and the Site of the Corporate Debtor and the filing of the Section 19 Application. The CoC resolved that the IRP shall be appointed as the Resolution Professional of the Corporate Debtor. The members of the COC were also informed that due to the non-availability of certain documents, the RP expected a delay in the preparation of the information memorandum in accordance with Section 29 of the IBC.



8. It is submitted that on 14.06.2018 and 15.06.2018, the RP again visited the Site to assess the situation and found limited documents and records. Most of these documents and records pertained to the period up to 31.03.2016. No relevant information was available on examining the hard disks obtained from the desktop computers and it was noted that the hard disk of the laptop was missing.
9. It is submitted that on 22.06.2018, the RP had issued an advertisement in the Economic Times for inviting expression of interest from prospective bidders. The deadline for the submission of the expression of interest was 02.06.2018 and subsequently, the RP published a corrigendum to the Advertisement in The Economic Times on 03.07.2018. *Vide* the corrigendum, the deadline to submit the Expression of Interest was extended till 09.07.2018.
10. It is further stated that in the 3rd CoC meeting held on 04.07.2018, the CoC ratified the appointment of IDBI Capital Markets & Securities Limited as the bid process advisor ("Bid Process Advisor") to *inter alia* frame the eligibility criteria for the prospective resolution applicants and to assist the RP in conducting the selection process for the Resolution Applicants. The RP also informed the members of the COC that the Bid Process Advisor had approached around 41 investors of the Corporate Debtor.
11. In the 4th meeting held on 30.07.2018, the Bid Process Advisor informed the COC that (a) Private investors were less interested in the acquisition of the business of the Corporate Debtor as the project of the Corporate Debtor was

incomplete and (b) the potential public-sector bidders wanted a certificate from a public-sector consultant on the Techno Economic Viability of the project. The members of the CoC further accorded approval to appoint Ernst & Young as a forensic auditor for Corporate Debtor, including but not limited to investigate if there were any preferential, undervalued and/or fraudulent transaction that the Corporate Debtor had entered into.

12. It is submitted that in the 5th meeting of the COC held on September 17, 2018, the RP informed the CoC *inter alia* that no expression of interest had been received from the investors of the Corporate Debtor by the aforesaid deadline. However, the RP informed the members of the CoC that officials of Andhra Pradesh Power Generation Corporation ("APGENCO") had sent email on September 15, 2018 with their interest in acquiring the business of the Corporate Debtor. Accordingly, the COC agreed to extend the CIRP by a further period of 90 days and deliberated to meet the officials of APGENCO for their participation as a prospective Resolution Applicant. The RP had also received a letter from APGENCO on September 25, 2018, evincing their willingness in acquiring the business of the Corporate Debtor.
13. The RP further made a public announcement on October 13, 2018 in The Economic Times, as a corrigendum to the Advertisement and extended the deadline to receive expression of interest till October 27, 2018. The RP filed an application bearing IA No.471/2018, pursuant to Section 12

of the IBC on September 25, 2018. The Hon'ble Tribunal was pleased to extend the CIRP by a period of 90days.

14. It is further stated that, despite providing several extensions on the deadline to submit the Expression of Interest, the RP had received only 1 Expression of Interest from Sterlite Power Grid Ventures Limited. Accordingly, the Request for Resolution Plan dated November 5, 2018 was issued to Sterlite which *inter alia* set out the last date of submission of the Resolution Plan as December 5, 2018. However, no resolution plan was submitted by the deadline date and no resolution plan has been submitted as on the date of this Application.
15. It is stated that, in the 6th meeting of the CC held on December 14, 2018, the CoC was informed that the Resolution Professional had not received any resolution plan by the above stated deadline. Since the deadline for the Expressions of Interest had been extended twice and the CIRP period had been extended from 180 days to 270 days and inspite of the above, no Resolution Plan had been received by the deadline, the members of the COC were of the view that the Resolution for liquidation of the Corporate Debtor should be put to vote and accordingly in the e-voting commenced after the 6th CoC meeting, the CoC accorded approval to liquidate the Corporate Debtor.
16. Therefore, pursuant to the voting by the members of the CoC whereby 100% of the members voted in favour of the decision to liquidate the Corporate Debtor, in accordance

with Section 33 of the IBC, the RP seeks order of this Hon'ble Tribunal for liquidation of the Corporate Debtor.

17. In view of the facts and circumstances recorded by RP in IA No. 103 of 2019 filed in CP(IB) No. 23/7/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. East Coast Energy 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 Here by Appoint Mr. Devendra Prasad who has given 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., Mr. Devendra Prasad 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

6

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.Devendra Prasad 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. 103 of 2019 filed in CP(IB) No. 23/7/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. East Coast Energy Private Limited, stands **disposed off**.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL