

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

IA No.823/2023 &

I.A. No. 08/2024

In

C.P. (IB) No.191/BB/2022

(Admitted Matter)

Application Under Sub-section (2) of Section 33 of the
Insolvency and Bankruptcy Code, 2016

In the matter of:

Suzlon Energy Limited

...Petitioner /Operational Creditor

VERSUS

Legend Artists Private Limited

...Respondent/Corporate Debtor

And in the matter of IA No.823/2023:-

Mr.T V S Siva Prasad

Resolution Professional,

Legend Artists Private Limited

...Applicant

Order delivered on: 05.07.2024

Coram:

1. Hon'ble Shri. K. Biswal, Member (Judicial)

2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

The RP

: Shri T.V.S. Prasad

O R D E R

I.A No.823/2023

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application has been filed by Mr TVS Siva Prasad, Resolution Professional of M/s. Legend Artists Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for

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passing an order of Liquidation in the matter of M/s Legend Artists Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor.

2. CP (IB) No. 191/BB/2022 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by “Suzlon Energy Limited” to initiate Corporate Insolvency Resolution Process (**in short ‘CIRP’**) against M/s. Legend Artists Private Limited was admitted on 04.07.2023 and Mr. TVS Siva Prasad was appointed as Interim Resolution Professional (IRP).
3. After receiving the Order, the IRP made a Public Announcement on 21.07.2023 in the prescribed form i.e, Form A. On the basis of claims received and admitted from the operational creditors, the applicant constituted the 1st CoC meeting on 14.08.2023 with the two operational creditors and there is no financial creditor. On 24.08.2023, wherein the COC has confirmed the interim resolution professional as Resolution Professional.
4. It is submitted that the applicant had appointed two registered valuers on 31.08.2023 to determine the fair value and liquidation value of the Corporate Debtor in accordance with the provisions of the Code. In the third meeting of COC there were general discussions on the steps taken by the RP and the developments and also to go for liquidation suggest by the operational creditor.
5. It is further submitted that since the directors of the CD are non-co-operative in providing the books of accounts of the CD and information about the CD, despite several requests, he is unable to get access to the books of accounts and unable to draw the financial statements during the entire CIRP Process. Further stated that this scenario until the directors of the CD are held accountable and brought to books, the financial status cannot be ascertained. The copy of financial statement as on March 31, 2019 has been annexed with the Application.

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6. In the fourth meeting of COC held on 20.10.2023 voted for liquidation of the Corporate Debtor, but did not agree on appointment of liquidator and the remuneration.
7. The RP had filed two I.A under section 19(2) of the IBC, 2016 seeking to issue necessary directions to GST Department, Pune and Income Tax Officer, Koramangala, Bengaluru to reset the user passwords & inform the same and to refund any amounts due to the Corporate Debtor in view of non-availability of the staff/management/directors of the Corporate Debtor and the books of accounts.
8. In the fourth meeting of CoC held on 20.10.2023, the CoC voted for liquidation of corporate debtor and the same is as under:

Item 1 : To initiate steps to liquidate the corporate debtor & Apply to NCLT

“M/s. Suzlon Energy Limited sought to liquidation of the CD, as no assets are found, despite our best efforts. The RP had explained the efforts made in finding out the assets of the CD. It is found that the CD has some deposits of about Rs. 20 Lakhs (without any lien on deposits) before drawal of his fee by the RP in ICICI Bank and no other assets could be found. The directors, as per the information available with the MCA portal, have not responded to the request of the RP for providing information about the company. Hence the agenda item is put to voting.

Suzlon’s representative had orally agreed to the agenda item. The agenda item is put to e-voting.

Item 2 : Confirmation of Resolution Professional as the liquidator.

9. In the e-voting for the liquidation of the CD, the COC members majority voted in favour of initiating the liquidation and disagreed for the appointment of RP as liquidator.
10. The Hon’ble NCLAT, in Praveen Kumar Nand Kumar v.VSL Securities Pvt Ltd. in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

11. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.

12. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

“33. Initiation of liquidation.-

(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority

shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

13. **Prescribed period for filing application-** In the present case, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 04.07.2023. The present Application is filed on 28.11.2023 i.e., before the expiry of the CIRP period. Hence, this application shall be considered under section 33(2).

14. **Appointment of Liquidator** - It is submitted that the CoC members did not vote in favour of the RP to act as the liquidator in the 4th CoC meeting. Subsequently, the applicant has filed another application bearing I.A. No. 08 of 2024 for appointment of Liquidator as per the provisions of the Code which recommends Shri. Prasad Kamalakar Dharap to be appointed as the Liquidator of the CD. The same has been approved by the CoC in its 6th CoC meeting held on 20.12.2023. In light of the above factual matrix, and in compliance with Section 34 of the Code, Shri. Prasad Kamalakar Dharap with Registration no. IBBI/IPA-001/IP-P00702/2017-18/11228 is appointed as the Liquidator of the CD.

15. Relevant aspects under Regulation 39B, 39C and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are examined hereunder:

- a. Liquidation Cost [Regulation 2A of IBBI (Liquidation Process) Regulation, 2016]** - The members of the CoC did not approve the estimation of liquidation cost as per Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 5th and 6th CoC meetings held on 08.12.2023 and 20.12.2023. Therefore, the liquidator is directed to necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulation, 2016.

b. Assessment of Sale as a going concern [Regulation 32A IBBI (Liquidation Process) Regulation, 2016]–

The members of the CoC did not approve the sale of Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 5th and 6th CoC meetings held on 08.12.2023 and 20.12.2023. Therefore, the liquidator is directed to refer to Regulation 32A of IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

c. Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

- The fee payable to the Liquidator is as per the resolution passed.

16. **Pending applications, if any, and its effects** – The Learned Counsel for the Applicant has stated that matter regarding with this Application has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.
17. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Legend Artists Pvt Ltd is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:
- i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor. However, a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
 - ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

- iii. That this order of liquidation under Section 33 of the Code 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; and
- iv. That 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 Liquidator; and
- v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of the said Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.

17. Thus **I.A No. 823 of 2023** stands disposed of.

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18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

I.A. 08 of 2024

- 1 The incumbent application has been filed by the Applicant/Resolution Professional of the CD i.e., Legend Artists Private Limited (“CD”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 for seeking the appointment of the CoC proposed Liquidator i.e., Shri. Prasad Kamalakar Dharap as the Liquidator of the CD.
- 2 The Applicant submits that in the 6th CoC meeting held on 20.12.2023, Since the recommendation of the Liquidator did not take place in the 4th CoC Meeting, wherein 6th the CoC approved the appointment of Shri. Prasad Kamalakar Dharap as the Liquidator of the CD with 99 percent voting share.
- 3 The Liquidator had his written consent to act as the Liquidator on 10.12.2023.
- 4 Heard the counsel for the applicant and perused the records pertinent to the facts and circumstances of the instant application.
- 5 In light of the instant application and the application bearing I.A. No. 08 of 2024 for seeking direction of Liquidation, we are of the considered opinion that the instant application is hereby allowed and Shri. Prasad Kamalakar Dharap with Registration no. IBBI/IPA-001/IP-P00702/2017-18/11228 is appointed as the Liquidator of the CD.
- 6 Accordingly, I.A. No. 08 of 2024 stands **disposed of**.

-Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd/-

**(K.BISWAL)
MEMBER (JUDICIAL)**