

S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
31-05-2024 AT 10:30 AM**

CP(IB) No.103/7/HDB/2020

AND

**IA (IBC) (Liquidation): 5/2024 in CP(IB) No.103/7/HDB/2020
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

State Bank of India

...Financial Creditor

AND

Mata Energy Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) (Liquidation): 5/2024

Orders pronounced. In the result, **this application is allowed** as per the terms and conditions mentioned in the order.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

PER: BENCH

1. This is an application filed by the Resolution Professional/Chairman of the Monitoring Committee (hereinafter referred to as “RP”) under Section 33(2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) praying this Adjudicating Authority to order liquidation of M/s. Mata Energy Limited (hereinafter referred to as “Corporate Debtor”).
2. The CIRP of the Corporate Debtor was initiated vide order dated 04.03.2022 (copy of the order received on 09th March 2022) on the application filed by the State Bank of India under Section 7 of IBC 2016 and appointed Mr B Naga Bhushan as Interim Resolution Professional vide the same order.
3. It is stated that during the first meeting which was held on 06.04.2022, the COC approved the Resolution Plan under section 30(4) of the IBC 2016 with 100% voting done in favor of the Resolution Plan submitted by the Consortium of M/s Varma Steels Private Limited and Mr AVP Varma.
4. The Resolution Professional filed an application before this Tribunal on 25th January, 2023 for obtaining the statutorily mandated approval under section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016, for the Resolution Plan submitted by the Successful Resolution Applicant and approved by the COC.
5. This Tribunal vide order dated 27.02.2023 approved the Resolution Plan submitted by the Successful Resolution Applicant.
6. The SRA made upfront payment of Rs 1.82 Crores as per approved Resolution Plan on 29/31.03.2023.

7. The approved plan is under implementation under the supervision of the Monitoring Committee (MC) comprising of the Financial Creditor, Successful Resolution Applicant, and the Resolution Professional. The Monitoring Committee is headed by the Resolution professional which has conducted eight meetings so far.

8. It is stated that of the plan amount is concerned Rs 4.50 Crores, the first installment of Rs 1.82 Crores was paid on 29/31.03.2023. The final tranche of Rs 2.50 Crore was due on 29.08.2023 and the has not been paid till date.

9. We have heard the Learned RP and perused the record.

10. In terms of section 33 (2) of the Code, which is as below liquidation of the corporate debtor can be ordered when the circumstances mentioned in the said section are present.

Section 33 (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 (approved by not less than sixty-six per cent. of the voting share) 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).

11. In the instant case 8th meeting of Monitoring Committee of Corporate Debtor was held on 05.03.2024 and notice of which was sent to SRA also through e-mail but the SRA did not attend the said meeting.

12. In the said meeting following resolutions have been passed by the lone Financial Creditor for filing an application, seeking liquidation of the Corporate Debtor and cancellation of the approved resolution plan:

“RESOLVED THAT the approved resolution plan of the successful Resolution Applicant viz., Verma Steels Pvt. Ltd. In consortium with Mr AVP Varma which was approved by Hon’ble NCLT vide order dt. 27.02.2023 be cancelled as the SRA has not complied with the terms of the plan by not paying the residual plan amount of Rs 2.50 crores by August 29, 2023 and that the amount of Rs 1.50 Crores paid till date be forfeited.”

“RESOLVED FURTHER THAT the Corporate Debtor may be Liquidated under Section 33(3) of IBC 2016 as the Successful Resolution Applicant has contravened the implementation of the approved resolution plan.”

“RESOLVED FURTHER THAT the performance bank guarantee for Rs 40 Lacs provided by the SRA be invoked and forfeit the amount already paid.”

“RESOLVED FURTHER THAT the Resolution Professional and Chairman of the meeting Mr. B. Naga Bhushan be and hereby authorized to make an appropriate application before the Hon’ble NCLT under section 33(3) read with Regulation 39(9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”

The above Resolution was approved with 100% voting share.’

13. Consequently, on the basis of the above said resolution passed in the 8th meeting of Monitoring Committee of Corporate Debtor, the resolution professional filed this application for liquidation of Corporate Debtor. We find that application satisfies the contents as mentioned under section 33(3) of IBC, 2016.

14. In respect of prayer (c) in this application which is to pass an order forfeiting the amounts paid by SRA till date, we have carefully perused the RFRP and the resolution plan submitted by the SRA and we do not find any clause or condition in these documents, which stipulate forfeiture of amount already paid by the SRA. However, regulation 36B (4A) provides that if the resolution applicant fails to implement or contributes to the failure of implementation of the plan, the performance security shall stands forfeited. We reproduce here under Regulation 36B(4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

“(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I - For the purposes, of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II - A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X and Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.,]

15. In addition to the provision contained in regulation 36B (4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 about the forfeiture of performance bank guarantee, the Para No 6 and 8 of the Letter of Intent dated 10.01.2023 which has been received and accepted by the SRA, also provides for forfeiture of performance bank guarantee in case of failure of implementation of resolution plan or in case of any breach of the Letter of Intent.

16. The said Paras of the Letter of Intent are reproduced hereunder for more clarity in the matter:

“Para (6) As specified in the RFRP you have been declared as the Successful Resolution Applicant, and subject to the terms of Clause 3.8 of the RFRP, you, as the Successful Resolution Applicant must, forthwith on issuance of this Letter of Intent (LOI) by the undersigned, furnished or cause to be furnished an unconditional and irrevocable performance bank guarantees/security amounting to 10% of the Resolution Plan Amount within 10days from the date of receipt of this letter of intent in one of the following forms with respect to the implementation of the Successful Resolution Plan (“Performance Bank Guarantee”):

i) *A Bank Guarantee issued by any scheduled commercial Bank in India (“Bank”) which shall be in accordance with Format XIII(PG) of this RFRP;*

Or

ii) *A Demand Draft issued by any scheduled commercial bank in India in favour of the M/s Mata Energy Limited payable at Hyderabad.*

As bank account has been opened in the name of Mata Energy Limited, you can also make-

iii) *A direct deposit by way of real time gross settlement system in to bank account of the Corporate Debtor which is under:*

<i>Account Holder Name</i>	<i>Mata Energy Limited</i>
<i>Current A/c No</i>	<i>41566224921</i>
<i>Bank Name</i>	<i>State Bank of India</i>
<i>Branch Name</i>	<i>Gandhi nagar branch</i>
<i>IFSC CODE</i>	<i>SBIN0011660</i>

Further, in terms of Clause 4.2(f) of the RFRP, you, as the Successful Resolution Applicant must, unconditionally accept this Letter of Intent forthwith and record such acceptance by providing the RP with 1(one) copy of the Letter of Intent with an endorsement stating that “Accepted Unconditionally”, under the signature of your authorized representative.

Para (8) The Performance Bank Guarantee/security shall be liable to be invoked and/or forfeited at any time in accordance with provisions of the RFRP and also in case of any breach of this LOI.

17. Keeping in view, Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 and also provisions contained in letter of intent, we hereby decide that performance bank guarantee given by resolution professional can be invoked and liquidated. However, keeping in view that there is no supporting provisions in RFRP and resolution plan to forfeit the other instalments/amount (other than performance bank guarantee) paid by SRA, we are of the view that, the resolution professional and COC should return the amount of Rs 1.82 Crores to the SRA if they decide to go for cancellation of resolution plan and go for liquidation of the corporate debtor.

18. In the above back drop, we pass following directions:-

- (i) We allow liquidation of M/s. Mata Energy Limited, the Corporate Debtor herein, which shall be conducted in the manner as laid down in Chapter III of Part II of the Code, 2016.
- (ii) We allow invocation and forfeiture of performance bank guarantee of Rs. 40,00,000/- provided by the SRA.
- (iii) We do not allow forfeiture of Rs. 1.50 Crores paid by the SRA other than the Performance Bank Guarantee and therefore resolution professional and COC is directed to return the said amount to the SRA.

19. Shri Kasi Srinivas, having Registration No: IBBI/IPA-003/IP-N00237/2019-2020/12840; Mobile No. 8008022887; e-mail: srinivaskashyap111080@gmail.com ; is hereby appointed as Liquidator;

20. He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

21. The moratorium declared under Section 14 of the Code, shall cease to have effect from the date of the order of liquidation;

22. Subject to Section 52 of the Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. This shall however 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.

23. All the powers of the Board of Directors, Key Managerial Personnel and partners of the corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

- 24.** The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 25.** Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- 26.** The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34(8) of the Code.
- 27.** The applicant is directed to serve the copy of this order to Registrar of Companies, Regional Director, Official Liquidator of Hyderabad, Registered office of the Corporate Debtor for information and compliance.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)