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

IA No.278/2021 in
C.P. (IB) No.243/BB/2018
(Admitted Matter)

**Under Section 33 of the
Insolvency and Bankruptcy Code, 2016**

In the matter of:

M/s. Pridhvi Asset Reconstruction ... Applicant/Financial Creditor

Versus

M/s. Sagar Power (Neerukatte) Private Limited ... Respondent/Corporate Debtor

And in the matter of IA No.278/2021:-

Mr.Pankaj Srivastava,
Resolution Professional,
Sagar Power (Neerukatte) Private Limited,
2nd Floor, Venkatadri Complex
83, Richmond Road
Bangalore-560015

Applicant-Resolution Professional

Order delivered on: 4th November, 2022

Coram: 1. Hon'ble Mr. Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the RP

: Ms.Amrita Jain



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ORDER**Per: Manoj Kumar Dubey, Member (Technical)****I.A No.278/2021:**

- 1 This application has been filed by Mr.Pankaj Srivastava, the Resolution Professional of M/s Sagar Power (Neerukatte) Private Limited (Corporate Debtor) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Sagar Power (Neerukatte) Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation Process of the Corporate Debtor etc.
- 2 CP (IB) No.243/BB/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Pridhvi Asset Reconstruction" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Sagar Power (Neerukatte) Private Limited was admitted on 27.09.2019 and Mr. Pankaj Srivastava was appointed as Interim Resolution Professional (IRP).
- 3 Following the initiation of CIRP, public announcement was made in Form-A on 30.09.2019 (Annexure C to the Application) in English and in Kannada newspapers. The CoC with the requisite majority confirmed the Interim Resolution Professional (IRP) as Resolution Professional (RP). On 22.11.2019, the RP was appointed by this Tribunal in IA.No.610/2019.
- 4 It is stated that the RP invited Expression of Interest in Form G by Publishing in Financial Express, Hyderabad Edition and Vaartha Bharti Bengaluru Edition. The last date of submission of Resolution Plan was 28.02.2020. The applicant had received resolution plan from Kundan Care Products Limited who had submitted their initial Resolution Plan on 14.03.2020 which went through several rounds of discussions and

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negotiations between March 2020 to October 2020. During the meeting of the Committee of Creditors dated 14.10.2020, the CoC members requested for the revised submission of the Resolution Plan.

- 5 It is further stated that the applicant had received the revised resolution plan from the resolution applicant, incorporating all the changes consequent to the various discussions, on 22.10.2020. The applicant examined the contents of resolution plan in compliance with the requirements envisaged in the IBC and had placed the same before the committee of creditors meeting dated 22.10.2020. The committee of creditors had in an length discussion pertaining to the revised Resolution Plan and the same was voted and finally approved by the CoC with 88.43% votes in favour of the Resolution plan. The Copy of Minutes of the CoC meeting dated 22.10.2020 is annexed as Annexure-F to the petition.
- 6 Furthermore, the Letter of Intent was issued to the Successful Resolution Applicant by the Applicant on 25.10.2020 and was duly accepted by the Successful Resolution Applicant on 26.10.2020. Pursuant to that, performance bank guarantee of INR 3,01,32,780/- was issued in favour of the Corporate Debtor on 26.10.2020 by the Successful Resolution Applicant. The applicant filed an Interlocutory Application 439 of 2020 before the Hon'ble Tribunal for the approval of the Resolution plan on 26.10.2020. However, the successful resolution applicant put forth baseless allegations with respect to the land parcels of the Corporate Debtor and filed an Interlocutory Application 500 of 2020 for withdrawal of the Resolution Plan and this Tribunal allowed the withdrawal of Resolution Plan by the Successful Resolution Applicant.
- 7 At the 16th meeting held on 19.10.2021, it was also put forth before the CoC to open the second round of bidding in case of rejection of the

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Resolution Plan by the CoC. However, the CoC unanimously decided to reject the same and voted in favour of liquidation of the Corporate Debtor. As a consequence of which the Resolution with respect to the appointment of Liquidator and determination of his fees, Liquidation costs and contribution thereto was passed by the CoC, whereby Mr.Pankaj Srivastava was unanimously appointed as the Liquidator of the Corporate Debtor. The resolution passed by the CoC is provided verbatim:

In a Scenario where the COC rejects all Resolution Plans and files for liquidation of the CD

E) “RESOLVED THAT the COC members be and hereby reject the resolution plan” and

“FURTHER RESOLVED THAT the COC members unanimously voted in favour of liquidation of the corporate debtor”

Appointment of Liquidator and fixing the remuneration and approval of liquidation cost budget

“RESOLVED THAT subject to the order of the Adjudicating Authority under section 34 of the Insolvency and Bankruptcy Code, 2016 Mr. Pankaj Srivastava, Registration Number IBBI/IPA-001/IP-P00245/2017-18/10474 shall act as the liquidator during the liquidation of the Corporate Debtor.

RESOLVED FURTHER THAT pursuant to Section 34(8) of the Insolvency and Bankruptcy, 2016, regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the fee payable to the liquidator and his team of professionals shall be as approved by Committee of Creditors as follows: (a) if Liquidation process gets completed within 9 months – 1.5% of the net realisation from the proceeds (c) if liquidation process takes longer than 9 months – 1% of the net realisation from the proceeds.”

- 8 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:-

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“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”.

- 9 We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.
- 10 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).”

- 11 **Prescribed period for filing application-** In the present case, the application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 27.09.2019. This Tribunal order dated 28.05.2020

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extended the period of 90 days beyond 180 days with effect from 28.03.2020 and further excluded the period of 120 days from 25.03.2020 to 22.07.2020. The present application is filed on 09.09.2021. i.e., after the CIRP period. **Hence, this application shall be considered under section 33(1), but not under section 33(2).**

- 12 Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP submitted the written consent in Form-AA, to act as the Liquidator for the purpose of Liquidation. **Shri Pankaj Srivastava, Resolution Professional with Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474** has been proposed by the COC to act as the Liquidator. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Pankaj Srivastava** is appointed as the Liquidator.
- 13** Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder
- a. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The liquidation cost is as per the resolution passed at agenda Item No.6.
 - b. **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The CoC has not made any recommendation regarding sale of the Corporate Debtor as a going concern. Therefore, the Liquidator is directed to refer to Regulation 32A of the 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

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fee payable to the Liquidator is as per the resolution passed at agenda Item No.6.

- 14 Pending applications, if any, and its effects** – On 26.08.2022, the Learned Counsel for the RP/Applicant was directed to file an affidavit stating whether any litigations/investigations are pending against the company within one week. In compliance to the Order dated 26.08.2022, an affidavit is filed vide Diary No. 4358 dated 12.10.2022, it was submitted that there was no pending cases of any nature against the Corporate Debtor before any Court of law, administrative body or any judicial Forum.
- 15** In view of the satisfaction of the conditions provided under **Sec. 33(1) of the Code**, the Corporate Debtor **M/s. Sagar Power (Neerukatte) Private Limited** 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;
Provided that 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

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- 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 the 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 these 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) Regulation 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 every fortnightly thereafter.
- 16 Thus **I.A No. 278 of 2021** stands disposed of.
- 17 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.

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

— *Sd* —
(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

IA No.278/2021 in
C.P. (IB) No.743/BB/
(Admitted Matter)



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OF THE ORIGINAL**
Praveen
DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench