

S.No.201

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24-12-2021 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA(IBC)/144, 478, 704,709/2021
CP (IB) No.407/7/HDB/2018
U/s 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

Vs

PPS Enviro Power Pvt Ltd

...Corporate Debtor

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Learned RP Shri Anurag Kumar, is present.

IA No.144/2021, is for the approval of the Resolution Plan. Since resolution plan is rejected, Liquidation order is passed vide separate orders.

Since liquidation order is passed, IA No.478, 704,709/2021 ^{dismissed as} becomes infructuous.


MEMBER (T)


MEMBER (J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

**IA (IBC) No. 144/2021
in
CP (IB) No. 407/7/HDB/2018**

Application under Section 30 (6) and 31 of IBC, 2016

In the matter
State Bank of India
vs
PPS Enviro Power Private Limited

Filed by

Anurag Kumar Sinha
Resolution Professional
M/s PPS Enviro Power Private Limited
97/A, Road No.18, Phase-1, IDA
Jeedimetla, Hyderabad – 500055

...Respondent/
Corporate Debtor

Date of order: 24.12.2021

Coram:

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Petitioner: Shri Manoj Kumar Mishra, Ms Sarvani Desiraju,
Advocates



PER BENCH

ORDER

1. This application is filed by Resolution Professional of PPS Enviro Power Private Limited/ Corporate Debtor, seeking approval of the resolution plan submitted by Zulaikha Motors Private Limited (Resolution Applicant) which is duly approved by the Committee of Creditors (CoC).
2. The gist germane to the case of the Applicant is that, the Adjudicating Authority vide orders passed in CP (IB) No.407/7/HDB/2018 dated 13.08.2019 admitted the petition which was triggered under Section 7 of the Code by State Bank of India, declared moratorium and appointed the Applicant herein as Interim Resolution Professional (later confirmed as Resolution Professional) for conducting Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor/M/s PPS Enviro Power Private Limited.
3. During the Corporate Insolvency Resolution Process (CIRP), the Applicant, in response to Form-G publication, received expression of interest from three parties viz Zulaikha Motor Pvt Ltd, Syed Fahad in Consortium with Greenergy Solar Enterprise Pvt Ltd and Kundan Care Products Ltds. The same were placed for deliberation before the CoC in its 23rd meeting held on 04.03.2021 and CoC approved the Resolution Plan of **Zulaikha Motors Private Limited (Successful Resolution Applicant)** with 100%



votes in favour of it. Thus, submitting, prayed for approval of the said Resolution u/s 31 (1) of IBC.

4. We heard the Learned Counsel for Resolution Professional and Learned Counsel for Resolution Applicant. It is observed by the Bench that CIRP was ordered to be initiated against the Corporate Debtor on 13.08.2019 and after granting extension of 90 days and exclusion of 135 days owing to covid induced lockdown, the term of 270 days of CIRP came to an end on 08.03.2021. We have categorically directed the Resolution Professional in the order passed in IA No. 64/2021 on 16.03.2021, that no further extension will be granted. However, it was observed that the Successful Resolution Applicant failed to submit any Performance Bank Guarantee, as required under RFRP as well as Regulation 39 (B) (4A) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. The Resolution Plan was approved by the CoC on 03.02.2021 and the same was filed before the Adjudicating Authority on 22.03.2021. There after the matter was listed on 31.03.2021, 09.07.2021, 12.08.2021, 03.09.2021, 23.09.2021, 18.11.2021 and 24.11.2021, and every time the Successful Resolution Applicant was pleading time for submission of PBG as required under RFRP. On 23.09.2021 when the matter came up for hearing the Learned Counsel for Successful Resolution Applicant appeared and sought four weeks' time, which was granted and recorded. However, the Resolution Applicant failed to furnish the same on the ground of covid



induced pandemic and at the request of Learned Counsel, one week's time was further granted with clear orders from the Bench that in case of default, the opportunity would stand forfeited and appropriate orders shall be passed by the Adjudicating Authority. During the hearing dated 24.12.2021 again the Successful Resolution Applicant was pleading for time for submission of PBG.

5. From the above proceedings, we fail to understand why the Resolution Plan was submitted by the Resolution Professional to the Adjudicating Authority for approval when the conditions of RFRP were not fulfilled.
6. In this backdrop, we are astonished to note that the Resolution Professional has filed IA 478/2021 seeking a direction to Resolution Applicant to furnish PBG. We have no hesitation to hold that the act of filing IA 478/2021 is nothing but dereliction of his functions as Resolution Professional, besides violation of CIRP Regulations referred supra. Here the conduct of CoC member also raises serious questions/doubts in approving the resolution plan in a mechanical and callous manner and presenting it for approval before this Authority. It is needless to say that, once the Resolution Applicant is found to have been breached the terms and conditions of Resolution Plan at this Tribunal, it is the duty of the Resolution Professional to move for liquidation.
7. It is noted by the Adjudicating Authority that the Resolution Applicant has not yet furnished Performance Bank Guarantee as required under amended Regulation 39 (B) (4A) of IBBI





(Insolvency Resolution Process of Corporate Persons)
Regulations, 2016, which is reproduced below:-

(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 performance security shall stand forfeited if the resolution applicant of 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.

8. We feel that despite granting sufficient opportunity, the Resolution Applicant has miserably failed in complying with the orders of the Adjudicating Authority with regard to furnishing of the performance bank guarantee. The reasons stated by the Resolution Applicant is not tenable. It is noted that 330 days' time has already elapsed. It appears to us that the Resolution Professional was not serious in the conduct of CIRP of the Corporate Debtor. We are not satisfied with the conduct of the CIRP by the Applicant herein. We are further requesting IBBI to look into the conduct of the Applicant and initiate appropriate action against the Resolution Professional.
9. Since the said Resolution Plan is rejected, this Tribunal appoints Shri K. Vatsa Kumar having registration no. IBBI/IPA-002/IP-N00922/2019-2020/12980 whose contact details are:

e-mail : kvkumar.ip@gmail.com

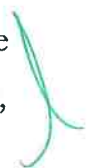
Address: 8-2-248/A/5/16, Plot No. 717, Journalist
Colony

Road No.2, Banjara Hills, Hyderabad – 500034
Contact No. 9061640003



To act as Liquidator as per Section 34(4) (a) of the Code. He shall file his consent in Form AA within two days of receipt of this order.

10. He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.
11. The Moratorium declared under Section 14 of the code shall cease to have its effect.
12. Subject to Section 52 of the Code, 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.
13. All 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.
14. 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 Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
15. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
16. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
17. 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.

18. The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.
19. Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.
20. We request the IBBI to look into the conduct of the Resolution Professional Shri Anurag Kumar Sinha and initiate appropriate action as deemed fit.

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(DR N.VENKATA RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)