IN THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD DIVISION BENCH COURT - 1

ITEM No. 304

IA(Liq.)/11(AHM)2024 in CP(IB) 141 of 2019

Order under Section 33(2) of IBC, 201

In The Matter Of:

Rahul Kavathekar RPApplicant

of Avantha Power & Infrastructure Ltd

Order delivered on: 14/06/2024

.....Respondent

Coram:

Mr. Shammi Khan, Hon'ble Member(J) Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant : For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR SHAMMI KHAN MEMBER (TECHNICAL) MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY NATIONAL COMPANY LAW TRIBUNAL DIVISION BENCH -I, AHMEDABAD

IA(Liq.)/11/AHM/2024 in CP (IB)/141/2019

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT, Rules, 2016).

In the matter of

M/s Avantha Power & Infrastructure Ltd.

Mr. Rahul Kavathekar

Resolution Professional of M/s Avantha Power & Infrastructure Ltd.

Having address at: J-901, The Trees Godrej One, Pirojshahnagar, Vikhroli East, Mumbai- 400079

.... Applicant/RP

Order Pronounced on 14.06.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL) Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr. Suraj Sharma, PCS

For Respondents :

ORDER

 The IA(liq)/11/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- a. Pass an order initiating the liquidation of the Corporate Debtor;
- b. Pass an order appointing Mr. Rahul Kavathekar (Resolution Professional) having IBBI registration no. IBBI/IPA -001/IP P00040/2017-18/10101 as the Liquidator of the Corporate Debtor for the fee deemed to be approved by the Corporate Debtor's COC; and/or
- c. Pass any such order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of Justice and equity.

2. Facts of the Case are as follows:-

- i. From the averments made by the Applicant, it is stated that by an order dated August 16, 2021, this Tribunal admitted the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP), under Section 7 of the Code. Vide the Admission Order, Mr. Srikanth Dwarakanath, was appointed as the Interim Resolution Professional of the Corporate Debtor.
- ii. It is stated that by an Order dated November 28, 2023, this Tribunal appointed the Applicant Mr. Rahul Kavathekar, holding Registration No: IBBI/IPA-001/IP-P00040/2017-18/10101 as the Resolution Professional

("RP") of Avantha Power and Infrastructure Limited ("Corporate Debtor").

- iii. It is submitted that in the 4th CoC Meeting held on January 16, 2024, which was subsequently adjourned and concluded on January 19, 2024, the CoC members discussed briefly about the initiation of liquidation under Regulation 40D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the said matter was then put to vote. The CoC approved the resolution by the majority of 88.58% members voting in favour, permitting the RP to make application to this Tribunal for initiation of Liquidation Process Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.
- iv. It is stated that the decision of the CoC to not approve issuance of NDA in favour of the RP and subsequently the Form G, EOI was based on its view that there was no resolution possible due to precarious financial health of the Corporate Debtor and further considering that there is no business even in the subsidiary company of

the Corporate Debtor and evidently both Corporate debtor and its subsidiary(ies) has a negative net worth so RP was not able to carry out activity of calling of EOI, and further the resolution process of the Corporate Debtor.

- v. It is stated that the CoC, at its 5th meeting held on January 24, 2024, approved the name of the Applicant i.e., Mr. Rahul Kavathekar, having insolvency professional number IBBI/IPA-001/IP-P00040/2017-18/10101, as its suggestion to this Hon. Tribunal to be considered for the appointment as Liquidator. The said suggestion of the CoC was also approved with the requisite majority. The Applicant has offered his consent to act as a Liquidator of the Corporate Debtor vide his consent letter dated March 11, 2024.
- 3. The provisions of Section 33(2) of the Code are reproduced below: -
 - "...(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the committee of creditors approved by **not less than Sixty-Six**

percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause(i), (ii) and (iii) of clause(b) of sub-section(1)."

- 4. This observation of this Tribunal are as under:
 - a) It is observed that the CoC members of the Corporate Debtor approved the resolution to file liquidation before this Tribunal by 88.58% during the 4th meeting on 16.01.2024.
 - b) The corporate debtor has been in the non-operational status for the preceding three years.
 - c) During the 5th meeting held on 24.01.2024 the CoC approved the name of the Resolution Professional in the present matter as the Liquidator.
 - d) It is seen that the Resolution Professional has violated some of the regulation of CIRP which are as under:
 - i. The Regulation 24(7) of the IBBI (Resolution Process for Corporate Persons) Regs., 2016 which is reproduced as under:

"24: Conduct of Meeting

- (7) The Resolution Professional shall circulate the minutes of the meetings to all participants by electronic means within **forty-eight** hours of the said meeting." the RP here in circulated the minutes of 4th meeting dated 19.01.2024 on 24.01.2024 which is in violation of the above mentioned regulation.
- ii. The Regulation 26(5) of the IBBI (Resolution Process for Corporate Persons) Regs., 2016 which is reproduced as under:

"26: Voting through electronic means.

(5) The Resolution Professional shall circulate a copy of the record made under sub-regulation (4) to all participants by electronic means within **twenty-four** hours of the conclusion of the voting."

The Resolution Professional circulated a copy of the record of e-voting of 5th meeting dated 24.01.2024 which was concluded on 24.02.2024 on 29.02.2024. The Resolution Professional was late by four days in circulating the record of e-voting which is in violation of Regulation 26(5).

- iii. There is a delay in the Filing of the Application for Liquidation as per Form H it is shown that the CIRP period expired on 07.08.2023 against which an IA of the extension was filed on 07.08.2023 which is yet to be allowed.
- 5. Hence we are left with no option but to liquidate the Corporate Debtor as the Corporate Debtor has no ongoing commercial operations and has no active employees for the last three preceding years.
- 6. The Hon'ble Supreme Court in the matter of K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justifiable. In this case, it is seen that CoC with 88.58% majority has passed the resolution seeking liquidation of the Corporate Debtor.
- 7. In terms of the above, we hereby order for liquidation of the Corporate Debtor.
- 8. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers

conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (read liquidation) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr. Tejas Shah** an IPA having registration No. IBBI/IPA-001/IP-P-00089/2017-2018/10815, as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2023, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -

- a) The Corporate Debtor M/s. Avantha Power and Infrastructure Limited shall be ordered for liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA(liq)/11AHM)2024.
- b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- c) As per section 34(4)(b) of the Code, **Mr. Tejas Shah** an IPA having registration No. IBBI/IPA-001/IP-P-00089/2017-2018/10815 is hereby appointed as a

Liquidator of the Corporate Debtor i.e. M/s Avantha Power and Infrastructure Limited. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

- h) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.
- k) The present Resolution Professional is directed to hand over the relevant documents and control of the

Corporate Debtor to the newly appointed liquidator forthwith.

the concerned **Registrar of the Companies**, the registered office of the Corporate Debtor; **IBBI**; the resolution professional; **Indian Institute of Insolvency Professionals of ICAI**, **IPA of RP**, and the **Liquidator** by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

9. Accordingly, **IA(liq)/11 (AHM)2024** in CP(IB) No. 141 of 2019 is disposed off.

-SD-SAMEER KAKAR MEMBER (TECHNICAL) -SD-SHAMMI KHAN MEMBER (JUDICIAL)

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