

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

13. I.A. 3078/2022

I.A. 1346/2022

I.A. 424/2022

IN

C.P.(IB)-1559(MB)/2018

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

SH. SATYA RANJAN PRASAD, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **07.12.2022**

NAME OF THE PARTIES: Punjab Renewable Energy Systems Pvt Ltd.

V/s.

Spark Green Energy (Ahmednagar) Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional/Applicant, Mr. Prakhar Tandon i/b Agam H Maloo and counsel for the Applicant, Ms. Sukanya Upasani, PCA Udayraj Patwardhan for the Applicant in I.A. 424 of 2022 and I.A. 1346 of 2022, Mr. Sagar Pathak for Respondent No. 2, Respondent No. 3 & Respondent No. 4 in I.A. 424 of 2022 are present through virtual hearing.

I.A. 3078/2022

Heard the counsel appearing for the Applicant/Resolution Professional. The above application is filed for liquidation of the corporate debtor company. The above application is allowed. Detailed order will follow.

I.A. 1346/2022

The above application is filed by the Applicant/RP, Mr. Suyash Chhajed for the following reliefs;

- a) *To allow the instant application;*
- b) *To allow extension for the period of 90 days of Corporate Insolvency Resolution Process of Corporate Debtor beyond 180 days, being May 14, 2022;*
- c) *To allow the exclusion of 14 days lost from the CIRP of the Corporate Debtor on account of delay in receipt of Admission order i.e. from November 16, 2021, to November 30, 2021.*
- d) *Such other orders be passed, as the Hon'ble Tribunal may deem fit and proper in the interest of justice.*

The purpose of filing the above application for extension and exclusion of time is only to revalidate the actions of the Resolution Professional and the COC beyond 180 days as the Resolution has been failed in this matter and a separate application bearing I.A. No. 3078 of 2022 filed for liquidation was already allowed. Therefore, this bench is of the view that no serious prejudice would be caused in allowing the above application and accordingly, the above application is allowed granting extension and exclusion in terms of prayer clause (b) and (c).

With the above observations and directions, the above I.A is allowed and stands disposed of.

List the pending application on **25.01.2023**.

Sd/-
SATYA RANJAN PRASAD
Member (Technical)
--Rajeev--

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT-III**

IA. No. 3078 of 2022

IN

C.P.No.(IB)1559(MB) of 2018

Under Section 33(1) of Insolvency &
Bankruptcy Code, 2016

In the matter of

Punjab Renewable Energy Systems Pvt. Ltd

.... OPERATIONAL CREDITOR

VERSUS

Spark Green Energy (Ahmednagar) Private Limited

.... CORPORATE DEBTOR

I. A. No. 3078 of 2022

Mr. Suyash Rajendra Chhajed

.... Applicant /Resolution Professional

Order delivered on 07.12.2022.

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Shri Satya Ranjan Prasad, Member (Technical)

For the Applicant: Mr Agam H Maloo (Advocate)

The above application I.A. No. 3078/2022 is filed by Resolution Professional, Mr. Suyash Rajendra Chhajed (hereinafter referred to as the "Applicant") seeking liquidation of **Spark Green Energy (Ahmednagar) Private Limited** (hereinafter referred to as the "Corporate Debtor") under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

- a. That the Corporate Debtor be ordered and directed to be liquidated as per Section 33(1) of the Code;*
- b. That Mr. Sanjay Gupta shall be appointed as the liquidator;*
- c. For such other and further reliefs as the Hon'ble Tribunal, Mumbai Bench, may deem fit in the facts and circumstances of the present case.*

1. The brief facts of the application are as follows:

- A. The present Application has been filed by, Mr. Suyash Rajendra Chhajed of Spark Green Energy (Ahmednagar) Private Limited ("Corporate Debtor") under Section 33(1) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, namely Bank of India, Edelweiss Asset Reconstruction Company Limited (Edelweiss ARC), Saraswat Co-operative Bank Limited and Brihanmumbai Electricity Supply & Transport Undertaking (BEST Undertaking), has resolved to liquidate the Corporate Debtor.
- B. On 30.12.2021, in the first meeting of the Committee of Creditors (hereinafter referred to as the "CoC") was held wherein the Interim Resolution Professional was not confirmed as Resolution Professional. Furthermore, the Applicant received the claims from the 4 Financial Creditors vide FORM C. The Applicant informed that operations of the Corporate Debtor as shut, and no revenue is being generated.
- C. The Applicant submitted that, the second meeting of the CoC was held on 28.01.2022 wherein, the IRP has sought the

information from the personnel and suspended Board of Directors of the Corporate Debtor on regular intervals and he has not receive any documents/information from them.

- D. Furthermore, neither the IRP was not confirmed as the Resolution Professional nor the appointment of Mr. Saurabh Chawla, another Insolvency Professional as the Resolution Professional of the Corporate Debtor.
- E. The Applicant further submitted that, the 3rd CoC meeting was held on 24.03.2022, the IRP informed the CoC that the Interlocutory Application (IBC) 424 of 2022 filed under Section 19(2) of the Code on 27.01.2022 and the Company Appeal (AT) (Ins) 16 of 2022 was filed by the suspended Board of Directors of the Corporate Debtor. The Form G was published on 04.02.2022 in Business Standard, Mumbai Edition (English Newspaper) and Pudhari, Mumbai Edition (Marathi Newspaper). Also, in Times of India, Aurangabad Edition (English Newspaper) and Lokmat, Ahmednagar Edition (Marathi Language) on 05.02.2022.
- F. Further, the Applicant submitted that, he was appointed as the Resolution Professional of the Corporate Debtor with 94.07%.
- G. The Applicant also submitted that, the 4th CoC meeting was held on 21.06.2022, wherein the Applicant informed that an Interlocutory Application (IBC) no. 1346 of 2022 had been filed before this Hon'ble Tribunal on 14.05.2022 for extension of CIRP period by 90 days and the appeal filed at the Hon'ble NCLAT has been dismissed on 26.05.2022. The Applicant informed that the RFRP and Evaluation Matrix was confirmed by the member of CoC vide mail dated 30.03.2022 and the same was issued to the Prospective Resolution Applicant in

which the last date for submission of Resolution was on 29.04.2022 however, CoC ratified and approved the last date of submission of the Resolution Plan upto 10.07.2022.

- H. The Applicant further submits that, the 5th CoC meeting was held on 05.08.2022 and adjourned meeting was resumed on 18.08.2022 and 19.08.2022, wherein the RP informed that no resolution plan was received in the matter of Corporate Debtor.
- I. The Applicant submitted that, the CoC further decided in the 5th CoC meeting that we should go for liquidation, without further delay as extension would mean unnecessary expenditure. The Applicant therefore submits that the Corporate Debtor shall be ordered and directed to be liquidated under the provisions of Section 33(1) of the Code.
- J. The Applicant further submits that the CoC has approved the appointment of Mr. Sanjay Gupta as a liquidator with 100% vote as below:

RESOLVED THAT the committee of Creditors is hereby approve the appointment of Mr. Sanjay Gupta having registration number IBBI/IPA-001/IP-P00117/2017-18/10252 AS Liquidator subject to submission of written consent to the Hon'ble NCLT.

RESOLVED THAT where an order for liquidation is passed by the Adjudicating Authority under section 33 of the Insolvency and Bankruptcy code, 2016, the committee of creditors, hereby fix that the Liquidator shall charge the following fees on percentage basis as follow-

1. 3% on distributed amount in first 6 months.

2. 2% on distributed amount in next 6 months.
3. 0.90% on distributed amount thereafter.

K. On 18.08.2022 in the 5th CoC Meeting, the members decided to unanimously opt for Liquidation. The relevant extract of the resolution is reproduced herein below for ready reference:-

*“**RESOLVED THAT**, where an order for liquidation is passed by the AA under section 33 of the Insolvency and Bankruptcy Code, 2016, then the committee of Creditors hereby recommends that the liquidator may first explore sale of the Corporate Debtor as a going concern under clause € of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the Corporate Debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33 of the Insolvency and Bankruptcy Code, 2016..”*

*“**RESOLVED FURTHER THAT** considering the nature of the business of the corporate debtor and its commercial considerations along with all its commercial assets including tangible and intangible, be sold as a going concern under provisions of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

2. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 5th CoC meeting that the CoC

has unanimously decided to liquidate the Corporate Debtor and requested to appoint Mr. Sanjay Gupta as the liquidator. This bench, therefore allows the above Interlocutory Application Number 1923 of 2022 and passed the following:

ORDER

1. The above I.A. No. 3078/2022 is Allowed, and the Corporate Debtor Spark Green Energy (Ahmednagar) Private Limited is ordered to be liquidated as Going Concern.
 - a. **Mr. Sanjay Gupta** (IP Registration No. IBBI/IPA-001/IP-P00117/2017-2018/10252 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.
 - c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
 - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a

direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- i. This liquidation order shall be deemed to be a 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.
- j. Registry is directed to communicate this order to the Liquidator.

With the above directions, this application i.e. I.A. No. 3078 of 2022 is hereby allowed and disposed of.

Sd/-
Satya Ranjan Prasad
MEMBER (TECHNICAL)

Sd/-
H.V. Subba Rao
MEMBER (JUDICIAL)