

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, NEW DELHI**

CA- 402(PB)/2019 in  
C.P. NO.IB-25(PB)/2018

**IN THE MATTER OF:**

ICICI Bank Limited

....Financial Creditor

vs.

Essar Power Jharkhand Ltd.

....Corporate Debtor

**AND IN THE MATTER OF:**

ICICI Bank Limited

..... Applicant

**SECTION: Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016**

**Order delivered on: 03.01.2020**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
Hon'ble President

**SH. V.K. SUBBURAJ**  
Hon'ble Member (Technical)

**PRESENTS:**

For the Applicant : Ms. Misha and Mr. Shantanu Chaturvedi,  
Advocates

For the RP : Mr. Puneet Singh Bindra, Ms. Simran Jeet  
and Mr. Sanam Preet Singh, Advocates

**ORDER**

**M.M.KUMAR, PRESIDENT**

1. This order shall dispose of the following CAs:



- i. C.A. No. 159(PB)/2019 has been filed by the Resolution Professional (for brevity 'RP') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a principal prayer to approve and accept the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by the Resolution Plan Applicant namely Lighting Solutions LLC in the Corporate Insolvency Resolution Process (for brevity 'CIRP') of the Corporate Debtor.
- ii. C.A. No. 402(PB)/2019 has been filed by the financial creditor of the corporate debtor namely ICICI Bank Limited having 99.34% voting share in the CoC praying for withdrawal of C.A. No. 159(PB)/2019 and order for liquidation of the corporate debtor.

2. Brief facts of the case necessary for disposal of these applications may first be noticed. ICICI Bank Limited filed C.P. No. IB – 25(PB)/2017 against Essar Power Jharkhand Limited under Section – 7 of the Code. After issuance of

notice to the Corporate Debtor we admitted the petition on 05.04.2018 and appointed Mr. Huzeifa Fakhri Sitabkhan as an IRP. As a consequence, the CIRP commenced and moratorium in terms of Section - 14 was imposed. In pursuance of Section - 15 of the Code the IRP made public announcement inviting claims and constituted a CoC as per the provisions of Section 21 of the Code. The IRP/RP have taken up various other processes as enjoined upon them under the Code.

3. The RP then invited expression of interest ("EoI") from prospective resolution applicants for submitting resolution plans in respect of the corporate debtor. The last date for submitting the resolution plans was extended time and again but no resolution plan was received from any prospective resolution applicant. In the 10<sup>th</sup> meeting of the CoC it was resolved to issue fresh advertisement for inviting resolution plans and a new process memorandum was issued in that regard.

4. Pursuant to the same only one resolution plan was received by the RP from the prospective resolution plan applicant namely Lighting Solutions LLC. The said resolution plan



was discussed in the various meetings of the CoC and it was reiterated time and again that a Performance Bank Guarantee is required to be given along with an executed letter of intent within 3 days of its receipt which was required to be done prior to filing an application for approval of the CoC approved resolution plan before the Adjudicating Authority-NCLT. The resolution plan was revised several times before being finally re-submitted on 29.12.2018 along with a covering letter. The final resolution plan was approved by 99.24% voting share of the CoC in its 15<sup>th</sup> meeting held on 30.12.2018. The minutes of the said meeting has been placed on record.

5. Subsequently the RP issued the letter of intent to the resolution plan applicant on 30.12.2018 ("LoI"). The terms of the LoI were unconditionally and irrevocably accepted by the resolution applicant on 31.12.2018. As per the terms of LoI, the last date for furnishing the performance bank guarantee was 21.01.2019 and it is submitted by the Applicant that till date no performance bank guarantee has been furnished. Further as the CIRP period in the present matter was expiring on 31.12.2018, the RP filed an



application being C.A. 159(PB)/2019 under Section 30(6) read with Section 31 of the Code before this Tribunal. The said CA was listed for hearing on 01.02.2019 and notice was issued. The matter then came up for hearing on 08.01.2019 and it was submitted by the ICICI bank that the resolution applicant has failed to fulfil the obligation under the resolution plan within the stipulated time and ICICI Bank having 99.34% voting share in the CoC no longer wanted to go ahead with the plan.

6. Further the applicant-ICICI Bank Limited has also placed on record a letter dated 03.07.2019 addressed to the RP of the corporate debtor where the resolution plan applicant namely Lighting Solutions LLC has expressed its inability to carry forward the resolution plan. The relevant portion of the same reads as under:

“Subsequently, when the NCLT passed the NCLT Order and rejected the EPOL proposal, we once again discussed with our bankers if they would be willing to provide us with the necessary financial assistance to enable us to proceed further with the LOI. However, our bankers informed us that they were not keen on providing us any financial assistance in view of ICICI’s earlier communication rejecting any



further time and also the uncertainty caused in the entire process due to EPOL's Proposal.

In view of the above, we regret our inability to continue with the Resolution Plan and we request you to kindly inform the Hon'ble Tribunal accordingly...."

7. It is in the aforesaid factual background that the ICICI Bank has filed CA No. 402(PB)/2019 seeking liquidation of the corporate debtor. Even otherwise for the want of time beyond statutory CIRP period there is no other option but to order for liquidation of the corporate debtor under Section 33 of the Code. The distribution of money would lead to better realization for all creditors.

8. Section 33 deals with 'Initiation of liquidation'. If Adjudicating Authority, 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, does not receive a 'Resolution Plan' under sub-section (6) of Section 30 or reject the 'Resolution Plan' under Section 31 for the non-compliance of the requirements specified therein, it is



empowered to pass order of liquidation under sub-section (1) of Section 33.

9. As per the provisions of Section-34(1) we appoint Mr. Huzefa Fakhri Sitabkhan, Insolvency Professional to act as Liquidator in the present case. He is directed to submit its written consent by filing an affidavit, in Form AA under the Code.

10. It is made clear that once order of liquidation is passed, the liquidator is required to follow the procedure laid down under the 'I&B Code', including Sections 35, 36, 37, 38, 39 and 40 etc. as also the procedure laid down under Section 230 of the Companies Act, 2013 as held by the Appellant Tribunal in **"Y. Shivram Prasad Vs. S. Dhanapal & Ors.— Company Appeal (AT) (Insolvency) No. 224 of 2018"**.

11. As a result CA No. 159(PB)/2019 filed under Section-30(6) is dismissed and we order liquidation of the corporate debtor, namely Essar Power Jharkhand Limited in the manner laid down in the Chapter III of Part II of the



Insolvency and Bankruptcy Code, 2016 along with following directions:

**a.** Mr. Huzefa Fakhri Sitabkhan, Resolution Professional holding registration no. IBBI/IPA-001/IP-P00031/2017-18/10115 (E-mail id [huzefa.sitabkhan@gmail.com](mailto:huzefa.sitabkhan@gmail.com) and Telephone No. 022-66100910/12) is appointed as Liquidator in terms of Section 34(1) of the Code;

**b.** Mr. Huzefa Fakhri Sitabkhan is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

**c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

**d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that





a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

**e.** The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

**f.** The liquidator shall also follow up the pending company applications and file its response for disposal of pending CAs during the process of liquidation.

**g.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

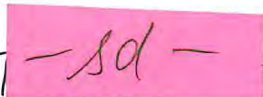
**h.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

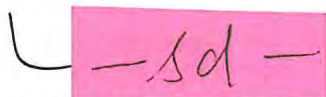


i. C.A. 402(PB)/2019 filed in IB 25(PB)/ 2017 is disposed of in the aforesaid terms.

j. C.A. 159(PB)/2019 filed by the RP is allowed to be withdrawn and the Resolution Plan Applicant is saddled with the cost of Rs. 50,000 which may be deposited in the accounts of the corporate debtor. C.A. 159(PB)/2019 is disposed of in above terms.

k. The Registrar NCT, Delhi is directed to update the master data concerning the corporate debtor by specifically mentioning the details of this order. It is necessary for the public in large to know the status of the corporate debtor. A copy may also be sent to the Secretary MCA to ensure compliance.

  
**(M.M.KUMAR)**  
**PRESIDENT**

  
**(V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

03.01.2020  
(VIDYA)