

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 30<sup>th</sup> AUGUST, 2024, 02:30 P.M.**

**IA(IBC)/10/GB/2021  
In CP(IB)/37/GB/2019**

**Present: 1. Hon'ble Member (Judicial), Shri Deep Chandra Joshi  
2. Hon'ble Member (Technical), Shri Balraj Joshi**

In the Matter of	Pradeep Kumar Goenka, RP In Bank of India Vs Agnipa Energo Pvt. Ltd)
Under Section	U/s 33 of IBC, 2016

**Appearances (via video conferencing/physically)**

For Petitioner (s) :

For Respondent (s) :

**ORDER**

Order pronounced through VC *vide* separate sheets.

Sd/-

**Balraj Joshi  
Member (Technical)**

Sd/-

**Deep Chandra Joshi  
Member (Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/10/GB/2021  
In CP (IB)/37/GB/2019**

*An Application under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for an order of  
Liquidation of the Corporate Debtor;*

*In the Matter of:*

**Bank of India**, having SME Branch Office at Killa Building, 1<sup>st</sup> Floor, Christian Basti, G.S. Road, P.O. Dispur, Guwahati- 781005, Assam.

**...Financial Creditor**

**-Versus-**

**Agnipa Energo Private Limited**, having registered office at 5<sup>th</sup> Floor, Shine Towers Sati Jaimati Road, Arya Chowk, P.O. Rehabari, Kamrup, Guwahati- 781008, Assam.

**...Corporate Debtor**

**-And-**

*In the Matter of:*

**Mr. Pradeep Goenka**, Resolution Professional of Agnipa Energo Private Limited, having office at AV Insolvency Professionals Pvt. Ltd., Bajrang Kunj, Room No. 412 and 413, 2B Grand Lane, 4<sup>th</sup> Floor Kolkata- 700012.

**... Applicant**

**Coram:**

Shri Deep Chandra Joshi : Member (Judicial)  
Shri Balraj Joshi : Member (Technical)

**Appearances (through video conferencing):**

For Petitioner / Applicant : Mr. P. Agarwal, Adv.  
For Corporate Debtor : Mr. R. Dubey, Adv.  
For Financial Creditor : Mr. S. Dutta, Adv.

**Order reserved on: 08.08.2024  
Order pronounced on: 30.08.2024**

Sd/-

Sd/-

## ORDER

1. IA (IBC)/10/GB/2021 has been filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Kuber Khanij Private Limited, praying the following:
  - a. *Issue necessary orders for liquidation of Agnipa Energo Pvt. Ltd. (U40101AS2008PTC008829), the Corporate Debtor herein;*
  - b. *Issue necessary orders to appoint the existing Resolution Professional/Applicant herein as the Liquidator in the instant matter;*
  - c. *Issue directions on the Liquidator in terms of Section 35(1) of the IBC, 2016 so that the Liquidator shall have the powers and duties listed out under Section 35(1) of the IBC, 2016;*
  - d. *Pass such other orders/directions as this Bench may deem fit and necessary in the facts and circumstances of the case.*
  
2. Brief facts as mentioned in the Application are that:
  - 2.1 The main petition being the C.P.(IB) No. 37/GB/2019 was filed by the Financial Creditor, namely **Bank of India**, hereinafter referred to as the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP in the matter of **Agnipa Energo Private Limited** (hereinafter referred as the Corporate Debtor), claiming dues owed to the said Financial Creditor by the Corporate Debtor.
  - 2.2 Thereafter, CIRP in the matter was initiated *vide* order dated **12.02.2020** wherein the Applicant herein *i.e.* Shri Pradeep Kumar Goenka was appointed as the Interim Resolution Professional. After verification and collation of claims, the Applicant herein constituted the Committee of Creditors (CoC), **wherein only one Financial Creditor is the sole member of the COC having 100% voting share.**
  - 2.3 The 1<sup>st</sup> meeting of the CoC was held, wherein the CoC unanimously resolved to appoint the Applicant herein as the Resolution Professional. However, the CIRP could not be proceeded with further due to Nationwide Lockdown announced from 25.03.2020 in the wake of Covid-19 pandemic.

Sd/-

Sd/-

- 2.4 As soon as the lockdown restrictions were relaxed, **Form G**, inviting expression of interest (EoI), was published in the newspapers till the last date for submission of the resolution plans, only two resolutions plans were received.
- 2.5 One of the Resolution Applicant *i.e.* Seema Holdings Pvt. Ltd. had submitted a cheque of Rs.40 lakhs towards EMD instead of a Draft/Fixed Deposit/Bank Guarantee as per the terms and conditions specified in the approved RFRP. The CoC was of the view that the resolution plan of Seema Holdings Pvt. Ltd. could not be accepted and advised the Applicant to inform the said Resolution Applicant that their resolution plan could only be considered if the EMD was submitted in Draft/Fixed Deposit/ Bank Guarantee. As such the Applicant herein, informed the same to the Resolution Applicant but no reply was received. Consequently, the resolution of Seema Holdings Pvt. Ltd. could not be considered.
- 2.6 The resolution plan of Rare Asset Reconstruction Ltd. was discussed in detail in the 5<sup>th</sup> CoC meeting held on 03.12.2020 and the said Resolution Applicant was requested to improve its plan size and that their term for assignment of personal/corporate guarantees given by the promoters/ others to the Resolution Applicant may not be accepted.
- 2.7 This Bench *vide* order dated 07.12.2020, had excluded a period of 160 days from the timeline of resolution process, that was sought for by the Applicant due to Covid-19 pandemic and consequent lockdown.
- 2.8 The only Resolution Applicant *i.e.*, Rare Asset Reconstruction Ltd. revised its plan to 196.64 lakhs which was discussed in the meeting held but the term for assignment of personal/corporate guarantees given by promoters/others to the Resolution Applicant was not revised. The resolution plan of Rare Asset Reconstruction Ltd. was put to vote in the 9<sup>th</sup> CoC meeting held, wherein the CoC with 100% voting share, rejected the resolution plan.
- 2.9 The 180 days of CIRP was completed after exclusion of 160 days from the CIRP period and the CoC with 100% voting share, had passed the resolution recommending liquidation of CD and appointment of the Resolution Professional *i.e.* the Applicant herein be appointed as the Liquidator in terms of Section 34(1)

Sd-

Sd-

of the Insolvency and Bankruptcy Code, 2016. The Written Consent and the Declaration of Eligibility of the proposed Liquidator has been annexed.

3. Upon hearing the liquidation application, the Tribunal then passed an order dated 10.02.2021 directing the RP to ensure another CoC meeting inviting the Promoter of the CD under CIRP, the said Resolution Applicant for negotiation in clear terms to find out any Viable Resolution Plan, if any and that for the CoC to discuss in details in the light of the recent amendment in IBC with regard to MSME Unit. The RP then in compliance of the order dated 10.02.2021 filed his report. Thereafter, again *vide* order dated 23.03.2021 the Bench 15 days' time granted to both the parties to settle the issue regarding the adjustment of EMD by the FC in case of non-approval of Resolution Plan submitted by the CD on submission of the said issue by the Ld. Counsel for CD.
4. The CD submitted its Final Resolution plan with Rs 40.00 lakhs considering all the requests of CoC on 08.07.2021. This plan considered a payment to Financial Creditors which was greater than the amount provided by RARE ARC Plan and also the liquidation value. Also all other issues were clarified such as source of finance etc.
5. The FC has submitted that the Plan received from the CD is not acceptable as it is not viable one and this led to the non-approval of the Final Resolution Plan by the CoC, who recommended liquidation based on its commercial wisdom. The CD, on the other hand submitted that the CoC is not considering its Resolution Plan as because they consider the CD as Wilful Defaulter. The CD was not a Wilful Defaulter and there was a stay from the Hon'ble High Court of Gauhati passed in W.P. (C) No. 7664/2019 dated 21.10.2019 on the notice of wilful default issued by the FC and subsequently the stay had been reportedly extended. It was further submitted by the FC/CoC that it was a conscious decision on the part of CoC to go for early liquidation of the CD and most importantly the High Court did not pass any order restraining further proceedings of the instant case before this Tribunal. The FC then submitted precedents like *K. Sashidhar vs. Indian Overseas Bank & Ors., Civil Appeal No. 10673 of 2018, Kalpraj Dharamshi & Anr vs. Kotak Investment Advisors Ltd., Civil Appeal No. 10673 of 2018 and Civil Appeals Nos. 2943-2944 of 2020* emphasising on the relevance of commercial wisdom of the CoC.

Sd—

Sd—

6. Subsequently, 15<sup>th</sup> meeting of the CoC was called and the representative of the Bank of India has opined that since they have initiated the process of declaring the CD / Directors of the CD as Willful Defaulter and that the matter was *sub judice* before the Hon'ble High Court at Guwahati, they felt that the promoters were not eligible to submit Resolution Plan as per section 29A (b) of the Code and requested the RP to relook into the provisions of section 29A (b) of the Code. In view of the above, the RP recited the provisions of Section 29A (b) before the meeting and opined RP that since the proceedings to declare the CD / promoters / directors of the CD as willful defaulters initiated by the Bank of India were yet to be concluded they did not fit in to the definition of Willful Defaulter as on date and therefore, were not ineligible under section 29A (b) of the Code to submit a Resolution Plan. Representative of the Bank of India also had pointed out that certain waivers and withdrawal of proceedings sought in the Resolution Plan needed to be removed which according to them should not be mentioned in the Resolution Plan as the same does not fall within the authority of NCLT to approve.
7. Submissions regarding no change in circumstances between February and July, 2021 and how the Bank was always aware of the pending proceedings pertaining to wilful defaulter and fraud and yet never treated the same as an issue which would in any manner impeded upon any resolution plan and like during the OTS settlement discussions, engaged with the promoters and when the settlement was almost done, the bank arbitrarily and without any cogent reason, citing pendency of default proceedings wriggled out of the CoC without allowing any vote on the promoter's proposal, were made. Furthermore, it was also submitted that this arbitrary and high-handed act of the sole lender would render, the entire process nugatory and the bank which would otherwise recover part of its dues in line with industry standards for settlement under the CIRP process will not stand to gain if the company is sent to liquidation, which remains the only option at that point in time. The reason for bank's arbitrary behavior was attributed to the pendency of the suit by the CD against the bank wherein the bank would have been liable to pay in excess of Rs. 12 Crore, as the liability of wrong insurance policy and loss suffered by the CD.
8. During the process of hearing this Tribunal observed that the FC was the sole Member of the CoC and the Petition was filed for liquidation of the CD. It was not clear on what

Sd-

Sd-

basis the Resolution had been passed by the CoC and the Application for liquidation was filed before this Bench rejecting the Resolution Plan for MSME Unit submitted by the CD when the amount provided in the Resolution Plan submitted was more than Twenty (20) times of the Liquidation Value of the CD. It was further reported that there were certain issues like a Suit filed by the CD, a Writ pending before the Hon'ble High Court, FIR filed with an Investigating Agency, report to RBI etc. It was also not clear whether the Resolution Plan submitted by the CD was not approved by the CoC on account of such issues when such issues were apparently not related to acceptance of the Resolution Plan and rescue of the Stressed Assets with its employees from the Liquidation. It was made clear that the objectives of the IBC are very clear and liquidation of a MSME Unit is the last resort. Hence, CoC was directed to clarify the aforementioned points. To which the CoC/the sole FC made a submission for it to be a commercial decision and wisdom of the CoC. The CoC also alleged that the RP had not complied the provisions of IBC when he placed the Resolution Plan submitted by the Suspended Management for approval and sought certain clarifications from him. The RP then made submissions clarifying his compliance with the Code.

9. Thereafter, Progress Reports were filed by the RP. In order to know the fate of the Revised Resolution Plan submitted by the Suspended Director, the matter was last listed on 11.01.2022 before this Tribunal. During the hearing, Ld. RP submitted that the Revised Plan had been rejected by CoC and Resolution passed for Liquidation stands.
10. The Liquidation application filed by the RP was then rejected and dismissed by this Tribunal for the reasons best explained and elaborated *vide* order dated 04.02.2022. The said order was then appealed before the Hon'ble NCLAT by the FC. Hon'ble NCLAT citing that the commercial wisdom of CoC is to be given prima facie importance, remitted it back to this Tribunal directing this Tribunal to take the proper course of action.
11. The matter was then listed again for the first time after being remitted from Hon'ble NCLAT on 02.08.2024 when it could not be heard due to paucity of time. On 08.08.2024 the matter was then heard by this Bench and Reserved for Order.
12. Heard Ld. Counsel for the parties and perused material available on record. The essence of the order passed by Hon'ble NCLAT in *Bank of India v. Pradeep Kumar Goenka and*

Sd.

Sd-

*Ors. Comp. App. (AT) (Ins) No. 342 of 2022 & I.A. No. 890, 891, 892 of 2022* dated 12.07.2024 is given hereunder:

- (i) *The decision in Amit Bharana and Ors vs. Gian Chand Narang [Company Appeal (AT) (Insolvency) No. 274 of 2020] is crystal clear and settle the principle of paramount supremacy of the commercial wisdom of the CoC.*
- (ii) *There is hardly any scope for judicial interference on the part of the Adjudicating Authority or the Appellate Tribunal except ensuring that the Resolution Plan meets the requirements of the Code and the related regulations.*
- (iii) *It is beyond doubt that the commercial wisdom of the CoC is required to be honoured in letter and spirit.*
- (iv) *There is no role for Adjudicating Authority to interfere on such unfounded reasoning as recorded in the Impugned Order.*

13. Therefore, as per the directions given by Hon'ble NCLAT and in light of a catena of judgments passed by the Hon'ble Supreme Court upholding the relevance of commercial wisdom of CoC and approval of the resolution for liquidation of the Corporate Debtor by 100% voting right, this Bench finds this application to be a fit case to order liquidation under Section 33(1) of the IBC, 2016.

14. **For the aforesaid reasons, IA (IBC)/10/GB/2021 is ALLOWED with the following directions:**

- i. The Corporate Debtor, Agnipa Energo Pvt. Ltd. (U40101AS2008PTC008829), is ordered to be liquidated with immediate effect under Section 33(1) of IBC, 2016.
- ii. Though the application suggests that the name of the RP to be appointed as Liquidator, but in view of the IBBI Circular No. Liq- 12011/214/2023-IBBI/840 dated 18.07.2023, when the CD goes into liquidation, the IRP/RP cannot be appointed as liquidator. Hence, the RP in the matter cannot be appointed as the liquidator .
- iii. Accordingly, from the panel of IBBI, Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266, having address at SUDHA and Associates, 18, MRD Road, Bamunimaidam, Guwahati- 781021, e-mail ID- [sudha.sarma@yahoo.com](mailto:sudha.sarma@yahoo.com), is appointed as the Liquidator of the Corporate Debtor

Sd-

Sd-

to carry out the liquidation process. This appointment is subject to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit her consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days. The Liquidator's fee shall be paid in accordance with relevant law, and in particular, as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- iv. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- v. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.
- vi. Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- vii. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
- viii. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.
- ix. On initiation of the Liquidation process but 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 a suit or other legal

Sd/-

Sd/-

proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

- x. In accordance with Section 33(7) of the Code, 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.
  - xi. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
  - xii. The application bearing **IA (IBC)/10/GB/2021** shall stand disposed of in accordance with the above directions.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
  16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
  17. File be consigned to records.

Sdr

**Balraj Joshi**  
**Member (Technical)**

Sdr

**Deep Chandra Joshi**  
**Member (Judicial)**

*Signed this on 30<sup>th</sup> Day of August, 2024*