NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA (IBC)/29/33(2)/GB/2023
In CP (IB) No.04/GB/2022

Coram:
Hon'ble Shri Deep Chandra Joshi, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.04.2023

In the matter of:

Amit Pareek, RP
In
(Anvi Metcorp Pvt. Ltd.
Versus
Matiz Metals Pvt. Ltd.)

Section: Under Section 33(2) of IBC, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NONE	-	-	Present in Video Conference

O R D E R

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through video conferencing vide separate sheet.

Sd/- **Sd/-**

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority

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(Anvi Metcorp Pvt. Ltd.
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Order Pronounced On 13.04.2023

ORDER
[Per: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. This IA has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 on behalf of the Resolution Professional, seeking the following reliefs:

   a. Pass an order for liquidation of the Corporate Debtor in terms of Section 33 of the Code.
   b. Appoint the Applicant/ Mr. Amit Pareek, Resolution Professional of the Corporate Debtor as the Liquidator of the Corporate Debtor,
   c. Approve the Liquidator fee to be paid in accordance with Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016 as approved by the by the Committee of Creditors in its sixth (6) COC meeting dated 02.02.2023

2. The Applicant submits that:

2.1 This Tribunal vide Order dated 30.09.2022 allowed the Application of the aforesaid Operational Creditor filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against CD-Matiz Metals Pvt. Ltd. and accordingly, appointed Mr. Amit Pareek as the Interim Resolution Professional-IRP**.**

2.2 As mandated under Section 15 of the Code and in terms of Regulation 6(1) of the CIRP Regulations, the Public Announcement of initiation of CIRP of Corporate Debtor, appointment of the IRP and invitation of claim(s) from creditor(s) were made on 07.10.2022 in prescribed format "FORM A" which was published in newspaper The Shillong Times and Rupang (English & Regional Language) having wide circulation in Meghalaya. The last date of submission of claim was fixed as 14.10.2022.

2.3 Pursuant to the aforesaid Public Announcement dated 06.10.2022, claim of only one (1) operational creditor i.e. Anvi Metcorp Private Limited was received of Rs 1,26, 96,154.00 and no claim from any of the claimant was received. Subsequently, after verification from the available records claim of Rs. 1, 13, 47,510.00 was admitted. Thus, as per the regulation 16 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Committee of Creditor was constituted on 21.10.2022 with Anvi Metcorp Pvt. Ltd., being the Operational Creditors of the Corporate Debtor, in absence of any financial creditor, as the member of Committee of Creditor. Subsequently, the IRP filed its Report dated 21.10.2022 under Regulation 17(1) of the CIRP Regulation *qua* constitution of COC vide e- filing diary no. 1806125000412022/7 dated 21.10.2022 before this Tribunal.

2.4 The First Meeting of COC was held on 27.10.2022 through virtual & physical mode wherein Anvi Metcorp Pvt Ltd., through its Authorised representative, Mr. Bhavesh Rathod, member of COC having voting share of 100.00% and Mr. Surendra Kumar Girdhailal Agarwal, suspended BOD of CD attended the meeting via video conferencing. IRP apprised the COC that only one claim from the operational creditor is received till 21.10.2022. Further in the meeting, various other agenda such as ratifying the fees of the IRP, appointment of IRP as Resolution Professional, appointment of Transaction Auditor and Registered Valuers, and to authorize RP to hold future meetings of COC at shorter notice of not less than 24 hours and to ratify the CIRP costs incurred by the IRP since commencement of CIRP till 27.10.2022 i.e., the 1st meeting of CoC, were discussed and subsequently, resolution in respect of the same were placed before the COC for voting. The COC approved the resolutions *qua* fixing the remuneration fees of the IRP, and to hold meetings of COC at shorter notice of not less than 24 hours and to ratify the CIRP costs incurred by the IRP since commencement of CIRP till 27.10.2022. However, appointment of IRP as the Resolution Professional u/s. 22(3) (a) of the Code was deferred for voting by CoC in the 1st COC meeting.

2.5 The second CoC meeting was then held on 13.11.2022 wherein the COC member attended the meeting through audio-visual mode. In the said meeting, IRP requested the suspended BOD to provide the brief details of the legal matter related to Excise dept. Shillong pending for adjudication, Mr. S.K. Agarwal suspended Board Member who was present in the meeting submitted that the matter is very old related to 2003-04 and earlier it was initiated by Commissioner of Excise Shillong in the year 2006. Further, IRP also apprised the meeting about the show-cause notice received from the Director of Commerce & Industry, Meghalaya dated 06.10.2022 for cancellation of lease agreement dated 20.05.2002, It was decided in the meeting that since there is neither any fixed assets and nor any possibility of revival of CD, hence the RP is requested to do the needful for cancellation of lease agreement & further in the meeting various agendas such as approving and ratifying the appointment of IRP as the resolution professional of the Corporate Debtor along with his remuneration as the RP and expenses and to approve and ratify the appointment and fee of the registered valuers for the Valuation of the Security and Financial Assets and finally to approve & ratify appointment and fee of the transaction auditor were discussed and subsequently, resolutions in respect of the same were placed before the COC for voting and was approved by the COC with 100% votes in favour.

2.6 Thereafter, the Applicant after taking over the role as the RP of the Corporate Debtor, vide letter dated 13.11.2022 appointed two (2) valuers duly registered with the IBBI in terms of Regulation 27 of the CIRP Regulations *i.e.* two (2) valuers Miss Khusbu Agarwal and Mr Vinay Kumar Singhal for valuation of Securities and Financial Assets (SFA); in order to determine the fair market & liquidation value of the Corporate Debtor in terms of Regulation 35 of the CIRP Regulations.

2.7 The RP, based on the respective valuation reports submitted by respective Registered valuers for respective class of assets., determined the average fair and liquidation value of the Corporate Debtor and submitted the same to the COC.

2.8 Further, to assist the RP in forming an opinion as to whether any avoidance transactions *i.e.* preferential (u/s 43), undervalued (u/s 45), or extortionate (u/s 50), within the relevant look back period, or fraudulent transaction(s) (u/s 66) if any has been committed by Corporate Debtor prior to the commencement of CIRP, the RP vide its letter dated 13.11.2022 appointed M/s Mukesh Chaudhary & Associates, Chartered Accountant as the Transaction Auditor.

2.9 As discussed in the 2nd COC meeting, RP has sent the intimation for initiation of CIRP of CD along with the Copy of NCLT Order dated 30.09.2022 to the Concerned Authority, through E-mails on various dates viz 26.12.2022, 28.12.2022,20.01.2023, & Registered Post dated 29.12.2022 having consignment No. ES0053534551N delivered on 02.01.2023.

2.10 In the third COC meeting called on 14.12.2022 via Virtual as well as Physical mode, accordingly notice was issued to CoC member and suspended BOD, but before the conduct of the meeting one E-Mail received from CoC stating his inability to attend the meeting due to medical emergency, accordingly the meeting was adjourned & later cancelled due to want of quorum.

2.11 The fourth CoC meeting was then held on 28.12.2022 wherein the CoC members attended the meeting through video conferencing mode. In the meeting various agenda were discussed such as eligibility criteria for prospective resolution applicants for inviting expression of interest (EOI), and the publication of 'FORM G' (Invitation for Expression of interest) in leading newspaper and to approve and the expenses incurred by RP till 30th November 2022 were put to vote and approved with 100.00% voting in its favour.

2.12 The RP published 'FORM G' inviting expression of interest for submitting Resolution Plans for Corporate Debtor on 31.12.2022 in The Shillong Times (English) and Rupang (Regional) having vide circulation in Meghalaya as well as on the website of IBBI and the original date for submission of EOI was fixed on 15.01.2023.

2.13 The CoC held its Fifth CoC meeting dated 20.01.2023 wherein the RP apprised the members that the last date of submission of EoI was fixed as 15th January 2023, and in pursuant to such few emails and calls received from the Prospective Resolution Applicants expressing their interest but since there are no assets in the CD except unquoted equity shares no EOI received till cut-off date. Hence, considering the better realization and maximization of value of CD, the last date for submission of EOI was extended to 01.02.2023. Subsequently, other agenda were discussed in the meeting and all the agenda were put to vote and approved with 100.00% voting in its favour. Further to approve the resolution plan and evaluation Matrix to be issued to the Prospective Resolution Applicant was deferred for voting in the meeting.

2.14 Pursuant to the approval of CoC in the 5th meeting of COC held on 20.01.2023, the RP published the addendum of FORM G mentioning the extended date for submission of inviting EOI i.e., 01-02-2023, in Shillong Times (English) having vide circulation in Meghalaya on 22.01.2023.

2.15 The CoC held its Sixth meeting on 02.02.2023 wherein the Applicant informed the members the pursuant to re-publication of FORM-G & Extension of timeline for submission of EOI, no EOI was received from the PRAs till the last date of submission of EOI, i.e., 01.02.2023. Further, 180th day of the CIRP is going to expire on 28.03.2023 and in absence of any assets of CD except unquoted Equity Shares, the possibility of Resolution Plan from PRAs cannot be expected, and as a consequence, there is no other option other than to Liquidate and dissolve the Corporate Debtor. Thus, the CoC members at Agenda Item No. B-6 briefly discussed the issue and accordingly, necessary resolutions *qua* liquidation of the Corporate Debtor was put for voting of the CoC by voting. Resolutions *qua* liquidation are reproduced below for easy reference:

> *"**RESOLVED THAT** Pursuant to section 33(2) of Insolvency and Bankruptcy Code, 2016 the Committee of Creditors, **hereby recommends for the liquidation and or dissolution of Corporate Debtor.**"*
>
> *"**RESOLVED FURTHER THAT** the Resolution Professional is authorized to file a necessary application before the Adjudicating Authority conveying the decision of the Committee of Creditors to liquidate and or dissolution of Corporate Debtor"*
>
> *"**RESOLVED FURTHER THAT** consent be and is hereby accorded for payment of all expenses to be incurred by the Resolution Professional as CIRP cost during the period from the date of this CoC Meeting till the date of order of Hon'ble Adjudicating Authority for liquidation and or dissolution of the Corporate Debtor, based on the amount and/or rates already approved by the Committee of Creditors in its meeting(s) for payment of Remuneration to Resolution Professional, Conveyance exp., Audit Fee/Charges, & Application Filing*

Charges with Hon'ble Adjudicating Authority or any other expense required to be incurred by the Resolution Professional to safeguard the assets of the Corporate Debtor, etc."

2.16 Further the Applicant, at Agenda Item No. B-7, informed the CoC that Regulation 39B of the CIRP Regulations framed there under, the COC may make the best estimate of the liquidation cost for the liquidation of the Corporate Debtor. Consequently, the CoC in consultation with the applicant herein made the best estimate of the Liquidation cost as provided below:

Particulars	**Total**
Liquidator Fee	Separate Resolution
Miscellaneous Expenses @ Rs. 5,000/Month	60,000/-
Publications Expenses	2,50,000/-
Application Filing Charges	25,000/-
Total Estimated Liquidation Cost	**3,35,0001-**

Accordingly, necessary resolution, *qua* Liquidation cost was put for voting in the meeting, the same is reproduced below for easy reference:

***"RESOLVED THAT** pursuant to Regulation 398 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the approval of the members be and is hereby accorded to fix the tentative and estimated liquidation cost as per Regulation 2(ea) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to be Rs. 3,35,000/-."*

***"RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary and incidental thereto."*

2.17 Furthermore, in the said meeting, the COC members, in terms of Regulation 39C of the CIRP Regulations explored the possibility of selling the Corporate Debtor as a going-concern and accordingly, passed the necessary resolutions as mentioned below for voting.

***"RESOLVED THAT** approval of COC be and is hereby accorded that the Liquidator may first explore the sale of the Corporate Debtor as a going concern under clause (e) or clause* *(f) of Regulation 32 of IBBI (Liquidation Process) Regulation, 2016. The Liquidator be and is hereby further authorized to sell assets of the corporate debtor on a standalone basis/ in a slump sale/sale of assets collectively/assets in parcels under Regulation 32 of IBBI (Liquidation Process) Regulation, 2016, as he may deem fit and appropriate."*

2.18 Thereafter, at Agenda Item No. B-9 discussed and deliberated on the agenda qua approve continuation of existing Resolution Professional as the liquidator and fixation of liquidator fee(s) respectively. The CoC member briefly discussed the agenda. Accordingly, as the Applicant herein gave his consent to act as a liquidator, the COC put up necessary resolutions, as mentioned herein below, *qua* his continuation as Liquidator and fixation of his fees:

> ***"RESOLVED THAT*** *the consent of the members of Committee of Creditors ("CoC") is hereby accorded for continuation of Resolution Professional, Mr. Amit Pareek as Liquidator and approves the Professional Fee of the Liquidator at Rs. 60,000/- per month on the fee payable as per Regulation 4 (2) of IBBI (Liquidation Regulations), 2016 plus GST & Out of Pocket Expenses and inclusion thereof in the Liquidation Cost*"

2.19 Thereafter the transaction Audit Report received on 16.03.2023, the RP called the 7th CoC Meeting for necessary further course of action, the deliberate discussion was made in CoC.

2.20 Thus, the present Application has been filed under Section 33(2) read with Section 60(5) has been filed before this Tribunal seeking order for liquidation of the Corporate Debtor and appointment of the Applicant as the Liquidator of the Corporate Debtor for the following reasons:

a) The 180th day of the CIRP of the Corporate Debtor ended on 28.03.2023;

b) No further extension has been recommended by the COC;

c) No Resolution Plan has been received despite publication of 'FORM G' two times *i.e.* 31.12.2022; and 22.01.2023;

d) CoC has passed necessary resolution to put the Corporate Debtor into liquidation.

3. The RP further submits that he made his best effort to revive the company however since there are no tangible assets of the CD hence the same did not yield any positive results.

ORDER

4. We heard the Learned RP and perused the materials available on record. It is found that no Resolution Plan has been received till date. **After perusing the minutes of the COC meeting held on 02.02.2023, it is also found that the CoC has voted for Liquidation of the CD with 100%. The CoC recommended that the liquidator may first explore selling the assets of the CD as one block on going concern basis. Since a viable resolution plan was not received during the CIRP period, the prayer made in the IA for Liquidation needs to be accepted.**

5. Section 33(2) of the Code empowers the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percentage of the voting share, to liquidate the Corporate Debtor. In this case the Resolution for Liquidation of the CD has been passed by the CoC **with 100% which is above the required percentage of voting for passing an order for Liquidation.**

6. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.

7. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation

brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

8. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. In this case during the hearing, the member of the CoC and the Applicant have submitted that they did not get any viable Resolution Plan at all despite publications of 'FORM G' two times *i.e.* 31.12.2022; and 22.01.2023. Hence, they have recommended for Liquidation.

9. **This Bench, therefore, hereby orders as follows:**

9.1 Prayers as sought for in IA (IBC) No. 29/GB/2023 filed by Mr. Amit Pareek, the RP of the Corporate Debtor- Matiz Metals Pvt. Ltd, is allowed and the **Corporate Debtor is ordered to be liquidated** in terms of section 33(2) of the Code read with sub-section (1) thereof.

9.2 Mr. Amit Pareek [Reg No. IBBI/IPA-002/IP-N00413/2017-18/11205], having address at 4th Floor, K.C Choudhary Road, Ram Prasad Complex, Chatribari, Guwahati-781001, Kamrup (M), Assam, whose name has been proposed by CoC, **is hereby appointed as Liquidator** as provided under Section 34(1) of the Code subject to his possessing a valid Authorization for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy

Board of India (Insolvency Professionals) Regulation, 2019. The Liquidator's fee is fixed at Rs. 60,000.00 plus GST per month during the liquidation period as decided by the CoC in its 6th meeting.

9.3 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.**

9.4 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.

9.5 Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.

9.6 All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with Section 34(2) of the Code. All these powers are vested henceforth with the Liquidator.

9.7 The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

9.8 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 suit or other legal 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.

9.9 In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge of 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.

9.10 In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this order with the Registrar of Companies, NER 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.

9.11 In terms of Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and **regular progress reports** according to Regulation 15.

10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

12. **Thus, the present application i.e. IA (IBC) No. 29/GB/2023 filed under Section 33(2) of the IBC stands admitted and disposed of with the above Observations and Directions.**

Sd/-	**Sd/-**
(**Prasanta Kumar Mohanty)** **Member (Technical)** **& Adjudicating Authority**	**(Deep Chandra Joshi)** **Member (Judicial)** **& Adjudicating Authority**