

SL No. 1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 22.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

**IA (IBC)/513/2021 in
CP (IB) No.323/7/HDB/2020
U/s 7 of Insolvency & Bankruptcy Code, 2016**

IN THE MATTER OF:

Aryan Structural Solutions Pvt Ltd

...Financial Creditor

Vs

Kyati Metals & Trading Pvt Ltd

...Corporate Debtor

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

Orders pronounced in IA(IBC)/513/2021 in CP(IB) No.323/7/HDB/2020, vide separate sheets.


MEMBER (T)


MEMBER (J)

Pavani/ Srinivasa Rao/

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

IA (IBC)/513/2021 in CP (IB) No. 323/7/HDB/2020

Under Section 33(1)(A) & 33(2) of the Insolvency and Bankruptcy Code, 2016

Filed by,

CA S. Prabhu

Resolution professional of

M/s. Kyati Metals and Trading Pvt Limited

M/s. SPP & Co, Chartered Accountants,

No. 27/9, Nivedh Vikas, Pankaja Mill Road,

Puliyakulam, Coimbatore – 641045.

...Applicant/Resolution Professional

Date of Order: 22.11.2021

Coram:

Dr. N V Ramakrishna Badarinath, Hon'ble Member Judicial

Shri. Veera Brahma Rao Arekapudi, Hon'ble Member Technical

Appearance

For Applicant: Shri. Mayur Mundra, Counsel

Heard on: 28.10.2021 & 09.11.2021

PER: BENCH

1. This instant application is filed by the Resolution Professional of M/s. Kyati Metals and Trading Pvt Limited (hereinafter referred to as "Corporate



Debtor”) under Section 33(1)(A) & 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for initiation of liquidation of Corporate Debtor due to non-receipt of resolution plan.

2. The Insolvency Petition was filed by the Financial Creditor i.e., M/s. Aryan Structural Solutions Pvt Limited under Section 7 of the Code vide CP (IB) No. 323/7/HDB/2020 and this Tribunal vide order dated 18.01.2021 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed CA S. Prabhu as an Interim Resolution professional (IRP) for the Corporate Debtor.

3. The Applicant made public announcement as prescribed in Form-A as per the Regulations for calling for submissions of claims and published the same in newspapers. After receiving the claims the applicant constituted Committee of Creditors (CoC) with One Financial Creditor and 5 Operational Creditors.

4. In the 2nd CoC meeting, the members resolved to issue Form-G for invitation of resolution plan and the applicant placed before the members the Evaluation Matrix, RFRP and Minimum Eligibility Criteria for proposed resolution applicants (PRAs).

5. In the 3rd CoC meeting, the members noted that the Corporate Debtor was not having any viable business in hand and had no fixed assets. The members resolved to proceed with the liquidation process of the Corporate Debtor since there is no scope for resolution plan. Hence, the applicant in accordance with Section 33(1)(a) and 33 (2) file and application for seeking an



order of liquidation of the Corporate Debtor and for appointing the Resolution Professional as Liquidator.

6. We have heard the Applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that,

“The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors”.

7. From the above, it would appear that despite of all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the Code. Therefore, we have no option than to pass an order of liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

8. The Application is accordingly allowed with the following directions:



- A.** The Corporate Person i.e., M/s. Kyati Metals and Trading Pvt Limited shall be liquidated in the manner laid down in Chapter-III of the Code.
- B.** CA S. Prabhu having IP registration no. IBBI/IPA-001/IP-P01275/2018-2019/11948, is appointed as Liquidator.
- C.** He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- D.** The Moratorium declared under Section 14 of the Code shall cease to operate here from.
- E.** Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- F.** All powers of Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the liquidator.
- G.** The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and Sections 52 to 54 of the Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- H.** Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.



- I. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34(8) of the Code.
- J. This order shall be deemed to be a notice of discharge to 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.
- K. Copy of the Order shall be furnished to IBBI, Regional Director, Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator, Hyderabad, Registered Office of the Corporate Debtor and the Liquidator.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


Dr.N.V.RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)