

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

IA 669 of 2019 in  
C.P.(I.B) No. 206/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.09.2020**

Name of the Company:

Arvind Gaudana RP for  
Regent Granito (India) Ltd

Section : Section 33(1) of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**  
(through video conferencing)

Advocate, Mr. Ishan Shah appeared on behalf of Applicant.

The instant application is filed under Section 33(1) of IBC with the following prayer:

- (i) *To allow this application and order liquidation of the Corporate Debtor under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 and pass consequential directions, in the interest of justice.*
- (ii) *To issue appropriate order for appointment of liquidator.*



On perusal of the record, it is found that there are two Financial Creditors namely, State Bank of India and Hero fin corp Ltd as reflected from page no. 72 of the Resolution so passed in 6<sup>th</sup> meeting of the CoC. During the period of CIRP and in

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the stipulated time as notified by RP by way of paper publication for filing of EOI. no Resolution Plan has been received by the CoC. However, on the expiry of the last date of filing the Resolution Plan, one Resolution Applicant, namely, Exxaro Tiles Pvt Ltd has filed the Resolution Plan beyond the stipulated time. Since, the same was not in compliance of IB Code, as such, CoC rejected twice.

It is a matter of record that the CIRP period of 270 days was expired on 11.10.2019 and the instant application was filed on 09.10.2019. However, due to filing of appeal before the Hon'ble NCLAT against the impugned order dated 19.12.2019 and due to lockdown, the instant application could not be disposed of.

It is also found that, after lockdown, Exxaro Tiles Pvt Ltd has withdrawn the appeal from the Hon'ble NCLAT vide order dated 28.08.2020. In view of that, the order so passed on 19.12.2019 by this Adjudicating Authority has become final. Since the CoC has already agreed in favour of liquidation of the Company by 100% voting share, this Bench is not going to interfere with the commercial wisdom of the CoC.

It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in **K. Sasidhar's** case and subsequently also reiterated by Hon'ble Supreme Court of India in its judgement passed in Civil Appeal No.8766-67 of 2019- *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs Satish Kumar Gupta & Ors* observed as follows:

*"The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.*

*The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC."*

Under the facts and circumstances as narrated above, we pass the following orders:



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- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- f) The 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.
- g) All the 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 Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.



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- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance

On perusal of the record it is found that the Suspended Management was served with the notice. As such, no objection received with regard to the application so filed under Section 33 of IBC.

In view of the above, the instant IA 669 of 2019 in CP(IB) 206 of 2018 so filed by the RP under Section 33(1), 33(2) and 34(1) of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., M/s. Regent Granito (India) Ltd filed under Section 9 of the IB Code. The RP namely, Mr. Arvind Gaudana, CS, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.

Accordingly, the instant IA is allowed and stands disposed of with the above observations.

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**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 18th day of September, 2020



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**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

Certified to be True Copy of the Original

*[Signature]*  
Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad  
23/09/20