

SL No.4

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference) Virtual Hearing

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)

CORAM: SHRI SATYA RANJAN PRASAD- HON’BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 24.04.2023 AT 4:00 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/136/2022 in CP (IB) No.198/7/HDB/2019
NAME OF THE COMPANY	Saikrishnodaya Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Sarwottam Ispat Ltd
NAME OF THE RESPONDENT(S)	Saikrishnodaya Industries Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders in IA 136/2022 pronounced, recorded vide separate sheets. In the result, this application is allowed and liquidation process against the Corporate Debtor, is hereby ordered.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Syamala

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

**I.A. No. 136/2022 in
C.P. (IB) No. 198/7/HDB/2019**
[u/s. 33(1),33(2) & 34(1) of the IB Code, 2016]

In the matter of
M/s. Sarwottam Ispat Ltd. vs.M/s. Sai Krishnodaya Industries Pvt. Ltd.

In the matter of:

Mr. Arun Kumar Malani,
Applicant of Sai Krishnodaya Industries Pvt. Ltd.
6-1-68/3/33, Dream Valley,
Shivarampally, Pillar No. 306, RR District,
Hyderabad – 500052

....Applicant /
Resolution Professional

Date of Order: 24.04.2023

Coram:

Hon'ble Dr.Venkata Ramakrishna Badarinath Nandula, Member (Judicial)
Hon'ble Sri Satya Ranjan Prasad, Member (Technical)

Counsel present:

For the Applicant : Mr. Arun Kumar Malani, RP

[**PER : BENCH**]

ORDER

1. This Application is filed by the Applicant under Section 33(1), 33(2) and 34(1) of IBC prying the Adjudicating Authority to pass appropriate orders for liquidation of the Corporate Debtor and to appoint Mr. Arun Kumar Malani, Resolution Professional as the Liquidator of the Corporate Debtor.

2. The brief facts of the case are as follows:
 - i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor (CD), vide order dated 17.10.2019 of this Tribunal by appointing Mr. Arun Kumar Malani as Interim Resolution Professional (IRP) and later in the 1st COC Meeting held on 05.12.2019, IRP was confirmed as RP. He commenced the CIRP w.e.f. 06.11.2019.

 - ii. After assuming charge as IRP, the IRP called for claims by way of public announcement fixing the last date as 27.11.2019 for submission of claims. On receipt of claim from only one Financial Creditor, he constituted the Committee of Creditors (CoC) and the First CoC meeting was held on 05.12.2019. The appointment of the IRP was confirmed as Resolution Professional (RP).

- iii. The CoC has taken a decision in its 2nd meeting held on 20.01.2020 to commence the CIRP against the CD and to call for Expression of Interest (EoI) by way of publication in Form-G. Since, no EoI was received till the 3rd meeting of CoC held on 27.02.2020, the CoC decided to appoint the Transactional Auditor.
3. A letter was issued by the suspended Directors of the CD to CoC, mentioning a proposal to settle the dues if sufficient time is given. Based on which, extension of time was sought for 90 days for completing the CIRP.
4. The CoC in its 8th meeting dated 02.11.2020, requested to consider the COVID lockdown period from 15th July to 31 July 2020, as the suspended Directors of CD were suffering from COVID and consider further progress of Liquidation as per the provisions of law, by continuing the Resolution Professional as the Liquidator.
5. The Adjudicating Authority has excluded the period of 129 days from maximum period of 330 days of CIRP as per the guidelines of the Hon'ble NCLAT by exercising its powers under Rule 11 of the NCLAT Rules, 2016 read with its judgment in *Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency No.185 of 2018)*.

6. According to Section 33(1) & 33(2) of the Code,

33(1) Where the 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 or the fast track Corporate Insolvency Resolution Process under Section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein, it shall –

(i) pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this chapter;

(ii) issue a public announcement stating that the Corporate Debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the Corporate Debtor is registered”.

(2) Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of Resolution Plan, intimates the Adjudicating Authority of the decision of the CoC to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i) (ii) and (iii) of clause (b) of sub-section (1).

7. As per Section 34(1) of the Code, the Adjudicating Authority can pass an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP under Chapter II shall act as the liquidator for the purpose of

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liquidation unless replaced by the Adjudicating Authority under Section (4).

8. Hence, this application, seeking for an order requiring the Corporate Debtor to be liquidated.
9. We have heard the Learned RP and perused the record. A perusal of the contents of the application would show that the Resolution Professional has made his best efforts to keep the Corporate Debtor as a going concern, but since no Resolution Plan, which was viable, was received. Accordingly, the applicant filed the present application seeking to liquidate the Corporate Debtor.
10. From the above, it would appear that despite all possible steps as required under the Code, taken during the CIRP, the CoC did not receive any viable proposal for revival of the Company.
11. In view of the facts and circumstances as recorded by RP in IA No. 136 of 2022 filed in CP(IB) No. 198/7/HDB/2019 as there is no Resolution Plan received under Sub-Section (6) of Section 30 of the I&B Code, 2016, and this Adjudicating Authority deems it proper to allow the Application bearing IA No.136/2022. Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass the Order as follows:—

- i. This Adjudicating Authority hereby order for Liquidation of M/s. Sai Krishnodaya Industries Pvt. Ltd., which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- ii. This Adjudicating Authority hereby appoint Mr. Kondapuram Anil Kumar, having Registration No.IBBI/IPA-001/IP-P-01513/2018-19/12275, email: ca.anilkumar16@gmail.com, Mobile No.9494249791. The Liquidator shall submit his consent in Form-2 within three days from the date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
- iii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
- iv. Subject to Section 52 of the I&B Code, 2016, 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 Adjudicating Authority.
- v. We make it clear that para (iv) 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.

- vi. 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.
- vii. 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 in 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 I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- ix. The Liquidator shall keep in view of the provisions of Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as a going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

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- x. The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with the decision taken by the COC under Regulation 39D of IBBI (Insolvency Resolution Process Corporate Persons) Rules, 2016 r/w Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016.
 - xi. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator for information and compliance.
 - xii. Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.
12. Accordingly, this application **IA No. 136/2022 is allowed and stands disposed of.**

(SATYA RANJAN PRASAD)
MEMBER (TECHNICAL)

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

VL/Syamala