NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

109. IA/4705/2023 IN C.P. (IB)/655(MB)2020

**IN THE MATTER OF**

PHOENIX INDUSTRIES LIMITED ... Petitioner

Vs

PR CASTALLOYS PRIVATE LIMITED ... Respondent

U/s 9 of the Insolvency and Bankruptcy Code, 2016

**Order Delivered on 20.10.2023**

CORAM:

MS. REETA KOHLI
MEMBER (J)

SH. SANJIV DUTT
MEMBER (T)

**Appearance:**

For the Applicant: Adv. Aditya Mishra

For the Respondent:

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## ORDER

**I.A. 4705/2023**

The submission made by the Ld. Counsel stating therein that despite the fact that in the 5th CoC meeting, the resolution for liquidation was tabled but the same was never voted for and no response has been received by the RP despite various reminders sent with respect to the same. In view of the submissions, the present I.A. is **allowed and disposed of**.

The Applicant is permitted to be recused from the present case. In view of the peculiar facts and circumstances of the case, the Corporate Debtor is ordered to be liquidated.

Sd/-
SANJIV DUTT
Member (Technical)

Sd/-
REETA KOHLI
Member (Judicial)

Shubham

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**
**MUMBAI BENCH, COURT-V**

**IA/4705/2023**
**IN**
**C.P. (IB)/655(MB)2020**

Under Section 60(5) and Section 33(3) of the Insolvency & Bankruptcy Code, 2016 read with applicable rules and regulations made thereon filed on behalf of the Applicant

**Mr. Sachin Shrinivas Bhattad**
Resolution Professional in the matter of PR Castalloys Private Limited

**.... Applicant**

*IN THE MATTER OF:*

Pheonix Industries Limited

**....... Operational Creditor**

***Versus***

PR Castalloys Private Limited

**........ Corporate Debtor**

**Order on 20.10.2023**

**Coram:**

Hon'ble Ms. Reeta Kohli, Member (Judicial)
Hon'ble Sh. Sanjiv Dutt, Member (Technical)

**For the Applicant:** Adv. Aditya Mishra

**ORDER**

1. The above application I.A. No. 4705/2023 is filed by Resolution Professional, Mr. Sachin Shrinivas Bhattad (hereinafter referred to as the "Applicant") seeking liquidation of PR Castalloys Private Limited (hereinafter referred to as the "Corporate Debtor") Under Section 60(5) and Section 33(3) of the Insolvency & Bankruptcy Code, 2016 read with

applicable rules and regulations made thereon filed on behalf of the Applicant (hereinafter called as "the Code"), praying for following reliefs:

a. *That this Hon'ble Tribunal be pleased to allow this present Interlocutory Application.*
b. *That this Hon'ble Tribunal be pleased to consider and allow the liquidation of the Corporate Debtor in this application under Section 33(3) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 12(2) of the Code and Rule 11 of the National Company Law Tribunal Rules, 2016.*
c. *That to recuse the applicant from being appointed as the Liquidator.*
d. *That to direct the CoC Members to clear the CIRP Expenses incurred in the process.*
e. *That this Hon'ble Tribunal may be pleased to pass such further orders in favor of the Applicant as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

**2. The brief facts of the application are as follows:**

A. The present Company Petition is filed by M/s. Pheonix Industries Limited before the Hon'ble National Company Law Tribunal, Mumbai Bench for the initiation of the CIRP of the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.
B. The Company Petition was allowed and initiation of CIRP was ordered against the Corporate Debtor vide order dated 01.02.2023. In the aforesaid order, Mr. Hemant Shripad Shetye, Insolvency Professional was appointed as the Interim Resolution Professional.
C. Thereafter, the public announcement was made in Form A intimating the commencement of CIRP of the Corporate Debtor and inviting claims if any. Based on the claims received in the CIRP of the

Corporate Debtor, the Interim Resolution Professional constituted the Committee of Creditors.

D. Further, the IRP published the Invitation for Expression of Interest in Form G on the 60th day of CIRP i.e. on 02.04.2023 in Free Press Journal (English Edition) and Navshakti (Marathi Edition) in Aurangabad.

E. Thereafter, in the 3rd CoC meeting held on 15.04.2023, the IRP intimated that he had received interest from 7-8 parties, expressing their willingness to participate in the EOI process of the Corporate Debtor but no documents were received from these parties for participation in the EOI process.

In this meeting, the CoC members proposed that the Applicant be appointed as the Resolution Professional with 100% voting share. Accordingly, the Hon'ble NCLT vide its order dated 07.06.2023 approved the appointment of Mr. Sachin Shrinivas Bhattad, having registration no: IBBI/IPA-001/IP-P00680/2017-2018/11159 as the Resolution Professional.

F. After the appointment of the Applicant as the Resolution Professional, the Applicant called the 4th CoC Meeting to discuss the next course of action in the CIRP of the Corporate Debtor. Since no Expression of Interest was received after the publication of Form G. the Applicant apprised the members of the two options for proceeding further in the CIRP - re-issuance of Form G or liquidation of the CD in accordance with section 33(2) of the Code. The Applicant however opined that considering the value of the assets as well as the cost and time involved in the process of re- issuance of Form G, the CoC may look at the option of liquidation of the CD. The Applicant requested the CoC to deliberate upon the same and decide the course of action.

G. The CoC advised the Applicant to defer the agenda up to 5th July 2023 as the members wanted the same to be discussed within their team internally. The Applicant suggested that owing to shortage of time, instead of a separate CoC meeting, the agenda be taken for approval through circular resolution on email. After due deliberation in the

CoC meeting, it was decided to pass the following resolutions through e-mail (circular resolution):

**Resolution No: 1(a)**

*"RESOLVED THAT approval of the Committee of Creditors be and is hereby accorded for filing of an application before Hon'ble NCLT for initiation of liquidation of the Corporate Debtor-PR Castalloys Private Limited."*

*"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit such application before the Hon'ble NCLT and to do all such acts, deeds, and things as may be required or considered necessary or incidental thereto."*

**Resolution No: 1(b)**

*"RESOLVED THAT an expense of Rs. 55,000/- (Rupees Fifty-Five Thousand Only) plus applicable taxes and out-of-pocket expenses/clerkage be and is hereby approved as the legal cost for drafting and filing of liquidation application and appearance before the Hon'ble NCLT until disposal of the application, and the same shall be treated as CIRP cost."*

**Resolution No: 1(c)**

*"RESOLVED THAT approval of the Committee of Creditors of PR Castalloys Private Limited be and is hereby accorded that for the purpose of Regulation 39B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the contribution towards the liquidation cost shall be made by the secured financial creditors."*

**Resolution No: 1(d)**

*"RESOLVED THAT approval of the Committee of Creditors of PR Castalloys Private Limited be and is hereby accorded that for the purpose of Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall sell the*

*assets of the Corporate Debtor in consultation with the Stakeholders Consultation Committee, once the liquidation order is passed."*

**Resolution No: 1(e)**

*"RESOLVED THAT appointment of Mr. Bijendra Kumar Jha, having registration number IBBI/IPA-001/IP-P00712/2017-2018/11227, as the liquidator of the Corporate Debtor at a fee of Rs. 1,00,000/- (Rupees One Lakh Only) per month plus applicable taxes and out of pocket expenses on actual basis be and is hereby approved in line with Regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

However, no response was received from the CoC members despite multiple reminders.

H. The case of the applicant is that the Applicant sent multiple emails on 11th July 2023, 14th July 2023 and 26th July 2023 to remind the Committee of Creditors about the approaching deadline of the Corporate Insolvency Resolution Process, which was 31 July 2023 (the 180th day). The Applicant requested updates regarding the next steps in the CIRP, but no response was received.

I. That due to the lack of response from the CoC members following the Fourth Meeting of the CoC, the Applicant convened the Fifth Meeting of the CoC on Monday, 31 July 2023 via video conference. During this meeting, the resolutions from the Fourth CoC meeting were reconsidered, and the resolutions were once again shared with the CoC members through emails dated 7th August 2023 and 21st August 2023. Subsequent reminders were also sent for prompt consideration of these resolutions but the same has not yet been addressed by the CoC members.

J. That as per Section 12 of the Code, the CIRP in the matter has to be completed within 180 days of the CIRP commencement date. The legislative extract of the same is reproduced as under;

*Subject to subsection (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

No resolution seeking the extension of 90 days has been approved by the members of the CoC in line with Section 12(2) of the Code. Therefore, the Corporate Debtor is deemed to be in liquidation.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed that the Applicant has unanimously decided to liquidate the Corporate Debtor and requested to appoint liquidator from the list of IBBI panel available with this bench. This bench, therefore allows the above Interlocutory Application Number 4705/2023 and passes the following:

**ORDER**

4. The above I.A. No. 4705/2023 is allowed, and the Corporate Debtor PR Castalloys Private Limited is ordered to be liquidated.

   a. **Sanjay Ramdas Mahajan** (IP Registration No. "IBBI/IPA- 001/IP-P-02122/2021-2022/13523" having email id sanjayrmahajan@hotmail.com, having mobile no. 9820134530 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
   b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.
   c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. The Liquidator appointed under section 34(1) of the Code will have all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be.
e. That the Corporate Debtor is to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a further direction to the Liquidator to send this order to the ROC under which this Corporate Debtor has been registered.
f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth shall vest with the Liquidator.
g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
h. That on having liquidation process initiated, 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 granted to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
i. 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.
j. Registry is directed to communicate this order to the Liquidator.

With the above directions, this application i.e. **I.A. No. 4705 of 2023 is hereby allowed and disposed of.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
REETA KOHLI
MEMBER (JUDICIAL)

Shubham