

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
06-12-2024 AT 10:30 AM**

CP(IB) No. 203/7/HDB/2022

AND

IA(IBC) (Liq.) 19/2024 in CP(IB) No. 203/7/HDB/2022

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

AND

Gati Infrastructure Bhasmeyer Power Private Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA(IBC) (Liq.) 19/2024

Orders pronounced. In the result, **this application is allowed** and liquidation against the Corporate Debtor ordered as per the terms mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

**IA (LIQ) NO. 19/2024
IN
CP(IB) NO. 203/7/HDB/2022**

Application filed u/s 33 (1) (a) of IBC, 2016

**IN THE MATTER OF
STATE BANK OF INDIA
VS**

GATI INFRASTRUCTURE BHASMEY POWER PRIVATE LIMITED

FILED BY

**Mr. ANSHUL GUPTA
RESOLUTION PROFESSIONAL
GATI INFRASTRUCTURE BHASMEY POWER PRIVATE LIMITED
410, 4TH FLOOR, BLUE ROSE
INDUSTRIAL ESTATE, NEAR METRO MALL,
BORIVALI EAST, MUMBAI CITY, MAHARASHTRA, 400066.
EMAIL: contactanshulgupta@gmail.com, gatiinfra.ibc@gmail.com.**

...Applicant/Liquidator

Date of order: 06.12.2024

Coram

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr. Milan Negi, Advocate

PER: BENCH

ORDER

1. This is an application filed by the Resolution Professional of Gati Infrastructure Bhasmey Power Private Limited under Section 33(2) of IBC,2016, seeking liquidation of the Corporate Debtor.

2. AVERMENTS IN THE APPLICATION IN BRIEF: -

BRIEF OVERVIEW OF THE CIRP PROCESS

(A) ADMISSION OF THE PETITION AND APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL / RESOLUTION PROFESSIONAL

This Tribunal vide order dated 24.04.2023, admitted the petition filed by State bank of India under section 7 of Insolvency & Bankruptcy Code, 2016 (Code) and appointed the Applicant herein as Interim Resolution Professional, who was later confirmed as Resolution Professional.

(B) CONSTITUION OF COMMITTEE OF CREDITORS (CoC)

- Pursuant to his taking over charge as Interim Resolution Professional, the Applicant herein complied with Section 13, Section 15 and other applicable sections of the Insolvency and Bankruptcy Code, 2016 read with Regulation 6 of Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations 2016, had carried out a public announcement on 30.04.2023 intimating the commencement of Corporate Insolvency Resolution Process against **GATI INFRASTRUCTURE BHASMEY POWER PRIVATE LIMITED** and Invited claims from the creditors.

- On receipt of the said claims, the IRP collated and verified the same by the applicant and accordingly, the CoC was constituted by the applicant with 2 financial creditors namely State Bank of India and PTC India Financial services limited (PFS). Later as per the Tribunal order in I.A.No.1477 of 2023 dated 06.02.2024 filed by IFCI Limited, the CoC was reconstituted, as under:

Financial Creditor	Admitted Claim	Voting Share (%)
State Bank of India	184,28,30,613.00	29.86%
PTC India Financial Service Limited	2,98,82,96,920.00	48.26%
IFCI limited	1,35,03,19,478.00	21.88%

(C) CONVENING OF 1ST COC MEETING AND THE DECISIONS TAKEN IN THE MEETING

- In the 1st meeting held on 29.05.2023, the appointment of the applicant herein as the resolution professional was approved, which was later confirmed by this vide order dated 02.11.2023.

(D) APPOINTMENT OF REGISTERED VALUERS

- The decision to appoint two IBBI registered valuers namely GTech Valuers Pvt Ltd and Pensar Valuation Pvt. Ltd. to determine the fair

value and liquidation value of each class of assets of the corporate debtor in accordance with Regulation 35 of IBBI Regulations, 2016, was taken in the 2nd CoC meeting held on 19.06.2023.

- Further, the applicant also appointed M/s Kava & Associates as the transaction auditor, for reporting of the avoidance transactions as may be applicable, whereby the transaction audit reports was received by the applicant on 25.11.2023, however no transactions have been reported by the transaction auditor to be falling under the category of avoidance transaction (PUFE) (being outside the lookback period) as per the relevant provisions of the code. The said transaction audit report was placed before the CoC by the Applicant in its 10th meeting held on 20.02.2024.

(E) ISSUANCE OF 1ST FORM-G (INVITATION FOR EXPRESSION OF INTEREST

- The 1st Form-G (Expression of Interest/EOI) was published by the applicant on 23.06.2023 with the approval of the CoC members, thereby inviting the prospective resolution applicants ('PRAs') to submit their EOIs on or before the last date of submission i.e. 08.07.2023, the time period which was subsequently extended till 23.07.2023 and the 21 PRAs were found eligible.

1.	NHPC Limited
2.	Adani Green Energy Limited
3.	Statkraft IH Holding As
4.	Nakshatra Corporate Advisors Limited
5.	IA Hydro Energy Pvt. Ltd
6.	Godawari Power And Ispat Limited
7.	Hydrolight Venture Private Limited

8.	RKG Fund I
9.	Madhav Dhir
10.	JFC Finance (India)Limited
11.	Amunra Infratech & Agritech Pvt Limited
12.	Kundan Care Products Limited
13.	SPSS Infrastructure Private Limited
14.	Shanti GD Ispat and Power Private Limited
15.	Amrutha Constructions Pvt Ltd.
16.	Attractive Capital Services Pvt Ltd.
17.	Brindavan Hydro Power Pvt Ltd.
18.	Sarda Energy & Minerals Limited
19.	Subhlaxmi Investment Advisory Pvt Ltd
20.	Jindal Power Limited
21.	Hira Infra-Tek Limited

- The PRAs namely Statkraft IH Holding As, M/s Adani Green Energy Limited and Shanti GD Ispat and Power Limited and Jindal Power, sought extension of time for submission of their resolution plans, which was allowed by the CoC on multiple occasions and the last date of submission of resolution plan was finally extended till 21.10.2023. Out of eligible PRA's, the applicant received only 4 resolution plans from the following PRAs till the last date of submission i.e., 21.10.2023:
 - a. Statkraft IH Holdings AS
 - b. JFC Finance (India) Limited
 - c. Shanti GD Ispat and power private limited
 - d. Attractive Capital Services Pvt. Ltd.
- In the 7th COC Meeting held on 23.11.2023, the resolution plans submitted by four PRAs were discussed and deliberated by the CoC members and after considering the feasibility and viability of the

resolution plans, the PRAs were asked to submit their revised resolution plans with improved financial proposal, to ensure the maximization of the value of the assets of the corporate debtor. When no revised resolution plans were received, the Applicant herein sent email on 04.12.2023 asking the PRAs to submit their revised resolution plans within 2 days i.e. by 06.12.2023.

(F) ISSUES WITH REGARD TO EPFO:

While the CoC was considering of the resolution plans, EPFO Department filed its claim on 11.10.2023 for Rs. 59,33,17,666 which was apprised to the COC and the PRAs. It is stated that the Applicant, in his capacity as the resolution professional, has taken legal steps to challenge the claim of EPFO before appropriate forum/ court of law and undertakes to bring on record such documents/ pleadings/ submissions as may be necessary, if so, directed by this Tribunal.

(G) ISSUES WITH REGARD TO SCOD EXTENSION/ COOPERATION OF SIKKIM GOVERNMENT:

- It is stated that the scheduled commercial operation date ('SCOD') stood expired on April 2018 vis-à-vis the contract awarded to the Corporate Debtor by the Sikkim Government. Though extension of the same has been sought by the applicant/RP and the CoC, the same is not granted as yet.
- Further, it is stated that I.A. 698 of 2024, has been filed by the Applicant before this Tribunal seeking cooperation of the Sikkim Government in the CIR process and sought extension of the SCOD time period till

December 2028, wherein this Hon'ble Tribunal has proceeded ex-parte against the Sikkim Government vide order dated 26.06.2024,. The record reveals that the same is dismissed by this Tribunal on 05.11.2024.

(H) DECISIONS TAKEN IN THE SUBSEQUENT COC MEETINGS

10 TH COC meeting	20.02.2024	The applicant apprised the CoC that M/s Shanti G.D. Ispat & Power Pvt. Ltd (PRA) expressed its inability to participate in the process and withdrew their resolution plan. Further, the COC considering the plan submitted by Statkraft IH Holding as a conditional resolution plan, resolved not to put the same for voting.
11 th COC meeting	01.03.2024	The COC convened for deliberating on the remaining resolution plans of the PRAs namely JFC Finance (India) Limited and Attractive Capital Services Pvt. Ltd. However, at the instance of one of CoC members i.e., IFCI (new inducted COC member, in terms of the order dated 06.02.2024), informed that they could not trace the relevant documents including resolution plans of the PRA, valuation summary and other documents and accordingly, the deliberations on the resolution plans were deferred.
12 th COC	05.03.2024	The COC deliberated the resolution plans of both the aforesaid PRAs, whereby the CoC had made certain observations with regard to the terms of the resolution plan including the sources of funds, implementation terms and accordingly, and the PRAs were given 3 days' time i.e., by 08.03.2024, as a last opportunity to submit the clarification/ reply to the

		observations made by the CoC, as the PRAs failed to provide the clarifications so sought by the CoC.
13 th COC	14.03.2024	The COC deliberated on the revised plans from two PRAs and was of the opinion that the plans so received were not compliant as the same were not feasible and viable and accordingly, it was decided not to put the same for voting before the CoC

(I) INTERLOCUTORY APPLICATIONS FILED BY THE RESOLUTION PROFESSIONAL FOR EXCLUSION & EXTENSION OF CIRP PERIOD AND LIQUIDATION OF THE CORPORATE DEBOR:

- In view of absence of any viable plan and expiry of CIRP period (330 days) i.e. on 20.03.2024, the COC with 100% voting resolved to liquidate the corporate debtor and instructed the applicant to move an application for the same.
- **IA No. 699/2024**: The Applicant filed the said IA seeking exclusion of the CIRP period by 225 days i.e. from 26.07.2023 to 06.03.2024. The Tribunal observed that the said period cannot be excluded as there was no stay on CIRP and directed the applicant to file an extension application within a period of 3 days with the approval of the CoC, and accordingly this IA was disposed of as withdrawn by the Tribunal on 23.04.2024.
- **IA (IBC) (Liquidation) 6/2024**: The Tribunal was of the view that in view of the directions given in IA No. 699/2024 on 23.04.2024, the liquidation application being IA No. 6/2024 was withdrawn by the applicant and was accordingly disposed of by this Hon'ble Tribunal vide order dated 23.04.2024.

- Pursuant to the above directions, the Applicant convened 14th CoC meeting on 24.03.2024, wherein the CoC with 100% votes approved the filing of an application for an extension of 90 days beyond 330 days i.e. as in the present case the CIRP period had expired on 20.03.2024.
- Accordingly, IA No. 986/2024 was filed by the applicant for the extension of 138 days w.e.f. 09.05.2024 which allowed by this Tribunal vide order dated 09.05.2024 and as such the CIRP time-period (468 days) expired on 24.09.2024.

(J) ISSUANCE OF 2ND/ FRESH FORM G DATED 11.05.2024:

- The Applicant published fresh Form G i.e. expression of interests on 11.05.2024, thereby inviting the PRAs to file their EOIs on or before the last date of submission as 26.05.2024.
- In response to the same, the applicant received 10 EOIs from the PRAs and accordingly, the final list of PRAs was published by the applicant on 01.07.2024, which is as follows:
 1. Kundan Care Products Limited
 2. Bommidala Enterprises pvt ltd
 3. Bhumireddy Gari Mohan Reddy
 4. Bhilangana Hydro Power Limited
 5. Orissa Metaliks Private Limited
 6. MS Agarwal Foundries Private Limited
 7. Resurgent India Limited
 8. RKG Fund
 9. Shanti G.D. Ispat and Power Private Limited
 10. Assam Power generation corporation Limited

(K) DECISIONS TAKEN IN THE COC MEETINGS PURSUANT TO ISSUANCE OF FRESH FORM “G”

15 th COC meeting	11.06.2024	The COC members approved the evaluation matrix along with the request for resolution plan (RFRP). The last date of submission of resolution plan was 10.08.2024 however at the request of PRAs the last date of submission was further extended till 25.08.2024.
16 th COC meeting	14.08.2024	The Applicant apprised the CoC that despite the extension of timelines and visits by some of the PRAs to the project site, no resolution plans were received from any of the PRA till 25.08.2024.
17 th COC Meeting	05.09.2024	The Applicant apprised the COC that no resolution plan has been received from the PRAs till 25.08.2024 and the extended CIRP period (468 days) was also expiring on 24.09.2024, the COC with 70.14% resolved to liquidate the Corporate Debtor and to appoint the Applicant herein as Liquidator.

(L) CIRP timelines in the present case:

The timeline of the CIRP in the present case is as under:

Date	Days	Particulars
24.04.2023	0	The CIRP in the instant case was initiated.
21.10.2023	180	Expiry of 180 days as per Section 12(1) of IBC.
19.01.2024	270	After applying the 90 days extension beyond 180 days period, granted by this Hon’ble Tribunal vide order dated 19.09.2023 passed in I.A. No. 4923 of 2023

20.03.2024	330	After applying the 60 days extension beyond 270 days granted by this Hon'ble Tribunal vide order dated 30.01.2024, passed in I.A. No. 185 of 2023
24.09.2024	468	After applying extension of 138 days beyond 330 days and exclusion of 50 days granted by this Hon'ble Tribunal vide order dated 09.05.2024 passed in I.A. No. 986 of 2024.

3. Thus submitting, the present application is filed by the Resolution Professional seeking an order requiring the Corporate Debtor (**GATI INFRASTRUCTURE BHASMEY POWER PRIVATE LIMITED**) to be liquidated as per Section 33 (2) of the Insolvency & Bankruptcy Code 2016. The said Section is extracted as below:-

Section 33(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 committee of creditors [approved by not less than sixty-six per cent. of the voting share] [Inserted by Act No. 26 of 2018, dated 17.8.2018.] 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).

[Explanation. [Inserted by Act No. 26 of 2019, dated 5.8.2019.] - For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

- (4) We have heard Shri Milan Negi, Ld. Counsel for the Resolution Professional and perused the records.
- (5) According to the Applicant, the CoC in its 17th CoC meeting dated 05.09.2024 with 70.14% voting, resolved to seek order of liquidation as no resolution plan is received by the Applicant.

- (6) We have gone through the minutes of the 17th meeting of the COC held on 05.09.2024 filed along with memo dated 07.10.2024, wherein the following resolutions were passed:-

RESOLVED THAT pursuant to Section 33(2) of Insolvency & Bankruptcy Code, 2016, the Committee of Creditors, hereby recommends for the liquidation of Corporate Debtor.

RESOLVED FURTHER THAT the Resolution Professional is authorised to file a necessary application before the Adjudicating Authority conveying the decision of the Committee of Creditors to liquidate the Corporate Debtor.

RESOLVED THAT the Hon'ble National Company Law Tribunal be and is hereby requested to appoint Mr. Anshul Gupta, Resolution Professional as Liquidator of M/s Gati Infrastructure Bhasmey Power Private Limited.

- (7) Therefore, taking into consideration the provisions of law, particularly Section 33 (2) of IBC, 2016, as well as the documents on record, this Adjudicating Authority is of the view that since there is no scope for resolution of the Corporate Debtor through the CIRP, the only option left, under the circumstances being liquidation process. Further the Insolvency and Bankruptcy Board of India ("IBBI") vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023, by exercising its powers conferred under Section 34(4)(b) of the Code has recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI. Though the COC has resolved to appoint Mr. Anshul Gupta, as Liquidator, in the light of the said circular, we hereby appoint Ms. M.S. Mano Ranjani, IBBI Regn No. IBBI/IPA-001/IP-P00736/2017-18/11235 is hereby appointed as Liquidator.
- (8) We allow this Application, directing the liquidation of the Corporate Debtor as under:-

ORDER

- (a) The Corporate Debtor **I.E. GATI INFRASTRUCTURE BHASMEY POWER PRIVATE LIMITED**, is put under liquidation process in the manner laid down in Chapter-III of the Code with effect from the date of order.
- (b) Ms. M.S. Mano Ranjani, IBBI Regn No. IBBI/IPA-001/IP-P00736/2017-18/11235, email id. manoranjani@metlaws.com mobile No. 9848559322 is hereby appointed as Liquidator. She is directed to file her consent in Form AA within 2 days of receipt of the copy of this order.
- (c) She shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.
- (d) The Moratorium declared under Section 14 of the code shall cease to have its effect.
- (e) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Person. 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 the 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 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (h) The 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) The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.
- (l) The Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

SD/_

(CHARAN SINGH)
MEMBER (TECHNICAL)

SD/-

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

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