

GUWAHATI BENCH
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ORDER SHEET OF THE HEARING ON 06th DECEMBER, 2023, 10:30 A.M.

IA (IBC)/100/GB/2023
CP (IB)/23/GB/2019

Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad

Name of the Company	Amit Pareek, RP (Punjab National Bank VS Shree Sai Smelters India Ltd.)
Under Section	U/s 33 (2) of IBC, 2016

For Petitioner (s) : Mr. Amit Pareek, RP

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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ORDER SHEET OF THE HEARING ON 06th DECEMBER, 2023, 10:30 A.M.

IA (IBC)/106/GB/2023
CP (IB)/23/GB/2019

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Rajiv Kumar Singhal & Ors Vs Punjab National Bank, 2. Amit Pareek, RP
Under Section	U/s 60(5) of IBC, 2016

For Petitioner (s) : Mr. Suraj Sharma, Adv.

For Respondent (s) : Mr. Amit Pareek, RP

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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IA (IBC)/102/33(2)/GB/2023

IA (IBC)/107/60(5)/GB/2023

In CP (IB)/22/GB/2019

IA (IBC)/102/33(2)/GB/2023

In the Matter of:

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Mr Amit Pareek, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **... Applicant**

In the Matter of:

Punjab National Bank, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Financial Creditor**

-Versus-

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Shree Sai Rolling Mills India Limited, having registered office at Rongsokana Village 15 Mile Byrnihat MI 793101 and Administrative Office at N.B.S. Complex Opp. Rajib Bhawan ABC. G.S. Road Guwahati 781005 Assam; **...Corporate Debtor**

IA (IBC)/107 /60(5)/GB/2023

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

1. **Mr Rajiv Kumar Singhal**, Lead Member of the Consortium, having address at Panchavati Apartment, FA Road. Kumarpara, Guwahati-781009, Assam;
2. **Mr Riben Sayoo**, having address at 22 Mile, Village Narang, Nongpoh, Ri Bhoi, Meghalaya;
3. **Mr Lokesh Pareek**, having address at Pareek Sadan, Opp. Fatasil Glass Factory Guwahati-781009, Assam;
4. **Mr Ashok Kumar Agarwal**, having address at Prabhat Apartment, Block-B. Flat 203 Beltola Chariali, Megha Plaza, Guwahati-781029, Assam;
5. **Mr. Kishan Kumar Agarwala** having address at Sawariya Palace, House No.-ISA Beltola Chariali, Megha Plaza, Guwahati-781029, Assam.
6. **Mr Rajendra Gupta**, having address at House No. 6, Janapriya Path College Road, Guwahati0781028, Assam.

... Applicants

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In CP (IB)/24/GB/2019

Versus

1. **Punjab National Bank**, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Respondent No. 1**
2. **Mr Amit Pareek**, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **...Respondent No 2**

IA(IBC)/100/33(2)/GB/2023
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IA(IBC)/100/33(2)/GB/2023

In the Matter of:

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Mr Amit Pareek, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **... Applicant**

In the Matter of:

Punjab National Bank, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Financial Creditor**

-Versus-

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Shree Sai Smelters India Ltd, having registered office at Rongsokana Village 15 Mile Byrnihat MI 793101 and Administrative Office at N.B.S. Complex Opp. Rajib Bhawan A.B.C, G.S. Road Guwahati 781005 Assam; **... Corporate Debtor**

IA (IBC)/106 /60(5)/GB/2023

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

1. **Mr Rajiv Kumar Singhal**, Lead Member of the Consortium, having address at Panchavati Apartment, FA Road. Kumarpara, Guwahati-781009, Assam;
2. **Mr Riben Sayoo**, having address at 22 Mile, Village Narang, Nongpoh, Ri Bhoi, Meghalaya;
3. **Mr Lokesh Pareek**, having address at Pareek Sadan, Opp. Fatasil Glass Factory Guwahati-781009, Assam;
4. **Mr Ashok Kumar Agarwal**, having address at Prabhat Apartment, Block-B. Flat 203 Beltola Chariali, Megha Plaza, Guwahati-781029, Assam;
5. **Mr. Kishan Kumar Agarwala** having address at Sawariya Palace, House No.-ISA Beltola Chariali, Megha Plaza, Guwahati-781029, Assam.
6. **Mr Rajendra Gupta**, having address at House No. 6, Janapriya Path College Road, Guwahati0781028, Assam.

... Applicants

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Versus

1. **Punjab National Bank**, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Respondent No. 1**
2. **Mr Amit Pareek**, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **...Respondent No 2**

IA (IBC)/101/33(2)/GB/2023

In CP (IB)/24/GB/2019

In the Matter of:

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Mr Amit Pareek, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **... Applicant**

In the Matter of:

Punjab National Bank, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Financial Creditor**

-Versus-

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IA (IBC)/101/33(2)/GB/2023
In CP (IB)/24/GB/2019

Shree Sai Prakash Alloys Private Limited, having registered office at Rongsokana Village
15 Mile Byrnihat MI 793101 and Administrative Office at N.B.S. Complex Opp. Rajib
Bhawan Abc. G.S. Road Guwahati 781005 Assam; **... Corporate Debtor**

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

IA (IBC)/100/33(2)/GB/2023; IA (IBC)/101/33(2)/GB/2023;

IA (IBC)/102 /33(2)/GB/2023

For Petitioner : Mr. Amit Pareek, RP

IA (IBC)/106 /60(5)/GB/2023; IA (IBC)/107/60(5)/GB/2023;

For Petitioners : Mr. Suraj Sharma, Adv.

For Respondents : Mr. Subrata Dutta, Adv. Mr. Amit Pareek, RP

Order reserved on: 01.12.2023

Order pronounced on: 06.12.2023

COMMON ORDER

1. **IA (IBC) 102/33(2)/GB/2023** has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Shree Sai Rolling Mills India Limited, for an order of Liquidation of the Corporate Debtor.

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In CP (IB)/24/GB/2019

2. **IA (IBC)/107/60(5)/GB/2023** has been filed by Mr. Rajeev Kumar Singhal (Lead Member of the Consortium) and others under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of the NCLT Rules, 2016 with the prayer to direct the Respondents to call and conduct a CoC meeting and consider the Resolution Plan of the Applicants.
3. **IA (IBC) 100/33(2)/GB/2023** has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Shree Sai Smelters India Limited, for an order of Liquidation of the Corporate Debtor.
4. **IA (IBC)/106/60(5)/GB/2023** has been filed by Mr. Rajeev Kumar Singhal (Lead Member of the Consortium) and others under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of the NCLT Rules, 2016 with the prayer to direct the Respondents to call and conduct a CoC meeting and consider the Resolution Plan of the Applicants.
5. **IA (IBC) 101/33(2)/GB/2023** has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Shree Sai Prakash Alloys Private Limited, for an order of Liquidation of the Corporate Debtor.
6. Since the issue of controversy involved in all the above IAs is common, all the above IAs are hereby disposed of through this common order.
7. The main crux of the issue involved in the above IAs are as follows:
 - 7.1 The Corporate Insolvency Resolution Process of all the three Sister Companies/Corporate Debtors- Shree Sai Rolling Mills India Limited; Shree Sai Smelters India Limited and Shree Sai Prakash Alloys Private Limited were

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initiated by an order of this Tribunal dated 23.08.20219. Thereafter, the CD preferred appeals before the Hon'ble NCLAT against the order of NCLT dated 23.08.2029 which was allowed by the NCLAT *vide* its order dated 18.06.2020. Aggrieved by the order of the Hon'ble NCLAT, the Financial Creditor in all the three cases approached the Hon'ble Supreme Court challenging the order of Hon'ble NCLAT dated 18.06.2020 and the Hon'ble Supreme Court on 14.07.2022, allowed the appeals in favour of the FC and the matters were remanded back to NCLAT for fresh Adjudication of the Appeals.

- 7.2 On 02.09.2022, the Hon'ble NCLAT dismissed the 3 appeals filed by the CDs bearing No. 1003/2019, 1004/2019 and 1005/2019 challenging the admission order passed by this Tribunal dated 23.08.2019 and remanded the matter back to NCLT for fresh hearing.
- 7.3 This tribunal on 30.09.2023 after hearing the matter afresh, admitted all the 3 Company Petitions and the Corporate Insolvency Resolution Process of all the three Sister Companies/Corporate Debtors- Shree Sai Rolling Mills India Limited; Shree Sai Smelters India Limited and Shree Sai Prakash Alloys Private Limited were initiated in Company Petition No. 22/GB/2019; Company Petition No. 23/GB/2019 and Company Petition No. 23/GB/2019 respectively.
- 7.4 Mr Amit Pareek was appointed as Interim Resolution Professional in all the three cases and he had constituted a Committee of Creditors and the Committee of the Creditors in the Second CoC meeting held on 07.11.2022 with 100 % voting confirmed Mr. Amit Pareek as Resolution Professional (RP) in all the three cases.
- 7.5 The IRP made Public Announcement on 07.10.2022 in prescribed format "FORM A" which was published in The Shillong Times and Rupang (English &

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Regional Language) having wide circulation in Meghalaya. The last date of submission of claim was fixed as 14.10.2022. The Resolution Professional has received different claim forms on different dates from claimants and accordingly RP submitted the revised list of creditors to NCLT Guwahati Bench. Subsequently, the RP appointed six Valuers on 11.11.2022 to determine the fair market & liquidation value of the Corporate Debtors.

- 7.6 The RP in the 3rd CoC meeting put forth the agenda for publication of 'FORM G' inviting expression of interest ("EOI") and the same was approved in the meeting for submitting Resolution Plans for Corporate Debtor on 15.12.2022 in The Shillong Times (English) and Rupang (Regional) having wide circulation in Meghalaya and in The Times of India on 17.12.2022 and the original date for submission of EOI was fixed on 30.12.2022. The RP informed the COC members that he has received few emails and calls expressing their interest and the process document was shared to them but no EOI was received, further pursuant to the approval of COC in 4th meeting of COC held on 10.01.2023, the RP re-published FORM G in the aforesaid Newspaper vide First Extension on 13.01.2023 but no EOI was received by the Resolution Professional by the last date fixed i.e., 25.01.2023. Thereafter, EOI was published again on 16.02.2023 but again no EOI was received by the last date i.e. 24.02.2023. However, RP was receiving the enquiries related to the submission of EOL, hence considering the better realization and maximization of the value of CD, one more extension for submission of EOI was considered as the liquidation of CD may adversely affect the interest of its stakeholders. Therefore, the last date for submission of EOI was extended to 12.04.2023.

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- 7.7 The 9th CoC meeting was held on 24.05.2023 wherein, RP informed the COC that he has received only one Resolution Plan from the Prospective Resolution Applicant in sealed envelope. The same was placed and opened before the COC in this Meeting. However, even after several meetings, discussion and negotiation between the CoC and the Prospective Resolution Applicant with regards to the resolution plan, the resolution plan was not approved.
- 7.8 The CoC in its 12th meeting dated 05.08.2023, rejected the resolution plan of the PRA and the resolution for liquidation of the Corporate Debtor was approved with 100% votes. The CoC recommended for sale of the Corporate Debtor as a going concern as per the provisions of law.
8. We have heard the submissions made by the Ld. Counsel for the Applicants along with the Ld. Counsel for the Respondents and have meticulously gone through the documents produced on record. Before going into the arguments/contentions made by the ld. Counsels for the RP, FC and the PRA, it is important to mention here that the out of the three Corporate Debtors, the PRA has only contested the liquidation of two of the Corporate Debtors namely, Shree Sai Rolling Mills Limited and Shree Sai Smelters India Limited.
9. The ld. Counsel for the PRA (Applicants in IA (IBC)/107/60(5)/GB/2023 and IA (IBC)/106/60(5)/GB/2023) submits that a Resolution Plan was submitted by the PRA on 22.05.2023 and the same was placed before the CoC for consideration, discussion, negotiation and necessary approval in the 9th and 10th CoC meetings. He further submits that in the 11th CoC meeting dated 19.06.2023, the CoC requested the PRA to improve the plan amount and reduce the duration of deferred payment and after deliberate

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discussion and negotiation the PRA increased the payment to Financial Creditor. The PRA also agreed to reduce the duration for the deferred payment from 24 months to 18 months. Thereafter, the CoC resolved to forward the plan submitted by the Applicants to the Higher Authority of the CoC for necessary approval.

The Ld. Counsel for the PRA states that the value of resolution plan is more than the liquidation value of the CD. He further submits that after waiting for more than one month, the PRA were informed that resolution plan was rejected by the CoC in its 12th CoC meeting held on 05.08.2023. Thereafter, the PRA requested the Resolution Professional and Financial Creditor to conduct a CoC meeting and offer to improve the Resolution Plan which will be beneficial to the CD being a MSME Unit and all the stakeholders, however, the same was refused by the Resolution Professional and Financial Creditor.

10. On the other hand, the Ld. Counsel for the Resolution Professional and Financial Creditor submits that the resolution plan was rejected by the CoC in its 12th meeting based on the commercial wisdom as the liquidation value was found to be more than the offered amount and further the condition put forth regarding the timeline of 730 days (18 months + 6 months moratorium) for payment of the Resolution amount was also not acceptable. He further submits that since the PRA are now fully aware of the liquidation value, they have resorted to filing application against only two Corporate Debtors out of the three- Sai Smelters India Limited and Shree Sai Rolling Mills India Ltd., while excluding Sai Prakash Alloys Pvt. Ltd. The three Companies must be sold together to maintain business viability and maximize liquidation value and as such the resolution plan cannot be reconsidered.

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11. In order to appreciate the contentions made, it is felt necessary to reproduce the relevant extracts from the 12th CoC meetings.

- Item B.5 from the minutes of the 12th CoC meeting has been reproduced as follows:

“...

ITEM B5- TO CONSIDER, DISCUSS, NEGOTIATE, FINALIZE AND APPROVAL OF THE RESOLUTION PLAN

RP informed the CoC that in the last COC meeting the Resolution Plan was considered, negotiated and discussed by the CoC members but was subject to the approval and or rejection by the Higher Authority of the CoC, since the decision is pending with the Higher Authority for a long hence considering the CIRP time line for its completion, this Agenda was again placed before the COC in this meeting for finalization & approval of the Resolution Plan.

“Resolved that the Resolution Plan received from Mr. Rajiv Kumar Singhal & consortium has been considered and the same has been approved by the COC members (Financial Creditors) having 100% voting right.”

“Further Resolved that the Resolution Professional is hereby authorized to sign, submit, file and do all the necessary acts as required for filing and submission of resolution plan along with the final report to the Adjudicating Authority for its approval.”

VOTING RESULT:

<i>Sl No</i>	<i>Financial Creditor</i>	<i>Voting %</i>			<i>Total</i>
		<i>Assented</i>	<i>Dissented</i>	<i>Abstained</i>	
<i>1</i>	<i>PNB</i>	<i>0</i>	<i>100</i>	<i>0</i>	<i>100</i>
	<i>Total</i>	<i>0</i>	<i>100</i>	<i>0</i>	<i>100</i>

- Item B.6 from the minutes of the 12th CoC meeting has been reproduced as follows:

“..

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Item B6- TO DISCUSS & CONSIDER THE PROPOSAL FOR THE LIQUIDATION OF CD AND FILING OF APPLICATION WITH THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL GUWAHATI BENCH UNDER SECTION 33 (2) of IBC 2016

Since Agenda item no. B5 was not approved by the COC in this meeting, this Agenda was considered and placed before the COC for discussion & voting. After deliberate discussion, the following Resolution was passed as under:

“RESOLVED THAT Pursuant to section 33(2) of Insolvency and Bankruptcy Code, 2016 the Committee of Creditors, hereby recommends for the liquidation of Corporate Debtor.”

“RESOLVED FURTHER THAT the Resolution Professional and or any person authorised by the RP is authorized to file a necessary application before the Adjudicating Authority conveying the decision of the Committee of Creditors to liquidate the Corporate Debtor.”

VOTING RESULT:

<i>Sl No</i>	<i>Financial Creditor</i>	<i>Voting %</i>			<i>Total</i>
		<i>Assente d</i>	<i>Dissent d</i>	<i>Abstaine d</i>	
<i>1</i>	<i>PNB</i>	<i>100</i>	<i>0</i>	<i>0</i>	<i>100</i>
	<i>Total</i>	<i>100</i>	<i>0</i>	<i>0</i>	<i>100</i>

12. From the plain reading of the resolutions above, it is observed that the CoC in its 12th Meeting have mentioned that the resolution approving the resolution plan has been approved by the CoC members (Financial Creditors) having 100% voting right and further authorized RP to sign, submit, file and do all the necessary acts as required for filing and submission of resolution plan along with the final report to the Adjudicating Authority for its approval. Surprisingly, the CoC in the same meeting dissented for accepting the resolution plan and approved for liquidation under Item B-6.

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13. This tribunal is unable to understand as to how the CoC can pass two resolutions simultaneously for both liquidation as well as for resolution in the same meeting. Therefore, the minutes itself speaks of the non-application of mind by both the CoC as well as the RP and further shows the casual approach of both.
14. It also appears that the present matter went several rounds of litigation up to the Hon'ble Supreme Court and more than 2 years have been spent in defending the litigation. Under these circumstances, keeping all the above facts in mind, this bench considers that this is a fit case to explore the available avenues for revival of the Company, CD being a MSME unit.
15. Furthermore, it is the contention of the PRA that they have given a higher value compared to the Liquidation Value as per the Valuation of the CD Company. Since, the CD is a MSME Unit and the object of IBC is revival of the Corporate Debtor (Resolution is Rule and the Liquidation is an Exception), this bench feels that it is appropriate to give one more opportunity to CoC to consider the resolution plan and take decision on merits of the plan, by duly recording the reasons.
16. In view of the above inconsistencies and for the foregoing reasons, this bench hereby redirects the matter to CoC to take a consistent stand with regard to liquidation or resolution and file an appropriate application in respect of all the three Corporate Debtors at the earliest preferably within 8 weeks from the date the order is uploaded on the e-portal, keeping in mind the timelines of the Code.
It is also clarified that this bench has not expressed any opinion on merits with respect to the resolution plan submitted by the Resolution Applicant.

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GUWAHATI**

**IA (IBC)/102/33(2)/GB/2023
IA (IBC)/107/60(5)/GB/2023
In CP (IB)/22/GB/2019
IA (IBC)/100/33(2)/GB/2023
IA (IBC)/106/60(5)/GB/2023
In CP (IB)/23/GB/2019
IA (IBC)/101/33(2)/GB/2023
In CP (IB)/24/GB/2019**

17. Accordingly, all the above 5 IAs are disposed of with the above observations and directions.
18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
19. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
20. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

Signed this on 6th day of December 2023.