# NATIONAL COMPANY LAW TRIBUNAL
# AMARAVATHI BENCH

**PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 22.10.2019 AT 10.30 AM**

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| TRANSFER PETITION NO. | IA NO. 13/2019 (AMR) in<br>TCP (IB) NO. 44/9/AMR/2019 |
| COMPANY PETITION/APPLICATION NO. | CP (IB) NO. 560/9/AMR/TP/2018 |
| NAME OF THE COMPANY | Sunshine Infraengineers India Pvt Ltd |
| NAME OF THE PETITIONER(S) | Vind Infra Power Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Sunshine Infraengineers India Pvt Ltd |
| UNDER SECTION | 9 OF IBC |

**Counsel for Petitioner(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|---|---|---|---|
| B. Naga Bhushan | AP | Tel: 9849995678<br>nagabhushanca@gmail.com | [signature] |
| | | | |

**Counsel for Respondent(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
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## ORDER

Order pronounced vide separate sheets. The I.A. is allowed.

[signature] 22/10/19

MEMBER JUDICIAL

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**NATIONAL COMPANY LAW TRIBUNAL**
**AMARAVATI BENCH AT HYDERABAD**
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**IA No. 13/2019/AMR**
**TCP (IB) No. 44/9/AMR/2019**
**[CP (IB) No. 560/9/HDB/2018]**

**In the matter of an Application under section 33 of the Insolvency and Bankruptcy Code, 2016**

**&**

**In the matter of M/s SUNSHINE INFRAENGINEERS INDIA PRIVATE LIMITED**

Mr. B. Naga Bhushan,
Resolution Professional of
M/s. Sunshine Infraengineers
India Private Limited. ... **Applicant**

**Date of Order: 22.10.2019**

**CORAM**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**Appearance:**

**For the Applicant** : Mr. Naga Bhushan, Resolution Professional.

**ORDER**

1. The present Application under section 33 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) is filed by the Resolution Professional of the Company namely M/s. Sunshine Infraengineers India Private Limited (hereinafter referred to as the Company) *inter alia* praying to order liquidation of the Company.

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2. The facts leading to the Application may thus be stated as follows. The Company Petition CP (IB) No. 560/9/HDB/2018 filed by an Operational Creditor namely Vind Infra Power Private Limited against the Company was admitted on 12.12.2018 by the learned NCLT, Hyderabad Bench. Moratorium was declared and the present Applicant was appointed as the Interim Resolution Professional. The Committee of Creditors (CoC) was constituted on 03.01.2019. The CoC in its third meeting held on 08.02.2019 appointed the Applicant as the Resolution Professional (RP). During the course of the Resolution Process the Applicant made public announcements in Economic Times, a National daily and Andhraprabha, a vernacular daily on 14.12.2018.

3. The Company undergoing Corporate Insolvency Resolution Process (CIRP) was engaged in the execution of Infra Projects at various work sites. The Applicant did not find the Registered Office of the Company in the address available in the website of the Ministry of Corporate Affairs (MCA). The Applicant also tried unsuccessfully to contact the Directors and Key Managerial Personnel (KMP) of the Company by various means to obtain necessary information in this respect to the Company. The Applicant however could obtain information with regard to the registered charges. As on 31.03.2018 an amount of Rs. 20,85,89,852/- remained outstanding against the Company as could be known from audited accounts. The Applicant kept CoC informed in their successive meetings, of his efforts to bring about a successful Resolution. Despite his best efforts the Applicant had not been able to obtain any document and other information from the Directors and the KMP of the Company. Order dated 23.04.2019 by the learned NCLT, Hyderabad Bench in IA No. 193 of 2019 and 275 of 2019 directing the Directors and KMP to extend cooperation also did not bear the desired result. Non-cooperation of the Directors of the Company resulted in the failure of the CIRP.

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4. Financial Creditors namely Oriental Bank of Commerce and HDFC, in the tenth meeting of the CoC held on 19.07.2019, felt that no solution appeared to be in sight and they recommended liquidation of the Company. The issue was however debated and recommendation for liquidation was agreed to be voted in the next meeting. In the absence of proper documents a full-fledged and complete information memorandum could not be prepared. Consequently, expression of interest could not be invited. During the CoC meetings the suspended Directors and other members of the Company informed that there were potential investors whose details would be shared. They however could not furnish the details except for one investor. The investor who attended the tenth CoC meeting expressed his intention for onetime settlement (OTS). Therefore no possibility was found in getting a proper Resolution Plan. The Applicant opined that there appears to be no chance for revival of the Company.

5. The CoC in their eleventh meeting held on 22.08.2019 felt that there was no possibility of Resolution and took a vote for liquidation of the Company. The Financial Creditor Andhra Bank having vote share of 65.27% abstained while the other Financial Creditors totalling 33.73% of voting share voted in favour of liquidation. Because of the abstention, the CoC could not approve the liquidation.

6. The Applicant however is of the opinion that there is no Resolution to continue the Company as a going concern and seeks orders for liquidation of the Company on the grounds indicated supra. The Applicant however has expressed his inability to continue as the Liquidator of the Company in case liquidation is ordered. Hence this Application.

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7. The matter has been heard, and records perused. The extension of time granted under section 12 (3) of the Code has since expired on 07.09.2019. Considering the facts and the grounds enumerated in the present Application and in the absence of any Resolution Plan under section 30(6) of the Code as well as viable alternative suggested by the CoC for revival of the Company, this Authority has no option than to accept the recommendation of the Applicant supported by reasons/grounds detailed in the Application. The Liquidation of the Corporate Debtor is here by ordered.

8. The Application is accordingly allowed with the following directions. Since the Applicant has expressed his inability to be considered as the Liquidator the following is appointed to act as Liquidator of the Company:
    a) The Corporate Debtor M/s Sunshine Infraengineers India Private Limited shall be liquidated in the manner as laid down in Chapter-III of the Code.
    b) Sri. Kammula Prabhakar Rao(Registration No. IBBI/IPA-001/IP-P01467/2018-2019/12339), having office at 39-4-1,S5,Koduru Enclave, Picchaiah street, Labbipet, Vijayawada, Krishna District, Andhra Pradesh – 520010; e-mail:kammulaprabhakar@hotmail.com; mobile no:9848124608 is appointed as the Liquidator. No disciplinary proceeding is pending/proposed against him as per the IBBI website. He is requested to furnish his consent in Form No.2.
    c) He shall issue public announcement stating that Corporate Debtor is in liquidation.
    d) The Moratorium declared under section 14 of the IBC 2016 shall cease to operate here from.
    e) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor.

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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) 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.

g) 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.

h) The liquidation shall exercise the powers and duties as envisaged under section 35 to 50 and 52 to 54 of the IBC, 2016 read with Insolvency and Bankruptcy Code(Liquidation Process) Regulations 2016.

i) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

j) The Liquidator shall be entitled to such fees as may be specified by the Code in terms of section 34(8) of the IBC 2016.

k) 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.

l) Copy of the order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator, the Registered Office of the Corporate Debtor and the Liquidator.

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**MOHAMMED AJMAL**
**MEMBER JUDICIAL**