

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 26.09.2019

**CAUSE LIST - 2**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Dr Ashok Kumar Mishra

| CP/CA No.                | Purpose                            | Sec                    | Name of Petitioner      | Petitioner Advocate | Name of Respondent                | Respondent Advocate |
|--------------------------|------------------------------------|------------------------|-------------------------|---------------------|-----------------------------------|---------------------|
| CP(IB)No.<br>103/BB/2018 | Subjudice before the Hon'ble NCLAT | Sec 7 of I&B Code 2016 | M/s State Bank of India | Just Law Advocate,  | M/s Metal Closure Private Limited | Abhishek Nagori RP  |

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

For RP

KAVITHA N  
Indialaw LLP  
6361996062



**ORDER**

Heard Ms. Kavitha N, learned Counsel for the Resolution Professional. Post the case on **05.11.2019** for the report of Liquidator.



**MEMBER (T)**



**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A No.493 of 2019 in  
C.P. (IB) No.103/BB/2018  
U/S 33(1) of IBC, 2016

Mr.Abhishek Nagori,  
Resolution Professional of  
M/s.Metal Closures Pvt. Ltd  
330/348, Third Floor, Tower-A,  
Atlantis K-10, Opp.Vadodara Central,  
Sarabhai Main Road,  
Vadodara- 390 023

- Applicant/  
Resolution Professional

**In the matter of:**

M/s.State Bank of India,  
Filed by the Consortium Banks  
Stressed Assets Management Branch  
Bangalore – 560 001

- Petitioner

**Versus**

M/s.Metal Closure Pvt. Ltd  
No.39/4-B, 12<sup>th</sup> K.M.  
Kanakapura Main Road,  
Bangalore – 560 062

- Respondent

**Date of Order: 26th September, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Ms. Kavitha N

For the Respondent : None

**ORDER**

**Per :** Rajeswara Rao Vittanala, Member (J)

1. I.A No.493 of 2019 in C.P(IB) No.103/BB/2018 is filed by Mr.Abhishek Nagori, (Applicant/Resolution Professional) under Section 33 (1) of the

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Code, by inter seeking to order for liquidation of the Corporate Debtor Company, M/s.Metal Closures Private Limited with consequential orders.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

- 1) Initially C.P(IB) No.103/BB/2018 is filed by State Bank of India (Financial Creditor) under Section 7 of IBC, 2016 R/w Rule 4 of I&B(AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s.Metal Closures Private Limited (Corporate Debtor) on the ground that it has committed a default for total amount of Rs.282,02,71,568.8/-. The case was admitted by this Adjudicating Authority, vide order dated 14.12.2018, by inter alia appointing Mr.Abhishek Nagori as the Interim Resolution Professional and imposed moratorium etc.
- 2) It is stated that the order received on 14.12.2018, and IRP has made the Public announcement in Deccan Chronicle (English) and Prajavai(Vernacular Language- Kannada) newspaper on 20<sup>th</sup> December, 2018 for inviting claims against the Debtor Company.
- 3) Subsequently the IRP, has inter alia constituted the Committee of Creditors of the Corporate Debtor, and the First Meeting of the Committee of Creditors (CoC) was convened on 11.01.2019.

| Sl. No. | Member of CoC       | Voting Percentage |
|---------|---------------------|-------------------|
| 1.      | State Bank of India | 71.75%            |
| 2.      | Corporation Bank    | 28.25%            |

It is stated that the first meeting of the Committee of Creditors (hereinafter referred to as the "COC") was held on 11.01.2019 and the CoC members have unanimously confirmed him appointment as the Resolution Professional for the remaining Corporate Insolvency Resolution Period (hereinafter referred to as "CIRP").

- 4) It is stated that there was no cooperation from Corporate Debtor/members of the suspended Board of Directors in



providing details of bank accounts, books of accounts and other record, they had filed an application in the above matter seeking direction from this Tribunal to direct the members of the suspended Board of Directors to co-operate. As per the hearing held on 31<sup>st</sup> January, 2019 the Tribunal was pleased to pass Order dated 31<sup>st</sup> January, 2019 and again on 5<sup>th</sup> March 2019, by directing the Directors of the Corporate Debtor and RP to carry out his duties and functions. However, despite the directions from the Tribunal to co-operate with IRP, the Directors have failed to provide the details and the necessary documents as requested by IRP, which in fact has disturbed the whole process and has not allowed IRP to discharge their duties as the RP of the Corporate Debtor.

- 5) It is stated that during the 3<sup>rd</sup> CoC, 4<sup>th</sup> CoC and 5<sup>th</sup> CoC meeting held on 25.02.2019, 16.04.2019, and 22.05.2019 respectively, it was discussed that the Order dated 31.01.2019 and 05.03.2019 was not complied with the Corporate Debtor and that IRP had not received any substantial Documents to impress upon the valuers, thereby causing undue delay of the CIRP, and hence it was decided in both the proceeding that an appropriate application shall be filed before the Tribunal for extension of the CIRP period by further 90 days. The CoC authorized the IRP to file the application for extension in the end of first 6 months as resolved in Fifth CoC meeting. It is stated that, IRP has been directed to publish Expression of Interest for inviting Resolution Plans to be submitted by Resolution Applicants as prescribed under the provisions of the Insolvency and Bankruptcy Code 2016.
- 6) Aggrieved by the admission of case, Shri B.Prashanth Hegde , Suspended MD of Corporate Debtor , has filed Company Appeal(AT) No. 68 of 2019 before the Hon'ble NCLAT and while ordering notice to other side, has passed order dated 14.05.2019 by allowing the parties six weeks' time to negotiate for settlement to ensure suitable exit of Corporate Debtor.

- 7) It is stated that the period of 180 days of the CIRP was to elapse on June 12<sup>th</sup> 2019, and necessary application was to be filed with NCLT for seeking extension of the CIRP period by 90 days as prescribed under Section 12(2) of the Insolvency and Bankruptcy Code, 2016. Accordingly, an Application was filed before the Hon'ble Tribunal on 28<sup>th</sup> May, 2019 seeking extension of CIRP period by 90 days and the same was allowed by the Hon'ble Tribunal vide its Order dated 13<sup>th</sup> June 2019.
  - 8) It is stated that since no response were received after publishing the Expression of Interest, once again IRP has been directed to publish Expression of Interest for inviting Resolution Plans to be submitted by Resolution Applicants as prescribed under the provisions of the Insolvency and Bankruptcy Code 2016. Accordingly, IRP has published another EOI on 01.07.2019. Again no response is received. The Hon'ble NCLAT has passed an order dated 17.07.2019 granting time to the parties for settlement up to 27.08.2019. Accordingly, the promoters proposed some settlement but it was not accepted by the members of the CoC. The Hon'ble NCLAT has passed by order dated 27.08.2019, given time of two more weeks for settlement.
  - 9) It is stated since no resolution was possible, the CoC resolved to liquidate the Company during the 7<sup>th</sup> meeting of Committee of Creditors of M/s Metal Closures Private Limited approving filing of an Application for liquidation process, subject to the order that would be passed by the Hon'ble NCLAT, on 17.09.2019. It is also unanimously resolved to appoint the Mr. Abhishek Nagori, the existing Resolution Professional as the Liquidator.
  - 10) Ultimately, Company Appeal (AT)(Insolvency) No. 68 of 2019 was dismissed by an order dated 26<sup>th</sup> September,2019. The CIRP period of 270 days came to end on 10.09.2019.
3. Heard Ms. Kavitha N, the learned Counsel for Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder.

4. As detailed supra, the Resolution Professional and COC made all out possible efforts to revive the Company but they could not do it, and thus there is no other alternative for the COC except to seek for liquidation of the Corporate Debtor. Accordingly, during 7<sup>th</sup> Meeting of CoC of Metal Closures Private Limited held on 29<sup>th</sup> August, 2019 has resolved to liquidate the Corporate Debtor Company (i.e M/s.Metal Closures Private Limited) with a requisite majority and also approve Mr.Abhishek Nagori,, the existing Resolution Professional as Liquidator, who has filed his written consent dated 26<sup>th</sup> September, 2019 by inter alia declaring that he was willing to accept the proposal as Liquidator and he is qualified Resolution professional eligible to be appointed as such. Therefore, we are of the considered opinion that the Instant Application deserves to be allowed as prayed for. Since the said Appeal finally stands disposed of only on 26<sup>th</sup> September, 2019 by the Hon'ble NCLAT, there cannot any delay in filing the instant Application and the delay technically arise on from 10.09.2019 condoned in the interest of justice.
5. Therefore, the Adjudicating Authority, by exercising powers conferred on it, U/s 33 of the IBC, 2016, Company Application bearing IA No.493 of 2019 in C.P.(IB) No.103/BB/2018 is dispose of with following directions:
- a) We hereby order that M/s.Metal Closures Private Limited, Corporate Debtor to be liquidated in the manner as laid down in Chapter III Liquidation process of the Code.
  - b) We hereby appointed Mr.Abhishek Nagori as a Liquidator subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of the IBBI.
  - c) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.
  - d) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.



- e) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders issued in this regard.
- f) Post the case for report of Liquidator on 5<sup>th</sup> November , 2019.

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

Raushan