

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

**I.A. No. 2623 of 2021  
In  
CP (IB) No. 1331 of 2017**

Application under Section 33 of  
Insolvency and Bankruptcy Code,  
2016

**Mr. Sunil Kumar Agarwal,  
Resolution Professional of Vistar  
Metal Industries Private Limited**  
Having address at: 401, 402 & 403,  
Coral Classic Co-operative Society,  
Road No. 20, Ambedkar Garden,  
Chembur (East), Mumbai- 400 071.  
.....Applicant

*In the matter of*  
**Satyaprakash Agarwal and Ors.**  
... Financial Creditor  
Vs.  
**Vistar Metal Industries Private  
Limited**  
... Corporate Debtor

**Order delivered on: 10.07.2023**

*Coram:*

**Hon'ble Member (Technical)**  
**Shri Shyam Babu Gautam**

**Hon'ble Member (Judicial)**  
**Shri Kuldip Kumar Kareer**

*Appearances:*

For the Applicant : Mr. Ayush Rajani

**ORDER**

*Per: Shyam Babu Gautam, Member Technical*

1. This is an Application under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “the Code”) by Mr. Sunil Kumar Agarwal, Resolution Professional (RP) of Vistar Metal Industries Private Limited seeking orders for Liquidation of the Corporate Debtor.
2. On perusal of this Application, it is evident that the **Company Petition No. 1331 of 2017** filed by the Financial Creditor under Section 7 of the Code was admitted by this Tribunal vide an **Order dated 14<sup>th</sup> October 2019** and one Mr. Atul Jain was appointed as the Interim Resolution Professional (IRP). A Public announcement dated 29<sup>th</sup> November 2019 was made pursuant to Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter called “CIRP Regulations”) inviting the creditors of the Corporate Debtor to file their claims before the IRP. Subsequently, the Committee of Creditors (CoC) was constituted and the IRP was appointed as the Resolution Professional (RP) of the Corporate Debtor in the First CoC Meeting held on 24<sup>th</sup> December 2019.
3. The Applicant submits that the CoC decided to change the RP and passed a resolution to appoint the present Applicant as the new RP during the 10<sup>th</sup> Meeting of the CoC held on 15<sup>th</sup> June 2021. Accordingly, the Applicant was confirmed as the RP of the Corporate

Debtor by this Tribunal vide **Order dated 2<sup>nd</sup> August 2021**. The Applicant further submits that two registered valuers were appointed during the course of the CIRP for the purpose of valuation of the assets of the Corporate Debtor. The reports of the same have been attached to this Application.

4. The Applicant submits that an Expression of Interest (“EoI”) was issued by the Applicant on 29<sup>th</sup> January 2020 wherein the last date for submission of resolution plans was fixed as 29<sup>th</sup> March 2020. Subsequently, EoIs were received from 5 parties and resolution plans were received from three prospective resolution applicants namely, Regency Ispat Private Limited, Guardian Castings Private Limited and Manohar Manak Alloys Private Limited. Thereafter, during the **15<sup>th</sup> CoC Meeting held on 5<sup>th</sup> October 2021**, the Applicant placed the Resolution plans of Guardian Castings Private Limited and Manohar Manak Alloys Private Limited before the CoC for e-voting, both of which stood rejected by the CoC since the plans offered were far below the liquidation value. The Resolution plan proposed by Regency Ispat Private Limited was not put for voting as they failed to deposit the Earnest Money Deposit despite several communications.
5. Consequently, in the **16<sup>th</sup> CoC Meeting held on 23<sup>rd</sup> October 2021**, since both Resolution plans were rejected, the CoC decided to initiate liquidation of the Corporate Debtor and directed the RP to file an appropriate Application before the Tribunal. The CoC passed the following resolution with 89% majority voting share:

*“Resolved that as per section 33 of IBC, RP to move an application, intimating to AA decision of COC for liquidation of CD through advocate for which fees is already approved by COC members. COC also approved continuation of RP as liquidator and fees of liquidator was already approved by COC previously.”*

6. The Applicant further submits that Mr. Vipin Agarwal, Suspended Promotor Director of the Corporate Debtor filed I.A. No. 192 of 2022 opposing the instant Application filed by the Applicant RP on the ground that the Corporate Debtor being an MSME, he was not barred under Section 29A read with Section 240A of the Code for proposing a Resolution plan. This Application was allowed by this Tribunal vide **Order dated 6<sup>th</sup> January 2023** and in compliance with the said order, a re-valuation of the assets of the Corporate Debtor was conducted and the Resolution plan proposed by the Suspended Director was placed before the CoC by the Applicant for e-voting during the 25<sup>th</sup> CoC Meeting held on 10<sup>th</sup> March 2023. The said plan was also rejected by the CoC and therefore, the Applicant pressed the present Application seeking liquidation of the Corporate Debtor. A copy of the minutes of the 25<sup>th</sup> CoC Meeting along with e-voting results has been duly annexed to the present Application.
7. On perusal of the Application and the documents annexed, we note that the CoC has rejected the resolution plans placed before it and is left with no other alternative than to initiate the liquidation of the Corporate Debtor. Looking at the averments and submissions of the

Applicant, we are of the considered opinion that this is a fit case for liquidation and, therefore, we hereby order the Liquidation of the Corporate Debtor with directions as follows:

- a) The Corporate Debtor, **Vistar Metal Industries Private Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) The present Applicant, **Mr. Sunil Kumar Agarwal**, the RP of Vistar Metal Industries Private Limited is appointed as the Liquidator.
- c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- d) The Moratorium declared under Section 14 of the Code shall cease to operate and a fresh Moratorium under Section 33(5) of the Code shall commence.
- e) Subject to section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. 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 and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will 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) Copy of the Order shall be furnished to the IBBI, to the Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra, Mumbai, the Registered Office of the Corporate Debtor; and the Liquidator.

8. The **I.A. No. 2623 of 2021** filed by the RP for Liquidation of the Corporate Debtor stands **allowed**.

**Sd/-**

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**

Anusha  
10.07.2023