

NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 16.11.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Ashok Kumar Borah, NCLT KOCHI
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 96/BB/2020	For pronouncement of order on IA 435/2020-CIRP	Sec 10 of I&B code 2016	Synew Steel Pvt Ltd			Akshay Petkar ,Mr Mandhar Shrikant Wagh, IRP

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

Akshay Petkar

ORDER

Heard Mr. Akshay Petkar, learned Counsel for the RP through Video Conference.

I.A. No.435 of 2020 in C.P(IB)No.96/BB/2020 is disposed of by separate order.

Post the case for the report of RP on 21.12.2020.

[Signature]
MEMBER (T)

Amar

[Signature]
MEMBER (J)

Verified

[Signature]
Court Officer

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

C.P. (IB)No.96/BB/2020

U/s.10 of IBC, 2016

R/w Rule 7 of I&B (AAA) Rules, 2016

And

I.A No.435/2020

U/s. 54, R/w Sec. 60(5) of the IBC, 2016

Mr. Mandar Wagh

Interim Resolution Professional of

M/s. Synew Steel Private Limited

A2/1102, Saarrthi Shilp

Behind Eklavya Kothurd,

Pune – 411 038

- Applicant / IRP

Date of Pronouncement: 16th November, 2020

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant

Mr. Akshay Petkar

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.435/2020 in C.P. (IB) No.96/BB/2020 is filed by Mr. Mandar Wagh, Interim Resolution Professional of M/s. Synew Steel Private Limited ('Applicant'), U/s.54 read with Section 60(5) of the IBC, 2016, by inter alia seeking to dissolve the Corporate Debtor (M/s. Synew Steel Private Limited).



2. Brief facts of the case, as available on records of the case, which are relevant to the instant case, are as follows:

- (1) Initially, C.P. (IB)No.96/BB/2020 was filed by M/s. Synew Steel Private Limited (Corporate Applicant), U/s. 10 of the IBC, 2016, read with Rule 7 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Synew Steel Private Limited, on the ground that it has committed default for an amount of Rs.1,18,56,964/- (Rupees One Crore Eighteen Lakh Fifty Six Thousand Nine Hundred and Sixty Four Only) which includes Financial Creditors Rs.27,84,394/- and Operational Creditors Rs.90,72,570/-. After considering the case, the Adjudicating Authority admitted the case by an Order dated 30.06.2020, by initiating CIRP in respect of the Corporate Applicant; appointing Ms. Tanuja Jalan, as IRP, imposing moratorium etc. Subsequently, the existing IRP was replaced and Mr. Mandar Shrikat Wagh was appointed as IRP, and the same was allowed by the Adjudicating Authority by an Order dated 21.08.2020.
- (2) Pursuant to the above, the IRP caused to publish a public announcement in Newspapers "*Financial Express (English) and Hosadi Gantha (Kannada)*" of CIRP of the Corporate Debtor inviting claims in terms of regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations). It was submitted that IRP has received claims form 3 Financial Creditors totally amounting of Rs.27,84,394/-. However, since all the Financial Creditors are related party in terms of Section 5 (24) of IBC, they shall not have right to representation, participation or voting in the meeting of COC. Resultantly, in terms of regulation 17 of CIRP Regulations and section 21 of IBC, COC could not be constituted as on 19.09.2020.
- (3) It is stated that the IRP is unable to constitute Committee of Creditors (COC) till date. There are no assets (movable or immovable) with the



Corporate Debtor. The cash balance lying with the Corporate Debtor is merely Rs.729/-. In such situation, the IRP is incapable of carrying out CIRP or Liquidation of the Corporate Debtor and hence the Application for Dissolution has been filed.

- (4) As per the provisional unaudited balance sheet as at 31.03.2020 and the accounts maintained by the Corporate Debtor it has no assets, movable or immovable, except cash balance of Rs.729/-. The entire share capital of the Corporate Debtor is eroded. Since there is no business that is conducted by the Corporate Debtor in last 3 years and accordingly, there has been no revenue.
 - (5) The IRP has appointed independent Chartered Accountant Mr. Parag Khare who has provided his certificate which states that the Company has filed Income Tax Returns under the provisions of Income Tax Act, 1961 and the Company has also complied with the Companies Act, 2013.
 - (6) It is stated that the IRP is incapable to perform any further duties either as IRP or as RP since there are no assets or funds available with the Corporate Debtor on account of unavailability of funds and non-constitution of COC. The appointment of RP, appointment of legal or other professionals, preparation of information memorandum, inviting resolution applications by EOIs are the stipulated events of CIRP which are impossible to be carried out in the present case.
3. Heard Shri Akshay Petkar, learned Counsel for the RP, through Video Conference. We have carefully perused the pleadings of the party along with extant provisions of the Code and the Rules made thereunder.
 4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder. Section 33(2) of Code reads "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 percent of the voting share 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)". **Section 54 of the Code** reads "54. (1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an Application to the Adjudicating Authority for the dissolution of such Corporate Debtor. (2) The Adjudicating Authority shall on Application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. (3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered". **Rule 14 of IBBI (Liquidation Process) Regulations, 2016** reads as "14. Early dissolution. Any time after the preparation of the Preliminary Report, if it appears to the liquidator that - (a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and (b) the affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution". **Rule 11 of NCLT Rules, 2016** confers inherent powers on NCLT, which reads as " Rule, 11- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. "**Section 64 of Code** ordains the Adjudicating Authority to dispose of Applications/Petitions filed under the provisions of Code as expeditiously, within the prescribed under this Code".



5. In terms of Section 60 of the Code, the Adjudicating Authority shall be the NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case justify that no purpose would be served to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.
6. The above facts and circumstances of the Case justify that there would be no useful purpose served, by placing the Corporate Debtor under a Liquidation process, under the extant provisions of Code. Since the Assets of Company were realized, the liquidation process under the provisions of Code is deemed to have been completed under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company, as proposed by Resolution Professional. The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra. We are satisfied that this is a fit case for dissolving the Applicant Company and allowing the Petition filed by the RP praying for the same.
7. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 and other relevant and connected Provisions of Code, and the Rules made thereunder, C.P. (IB)No.96/BB/2020 and I.A.No.435/2020, are hereby disposed of with the following directions:
- (1) The Applicant Company, M/s. Synew Steel Private Limited is ordered to be dissolved with immediate effect.
 - (2) The Registry is directed to forward a copy of this Order to

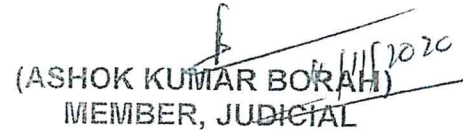


the Registrar of Companies, Karnataka, Bengaluru, within a period of two weeks from the date of this order;

- (3) The Resolution Professional is also directed to forward copies of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.
- (4) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal recourse against them.
- (5) No order as to costs.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(ASHOK KUMAR BORAH)
MEMBER, JUDICIAL

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