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**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC) No. 31/GB/2022  
in C.P. (IB)No. 14/GB/2021**

**Coram:**

**Hon'ble Shri Rohit Kapoor, Member (J):** Hearing through  
**Hon'ble Shri Prasanta Kumar Mohanty, Member (T):** Video Conference

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.06.2022**

In the matter of: Purshotam Gaggar, Liquidator  
in  
(M/s. Tata Hitachi Construction Co. Pvt. Ltd.  
Versus  
M/s. Berial Engineers Pvt. Ltd.)

Section: Under Section 54 of IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>
1.	MR. PURSHOTAM GAGGAR	CA	Applicant
2.	NONE	-	Respondent

Present in  
Video  
Conference

**ORDER**

The Applicant is represented through respective learned counsel(s).  
The case is fixed for pronouncement of order.  
The order is pronounced in the open court, vide separate sheet

Sd/-

**(Prasanta Kumar Mohanty)  
Member (Technical)  
& Adjudicating Authority**

Sd/-

**(Rohit Kapoor)  
Member (Judicial)  
& Adjudicating Authority**

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**NATIONAL COMPANY LAW TRIBUNAL  
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in  
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Versus  
M/s. Berial Engineers Pvt. Ltd.)

Section: Under Section 54 of IBC, 2016

**Order delivered on 16.06.2022**

**O R D E R**

**[Per se: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]**

1. This Application has been filed under Section 54 the Insolvency and Bankruptcy Code, 2016 read with Regulation 45(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 for Dissolution of the Corporate Debtor i.e., M/s Berial Engineers Pvt. Ltd, seeking the following reliefs:

- a. For Exemption from issuing public notice announcing the commencement of liquidation.
- b. For Exemption in filing final report on liquidation and compliance certificate in Form H.
- c. For dissolution of the Corporate Debtor.

2. Briefly stated that:

2.1 The Hon'ble Tribunal has in its order dated 10<sup>th</sup> December 2021 in application C.P.(IB)/14/GB/2021 filed by M/s Tata Hitachi

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Construction Machinery Co. Pvt. Ltd under section 9 of Insolvency and Bankruptcy Code, 2016, ordered commencement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The Hon'ble Tribunal also appointed the Applicant (CA Purshotam Gagar) as Interim Resolution Professional for the said matter. The order of the Hon'ble NCLT was communicated to the IRP on 06 January 2022 by Tata Hitachi Construction Machinery Co. Pvt. Ltd through email. Copy of order for commencement of CIRP has been enclosed herewith and marked as ANNEXURE I.

2.2 The IRP received two claims in response to public announcement and the details of which are given below.

Sl. No	Name of Creditors	Nature of Creditor	Address	Amount Claimed by the Creditors (Amt. in Rs.)	Amount Admitted (Amt. in Rs.)
1.	UCO Bank	Financial Creditor	Silpukhuri Branch, MRD Road, Silpukhuri Guwahati 781003	9,79,26,620.58	9,79,26,620.58
2.	Tata Hitachi Construction Co. Pvt. Ltd.	Operational Creditor	Jubilee Building 45, Museum Road,	13,28,79,360.00	13,28,79,360.00
Total				23,08,05,980.58	23,08,05,980.58

The claims were admitted with verification based on the records produced by the claimants.

2.3 The Committee of Creditors is constituted with the sole financial creditor UCO Bank as per the provision of Section 21(2) of Insolvency & Bankruptcy Code, 2016. Since, UCO Bank is the sole member of the Committee of Creditors, the UCO Bank had 100% voting rights for matters to be transacted in the CoC meeting.

2.4 The Committee of Creditors in its first meeting held on 02.02.2022 appointed IRP as Resolution Professional (RP) for the Corporate Debtor. The RP prepared Information Memorandum (IM) of the



*[Handwritten signature]*

Corporate Debtor from the data available with the RP. However, the RP could not provide updated information in the IM as the Corporate Debtor has not been carrying on its business since 2011. The Books of accounts and other records could not be traced as no office of the Corporate Debtor exists as on date. The Corporate debtor filed its annual report with ROC up to FY 2009-10 and no document thereafter could be found on MCA portal. A copy of the IM has been enclosed.

2.5 The Resolution Professional expressed its opinion before the committee that the corporate debtor should be sent for liquidation as continuing the CIRP process would attract unnecessary cost without any fruitful results, The COC discussed the matter and recommended liquidation of the Corporate Debtor as there is no business activity carried on by the Corporate Debtor. The CoC recommended liquidation of the corporate debtor considering the following factors:

- a. The company **does not have any books of accounts and audited financials since 2009-10.**
- b. The company **does not have commercial operation since 2011.**
- c. The company **does not have any moveable or immovable assets.**
- d. The bank accounts maintained by the company are either **closed or out of balance.**
- e. The assets on which security is created against the loans taken from bank is **owned by third party.**
- f. **The liquidation value of the company is NIL.**

2.6 That the Hon'ble Tribunal has vide its order dated 08th April 2022 in I.A. (IBC) No. 16/2022 in C.P.(IB) No. 14/GB/2021 ordered commencement of liquidation of the Corporate Debtor. The Hon'ble Tribunal vide the said order also appointed the applicant as the Liquidator of the Corporate Debtor. A copy of the Liquidation order has been enclosed herewith.



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- 2.7 The Hon'ble NCLT vide the said order directed the liquidator to initiate the liquidation process as per IBBI (Liquidation Process) Regulations, 2016 and to issue notice in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- 2.8 The liquidator did not issue Public notice as directed in the order of liquidation. The liquidator did not go through the process of liquidation as prescribed under Insolvency and Bankruptcy Code, 2016 and the Regulations prescribed under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 **as there is no realizable value of the Corporate Debtor to recover outstanding amount of the stakeholders & other costs. The liquidation value of the corporate Debtor is NIL as the Corporate Debtor does not have commercial operation since 2011 and there is no asset to liquidate belonging to the corporate debtor.**
- 2.9 The continuation of the liquidation process shall not add any value to the asset of the corporate debtor, instead it will attract unnecessary cost in terms of compliance of the regulations for liquidation. The liquidator is of the opinion that the affairs of the corporate debtor do not require any further investigation, **the Applicant prays for dissolution of the corporate debtor.**
- 2.10 As per Section 54(1) the Insolvency and Bankruptcy Code, 2016, the liquidator can make an application for dissolution of Corporate Debtor where the asset of the corporate debtor is completely liquidated.
- 2.11 As per Section 54 the Insolvency and Bankruptcy Code, 2016 read with Regulation 45(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the Hon'ble Tribunal is empowered to pass necessary order for dissolution of Corporate Debtor, on an application by the liquidator after complete liquidation of the assets of the Corporate Debtor.
- 2.12 This application for dissolution is filed by liquidator immediately after the liquidation order is passed by this Hon'ble Tribunal as



*[Handwritten signature]*

mentioned above. The Liquidator therefore has not submitted the final Report and Compliance certificate in Form H as required under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016.

3. However, as per the directions of this Bench vide order dated 19.05.2022, the Liquidator has filed the Form H Compliance Certificate on 24.05.2022 submitting that:

*“The liquidator did not go through the process of liquidation as prescribed under Insolvency and Bankruptcy Code, 2016 and the Regulations prescribed under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 as there is no realizable value of the Corporate Debtor to recover outstanding amount of the stakeholders & other costs. The liquidation value of the corporate Debtor is NIL as the corporate Debtor does not have commercial operation since 2011 and there is no asset to liquidate belonging to the corporate debtor.” Hence the ld. Liquidator has once again prayed for the dissolution of the CD on account of the points mentioned above by him.*

### **ORDER**

4. Heard the Liquidator in details, perused the documents submitted and submissions made. It is observed that:

- 4.1 The Corporate Debtor does not have commercial operation since 2011 and there is no asset to liquidate belonging to the corporate debtor. **The liquidation value of the corporate Debtor is NIL.**
- 4.2 There is no realizable value of the Corporate Debtor to recover outstanding amount of the stakeholders & other costs.
- 4.3 The CoC recommended liquidation of the Corporate Debtor and the Liquidator has prayed for dissolution.
- 4.4 According to the Liquidator, the Corporate Debtor does not have any books of account and audited financial since 2009-10. The bank accounts maintained by the company are either closed or out



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of balance. The assets on which security is created against the loans taken from bank is owned by third party.

4.5 According to the Liquidator, the Corporate Debtor is not involved in any kind of business activities, wherein the public interest at large is involved or it is going to be affected adversely in case such dissolution of the Company is ordered.

5. Considering the above facts, documents submitted, submissions made, we are of the considered view that there would be no useful purpose to continue with the process of liquidation of the Corporate Debtor under the extant provisions of Code, as there is no realizable value of the Corporate Debtor to recover outstanding amount of the stakeholders & other costs. **The liquidation value of the corporate Debtor is NIL** as the Corporate Debtor does not have commercial operation since 2011 and there is no asset to liquidate belonging to the corporate debtor. Hence, 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 the Liquidator. We are satisfied that this is a fit case for dissolving the Corporate Debtor and allowing the IA filed by the Liquidator praying for the same.

**6. Consequently, this Adjudicating Authority in exercise of power conferred under Section 59 (8) of the Insolvency and Bankruptcy Code 2016, the Corporate Debtor i.e., "M/s. Berial Engineering Pvt. Ltd" is ordered to be dissolved with effect from the date of this Order i.e. 16.06.2022.**

7. The Liquidator is directed to communicate a copy of this order to the respondent i.e. Registrar of Companies, NER, Guwahati, including Insolvency and Bankruptcy Board of India (IBBI) and other concerned statutory authorities, wherein the Applicant Company was registered and its registered office was situated. Such communication should be made by the



Liquidator within fourteen (14) days from the date of receipt of authentic copy of this order.

8. The Registry is directed to communicate a copy of this order to the Registrar of Companies, NER, Guwahati, and Insolvency and Bankruptcy Board of India (IBBI).

9. Accordingly, IA (IBC) 31/GB/2022 in C.P. (IB)No. 14/GB/2021 is allowed and stands disposed of.

Sd/-

(Prasanta Kumar Mohanty)  
Member (Technical)  
& Adjudicating Authority

Sd/-

(Rohit Kapoor)  
Member (Judicial)  
& Adjudicating Authority



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OF THE ORIGINAL

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29.7.22  
By REGISTRAR/ASST. REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
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29/7/22