

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 25th JANUARY, 2024, 10:30 A.M.

**IA (IBC)/LIQ/2/GB/2024
In
CP (IB)/23/GB/2019**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

| | |
|---------------------|-------------------------|
| Name of the Company | Amit Pareek, RP |
| Under Section | U/s 33 (2) of IBC, 2016 |

For Petitioner (s) : Mr. Amit Pareek, CS.

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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**IA (IBC) (LIQ.)/2/33(2)/GB/2024
in CP (IB)/23/GB/2019**

In the Matter of:

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Punjab National Bank, Zonal Sastra Centre, 1st floor, Zonal Office, Hem Barua Road, Panbazar, Guwahati-781001; **... Financial Creditor**

-Versus-

Shree Sai Smelters India Ltd, having registered office at Rongsokana Village 15 Mile Byrnihat MI 793101 and Administrative Office at N.B.S. Complex Opp. Rajib Bhawan Abc. G.S. Road Guwahati 781005 Assam; **... Corporate Debtor**

-And-

In the Matter of:

Mr Amit Pareek, Resolution Professional of Shree Sai Smelters India Ltd, having address at 4th Floor, Ram Prasad Complex Chatribari, Guwahati-781001, Assam. **... Applicant**

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

IA (IBC)(LIQ.)/2 /33(2)/GB/2023

For Petitioner : Mr. Amit Pareek, RP

**Order reserved on: 12.01.2024
Order pronounced on: 25.01.2024**

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ORDER

1. IA (IBC)(Liq.)/2/33(2)/GB/2024 has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Shree Sai Smelters India Limited, praying the following:
 - a) *Pass an order directing the initiation of liquidation proceedings of the Corporate Debtor to in terms of Section 33 of the Code;*
 - b) *Necessary direction to the CoC to make payment of all dues CIRP Cost; and*
 - c) *Appoint Mr. Sandeep Khaitan to act as Liquidator as provided under Section 34(1).*
2. The brief facts are that the main application CP (IB)/23/GB/2019 filed by the Financial Creditor- Punjab National Bank under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for brevity) was admitted by this Adjudicating Authority on 30th September 2022 and Mr. Amit Pareek was appointed as Interim Resolution Professional (IRP). The IRP Mr Amit Pareek had constituted a Committee of Creditors and the Committee of the Creditors in the Second CoC meeting held on 7.11.2022 with 100 % voting confirmed Mr. Amit Pareek as Resolution Professional (RP).
3. The IRP made Public Announcement on 07.10.2022 in prescribed format "FORM A" which was published in The Shillong Times and Rupang (English & Regional Language) having wide circulation in Meghalaya. The last date of submission of claim was fixed as 14.10.2022. The Resolution Professional has received different claim forms on different dates from claimants and the total claim admitted by Interim Resolution Professional/Resolution Professional till voting on Liquidation of the CD is Rs. 32,09,02,693.00 and accordingly RP submitted the revised list of creditors to NCLT Guwahati Bench. Subsequently, the RP appointed six Valuers on 11.11.2022 to determine the fair market & liquidation value of the Corporate Debtor.
4. It is stated that the RP in the 3rd CoC meeting put forth the agenda for publication of 'FORM G' inviting expression of interest ("EOI") and the same was approved in the meeting for submitting Resolution Plans for Corporate Debtor on 15.12.2022 in The Shillong Times (English) and Rupang (Regional) having wide circulation in Meghalaya and in The Times of India on 17.12.2022 and the original date for submission of EOI was fixed on 30.12.2022. The RP informed the COC members that he has received few

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emails and calls expressing their interest and the process document was shared to them but no EOI was received, further pursuant to the approval of COC in 4th meeting of COC held on 10.01.2023, the RP re-published FORM G in the aforesaid Newspaper vide First Extension on 13.01.2023 but no EOI was received by the Resolution Professional by the last date fixed i.e., 25.01.2023. Thereafter, EOI was published again on 16.02.2023 but again no EOI was received by the last date i.e. 24.02.2023. However, RP was receiving the enquiries related to the submission of EOL, hence considering the better realization and maximization of the value of CD, one more extension for submission of EOI was considered as the liquidation of CD may adversely affect the interest of its stakeholders. Therefore, the last date for submission of EOI was extended to 12.04.2023.

5. Further, it is stated that the 9th CoC meeting was held on 24.05.2023 wherein, RP informed the COC that he has received one number of Resolution Plan from the Prospective Resolution Applicant in sealed envelope. The same was placed and opened before the COC in this Meeting. However, even after several meetings, discussion, and negotiation between the CoC and the Prospective Resolution Applicant with regards to the resolution plan, the resolution plan was not approved.
6. The CoC in its 12th meeting dated 05.08.2023, rejected the resolution plan of the PRA and the resolution for liquidation of the Corporate Debtor was approved with 100% votes.
7. Accordingly, the RP had filed the liquidation application on 23.08.2023, the Prospective Resolution Applicant (PRA) also filed Interlocutory Application contending the liquidation application of the CD and one of its sister company under CIRP on 29.09.2023. The NCLT through a common order on 06.12.2023 disposed of the Liquidation Applications of CD and its sister companies along with the IAs contending the Liquidation Application and allowed 8 weeks' time period to the CoC for taking a consistent stand for resolution or liquidation of CD.
8. In accordance with the order dated 06.12.2023, 13th CoC meeting was held on 11.12.2023, wherein the CoC sought one week time for necessary decision and further course of action.

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9. Thereafter, the CoC in the 14th CoC meeting held on 18.12.2023, with 100% voting rights took a consistent stand for rejection of the resolution application and approval for liquidation of CD citing the following reasons:
- 9.1 Amount offered to the secured FCs in NPV terms as per the resolution plan submitted by consortium of Mr. Rajiv Kumar Singhal (Lead Member), Mr. Ashok Kumar Agarwal, Mr. Kishan Kr Agarwala, Mr. Rajendra Gupta, Mr Lokesh Pareek & Mr Riben Sayoo is Rs. 2.02 Crore which is lower than liquidation value of CD amounting Rs. 2.26 Core.
- 9.2 There are 2 reliefs sought in the plan, which makes the submitted resolution plan as condition precedent, which are as under
- i. The Resolution Applicant shall be at liberty to amend, vary, modify or add prayers in the resolution plan any time before CoC voting on the resolution plan.
 - ii. The MEPDCL or any other Body or Corporate or Authority shall provide the electricity power supply to the Corporate Debtor within 30 days from the order of A.A. without any claim, demand and or compensation etc. which has been accrued, due or arises and or pending prior to the approval of Resolution Plan by the A.A. MEPDCL shall also withdraw all the cases and or complaints against the CD without any claim and or demand of whatsoever nature.
- 9.3 CoC is further of the view that all the three CDs i.e., Shree Sai Rolling Mills India Ltd., Shree Sai Prakash Alloys Pvt Ltd. & Shree Sai Smelters India Ltd, which are under CIRP, having common directors are situated in the same compound. There is no separation/division among all the three companies. All expenses like security, maintenance, and electricity expenses etc were common and were being shared by them. Landed property, Civil Work and Amenities situated at combined plot of land measuring 513586 sq. feet 35.66 Bighas situated at 15th Mile, Rangsakona, Byrnihat, Meghalaya under different sale deeds in the names of Shree Sai Megha Alloys Pvt. Ltd., Shree Sai Prakash Alloys Pvt. Ltd. and Shree Sai Rolling Mills India Ltd. were utilised by all the three companies without any demarcation/distinction. Individual resolution of

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any of the CD or any two of the CDs under CIRP process is not practical and feasible Besides, the total amount offered to secured FC by PRA in all the three cases is Rs. 22 10 crore (NPV Rs. 20.97 crore) which is less than the total liquidation value of Rs. 24.14 crore.

9.4 Hence, in view of the above liquidation is preferred for all the three CDs.

10. The CoC recommended for sale of the Corporate Debtor as a going concern as per the provisions of law. Relevant documents in this regard have been enclosed with the application.

11. Further, the CoC recommended that Mr. Sandeep Khaitan having IBBI Registration Number IBBI/IPA-001/IP-P00532/2017-2018/10957 be appointed as the Liquidator in the matter. The Consent Letter dated 22.08.2023 of the Liquidator has been enclosed with the application.

12. In this respect, it is relevant to reproduce section 33(2) of the Insolvency and Bankruptcy Code, which is as under:

“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).”

13. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the COC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case the CoC with 100% voting right approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.

14. **For the aforesaid reasons, IA (IBC)(Liq.)/2/GB/2024 is ALLOWED with the following directions:**

- i. The Corporate Debtor, Shree Sai Smelters India Limited is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.

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- ii. The Resolution Professional Mr. Sandeep Khaitan having IBBI Registration Number IBBI/IPA-001/IP-P00532/2017-2018/10957, having address at 2nd Floor, Sanmati Plaza, G.S Road, ABC, Guwahati, Assam – 781005, is hereby appointed as Liquidator of the Corporate Debtor, since he has given his consent to be so appointed. This appointment is subject to him possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator's fee is to be decided as per Regulation 4 (2) (b) of IBBI (Liquidation Process) Regulations, 2016.
- iii. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The liquidator is directed to adhere to it.
- iv. Public Notice as contemplated under section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- v. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
- vi. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
- vii. On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

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- viii. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.
- ix. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
- x. The application bearing IA (IBC)(Liq.)/2/GB/2024 shall stand disposed of in accordance with the above directions.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
17. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

Signed this on 25th day of January, 2024.