NATIONAL COMPANY LAW TRIBUNAL,
COURT- V, MUMBAI BENCH

116) IA/1632(MB)2021
IA/515(MB)2021
IA/1470(MB)2021 IN
C.P. (IB)/888(MB)2019

CORAM:

SMT. ANURADHA SANJAY BHATIA, Member (Technical)
SMT. SUCHITRA KANUPARTHI, Member (Judicial)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **06.12.2021**

NAME OF THE PARTIES: AMRIK SINGH & SONS CRANE SERVICES PVT LTD

Vs.

MS CAPACITE STRUCTURES LIMITED

UNDER SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

IA 1632 of 2021:

The present application is filed by the RP seeking for liquidation of Corporate Debtor under Section 33.

The admission of CIRP against the Corporate Debtor was passed on 29.08.2019. IRP has made public announcement on 13.10.2019 and constituted the CoC, the first meeting of CoC was held on 08.11.2019.

In the 4th Meeting of CoC which was held on 14.02.2020, the Applicant informed about publication of Form-G on 05.01.2020.

In the 5th CoC meeting which was held on 06.03.2020, the Applicant informed the CoC members that they have received 3 EOI's from prospective resolution applicant pursuant to publication of Form-G. Thereafter, due to ongoing nation-wide lockdown since March 2020, the IRP with consent of CoC extended the time line for submission of EOI from time to time.

The transaction audit report was submitted in the 13th CoC Meeting. In the 15th CoC Meeting, the revised resolution plan as submitted by Zetwerk was considered and the CoC has found the resolution plan not viable.

The CoC in its 16th meeting held on 12.04.2021, were informed that 3 parties were interest to submit resolution plan and hence a fresh Form-G was issued.

In the 19th Meeting of CoC, the members of CoC deliberated and decided and informed the authorized representative of Wadhwa to submit a revised resolution plan. There after in the 20th Meeting of CoC, the applicant informed the CoC members that Wadhwa had not submitted revised resolution plan.

In the 21st meeting of CoC held on 08.07.2021, authorized representative informed that due to apprehension of getting additional tax liability, the resolution applicant would stick with DTS structure of resolution plan and cannot submit revised resolution plan for acquiring the entire Corporate Debtor as going concern. Hence, the CoC resolved to liquidate the Corporate Debtor. The grounds for seeking liquidation of Corporate Debtor is as follows:

a. The Applicant has carried out his duties in accordance with the provisions of IBC and has conducted the CIRP of the Corporate Debtor in good faith and in the best interest of stakeholders.
b. The Applicant has not received any code complaint or financially viable resolution plans even after causing multiple publications of invitation of EOI.

The Resolution passed by the CoC and the voting resolutions are as follows:

Resolution Number	Yes (%)	No (%)	Abstain (%)	Final Status	Resolution Summary
1	76.28%	23.72%	-	APPROVED	RESOLVED FURTHER THAT the consent of members be and is hereby accorded to appoint Mr. Gajesh Labhchand Jain (IBBI Registration No. IBBI/IPA-001/IP-P-01697/2019-2020/12588) as the Liquidator of the Company and be paid a fees as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (plus taxes and out of pocket expenses). RESOLVED FURTHER THAT Mr. Gajesh Labhchand Jain be and is hereby authorize to make necessary application for the appointment of Liquidator in the matter of Capacite Structures Limited and to do all such act, deeds and things to give effect to the aforesaid resolution.”
2	69.61%	23.72%	6.67%	APPROVED	“RESOLVED THAT The Consent Of Members Of Committee Of Creditors Be And Is Hereby Accepted Approve The Plan Providing For Contribution For Meeting The Differential Expenses Between The Estimated Value Of Liquid Assets And Estimated Liquidation Cost In The Event An Order Of Liquidation Is Passed Under Section 33 Of The Code In The Ratio Of Their Voting Share In Order To Meet The Liquidation cost as per Regulation 39B of CIRP Regulation.”

Findings:

1. This Bench considers the fact that no code complaint resolution plan was received by the resolution professional even after issuing multiple publications of Form-G, and that the CoC has resolved by 76.28% voting results to liquidate the Corporate Debtor. Hence, this Bench having being satisfied with the reasons aforesaid mentioned, approves the liquidation of Corporate Debtor and appoints Mr. Gajesh Labhchand Jain (IBBI Registration No. IBBI/IPA-001/IP-P-01697/2019-2020/12588) who has given consent to be appointed as liquidator in the present matter.
2. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

    a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

    b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.

    c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

f. that on having liquidation process initiated, 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 suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.

g. This liquidation order shall be a deemed to be 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.

3. IA 1632 of 2021 is **allowed** and disposed of in view of the above terms.

Sd/-	sd/-
ANURADHA SANJAY BHATIA Member (Technical)	SUCHITRA KANUPARTHI Member (Judicial)

/n/