

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 13th OCTOBER, 2023, 11.00 A.M.

**IA(IBC)/40/33(2)GB/2023
IA(IBC)/78/60(5)/GB/2023
IA(IBC)/79/60(5)/GB/2023
In
CP(IB)/19/GB/2022**

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

Name of the Company	Meena Surekha, RP, In (M/s Brahmaputra Iron & Steel Company Pvt. Ltd. Vs. State Bank of India, 2. North Eastern Development Corporation Ltd.)
Under Section	U/s 33(2) of the IBC, 2016

For Petitioner (s) : Mr. Dilip Dey, Adv. (For EPFO)

For Respondent (s) :

ORDER

IA(IBC)/40/33(2)GB/2023

Order Pronounced through VC *vide* separate sheets.

IA(IBC)/78/60(5)/GB/2023

Ld. Counsel for the Petitioner Mr. Dilip Dey present in this IA.

Order Pronounced through VC *vide* separate sheets.

IA(IBC)/79/60(5)/GB/2023

Ld. Counsel for the Petitioner Mr. Dilip Dey present in this IA.

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)/40/33(2)/GB/2023
IA (IBC)/78/60(5)/GB/2023
IA (IBC)/79/60(5)/GB/2023
In CP (IB)/19/GB/2022**

**IA (IBC)/40/33(2)/GB/2023
In
CP (IB)/19/GB/2022**

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:

Brahmaputra Iron & Steel Company Pvt. Ltd., having office at Room No 19, 2nd floor Vrindavan Market, SJ Road, Athgaon, Guwahati-781001;

...Corporate Debtor

-And-

In the Matter of:

Ms. Meena Sureka, Resolution Professional in the matter of Brahmaputra Iron & Steel Company Pvt. Ltd, having office at Central Plaza, 6th Floor, Room No. H, 41, B. B. Ganguly Street, Kolkata-700012;

... Applicant

**IA (IBC)/78/60(5)/GB/2023
In
CP (IB)/19/GB/2022**

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016;

-And-

In the Matter of:

1. Employees Provident Fund Organization (EPFO), represented by its Regional Provident Fund Commissioner, Regional Office, NE, Region, G.S. Road, Bhangagarh, Guwahati-781005;

-And-

2. The Recovery Officer, EPFO, Regional Office, NE, Region, G.S. Road, Bhangagarh, Guwahati-781005.

... Applicants

-Versus-

1. Meena Surekha, RP of Brahmaputra Iron & Steel Company Pvt. Ltd, having office at Central Plaza, 6th Floor, Room No. H, 41, B. B. Ganguly Street, Kolkata-700012;
2. State Bank of India (CoC), A.T. Road Branch, A.T. Road, Guwahati-781001.

... Respondents

-And-

IA (IBC)/79/60(5)/GB/2023

In

CP (IB)/19/GB/2022

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016;

-And-

In the Matter of:

1. Employees Provident Fund Organization (EPFO), represented by its Regional Provident Fund Commissioner, Regional Office, NE, Region, G.S. Road, Bhangagarh, Guwahati-781005;

-And-

2. The Recovery Officer, EPFO, Regional Office, NE, Region, G.S. Road, Bhangagarh, Guwahati-781005.

... Applicants

Versus-

1. Meena Surekha, RP of of Brahmaputra Iron & Steel Company Pvt. Ltd, having office at Central Plaza, 6th Floor, Room No. H, 41, B. B. Ganguly Street, Kolkata-700012;
2. State Bank of India (CoC), A.T. Road Branch, A.T. Road, Guwahati-781001.

... Respondents

Coram:

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

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

IA (IBC) 40/33(2)/GB/2023

For Petitioner (s) : Mr. Saunak Mitra, Adv.
Mr. Saurav Jain, Adv.
Ms. Meena Sureka, RP

**IA (IBC)/78/60(5)/GB/2023 &
IA (IBC)/79/60(5)/GB/2023**

For Petitioner (s) : Mr. Dilip Dey, Adv.
For Respondent (s) : Mr. Saunak Mitra, Adv.
Mr. Saurav Jain, Adv
Ms. Meena Sureka, RP.

Order reserved on: 22.09.2023

Order pronounced on: 13.10.2023

COMMON ORDER

Per: Bench

1. IA (IBC) 40/33(2)/GB/2023 has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Brahmaputra Iron & Steel Company Pvt. Ltd., praying the following:
 - a) *Pass an order requiring the Corporate Debtor to be liquidated under Section 33(2) of the IBC, 2016; and*
 - b) *Appoint Mrs. Meena Sureka to act as Liquidator as provided under Section 34(1).*
2. The brief facts are that the main application CP (IB)/19/GB/2022 filed by the Corporate Debtor- Brahmaputra Iron & Steel Company Pvt. Ltd. under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for brevity) was admitted by this Adjudicating Authority on 28th October 2022 and Mr. Purshotam Gaggar was appointed as Interim Resolution Professional (IRP). The IRP Mr. Purshotam Gaggar had constituted a Committee of Creditors and the Committee of the Creditors in a unanimous resolution dated 23.12.2022 in the Second CoC meeting, decided to replace the IRP Mr. Purshotam Gaggar and resolved to appoint Mrs. Meena Sureka as Resolution Professional and an application for the replacement of IRP was filed before the bench.

3. It is stated that the erstwhile IRP convened the Third CoC meeting and placed the draft copy of invitation of Expression of Interest for resolution plan. However, the CoC was of the opinion that since all the tangible assets of the Corporate Debtor were already sold out by the CoC members under SARFAESI Act, it would be best to initiate liquidation of Corporate Debtor Hence, in view of the provision of Section 33(2) of the Code, the CoC decided not to publish Form G for invitation for Expression of Interest and directed the erstwhile IRP to file the liquidation application.
4. Subsequently, this Adjudicating Authority *vide* order dated 10.02.2023 in IA (IBC)/8/22(3)(B)/GB/2023, appointed Mrs. Meena Sureka, the Applicant herein as Resolution Professional.
5. Thereafter, the Applicant conducted the fourth CoC meeting on 02.03.2023, wherein the present state of the Corporate Debtor was discussed in detail and it was decided in the best commercial wisdom to initiate the process of liquidation against the Corporate Debtor and the Applicant/RP was requested to continue as the Liquidator in the matter.
6. Subsequently, the Fifth CoC meeting was conducted on 23.03 2023, to discuss the various aspects of sale of Corporate Debtor. The CoC recommended for sale of the Corporate Debtor as a going concern as per the provisions of law.
7. It is further stated that the resolution for liquidation of the Corporate Debtor was approved with 100% votes. Relevant documents in this regard have been enclosed with the application.
8. 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).”
9. 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 liquation 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.

10. For the aforesaid reasons, IA (IBC) 40/GB/2023 is ALLOWED with the following directions:

- i. The Corporate Debtor, Brahmaputra Iron & Steel Company Pvt. Ltd. is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.
- ii. The Resolution Professional Ms. Meena Sureka [Reg No. IBBI/IPA-001/IP-P01422/2018-19/12163], having address at Central Plaza, 6th Floor, Room No. H, 41, B.B. Ganguly Street, Kolkata-700012, is hereby appointed as Liquidator of the Corporate Debtor, since she has given her consent to be so appointed. This appointment is subject to her 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 fixed at Rs 75,000.00 per month plus out of pocket expenses (on actual basis) and applicable taxes during the liquidation period as decided by the CoC in its 5th meeting.
- 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.
 - 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) No. 40/GB/2023 shall stand disposed of in accordance with the above directions.
11. IA (IBC)/78/60(5)/GB/2023 filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for a direction to Respondent No. 1/RP to accept the claim submitted under Form- F dated 10.05.2023 and/or a fresh claim application as per the provisions and Rules of IBC 2016 considering the said claim being the priority and statutory claim over all other claim of the CoC/Secured Creditor. In view of the order passed for liquidation of the CD- Brahmaputra Iron & Steel Company Pvt. Ltd., **this application i.e., IA (IBC)/78/60(5)/GB/2023 has become infructuous and shall stand disposed of.**
12. IA (IBC)/79/60(5)/GB/2023 filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for allowing the application for impleading Applicant No.1 and 2 (Regional PF Commissioner and Recovery Officer EPFO, Regional Office, Guwahati) in the CIRP of Corporate Debtor- Brahmaputra Iron & Steel Company Pvt. Ltd., arising out of Order dated 28.10.2022 in CP (IB)/19/GB/2022. However, in view of the order passed for liquidation of CD- Brahmaputra Iron & Steel Company Pvt. Ltd., this application i.e., IA (IBC)/78/60(5)/GB/2023 has become infructuous and shall stand disposed of.

13. 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.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
15. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

Signed this on 13th day of October 2023