**NATIONAL COMPANY LAW TRIBUNAL**
**GUWAHATI BENCH**
**GUWAHATI**

**CP (IB) No. 04/GB/2022**

**Coram:**
**Hon'ble Shri Deep Chandra Joshi, 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 30.09.2022**

In the matter of:

Anvi Metcorp Pvt. Ltd.
... Petitioner/Operational Creditor
Versus
Matiz Metals Pvt. Ltd.
... Respondent/Corporate Debtor

Section: Under Section 9 of IBC, 2016

| S. NO. | NAME (CAPITAL LETTERS) | DESIGNATION | REPRESENTATION | SIGNATURE |
|---|---|---|---|---|
| 1. | MR. BISHAL HARLALKA | CS | Petitioner | Present in Video Conference |
| 2. | NONE | - | Respondent | |

**O R D E R**

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

**SD/-**

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

**SD/-**

**(Deep Chandra Joshi)**
**Member (Judicial) &**
**Adjudicating Authority**

**NATIONAL COMPANY LAW TRIBUNAL**
**GUWAHATI BENCH**
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**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2022**

Under Section 9 of IBC, 2016

In the matter of:

**Anvi Metcorp Pvt. Ltd.**
39/41, Patharwala Building,
2nd Floor, Office No. 19,
Vithalwadi, Mumbai-400002

… Petitioner/Operational Creditor

Versus

**Matiz Metals Pvt. Ltd.**
Registered office:
Plot No. 18, EPIP,
Byrnihat-793101,
District Ri-Bhoi, Meghalaya.
Administrative Office:
191, Kika Street, Room No 35,
5th Floor, Gogate Mansion,
Gulalwadi, Mumbai-400002.

… Respondent/Corporate Debtor

**Order delivered on 30.09.2022**

**O R D E R**
**[Per se: Shri Prasanta Kumar Mohanty, Member (T)]**

1. The present Petition has been filed by the Petitioner/Operational Creditor, i.e. M/s Anvi Metcorp Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor, namely, M/s Matiz Metals Pvt. Ltd., seeking the following reliefs:

i. To pass appropriate order to commence insolvency as per the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

ii. To admit the debt payable to the Petitioner comprising

  a. Payment outstanding as per the ledger submitted; and,

  b. Interest @ 18% p.a. from the date of Default i.e., 02.02.2022 till realization.

2. The Corporate Debtor i.e. Matiz Metals Pvt. Ltd is a Private Limited Company incorporated as per Companies Act, 1956 having its registered office situated at the address Plot No. 18, EPIP, Byrnihat-793101, District Ri-Bhoi, Meghalaya. It has been trading in gold, gold Jewellery, Jewellery of other precious metals, diamonds and copper waste and scrap. As per the information available on the website of Ministry of Corporate Affairs, the authorized share capital of the Corporate Debtor is Rs. 6,00,00,000.00 (Rupees Six Crore only) and paid-up capital Rs. 89,20,000.00 (Rupees Eighty-Nine Lac Twenty thousand only). A true copy of the Master Data of the CD Company as available on the Ministry of Corporate Affairs website has been annexed with the Petition.

3. The Petitioner/Operational Creditor submits that:

3.1 The Operational Creditor is a Company which has sold and delivered, 2,300.000 gm. of Gold Bars 995 material under Tax Invoice bearing No. 21-22/110 dated 01.02.2022 of Rs. 1,13,47,510.00 (Rupees One Crore Thirteen Lakhs Forty-Seven Thousand Five Hundred Ten only) by Delivery Challan No. 110/21-22 dated 01.02.2022 on the same day. Copies of Tax Invoices and Delivery Challan have been annexed with the Petition.

3.2 In spite of the clear condition of immediate payment against delivery when no payment was received from the Corporate Debtor, the Operational Creditor, vide its letter dated 04.02.2022, reminded Corporate Debtor, that there was an outstanding of Rs. 1,13,47,510.00 (Rupees One Crore Thirteen Lakhs Forty-Seven

Thousand Five Hundred Ten only). However, vide letter dated 07.02.2022, the Corporate Debtor expressed inability in making the payment because of financial difficulties and asked for further two days' time to clear the outstanding. Copies of letter dated 04.02.2022 by the Operational Creditor and reply dated 07.2.2022 received from the Corporate Debtor have been annexed with the Application.

3.3 The Operational Creditor, vide its letter dated 08.02.2022 granted two more days' time to make payment of dues to the Corporate Debtor, however, again Corporate Debtor failed and neglected to pay the said amount of Rs. 1,13,47,510.00, on 10.02.2022 also. Copy of letter dated 08.02.2022 has been annexed with the Application.

3.4 The Corporate Debtor though admitted the claim but did not pay the company. The Operational Creditor also prepared ledger statement for the relevant period and the same was duly acknowledged by Corporate Debtor. Copy of the Statement of Accounts has been annexed.

3.5 The Operational Creditor thereafter sent Demand notice dated 18.2.2022 in Form 3 and Form 4 as prescribed under Section 6 and 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor at Registered Office and also at its administrative office on 18.02.2022 calling upon the Corporate Debtor to make payment of the operational debt due. The demand notices dispatched at the registered office and administrative office of the Corporate Debtor were duly received by the Corporate Debtor. Copy of Demand Notice U/s 8 of IBC issued along with Postal Receipts has been annexed with the Application.

3.6 The Corporate Debtor on receipt of said demand notice has replied to the said demand Notice by its letter dated 25.2.2022 however, while admitting the liability requested for time to make payment. The copy of said reply dated 25.2.2022 has been annexed.

3.7 The Corporate Debtor in spite of assurance failed to pay the amount and there is not any dispute as per the provisions of Insolvency and

Bankruptcy Code. The Bank Statement of the Operational Creditor for the Period 01.02.2022 to 09.03.2022 has been annexed.

3.8 The Corporate Debtor even after accepting and acknowledging its liability has failed to pay outstanding amount with the sole intention to prejudice the rights of the Operational Creditor in respect of its legitimate claim. The Corporate Debtor has not made any attempt to act and/or clear the outstanding dues as on date. This act clearly shows its intentions of purposely delaying the payment. The Corporate Debtor has not denied the claim, however conveniently not complied with the demand notice also.

3.9 The Operational Creditor humbly submits that, thus admittedly the corporate debtor is liable to pay amount of Rs. 1,13,47,510.00 (Rupees One Crore Thirteen Lakhs Forty-Seven Thousand Five Hundred and Ten Only) on this ground alone the petition ought to be admitted. Hence from the aforesaid it is clear and evident that the Corporate Debtor despite acknowledging its liability has miserably failed to honour the claim of the Operational Creditor, namely Anvi Metcorp Pvt. Ltd.

3.10 Hence, the Operational Creditor humbly prays that the instant application u/s 9 of the IBC be admitted and Corporate Insolvency Resolution Process should be initiated against the Corporate Debtor.

4. On the other hand, the Respondent submits that

4.1 The Respondent Company is a company incorporated on 09.11.2000, under Companies Act 1956, with the main object to carry on the business of manufacturers and dealers in metal and its allied products. Copy of Master data of Respondent & MOA has been attached.

4.2 The Metal business of Respondent in the State of Meghalaya has been failed and closed in the year 2005. The Respondent does not have any financial creditor as on today. The Board of Directors in the best interest of CD has decided to carry the business of precious metals in the year 2021-22 from the corporate office of the CD situated at 191, Kika Street, Room No 35, 5th Floor, Gogate Mansion, Gulalwadi, Mumbai-400002. Copy of GST Registration Certificate has been attached.

4.3 The Respondent CD has purchased 2300 grams gold bar from the Applicant on 01-02-2022 on the terms of immediate payment but unfortunately due to sudden outbreak of Russia- Ukraine war, the business of Respondent Company has adversely impacted as it created rush for safe investment in market due to on-going market volatility and pushed up the global gold prices higher. Further, the Respondent Company has entered into the contract with the few clients for sale and purchase of gold bar at the market prevailing market rates but the due to sudden increase in the price of gold, it has failed to fulfil its obligation towards the vendors and purchasers.

4.4 Owing to the economic slowdown triggered by Russia- Ukraine war, the Respondent Company was rendered powerless to fulfil its obligation of immediate payment to Applicant as agreed, however, the Respondent company has left no stone unturned to fulfil its obligation.

4.5 The reason of non- fulfilment of Respondent to the Applicant was due to unforeseen incident i.e., Russia-Ukraine war, hence in view of the submission made hereinabove, the instant application filed by the Applicant under section 9 of IBC-2016, is liable to be rejected and the Respondent should be granted the opportunity to revive its business activity.

5. The Applicant vide its rejoinder submits that:

5.1 The Reply of Corporate Debtor/Respondent covers the under mentioned issue: “That owing to economic slowdown triggered by Russia- Ukraine War, the Respondent fails to fulfil its obligation.” In reference to this issue raised by the Respondent, it is submitted that the Respondent by alluding such issues, admitting the fact that the debt is due and there is default on its part, hence raising such issue after occurrence of default is irrelevant. Further, it is lucidly clear that the Respondent has grossly failed to pay the debt amount which is due and payable as confirmed by the Respondent in terms of Section 3(12) of IBC, 2016, and application under 9(1) of IBC-2016 was filed by the Operational Creditor to trigger CIRP against the Respondent on the occurrence of default, which is its substantive right of Operational Creditor and further such application is in compliance of section 9(1),(2),(3) &(4) which justify that the application must be admitted

5.2 In Compliance of NCLT Order dated 13-05-2022,Submission relating to the nature of transaction, source of procurement of gold, certificates, and Trade Licence has been made by the OC as under:

5.3 Nature of Transaction: The nature of transaction between Applicant & Respondent is well evident from the GST invoice, raised by the Applicant for the supply of Gold Bar under the HSN Code '71081200' dated 01.02.2022 vide Invoice No: 21-22/110 attached with the Original Application as Annexure- B vide Page No. 32.

i. Source of Procurement: The Operational Creditor is dealing in the business of bullion since 2012 & having yearly turnover of Rs. 266,84,44,555.00 as per Audited Financial Statement for the Period April 2020 to March 2021. (Copy of Audited financial statement for the F.Y. 2020-21 has been attached). The Operational Creditor made purchase and sale of bullions as per the prevailing market rate. The Applicant is legally authorized to purchase and sale of precious metals from the open market, to establish the source of Procurement and sale of gold bar a copy of sales and purchase ledger for the period Oct 2021 to March 2022 has been attached.

ii. Trade Licence: The Applicant is dealing in the business of Bullion and the applicant has obtained the Certificate from the Maharashtra Shop & Establishments which has been annexed.

iii. Other Certificates: Copy of GSM Certificate & Memorandum of Association have been annexed.

5.4 Existence of debt: The debt is due in the instant matter in pursuant to section 3(11) of IBC-2016, which states that

*"debt" mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*

The debt is due in the instant matter which could be manifest from the confirmation of the ledger account by the Respondent itself in writing as on 17.03.2022, patently showing the outstanding debt due is Rs. 1,13,47,510.00

5.5 Existence of default: There is default in the instant matter in pursuant to section 3(12) of IBC-2016, which states that:

*"Default" means non-payment of debt when whole or any part or instalment of the amount of debt hers been due and payable is not paid by the debtor or the corporate debtor, as the case may be.*

The date of the default in the instant matter is 02.02.2022, as per the GST invoice.

5.6 Compliance of section 9 of IBC 2016: The demand notice u/s 8 of IBC 2016 was issued on 18.02.2022 & delivered on 21.02.2022. The Applicant/Operational Creditor has not received the debt amount after issue of demand notice to the CD till date. Thereafter application u/s 9(1) of IBC 2016 has been filed before the Adjudicating Authority for initiation of CIRP. The provision of section 9(2), 9((3) & 9(4) of IBC 2016, has been complied with. Under this circumstance, the Hon'ble Bench may graciously be pleased to admit this application.

6. In compliance to our order dated 17.06.2022, the Applicant further submits that:

6.1 The Operational Creditor/Applicant has sold and delivered, 2300 gms of Gold Bar 995 under HSN Code 71081200 vide E-Tax Invoice bearing No 21-22/110 dated 01.02.2022 of Rs. 1,13,47,510.00 (Rupees One Crore Thirteen Lakhs Forty-Seven Thousand Five

Hundred and Ten Only) by Delivery Challan No. 110/21-22 dated 01.02.2022 on the terms of immediate payment.

6.2 The Operational Creditor has sent the reminder letter dated 04.02.2022 to the Corporate Debtor for payment of outstanding amount Rs. 1,13,47,510.00 on that Corporate Debtor expressed in making payment because of financial difficulty and asked for two days' time to clear the outstanding amount.

6.3 The Operational Creditor has granted two days' time to the Corporate Debtor to clear the outstanding amount vide letter dated 08.02.2022 but the Corporate Debtor has failed and neglected to pay the said due amount of Rs. 1,13,47,510.00. Hence, it compelled the Operational Creditor to send demand notice to the Corporate Debtor on 18.02.2022 both at the registered office & Administrative office of the Corporate Debtor.

6.4 The Corporate Debtor after receipt of the demand notice has replied vide E-mail dated 25.02.2022, wherein admitted the liability without raising any dispute and requested for the time to make payment but in spite of assurance the Corporate Debtor has failed to pay the outstanding amount. This shows that even after accepting and acknowledging the liability the Corporate Debtor has failed to pay outstanding amount with the sole intention to prejudice the right of the Operational creditors in respect of its legitimate claim. Hence, on 22.03.2022 the Operational Creditor has filed the Application (CP (IB) 04/GB/2022) under section 9 of IBC before the Hon'ble Bench & sent the copy to the CD.

6.5 The Corporate Debtor has filed reply dated 19.04.2022 to the application CP (IB) 04/GB/2022) stating his inability of making payment due to financial difficulty and taking the shelter of Russia-Ukraine war. Whereas by alluding such issues the Corporate Debtor admitting the fact that the debt is due and there is default on his part, hence raising such issue after occurrence of default is irrelevant.

6.6 There is debt u/s 3(11) of IBC which is acknowledged by the Corporate Debtor by confirming the ledger account as well as there also is default u/s 3(12) which is evident from the delivery challan issued by operational creditor on 01.02.2022 wherein the term of payment is on immediate basis. Since there is debt & default u/s 3(11) & 3(12) of IBC-2106 respectively, and the application flied u/s 9 of IBC has complied with the provision of section 9(2), 9((3) & 9(4) of IBC 2016. Hence under this circumstance, the Hon'ble Bench may graciously be pleased to admit this application

7. The matter was heard on 01.04.2022, 06.05.2022, 13.05.2022, 10.06.2022, 17.06.2022, 28.07.2022, 05.08.2022, 25.08.2022. The Respondent failed to appear for the last 3 hearings despite giving them sufficient opportunities to appear and present its case. This matter was last heard on 16.09.2022 ex-parte and reserved for orders.

**ORDER**

8. Considering the materials made available by the Operational Creditor/Petitioner , the arguments of learned counsel of the Petitioner and the facts mentioned hereinabove, this Adjudicating Authority is satisfied that:

a. **Existence of operational debt is above Rupees One Crore.**
b. **Debt is due and defaulted.**
c. **Default occurred on 02.02.2022 and continuing,**
d. **Demand Notice dated 18.02.2022 has been served at the Registered and Administrative office of the CD and proof of delivery of notice has been filed by the OC/Applicant.**
e. **Petition has been filed within the limitation period, as the default date is 02.02.2022 and onwards when the petition under Section 9 of the IBC has been filed on 22.03.2022**
f. **Existence of dispute prior to the issue of demand notice is not found.**

**Hence, the application filed by the Petitioner under Section 9 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.**

**9. Accordingly, the petition filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of the CD- Matiz Metals Private Ltd. The date of admission of this petition is 30.09.2022.**

10. Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016 is hereby declared. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

i. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

   a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
   b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
   c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

ii. The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

iii. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

v. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

11. Since the Applicant has suggested the name of a Resolution Professional Mr. Amit Pareek to be appointed as IRP, this Adjudicating Authority hereby appoints, Mr. Amit Pareek, 4th Floor, K.C Choudhary Road, Ram Prasad Complex, Chatribari, Guwahati-781001, Kamrup (M), Assam, having IP Registration No. IBBI/IPA-002/IP-N00413/2017-18/11205, as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP is to file Assignment Declaration Form with the Registry within 3 days from receipt of this Order.

12. The Operational Creditor has to deposit Rs, 3,00,000.00 (Rupees Three Lakhs Only) in the account of the IRP within three days for initial expenses of CIRP including paper publication etc., which will be apportioned as per the provisions of the Code and reimbursed the amount approved by the CoC to the Applicant upon formation of the Committee of Creditors.

13. The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016 and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honest and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

14. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall complete the CIRP in time.

15. Registry is hereby directed to communicate this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail immediately.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

17. Hence, CP (IB) 4 of 2022 is hereby admitted with the above directions.

**SD/-**

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

**SD/-**

**(Deep Chandra Joshi)**
**Member (Judicial) &**
**Adjudicating Authority**