







appointed Mr. Purshotam Gaggar, as an Interim Resolution Professional.

2.2 On 27.03.2022, the IRP for the Corporate Debtor, under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 made public announcement as per Regulation 6 of the CIRP Regulations in North East Times (English Newspaper) and Amar Asom (Assamese Newspaper) and based on the claims received constituted a Committee of Creditors (COC) and the same was updated from time to time, as on date, the CoC comprises of the following:

S. No.	Financial Creditors	Amount Claimed (INR)	Claim Admitted (INR)
1	Indian Bank	6,76,91,833.00	6,76,91,833.00
2	Mrs. Deboshree Banik	41,48,509.00	30,84,973.00
3	Mr. Mantu Das	29,91,479.00	22,50,413.00
4	Mrs. Gitanjali Bordoloi	35,59,861.00	28,92,961.00
5	Ms. Jamuna Saikia	24,00,000.00	16,00,000.00
	<b>TOTAL</b>	<b>8,07,91,682.00</b>	<b>7,75,20,180.00</b>

2.3 There have been Eight (8) meetings of the Committee of Creditors during the CIRP Period of the Corporate Debtor. The list of dates and particulars of the CoC meetings are mentioned hereunder:

Particulars	Meeting Conducted by	Date of the Meeting	Mode of Meeting
First Meeting	IRP	21.04.2022	Video Conferencing/Physical
Second Meeting	RP	04.06.2022	Video Conferencing
Third Meeting	RP	30.06.2022	Video Conferencing
Fourth Meeting	RP	25.07.2022	Video Conferencing
Fifth Meeting	RP	08.08.2022	Video Conferencing
Sixth Meeting	RP	22.09.2022	Video Conferencing
Seventh Meeting	RP	28.10.2022	Video Conferencing/Physical
Eighth	RP	03.12.2022	Video



Meeting			Conferencing/Physical
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- 2.4 The Applicant, in conformity with Regulation 35 (1)(c) of the said CIRP Regulations, has considered the valuation reports in respect of each segment and duly considered the average value of the two estimates as mentioned in each of the above segments and consequently arrived at the valuation of the assets in respect of the Corporate Debtor.
- 2.5 In the 1<sup>st</sup> Meeting of the CoC, it was resolved to appoint Mr. Purshotam Gagar (Applicant herein) as Resolution Professional (RP) of Corporate Debtor, it was further resolved to appoint valuers for valuation of the Corporate Debtor.
- 2.6 During the 2<sup>nd</sup> CoC meeting held on 04.06.2022, the RP informed the CoC members of the action taken by RP. CoC members sought time to verify the draft EOI circulated by RP.
- 2.7 In the 3<sup>rd</sup> meeting of the CoC, the members approved Form G prepared in accordance with Regulation 36 A(1) of the said CIRP Regulation which was published on 02.07.2022 in English paper (North east Times) and Assamese paper (Amar Asom). Moreover, the CoC members also approved the eligibility criteria for the Prospective Resolution Applicant.
- 2.8 The 4<sup>th</sup> Meeting of the CoC, took place on 25.07.2022, wherein the members of the CoC approved the Evaluation Matrix and the Request for the resolution Plan to be circulated amongst the Prospective Resolution Applicant. The request for Resolution Plan was prepared following Regulation 36B of the said CIRP Regulations. Moreover, since the RP was in receipt of only one expression of interest, CoC resolved to publish a fresh Form G.
- 2.9 On 28.07.2022, the 2<sup>nd</sup> Form G was published in English Paper- The North East Times and Assamese paper-Amar Asom.
- 2.10 The 5<sup>th</sup> CoC meeting took place on 08.08.2022, wherein it was resolved to seek extension of CIRP period by 90 days.



- 2.11 On 18.08.2022, the Applicant, upon having circulated the Final List of Prospective Resolution Applicants compiled in conformity with Regulation 36A (12) of the said CIRP Regulations, the said Prospective Resolution Applicant duly submitted their expression of interest as per the format and the requirements within the last date for submission of such expression of interest.
- 2.12 This Hon'ble Tribunal vide order dated 25.08.2022 in IA No. 58/GB/2022, allowed the application for extension filed by applicant herein, thereby extending CIRP period by 90 days w.e.f. 20.09.2022.
- 2.13 On 19.09.2022, only one Resolution Plan was received by RP from consortium of Shyam & Sons (HUF) Mr. Shyam Sunder Pareek and Mr. Pawan Kumar Joshi. In the 6<sup>th</sup> meeting of CoC, held on 22.09.2022, wherein the Resolution Plan was opened before the CoC.
- 2.14 In the 7<sup>th</sup> Meeting of the CoC, held on 28.10.2022, RP certified legal compliance pertaining to Resolution Plan and eligibility of the resolution applicant from the point of view of Section 29A. Furthermore, in the said meeting due deliberation on the plan submitted and negotiation with the Resolution Applicant was undertaken by the Committee and the Resolution Applicant was requested to submit an improved plan.
- 2.15 The 8<sup>th</sup> meeting of the CoC was held on 03.12.2022, wherein the Resolution Applicant refused to improve upon his bid, after which the Resolution Plan was placed before CoC for voting. Further discussion took place on matters specified under regulation 39B, 39C, 39D & 40D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same was placed before CoC for voting. The CoC, on 17.12.2022, rejected the resolution Plan with 87.32% vote. The CoC also voted with 87.32% vote to file an application for liquidation of the CD. In terms of Regulation 39C of the CIRP Regulations, while recommending liquidation of the Corporate Debtor under Section 33 of the Code, **the CoC recommended that the liquidator should**



**first explore selling the assets of the Cd as one block on going concern basis.**

- 2.16 The Applicant, being eligible for appointment as Liquidator under Section 34 of the Code has attached herewith his consent to act as liquidator of the Corporate Debtor.
- 2.17 The Applicant has duly performed his duties as specified under the Code read with the regulations thereunder.
- 2.18 In view of the above, the present Application is being moved praying for liquidation of the Corporate Debtor in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

3. The RP has under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the Compliance Certificate. The relevant portion is reproduced below:

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i. *The details of the CIRP are as under:*

<b>SL. NO.</b>	<b>PARTICULARS</b>	<b>DESCRIPTION</b>
1.	<i>Name of the CD</i>	<i>Guwahati Constructions Private Limited</i>
2.	<i>Date of Initiation of CIRP</i>	<i>24.03.2022</i>
3.	<i>Date of Appointment of IRP</i>	<i>24.03.2022</i>
4.	<i>Date of Publication of Public Announcement</i>	<i>27.03.2022</i>
5.	<i>Date of Constitution of CoC</i>	<i>19.04.2022</i>
6	<i>Date of First Meeting of CoC</i>	<i>21.04.2022</i>
7	<i>Date of Appointment of RP</i>	<i>21.04.2022</i>
8	<i>Date of Appointment of Registered Valuers</i>	<i>20.05.2022</i>
9	<i>Date of Issue of Invitation for EoI</i>	<i>First EOI on 02.07.2022 Second EOI on 28.07.2022</i>
10	<i>Date of Final List of Eligible Prospective Resolution Applications</i>	<i>18.08.2022</i>
11	<i>Date of Invitation of Resolution Plan</i>	<i>16.08.2022</i>



12	Last Date of Submission of Resolution Plan	19.09.2022
13	Date of Approval of Resolution Plan by CoC	NA
14	Date of filing of Resolution plan with adjudicating Authority	NA
15	Date of Expiry of 180 Days of CIRP	20.09.2022
16	Date of order extending of period of CIRP	25.08.2022
17	Date of Expiry of Extended Period of CIRP	19.12.2022
18	Fair Value	Rs. 10,12,38,489.50
19	Liquidation Value	Rs. 7,59,30,011.50
20	Number of Meetings of COC held	8

- ii. The RP has examined the Resolution Plan received from Resolution Plan Applicant/ the consortium of Mr. Shyam Harlalka (Lead Member) with Mr. Shyam Sunder Pareek and Mr. Pawan Kumar Joshi. **The resolution plan received for the corporate debtor was not approved by the CoC.**
- iii. The list of financial creditors of the CD/ Guwahati Constructions Private Limited being members of the CoC and distributing of voting shares among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/ Dissented/ Abstained)
1.	Indian Bank	87.32%	Dissented
2.	Mrs. Deboskee Banik	3.98%	Abstained from voting
3.	Mrs. Gitanjali Bordoloi	3.73%	Abstained from voting
4.	Mr. Mantu Das	2.90%	Abstained from voting
5.	Mrs. Jamuna Saikia	2.06%	Abstained from voting

- iv. **A. The committee has approved a plan providing for contribution under regulation 39B as under:**
- Estimated liquidation cost: Rs. 17,39,400.00
  - Estimated liquid assets available: Nil
  - Contributions required to be made: Rs. 17,39,400.00
  - Financial creditor wise contribution is as under: NA



Sl. No.	Name of Financial Creditor	Voting Share (%)	Amount to be contributed (In Rs.)
1.	Indian Bank	87.32%	15,18,844.00
2.	Mrs. Deboskee Banik	3.98%	69,228.00
3.	Mrs. Gitanjali Bordoloi	3.73%	64,880.00
4.	Mr. Mantu Das	2.90%	50,443.00
5.	Mrs. Jamuna Saikia	2.06%	36,005.00
Total		100%	17,39,400.00

**B. The committee has recommended under regulation 39C as under:**

- a. Sale of corporate debtor as a going concern: Yes
- b. Sale of business of corporate debtor as a going concern: Yes

**C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. Yes, the Liquidator's fee is decided as Rs. 90,000.00 plus GST per month during the liquidation period.**

**ORDER**

4. We heard the Learned RP and perused the materials available on record. **After perusing the minutes of the COC meeting held on 17.12.2022, it is found that the CoC has rejected the Resolution Plan with 87.32 % vote and also voted for Liquidation of the CD with 87.32%. The CoC recommended that the liquidator should first explore selling the assets of the CD as one block on going concern basis. Since a viable resolution plan was not received during the CIRP period, the prayer made in the IA for Liquidation needs to be accepted.**

5. Section 33(2) of the Code empowers the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six % of the voting share, to liquidate



the Corporate Debtor. In this case the Resolution for Liquidation of the CD has been passed by the CoC **with 87.32% which is above the required % of voting for passing an order for Liquidation.**

6. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.

7. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

8. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. In this case during the hearing, the member of the CoC and the Applicant have submitted that they did not get any viable Resolution Plan at all. Hence, they have recommended for Liquidation.

9. **This Bench, therefore, hereby orders as follows:**



- 9.1 Prayers as sought for in IA (IBC) No. 04/GB/2023 filed by Mr. Purshotam Gaggar, the RP of the Corporate Debtor, Guwahati Constructions Pvt Ltd (GCPL) is allowed and the **Corporate Debtor is ordered to be liquidated** in terms of section 33(2) of the Code read with sub-section (1) thereof;
- 9.2 Mr. Purshotam Gaggar [Reg No. IBBI/IPA-001/IP-P00117/2017-18/10252], having address at P. Gaggar & Associates, Chartered Accountants, Advika, 3<sup>rd</sup> Floor, Opp. Sukreswar Ghat Garden, MG Road, Panbazar, Guwahati-781001, Assam, whose name has been proposed by CoC, **is hereby appointed as Liquidator** as provided under Section 34(1) of the Code subject to his possessing a valid Authorization for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2019. **The Liquidator's fee is fixed at Rs. 90,000.00 plus GST per month during the liquidation period as decided by the CoC in its 8<sup>th</sup> meeting.**
- 9.3 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.**
- 9.4 The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 9.5 Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- 9.6 All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with Section 34(2) of the Code. All these powers are vested henceforth with the Liquidator.
- 9.7 The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.



- 9.8 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 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.
- 9.9 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 when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- 9.10 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.
- 9.11 In terms of Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.
10. **Thus, the present application i.e. IA (IBC) No. 04/GB/2023 filed under Section 33(2) of the IBC stands admitted and disposed of with the above observations and directions.**
11. 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.



12. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Sd/-**

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

**Sd/-**

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