

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC) No. 16/GB/2022
in CP (IB) No. 14/GB/2021**

Coram:

Hon'ble Shri Rohit Kapoor, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL
COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 08.04.2022**

Name of the Company:

M/s Tata Hitachi Construction Machinery Co. Pvt. Ltd
..... Operational Creditor

-Versus-

M/s Berial Engineers Pvt. Ltd.

..... Corporate Debtor

AND

CA Purshotam Gaggar, RP- Berial Engineers Pvt. Ltd

..... Applicant

Section: Section 33(2) of Insolvency and Bankruptcy Code, 2016

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	NONE	-	Petitioner	Present in
2.	NONE	-	Respondent	Video Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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

Sd/-

Sd/-

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

(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority

O R D E R
[Date of Order: 08.04.2022]
[Per se: Prasanta Kumar Mohanty, Member (T)]

1. This is an application filed by the Resolution Professional ('RP') upon the instructions of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Berial Engineers Pvt. Ltd. [CIN: U74210AS1998PTC005530], **on the ground that there is no business activity carried on by the Corporate Debtor. The Applicant has sought for the following** relief:

- a. For an order for liquidation of the Corporate Debtor with necessary directions which may provide for or in relation to-
 - i. Public announcement for liquidation for Corporate Debtor;
 - ii. Appointment of liquidation;
 - iii. Restriction on institution of suit or legal proceedings' by or against the Corporate Debtor;
 - iv. Any other matter as the Hon'ble Tribunal deems proper for conducting liquidation process of the Corporate Debtor.

2. This Adjudicating Authority vide its order dated 10th December, 2021 on a Petition filed by Tata Hitachi Construction Machinery Company Private Limited ('Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Mr. Purshotam Gaggar as the Interim Resolution Professional ('IRP') who was later confirmed as the Resolution Professional.

3. The IRP published public announcement on the commencement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor on 08.01.2022 in two newspapers; one in English daily (The North East Times) and other in Assamese Daily (Amar Asom) which are largely circulated in the

State of Assam i.e. the place where the registered office of Corporate Debtor is situated.

4. The IRP received two claims in response to public announcement and the details of the name are as follows:

Sl No.	Name of Creditor	Nature of Creditor	Address	Amount Claimed by the Creditors (Amt. in Rs.)	Amount Admitted (Amt. in Rs.)
1.	UCO Bank	Financial Creditor	Silpukhuri Branch, MRD road, Silpukhuri Guwahati 781003	9,79,26,620.58	9,79,26,620.58
2.	Tata Hitachi Construction Machinery Co. Pvt. Ltd	Operational Creditor	Jubilee Building 45, Museum Road, Bangalore Karnataka-560025	13,28,79,360.00	13,28,79,360.00
	TOTAL			23,08,05,980.58	23,08,05,980.58

The claims were admitted with verifications based on the records produced by the claimants.

5. The Committee of Creditors is constituted with the sole financial creditor UCO Bank as per the provisions of Section 21(2) of Insolvency & Bankruptcy Code, 2016. Since, UCO Bank is the sole member of the Committee of Creditors, the UCO Bank has 100% voting rights for matters to be transacted in the CoC meeting.

6. The Committee of Creditors in its first meeting held on 02.02.2022 appointed IRP as Resolution Professional (RP) for the Corporate Debtor. The RP prepared the Information Memorandum (IM) of the CD from the data available with the RP. However, the RP could not provide updated information in the IM as the corporate debtor has not been carrying on its business since 2011. The

Books of accounts and other records could not be traced as no office of the corporate debtor exists as on date. The Corporate Debtor filed its annual report with ROC up to FY 2009-10 and no documents thereafter could be found in the MCA Portal.

7. The RP in the CoC meeting dated 23.02.2022 apprised the committee about the following facts about the corporate debtor:

- a) The company does not have any books of accounts and audited financials since 2009-10.
- b) The company does not have commercial operation since 2011.
- c) The company does not have any moveable or immovable assets.
- d) The bank accounts maintained by the company are either closed or out of balance.
- e) The assets on which security is created against the loans taken from bank is owned by third party.
- f) The liquidation value of the company is NIL.**

8. The RP expressed its opinion before the committee that the corporate debtor should be sent for liquidation only as continuing the CIRP process would attract **unnecessary cost without any fruitful results. The CoC discussed the matter and has recommended liquidation of the Corporate Debtor as there is no business activity carried on by the Corporate Debtor. Moreover,** the **realizable value** of assets of Corporate Debtor **is Nil.** The CoC approved liquidation of the corporate debtor and authorized Resolution Professional to approach this Hon'ble Tribunal to obtain necessary order. Minutes of the CoC meeting dated 23rd February, 2022 has been annexed.

9. The decision on liquidation of the Corporate Debtor has been taken by the CoC with **the approval of 100% voting of the CoC.** The RP also gives its consent to act as liquidator of the Corporate Debtor in Form 2, if order for

liquidation is passed by the Hon'ble Tribunal. Copy of the consent has been annexed.

10. Hence, the RP has filed an application under Section 33 (2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.

ORDER

11. We have considered the averments made and heard the Learned RP.

12. **After perusing the minutes of the COC meeting held on 23.02.2022, it is found that there is no business activity carried on by the Corporate Debtor.** The Corporate Debtor filed its annual report with ROC up to FY 2009-10. The **realizable value** of assets of Corporate Debtor **is Nil. The CoC has also resolved by 100% voting share to liquidate the Corporate Debtor even before the expiry of the insolvency resolution process period. When no security is there and resolution has been passed in the CoC with 100 % voting share, it is not worth to continue the CIRP and increase the cost of the CIRP. Hence the prayer made in the IA needs to be accepted.**

13. 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 percent of the voting share, to liquidate the Corporate Debtor.

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

14.1 Prayers as sought for in IA (IBC) No. 16/GB/2022 filed by Mr. Purshotam Gaggar, the RP of Berial Engineers Pvt. Ltd., the Corporate

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Debtor, 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;

- 14.2 Mr. Purshotam Gaggar [Reg No. IBBI/IPA-001/IP-P00117/2017-18/10252], having address at P. Gaggar & Associates, Chartered Accountants, Advika, 3rd 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, however, 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.
- 14.3 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.
- 14.4 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.
- 14.5 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 in the Liquidator.
- 14.6 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.
- 14.7 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.

14.8 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.

14.9 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.

15. Thus, the present application i.e. IA (IBC) No. 16/GB/2022 filed under Section 33(2) of the IBC stands admitted and disposed of with the above observations and directions.

16. 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.

17. 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/-

**(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority**