#### IN THE NATIONAL COMPANY LAW TRIBUNAL **DIVISION BENCH (Court -I) KOLKATA**

#### IA(IBC)(LIQ.)/39 (KB)2024 **CP(IB)/211(KB)2023**

An Application Under section	33(1) of th	ne Insolvency & Bankruptcy Code, 2016
In the matter of:		
Gemus Engineering Pvt.Ltd.		
	An	Corporate Debtor
In the matter of:		
Mr.Anil Anchalia		
RP		
		Applicant/IRP
		Order pronounced on: 17/12/2024
Coram:		
Mrs. Bidisha Banerjee,	:	Member (Judicial)
Shri Balraj Joshi,	:	Member (Technical)

Appearances (through hybrid mode):

For RP : Mr.Anil Anchalia, RP

#### ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1. This Adjudicating Authority convened through hybrid mode.
- 2. IA(IBC)(LIQ.)/39 (KB)2024- is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 ("IBC") by the Resolution Professional ("RP") of M/s Gemus Engineers Private Limited, the Corporate Debtor, praying for

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that:

- 3. This Adjudicating authority, on a petition filed u/s. 10 of the IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Gemus Engineering Litmited (Corporate Debtor), *vide* order dated 30/04/2024, had ordered initiation of Corporate Insolvency Resolution Process ("CIRP") against **M/s Gemus Engineers Private Limited**, the Corporate Debtor appointing Arun Kumar Gupta, as the Interim Resolution Professional ("IRP"). (Annexure-A) The said order was duly communicated to the IRP by the Registry.
- 4. Pursuant to provision of section 22(2) of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors in its first meeting held on 30/05/2024 had appointed Mr.Anil Anchalia as Resolution Professional of the Corporate Debtor by replacing Mr.Arun Kumar Gupta, IRP. The appointment was subsequently approved by the Hon'ble NCLT in its order dated 18/07/2024.
- 5. It is submitted that Mr.Arun Kumar Gupta, the erstwhile IRP, published Form G to invite Expression of Interest on 29/06/2024. Thereafter, Mr.Anil Anchalia, the RP, published a revised Form-G for the invitation of EOIs in the newspapers on 13/08/2024. (Annexure-C).
- 6. It is submitted that on 05/09/2024, the RP filed an application being IA No. 1902/2024 under section 60(5) of the IBC, 2016 read with rule 11 of NCLT Rules, 2016, against Calforge Steel Pvt.Ltd. & Ors before this Adjudicating Authority, seeking a directive to hand over the assets financed by Hero Fincorp Ltd., which are currently located at the factory premises purchased by Calforge Steel Pvt.Ltd. through an e-auction sale on 8/8/2022, conducted by Punjab National Bank. This application is pending for Adjudication.
- 7. That on 12/09/2024, the RP filed an application being IA No. 1993/2024 under Section 60(5) of the IBC, 2016, read with rule 11 of NCLT Rules, 2016 and

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

Regulation 30 of CIRP Regulations,2016, agasint SK. Fajkur Rahaman, proprietor of K.G.N. Engineering Works (a job worker of the CD) and others, seeking the handover of control and custody of a 9.25 cottah land at Mouza-Manickpur, Uluberia, District-Howrah. This application is pending for Adjudication.

- 8. It is submitted that in the 5<sup>th</sup> CoC meeting held on 24/09/2024, the RP informed the CoC that two Prospective Resolution Applicants (PRAs) had come forward in the CIRP following publication of the Invitation For EOI. The name of the PRAs are (1) Anuj Goyal and (2) Merc Infra India Pvt. Ltd. Following the publication of the EOI on 30/09/2024, the Request for Resolution Plan, Evaluation Matrix, and Information Memorandum (IM) were issued to the PRAs. The last date of submission of the Resolution Plan was set for 31/10/2024. However, no Resolution Plans were received from either of the PRAs in the CIRP.
- 9. It is submitted in the 7<sup>th</sup> CoC meeting held on 20/11/2024 ( with e-voting concluded on 28/11/2024), CoC Members, pursuant to Section 33(2) of IBC, 2016, passed a resolution (item No.6) for the initiation of liquidation proceedings against the Corporate Debtor. Photo copy of Minutes of the 7<sup>th</sup> CoC meeting, along with e-voting results is annexed as Annexure-D.
- 10. Pursuant to the decision of the CoC to liquidate the Corporate Debtor, the RP is hereby intimating the Adjudicating Authority, in accordance with Section 33(2) of the IBC, 2016, of the decision of the CoC.
- 11. It is submitted that the CIRP of the Corporate Debtor commenced on 30/04/2024 and is set to conclude on 25/01/2025 following an extension of 90 days from 26/10/2024 (the completion of 180 days), as per the Order dt. 3/10/2024 passed in IA No. 1897/2024.
- 12. In the above facts, it is therefore prayed that the Corporate Debtor may be liquidated in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the rules and Regulations framed thereunder.
- 13. In the above scenario, the applicant has filed the instant application being

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

IA(IBC)(LIQ.)/39(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.

- 14. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
- 15. A conjoint reading of these two provisions read with the Resolution of the CoC, leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
- 16. It is mentioned that the replacement of the liquidator is covered under section 34(4) of the Code, which provides as under: -
  - (4) The Adjudicating Authority shall by order replace the resolution professional, if
    - a. The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in subsection (2) of section 30; or
    - b. The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]
    - c. The resolution professional fails to submit written consent under subsection (1)
  - We have noted the assertions made in the recommendation that the existing RP be continued as liquidator, however we also note that the Circular No. **Liq.** 12011/214/2023-IBBI/840 dated 18/07/2023 has been issued by IBBI under the powers given to the Board under section 34(4)(b), whereby the Board in Para 3 of the said circular recommends that

"In view of the above justification, the Board in exercise of its powers conferred under section 34(4)(b), recommends that an IP other than the RP/IRP may be

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

appointed as the liquidator in all cases where Liquidation order is to be passed henceforth. The Liquidator can be appointed from the penal list of IBBI."

- 26. This Bench, therefore, hereby orders as follows:
  - a. **IA(IBC)/39(KB)2024** filed by the RP/Applicant of **Gemus Engineering Pvt.Ltd**, the Corporate Debtor, is **allowed**. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with subsection (1) thereof;
- 28. In view of the circular cited above, we hereby appoint Ms. Rashmi Chhawchharia, Regn. No. IBBI/IPA-001/IP-P02016/2020-21/13148 having email ID rashmi.chhawchharia@gmail.com, as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation 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) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days.
  - a. 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.
  - b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in "Business Standard" (English) and "Ekdin (Bengali daily) " in Vernacular Language i.e. Bengali stating that the Corporate Debtor is in liquidation.
  - c. 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

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

-----

shall henceforth vest in the Liquidator.

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

- e. 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.
- f. 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.
- g. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal.
- 29. The application bearing IA(IBC)(LIQ.)/39 (KB)2024 shall stand disposed of in accordance with the above directions.
- 30. CP(IB)/211(KB)2023 is to come up for filing of Periodical Progress Report on 08-04-2025.
- 31. The Registry is directed to send e-mail copies of the order forthwith to all the parties, including the liquidator appointed as above, and their Ld. Counsel for information and for taking necessary steps.

IA(IBC)(LIQ.)/39(KB)2024 in CP(IB)/211(KB)2023

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

Balraj Joshi Member (Technical) Bidisha Banerjee Member (Judicial)

Signed on this, the 17th day of Dec., 2024.

РJ