

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

No. T.C.P. (IB)-644(MB)/2017
IA 23 of 2018

CORAM : Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **09.05.2018.**

NAME OF THE PARTIES : Abhudaya Co-operative Bank Ltd.
Vs.
Shivkripa Ispat Pvt. Limited

SECTION OF THE COMPANIES ACT: I & B Code, 2016

ORDER u/s 33 of I & B Code. me

1. The Applicant herein is Resolution Professional duly appointed in the Insolvency Resolution Process of Shiv Kripa Ispat Private Limited and prefers this present Application under section 33 of the Insolvency and Bankruptcy Code 2016 (herein after referred to as "**IB Code**").
2. Abhudaya Co-operative Bank Limited had filed a Company Petition in the Hon'ble Bombay High Court for winding up of Shiv Kripa Ispat Private Limited. Thereafter due to change in Insolvency Laws, the Company Petition was Transferred to National Company Law Tribunal, Mumbai. The Company Petition was Admitted by this Hon'ble Tribunal on 14.08.2017. By this Order the Applicant Rajendra K. Bhuta was appointed as Interim Resolution Professional. As per this Order the Interim Resolution Professional caused advertisement in Newspapers for the Corporate Debtor. Advertisement was published on 21.09.2017 in terms of which the Applicant invited claims from Creditors of the Corporate Debtor.
3. An Order was passed u/s 7 dated 14.08.2017 of the Insolvency Code in respect

of the Petition submitted by the Financial Creditor Abhudaya Co-operative Bank Limited against the Corporate Debtor Shivkripa Ispat Private Limited. On examination of the records it is noticed that the Loan Facility granted originally by Abhudaya Co-operative Bank Limited was for an amount of ₹ 24,50,95,702/-

4. Once the Insolvency Proceedings commenced against the Corporate Debtor an IRP was appointed and thereafter RP Mr. Rajendra K. ^{Bhuta} Gupta took over the charge and called Meeting of Committee of Creditors. He has intimated that public announcements have been made and published the advertisement in the newspapers. The Resolution Professional did not receive any claim from any Creditor of the Corporate Debtor except from the ^{ev} Petitioning Financial Creditor ^{mes} for a sum of Rs. 25,02,88,813/- (Rupees Twenty-Five Crore Two Lakh Eighty Eight Thousand Eight Hundred Thirteen only). After scrutinizing the documents furnished, the IRP admitted claim of the ^{ev} Petitioning Financial Creditor. The IRP ^{mes} constituted Committee of Creditors which consists of the ^{ev} Petitioning Financial ^{mes} Creditor.
5. The First Meeting was convened and held on 10.11.2017 of the Committee of Creditors, but no meaningful information and documents have come forth from Directors of the Corporate Debtor. None of the Directors had made themselves available to the Applicant on the pretext that they are out of India since 2013-14 onwards. Accordingly, the Committee inter alia felt necessary to appoint accountant for preparing of financial statements of the Corporate Debtor for Financial Years 2013-14, 2014-15, 2016-17 and from 01.04.2017 till Insolvency Commencement date. There is no activity at its registered office and in fact another company with name Shree Jay Ambe Steel Yard Private Limited is operating from there. The Corporate Debtor has not filed its Annual Accounts and Annual Report with Registrar of Companies. No relevant record of the Corporate Debtor is available for the period starting from 01.04.2013. It was conveyed that as per Shri Jay Gupta, director of the Corporate Debtor, there are no workers or employees working with the Corporate Debtor. The Applicant was appointed as Resolution Professional.

6. The Second Meeting was convened and held on 09.02.2018 of the Committee of Creditors. The Resolution Professional apprised the Committee on financial statements for the financial years 2013-14, 2014-15, 2016-17 and from 01.04.2017 till Insolvency Commencement date. The accounts audited by N.S. Gokhale & Company were placed with the committee for review. The R.P. also placed on record Information Memorandum, Valuation Reports prepared by Rachana Vishwa and Rakesh Jadhav and Associates which were perused and accepted by the Committee of Creditors. The Liquidation value quoted by both Valuers are as under :-

<i>Particulars</i>	<i>Rajesh Jadhav & Associate</i>	<i>Rachana Vishwa</i>	<i>Average Value (Amount in Rs.)</i>
<i>Fair Market Value of Plot & Plan and Machinery</i>	<i>4,60,19,000</i>	<i>4,81,08,000</i>	<i>4,70,63,500</i>
<i>Liquidation Value of Plot & Plan and Machinery</i>	<i>3,22,13,000</i>	<i>3,60,90,000</i>	<i>3.41,51,500</i>

7. The Value emerged from the information and documents available that the Corporate Debtor has not entered into transaction with any related parties during past two years preceding Insolvency Commencement date. In the second meeting, the Applicant informed the Committee that he has not received Resolution Plan from any Creditor, the Corporate Debtor or third party. The Committee which consists of the Petitioning Financial Creditor as its sole member delved upon the information and the documents placed before it and resolved that Corporate Debtor be liquidated. As regards to his appointment as liquidator in the matter of Corporate Debtor, the Resolution Professional confirmed his eligibility as well as his willingness to act as Liquidator in the matter of Corporate debtor and the members of the Committee of Creditors unanimously decided to initiate the Liquidation Process. **It was resolved that after the publication of Expression of Interest, there was no Resolution Plan received from any prospective Resolution Applicant, hence decision was taken to get the assets liquidated.**

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8. The Resolution Applicant therefore prays that the Hon'ble Tribunal be pleased to pass an Order of Liquidation for the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code and to confirm the Committee's decision to appoint him as Liquidator of the Corporate Debtor.
9. As per the provisions of Section 33(2) of The Code to initiate Liquidation Process, the Resolution Professional at any time during the Corporate Insolvency Resolution Process but before confirmation of Resolution Plan, intimates the AA of the decision of the Committee of Creditors to Liquidate the Corporate Debtor the Adjudicating Authority shall pass a Liquidation Order as prescribed u/s 33 of The Code. It is intimated that after due deliberations the Committee of Creditors passed a Resolution for Liquidation of the Company with 100% Voting Share in favour of the said Resolution.
10. As far as the Valuation of the property of the Corporate Debtor is concerned, there was no confusion for initiation of Liquidation Proceedings for IRP who is now to be termed as "Liquidator". Therefore, to avoid such high percentage of sacrifice, it is necessary to take a decision in favour of the Financial Creditor to initiate Liquidation Proceedings against the Corporate Debtor who had mortgaged the property and the Loan in question was granted. The Debt in question is intricately linked with the property mortgaged hence cannot be segregated in the process of Liquidation proceedings. Therefore, it is hereby authorized that the Liquidator shall take necessary steps to liquidate the assets of the Corporate Debtor, for which a Valuation Report is already on record.
11. This decision is taken on the basis of one of the Sections as prescribed under the I&B Code i.e. Section 33(2) which prescribes that where a Corporate Insolvency Resolution Process or Liquidation Process of a Corporate Debtor is pending before NLCT, an Application relating to the Insolvency Resolution or Bankruptcy of such "Corporate Debtor" shall be filed before such NCLT. A clarification can also be inserted at this juncture that the Resolution Process is distinct from Liquidation Process. There may or may not be restrictions on the assets of a

Corporate Debtor in the event Resolution Process is commenced but right now the proceedings for Liquidation has been commenced. As a result, the assets of the Corporate Debtor can be subjected to Liquidation by invoking the jurisdiction prescribed u/s 33(2) of The Code.

11. The Resolution Professional is hereby appointed as a "Liquidator" to proceed with the Liquidation Process as directed hereinabove. This Application IA No. 23 is disposed of accordingly.

Date : 09.05.2018
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M.K. SHRAWAT
Member (Judicial)