

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 1217/2018
in C.P.(IB)-278(MB)/2017**

Under section 33(2) of the IBC, 2016

Through Mr. Jayesh H.
Resolution Professional
.....Applicant

In the matter of
Damani Shipping Pvt. Ltd.
.....Operational Creditor

Vs.

Ispat Energy Ltd.
.....Corporate Debtor

Order delivered on 14.11.2018

Coram: Hon'ble Shri. M.K. Shrawat, Member (Judicial)

For the Applicant : Mr. Niket Mehta, Adv. – for Resolution Professional
i/b Juris Corp

Per M.K. Shrawat, Member (Judicial)

ORDER

The Resolution Professional Mr. Jayesh H. filed this Miscellaneous Application No.: 1217/2018 u/s 33(2) of the Insolvency and Bankruptcy Code, 2016, (**Code**) seeking initiation of "Liquidation" of the Corporate Debtor on account of Committee of Creditors (CoC) passing a resolution on 12.07.2018 to get the approval of this Bench for Liquidation order as envisaged under Section 33 of the Code. The said resolution was further ratified in the CoC meeting held on 04.09.2018, hence this application.

2. On perusal of this application, this Bench has noticed that earlier under old provisions u/s 433 and 434(1)(a) of the Companies Act, 1956, a Company Petition No. 580/2016 had been filed before

the Hon'ble High Court of Bombay on 19.07.2016 for winding up of the Corporate Debtor, the same was transferred to NCLT on 01.02.2017. Pursuant to the said transfer, the Petitioner/Operational Creditor viz. Damani Shipping Pvt. Ltd. initiated Corporate Insolvency Resolution Process (CIRP) against Ispat Energy Ltd. (hereinafter as 'Corporate Debtor') u/s 9 of the Code and the same was admitted on 25.04.2018 by this Bench wherein Mr. Jayesh H. (IBBI/IPA-001/IP-P00146/2017-18/10310) was appointed as Interim Resolution Professional (IRP) and he was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in its first meeting held on 26.06.2018.

3. In pursuance of the admission order dated 25.04.2018, the IRP issued public announcement u/s 15 of the Code in two newspapers viz. Free Press Journal (English) and Navshakti (Marathi) on 04.05.2018, inviting claims from the creditors. After having verified and admitted the claims received from the creditors, on 05.06.2018 CoC was constituted comprising of the Financial Creditors of the Corporate Debtor and a report in accordance with section 21(1) of the Code is submitted to this Tribunal. Total claims received are given in the table below:

Sr. No.	Name of the Creditors	Admitted Amt. (Rs.)
1.	JSW Steel Ltd. – Financial	42,05,61,500.00
2.	The Indure Pvt. Ltd. – Operational	117,65,81,106.00
3.	Damani Shipping Pvt. Ltd.- Operational	50,24,512.00
Total		160,21,67,118.00

4. In furtherance thereof, the first CoC meeting took place on 26.06.2018 wherein the CoC approved resolution allowing IRP to continue as Resolution Professional (RP) as also agreed to appoint two registered valuers viz. M/s. Rakesh Narula & Co. and Kanti Karamsey & Co. Subsequently, the second CoC meeting was held on

12.07.2018 wherein the CoC approved resolution recommending liquidation of the Corporate Debtor company with 100% voting, as the Corporate Debtor company neither possessed any substantial asset/s nor did it have any active business operations in existence.

5. This applicant/RP appointed two Registered Valuers under Regulation 27 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [IBBI(IRPCP)] for determination of Liquidation value of the assets of the Corporate Debtor in accordance with Regulation 35 of IBBI(IRPCP). Basing on the valuation given by them, this RP determined the average value of two Valuers as ₹1,77,058 (Rupees One Lakh Seventy-Seven Thousand and Fifty-Eight only) but the CoC, instead of giving an approval for inviting expression of interest, took a decision on 12.07.2018 passing a resolution with 100% voting in favour of seeking the approval from this Bench for liquidation of this company.

6. Subsequently, RP was informed by one of the Operational Creditors viz. The Indure Pvt. Ltd. (TIPL) that they wished to withdraw all their claims filed with RP. Further informed that TIPL had no claims against the Corporate Debtor and all proceedings filed before the Hon'ble Bombay High Court, were being withdrawn unconditionally.

7. In furtherance thereof, a third meeting of CoC was held on 04.09.2018 wherein TIPL confirmed withdrawal of its claim with RP and also informed the meeting that TIPL will be withdrawing the Miscellaneous Application No. 702/2018 filed with NCLT, Mumbai. In the said meeting the CoC also ratified the resolution passed in the second CoC meeting recommending the liquidation of the Corporate Debtor Company. In this meeting, the CoC also informed the RP to request the advocates on record in the Appeals to withdraw the amount of Rs. 39,00,000/- plus interest deposited with the Ld.

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Prothonotary and Senior Master, Hon'ble Bombay High Court, in favour of the RP so that the same can be utilised for the CIRP of the Corporate Debtor. The revised list of claims is as under:

Sr. No.	Name of the Creditors	Admitted Amt. (Rs.)
1.	JSW Steel Ltd. – Financial	42,05,61,500.00
2.	Damani Shipping Pvt. Ltd.	50,24,512.00
Total		42,55,86,012.00

8. On the RP being asked to get the approval from this Bench under Section 33(2) of the Code, the applicant has filed this application.

9. On perusal of the Application filed by the RP, this Bench having noticed that the Corporate Debtor has no assets, trade receivables and not carrying on any business, also the CoC approved resolution with 100% voting for liquidation of this company under Section 33(2) of IB Code, 2016 and the Regulations thereof, this Bench hereby orders as follows:

- a. That the Corporate Debtor be liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to appointment of Liquidator, the Resolution Professional i.e. the applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Resolution Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the

liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

- c. Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
- d. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- e. The Liquidator so appointed is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
- f. The Liquidator so appointed is hereby Authorised to represent the Corporate Debtor before the Government Authorities, if need be.

10. Moratorium declared vide Order No.: CP(IB)-278(MB)/2017 dtd. 25.04.2018 ceased to exist.

11. Accordingly, the MA 1217/2018 u/s 33(2) in CP(IB)-278(MB)/2017 is hereby **allowed**.

12. Registry is directed to communicate this order to the Applicant immediately.

Sd/-

**M.K. SHRAWAT
MEMBER (JUDICIAL)**

Date: 14.11.2018
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