

THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I,  
MUMBAI

MA 1315/2018 IN CP (IB)-1597/MB/2017

CORAM : SHRI V.P. SINGH, MEMBER (J)  
SHRI RAVIKUMAR DURAISAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 11.02.2019

NAME OF THE PARTIES: SAICON STEELS PVT. LTD.

SECTION 10 OF INSOLVENCY & BANKRUPTCY CODE, 2016

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ORDER

16. MA 1315/2018 IN CP (IB)-1597/MB/2017

IA 1315/2018 has been filed under Section 33 of the IBC, 2016, seeking liquidation of the Corporate Debtor.

It is stated in the application that the Corporate Insolvency Resolution Process for the Corporate Applicant company commenced on 2.5.2018. The applicant was appointed as IRP for the Corporate Applicant, whose name was further confirmed to work as Resolution Professional by the CoC. During CIRP, four meetings of the CoC took place, i.e. on 19.6.2018, 20.7.2018, 24.8.2018 and 26.9.2018 and efforts were made to revive the company.

In the 4<sup>th</sup>CoC meeting, CoC passed the resolution that "since there was no response to Expression of Interest and chances of the resolution were NIL, in the absence of any prospective Resolution Applicant, the Resolution professional and CoC tried using their offices to identify prospective applicants. However, since the factory is closed for the last 4 years; the already old machinery is rusted and is in very bad condition since it is not functional; restarting of the operations would require heavy investment and the factory is situated in a tribal area where investors may not be keen to invest, no resolution plan was received.

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It is stated in the audit report for the period ended 31.3.2017 that;

“the lending banker has taken physical possession of fixed assets and also arranged an auction of all assets. The Board of Directors does not intend to start business activity. Hence fixed assets are grouped as fixed assets for sale, and no depreciation has been charged. Fixed assets have been impaired and brought to net realisable value. As the bank has taken possession of all assets and tried auctioning them, all assets have been written to scrap value as per Companies Act, 2013.”

It is further stated in the minutes that “the CoC has acknowledged that the Bank tried to auction the assets of the company on five occasions without any success. The 180 days of CIRP expired on 28.10.2018. The CoC evaluated whether 90 days extension to CIRP would make any difference to the ground reality. However, there is no resolution applicant, and further, there is no alternate mechanism to maximise the value of the assets of the Corporate Debtor. The company operations were closed four years ago, and there are no employees with corporate Debtor. Additionally, only one claim has been received which is from Canara Bank, the sole CoC member.”

It is further stated in the minutes that “after deliberations, the CoC concluded that the corporate debtor is no longer a going concern and they are left with the only option of liquidating the corporate debtor and after that receive the proceeds as per the waterfall mechanism under Section 53 of the Code.”

The CoC unanimously resolved that the Corporate Debtor be liquidated. The CoC authorises Resolution Professional to submit the necessary application to the NCLT. It is further stated in the CoC minutes dated 26.9.2018 that if an order of liquidation of the Corporate Debtor is passed then the Resolution professional appointed for the CIRP under Chapter II may be appointed as Liquidator of the Corporate Debtor, for liquidation as per Section 34(1) of the Code.

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The CoC further resolved and proposed that Resolution Professional be appointed as Liquidator as per the provision of the Code and Liquidator shall charge a fee as per the provision of the Code.

Given the unanimous resolution passed in the 4<sup>th</sup>CoC meeting held on 26.9.2018, we at this moment allow Application under section 33(2) of the IBC, 2016 and pass an order for the liquidation of the Corporate Debtor and appoint Mr. Jitendra Palande as Liquidator.

On perusal of this application filed by the RP, this Bench having noticed that the CoC approved resolution unanimously for the liquidation of this company under Section 33(2) of IB Code, 2016 and the Regulations thereof, this Bench at this moment 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 the appointment of Liquidator, the Resolution Professional, i.e. the applicant herein is at this moment directed to act as a Liquidator for liquidation of Corporate Debtor company with all powers as envisaged in the Code.
- c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.
- d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- e. That 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

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and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

- f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
- g. 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 continuing during the liquidation process by the Liquidator.

Moratorium declared vide Order dated 2.5.2018 in CP No.: 1597/2017 ceased to exist.

Accordingly, the IA No. 1315/2018 in CP-1597/2017 is hereby allowed.

The registry is directed to communicate this order to the Applicant and Liquidator immediately, even by way of e-mail.

Sd/-

RAVIKUMAR DURAISAMY  
Member (Technical)

Sd/-

V. P. SINGH  
Member (Judicial)