

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

M.A. 528/2017

C.P. NO.1A/I&BP/NCLT/MAH/2017

Under Section 30 and 10 of IBC, 2016

Mr. Sanjeev Maheshwari
(Resolution Professional)

..... Applicant

In the matter of

U. B. Engineering Ltd.

..... Corporate Debtor

Order delivered on 5.12.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Shyam Kapadia, Advocate, i/b Abhishek Adke

For the Respondent: Mr. Rathina Maravarman, Advocate, Mr. Ashish
Pyasi, a/w Umang Thakar, i/b Dhir & Dhir Associates

For the Intervener: Mr. Sanjeev Maheshwari.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

M.A. No.528 of 2017 in CP 1A/I&BP/NCLT/MUM/2017

The Insolvency Resolution professional has filed Miscellaneous Application 528/2017 stating that the Resolution Plan filed by a Resolution Applicant has not been approved by not less than 75% of voting share of the Committee of Creditors and since the Committee of

Creditors has not approved the resolution plan even after completion of 270 days period already given, the Resolution professional has therefore, filed this MA 528/2017 reporting rejection of the plan by the CoC to be taken on record and pass orders accordingly.

2. On computation of 270 days' period given for insolvency resolution process from the date of admission, i.e. 18.1.2017 was over by 13th October, 2017. In these 270 days, the Committee of Creditors was validly constituted, thereafter several meetings of the CoC taken place, wherein a resolution plan given by the Resolution applicant namely Western India Erectors LLP was considered and thereafter on 10.10.2017, the Committee of Creditors rejected the said plan. For no resolution plan was approved by the Committee of Creditors, indeed CoC rejected the plan that came before it on 13.10.2017, this Resolution professional filed this MA intimating that no plan was approved within the resolution period granted to this Corporate Debtor.

3. Before going to say what call this Adjudicating Authority has to take when no resolution plan was not approved by the Committee of Creditors within the resolution period, it is essential to look into the section as to what mandate is given to the Adjudicating Authority to proceed further in respect to the Corporate Debtor, for which Section 33 of the Code say as follows:

"Section 33: Initiation of Liquidation:

1[(1) Where the Adjudicating Authority, --

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the

case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a

liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section 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.]”

4. By reading this Section, when no Resolution plan was approved by super majority in CoC, the question of Resolution Professional submitting Resolution Plan before Adjudicating Authority as contemplated u/s 30(6) of the Code will not arise, when no such plan has not been received from the RP by this Adjudicating Authority, then question of this Authority exercising its jurisdiction for approving the plan u/s 31 of the Code will also not arise. In the meanwhile if the Corporate Insolvency Resolution Process Period or maximum period permitted for completion of the Corporate Insolvency Resolution Process

u/s 12 of the Code, the recourse open to this Authority then is envisaged under Section 33 (1)(a) of the Code, after completion of the maximum period of the Corporate Insolvency Resolution process given under Section 12 of the Code, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the chapter of liquidation of process, issue a public announcement stating that the Corporate Debtor is in liquidation and require such order to be sent to the authority in which the Corporate Debtor is registered.

5. As to initiate process under Section 33(1) of the Code, no application need to be filed by the Resolution Professional. Once it has been reported that no resolution plan has been approved by the CoC in the maximum period permitted for completion of Corporate Insolvency resolution process, then the Adjudicating Authority can pass an order for initiation of liquidation under sub-section 1 of Section 33 of the Code.

6. Here in this case, since no plan was approved within the resolution period and the same has been informed by the Resolution professional by filing this application, we hereby hold that this Adjudicating Authority is conferred with power ordering the Corporate Debtor to be liquidated in the manner as laid down under Liquidation process.

7. Looking at the averments of the application, this Bench admitted the application filed u/s 10 of the Code on 18.01.2017 by appointing one Mr. Aadesh Kumar Mehta as Interim Resolution Professional under Section 16 of the Code, in furtherance of it, public announcement was given on 3.2.2017 in accordance with Section 13(b) and 15 of the Code inviting proof of claims from the creditors of the Corporate Debtor, pursuant to this, on various creditors made their claims, the Interim Insolvency Resolution Professional on examination of those claims, constituted Committee of Creditors. The first meeting of the CoC was

held on 2.3.2017, wherein the present applicant Sanjeev Maheshwari was proposed as Resolution Professional accordingly, he was appointed as Resolution Professional by this Adjudicating Authority on 11.5.2017. In furtherance of it, this Applicant invited expression of interest from Resolution Applicants to submit the resolution plan for the Corporate Debtor.

On Resolution Applicant by name, Western India Erectors LLP submitted its Resolution plan dated 6.9.2017, since the plan was in compliance of Section 30 (2) of Insolvency & Bankruptcy Code, 2016 r/w Section 37 & 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. On such resolution plan has been rejected by the Committee of Creditors, this applicant had filed an application for extension of 90 days' period beyond 180 days already provided, on considering it, this Bench ordered on 7.7.2017 granting extension of 90 days u/s 12(2) of the Code. As the extension period was also to expire by 14.10.2017, it was filed on 13.10.2017 reporting that no resolution plan was approved by the Committee of Creditors within 270 days' period.

8. For this Bench has already stated that once report has come stating that the resolution plan has not been approved by the Committee of Creditors, on looking at the report given by the Resolution Professional stating no approved plan has been filed before the Adjudicating Authority as contemplated under Section 31 of the Code, this Bench is supposed to initiate liquidation against the Corporate Debtor as envisaged u/s 33 (1)(a) of the Code, accordingly, this Bench hereby ordered the Corporate Debtor to 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.

9. 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 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 extent all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency 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 by the Bankruptcy Board and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

10. 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.

11. This liquidation order shall be deemed to be notice of discharge to the offices, 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.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)