

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

**IA(IBC)/267(KB)2023
in
CP(IB)/1226(KB)2019**

Under section 33 read with section 60(5) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Asset Reconstruction Company India Limited

.... Financial Creditor

Versus

Maeksin Shipping Company Private Limited
(U63090WB1996PTC079831)

.... Corporate Debtor

And

In the matter of:

Mr. Soumitra Lahiri,
Resolution Professional of Maeksin Shipping Company Private Limited

... Applicant

Order reserved on: 17/04/2023

Order pronounced on: 26/06/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Vikram Wadehra, Adv.

Mr. Indradeep Basu, Adv.

Mr. Soumitra Lahiri, RP in person

For R-1, 2 & 5 in IA/1504/2022 : Mr. Deb Kumar Sen, Adv.
& IA/1661/2022

For R-3 in IA/1504/2022 : Mr. Sourojit Dasgupta, Adv.
Mr. Nikunj Berlia, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/267(KB)2023** is an application filed under section 33 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Maexsin Shipping Company Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Soumitra Lahiri, the RP.
3. This Adjudicating authority, on a petition filed u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Asset Reconstruction Company India Limited, the Financial Creditor, *vide* order² dated 14/07/2022 in CP(IB)/1226(KB)2019, had ordered initiation of CIRP against Maexsin Shipping Company Private Limited, the Corporate Debtor. Mr. Soumitra Lahiri was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Business Standard*” (English) and “*Ek Din*” (Bengali) on 18/07/2022 inviting claims from the creditors and duly formed Committee of

¹ At pages 38 and 40 of the application

² Annexure - 1 at pages 41 to 50 of the application

³ Averments in paragraph 1(a) at page 12 of the application

Creditors (in short “CoC”) on 29/07/2022 and held 1st meeting of the CoC on 04/08/2022. However, based on Form B dated 29/07/2022 submitted by Employees State Insurance Corporation (in short “ESIC”), the IRP admitted the claim of ESIC amounting to Rs.3,62,099/- and reconstituted List of Creditors⁴ on 08/08/2022 under regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. The CoC, at its 2nd meeting held on 26/08/2022 accorded approval to appoint two registered valuers under each of the asset class, viz., Plant & Machinery, Land & Building and Securities and Financial Assets to determine the fair value and the liquidation value of the Corporate Debtor in accordance with regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and accordingly appointed⁵ the Registered Valuers under each of the asset class. The CoC, at its 2nd meeting also accorded approval to appoint Transaction Auditor to report on Preferential, Undervalued, Extortionate Creditor and Fraudulent transactions and accordingly appointed M/s. P. S. Roy and Associates, Chartered Account as Transaction Auditor⁶.
6. In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Form G⁷ was published one in “*Business Standard*” (English) and one in “*Sukhabar*” (Bengali) inviting Expression of Interest (“**EoI**”) on 31/10/2022 and in response EoIs were received from prospective resolution applicants (in short “**PRA**”). The RP duly published Final List⁸ of PRAs in conformity with sub-regulation (12) of regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In compliance of regulation 36B(1) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Evaluation Matrix, Information Memorandum and Request for Resolution Plan (‘RFRP’) were issued to those

⁴ Averments in paragraph 1(f) and 1(g) at pages 17 and 18 of the application

⁵ Averments in paragraph 1(h) at pages 19 and 20 of the application

⁶ Averments in paragraph 1(i) at page 20 of the application

⁷ Averments in paragraph 1(o) at page 23 of the application

⁸ Averments in paragraph 1(r) at pages 24 and 25 of the application

who submitted their EoIs within time for submission of Resolution Plan⁹ but none of them submitted their Resolution Plan¹⁰.

7. It is stated in the application that 'fair value' and 'liquidation value' of all assets¹¹ of the Corporate Debtor has been computed in accordance with clause (c) of sub-regulation (1) of regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same stood at Rs.1,73,54,464/- and Rs.1,36,10,509/- respectively.
8. It is also stated in the application that on 25/11/2022 the applicant with the representative of the CoC visited the registered office and workshop of the Corporate Debtor at Lot-8, Kakdwip, 24 parganss (South). In the course of the visit, it transpired that the floating jetty (worth around Rs.3.00 Crores) almost finished for which order was placed by JMC Projects India Limited was missing from the site along with many other assets and that the erstwhile promoter of the Corporate Debtor was absconding from the premises. The applicant immediately lodged a police complaint at Lot 8, Hardwood Point Police Station and wrote several emails to various authorities and also filed an application¹² being IA(IBC)/1661(KB)2022 with this Adjudicating Authority, which is pending for adjudication.
9. At the 6th CoC meeting¹³ held on 04/01/2023, the CoC with 100% voting share has decided for liquidation of the Corporate Debtor under section 33(2) of the Code and passed the following Resolutions: -

“RESOLVED that Maeksin Shipping Company Private Limited be recommended for liquidation under sub-section (2) of section 33 of the Insolvency and Bankruptcy Code, 2016 since the Committee of Creditors, while exercising their commercial wisdom, do not find any prospect for

⁹ Averments in paragraph 1(r) at pages 24 and 25 of the application

¹⁰ Averments in paragraph 1(z) at page 32 of the application

¹¹ Averments in paragraph 1(s) at pages 25 and 26 of the application

¹² Averments in paragraph 1(t) at pages 27 of the application

¹³ Annexure - 3 at pages 60 to 67 of the application

turn around and that is no interested investor has shown interest to submit Resolution Plan worth accepting while exercising their commercial wisdom.”

10. The applicant has submitted Compliance Certificate¹⁴ with respect to the CIRP of the Corporate Debtor dated 04/01/2023.
11. Mr. Soumitra Lahiri, Resolution Professional has submitted his consent¹⁵ dated 04/01/2023 giving consent to act as the Liquidator of the Corporate Debtor.
12. It is to be noted here that the 180 days CIRP period has ended on 09/01/2023 and no application for extension of the CIRP period has been filed.
13. 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.
14. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
15. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/267(KB)2023 filed by **Mr. Soumitra Lahiri, RP of Maexsin Shipping Company Private Limited**, 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 sub-section (1) thereof;
 - b. **Mr. Soumitra Lahiri [Reg. No. IBBI/IPA-001/IP-P00734/2017-**

¹⁴ Annexure - 5 at pages 72 to 75 of the application

¹⁵ Annexure - 7 at pages 77 to 78 of the application

2018/11232/ of 14D & E, Tower – 32, Genexx Valley, Joka, Diamond Harbour Road, Kolkata 700104, having e-mail i.d. slahiri0207@gmail.com, telephone no. +91 33 23903644, Cell: +91 8420969857 is hereby appointed 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.

c. 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.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “*Business Standard*” (English) and “*Sukhabar*” (Bengali) stating that the Corporate Debtor is in liquidation.

e. 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 shall henceforth vest in the Liquidator.

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

g. 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.

h. 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.

i. 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**.

16. The application bearing **IA(IBC)/267(KB)2023** shall stand disposed of in accordance with the above directions.
17. **CP(IB)/1226(KB)2019** is to come up for filing of Periodical Progress Report on **13/07/2023**.
18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
19. 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 26th day of June, 2023.

hb.