

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

**MA/850/2019
IN
CP/989/IB/2018**

*Under Section 33(2) r/w Section 60(5)
of the IBC, 2016*

In the matter of M/s. Thomson Nusa Metals Private Limited

CA Tejas Shah
(Resolution Professional,
M/s. Thomson Nusa Metals Private Limited)

---Applicant

Order delivered on: 26.08.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant: *Mr. S. Sathiyannarayan, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 23.08.2019

It is an application filed by the Resolution Professional (RP) u/s 33(2) of the Insolvency & Bankruptcy Code, 2016 ("the Code") for liquidation of the Corporate Debtor company, based on the resolution

passed by CoC in its 5th meeting held on 03.08.2019 with 79.46% voting approval.

2. On perusal of this application, it appears that this CP/989/IB/2018 was admitted on 04.02.2019 appointing an IRP, thereafter four CoC meetings were held on various dates but whereas the CoC members failed to arrive at a conclusion to proceed with resolution of this Company. As the same was continuing, RP says that the IRP could not prepare Information Memorandum or invite Expression of Interest to proceed any further. In this process, though 4 months are lost in the CIRP period, there is no resolution from the CoC. Thereafter, RP, appointed on 30.07.2019, has prepared Information Memorandum on the basis of data available with him and furnished it to the CoC who had shared the confidentiality agreement to the RP. Subsequent thereto, the CoC held 5th meeting on 03.08.2019 seeking extension of CIRP period beyond 180 days and also liquidation of the Corporate Debtor. When these two resolutions aforesaid put for e-voting opened on 30th July, 2019 at 15.00 hours, CoC members voted, after voting, e-voting closed on 1st August, 2019 at 17.00 hours. In the e-voting, 22.20% voted in favor for

extension of CIRP period for another 90 days, whereas 77.80% voted against for extension of CIRP period for another 90 days.

3. As to the resolution for liquidation of the Corporate Debtor, 79.46% of the CoC members voted in favour of it, whereas 20.54% voted against resolution of the liquidation of the Corporate Debtor. Since the CoC has resolved with requisite majority to liquidate the Corporate Debtor with approval of 79.46% voting share, this RP has filed this application for liquidation of the Corporate Debtor.

4. When we enquired about the position of the Corporate Debtor, the Applicant Counsel has stated that it is not a going-concern, it has huge liabilities without any assets which can compensate the liabilities payable to the Creditors. In view thereof, we are of the considered view, the CoC has rightly taken a decision for liquidation of the Company by passing the resolution as stated above.

5. For having the CoC already decided with requisite majority for liquidation of the Corporate Debtor, this Bench being satisfied of the resolution passed by the CoC in its meeting held on 03.08.2019 for

liquidation of the Corporate Debtor, we hereby order for liquidation of the Corporate Debtor with the directions as follows:

- a) This Bench hereby orders 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 with which this company has been registered.
- b) The Resolution Professional viz Mr. **CA Tejas Shah** is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required 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 under regulation 4 of the Insolvency and Bankruptcy Board of India (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 proceedings 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 extent of the business of the Corporate Debtor is continued during the liquidation process by the by the Liquidator.

e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

6. Accordingly, this MA/850/2019 filed in CP/989/IB/2018 is hereby **allowed**.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

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

Arpan