

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CORAM: Shri Jinan K.R.,
Member (Judicial)
&
Shri Harish Chander Suri,
Member(Technical)**

CP (IB) No.1366/KB/2018

CA(IB)No.1186/KB/2019

CA(IB)No.1564/KB/2019

**CORRIGENDUM TO ORDER DATED
17th December, 2019**

In the Matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Credence Logistics Ltd., a Company registered under the Provisions of Companies Act, 1956 having its registered office at P-11, Khairu Place, Kolkata- 700072.

....Operational Creditor

-Versus-

In the Matter of:

Marina Projects Pvt. Ltd., a company incorporated under Companies Act, 1956 and having its registered office at 16A, Chowringhee Mansion, 30 Jawaharlal Nehru Road, 2nd Floor, Lift No.3, Kolkata-70016.

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Per Shri M.B. Gosavi, Hon'ble Member(J)

1. It is mentioned that some typographical errors occurred in the Cause Title of the Order of this Tribunal dated 17th December, 2019 passed in CP(IB)No.1366/KB/2019, CA(IB)No.1186/KB/2019 and CA(IB)No.1564/KB/2019.

2. Accordingly, the following rectification are made:

(i) CP(IB)No.1096/KB/2018 is corrected and changed to CP(IB)No.1366/KB/2018 in the Cause Title of the said order dated 17th December, 2019 at page no. 1.

3. The above rectification of the Order of this Tribunal dated 17th December, 2019 has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016.

4. Accordingly, the order dated 17th December, 2019 passed in CP(IB)No.1366/KB/2019, CA(IB)No.1186/KB/2019 and CA(IB)No.1564/KB/2019 stands rectified as above and this order shall form integral part of the order of this Tribunal dated 17th December, 2019.

5. The remaining part of the order dated 17th December, 2019 will remain unchanged.

Urgent copy of this order be supplied to the party.

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**(Virendra Kumar Gupta)
Member(Technical)**

Sd
**(Madan B. Gosavi)
Member(Judicial)**

Signed on this, the 20th day of December, 2019.

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

**Coram : Shri Madan B. Gosavi,
Hon'ble Member (J)
&
Shri Virendra Kumar Gupta
Hon'ble Member (T)**

**CP (IB) No.1096/KB/2018
CA(IB)No.1186/KB/2019
CA(IB)No.1564/KB/2019**

In the Matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Credence Logistics Ltd., a Company registered under the Provisions of Companies Act, 1956 having its registered office at P-11, Khairu Place, Kolkata- 700072.

...Operational Creditor

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...Corporate Debtor

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Counsels appeared:

For the Operational Creditor

1. Mr. Sagnik Basu, Advocate
2. Mr. MD Dilawar Khan, Advocate
3. Mr. Jayanta Sengupta, Advocate

For Resolution Professional

1. Ms. Sonu Jain, RP

For the Corporate Debtor

1. Mr. Anirban Ray, Advocate
2. Ms. Riti Basu, Advocate

Date of pronouncement of order: 17th December, 2019

ORDER

Per Shri M.B Gosavi, Member (J):

1. M/s Credence Logistics Ltd., the Operational Creditor filed this application under Section 9 of Insolvency and Bankruptcy Code against M/s Marina Projects Pvt. Ltd., the Corporate Debtor to start Corporate Insolvency Resolution Process of the Corporate Debtor as the Corporate Debtor committed default in paying operational debt of Rs. 15,99,500/- (Rupees Fifteen Lakh Ninety Nine Thousand Five Hundred Only) along with interest at the rate of 18% per annum towards unpaid hire charges of Vessel hired by the Corporate Debtor.
2. This authority vide order dated 20.08.2019 admitted the corporate debtor in CIRP. Ms. Sonu Jain, having registration no. IBBI/IPA/001/IP-

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[Signature]

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[Signature]

P00575/2017-2018/11016 was appointed as the IRP. IRP proceeded with the CIRP. On 02.03.2019, she made public announcement of CIRP of the corporate debtor publishing notice in "Financial Express" and "Dainik Statesman". She thereby called upon the creditors of the corporate debtor to submit their claims with the proof.

3. It is seen from the record that IRP received claim from one Operational creditor i.e. applicant herein (M/s. Credence Logistics Ltd.). IRP formed the Committee of Creditors consisting of one Operational Creditor i.e. applicant in view of the proviso of Section 21 of IBC assigning the applicant 100% voting share. The CoC in its meeting dated 28.03.2019 confirmed appointment of IRP as RP by 100% votes.
4. It is revealed during the proceeding that Corporate Debtor has taken on the lease the vessel owned by the Operational Creditor on rent. It appears that the rents were not paid. Hence, CIRP of the Corporate Debtor was initiated. Upon these facts, the RP requested CoC to permit to appoint Valuer to assess other assets of the Corporate Debtor. However, that permission was not granted by the CoC. This Authority directed the suspended board of directors of the the Corporate Debtor to give cooperation to the RP by handing over books of accounts and information relating to assets so as to enable the RP to prepare Information Memorandum. It appears from the record that such information was not provided by the Corporate Debtor. For want of requisite information of the assets and liabilities of the Corporate Debtor, the RP could not prepare Information Memorandum despite that the RP in concurrence of CoC published notice calling EOI/resolution plan from prospective resolution applicants on the basis of whatever information of the assets of the Corporate Debtor was then available. Notice to call EOI was published in daily Financial Express and Dainik Statesman dated 03.08.2019.

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5. CIRP period of 180 days completed on 26.08.2019. However, it was extended for 45 days at the request of RP and the CoC. We find that the CoC period of 270 days completed on 10.10.2019. The RP and the CIRP did not receive any resolution plan for the Corporate Debtor during CIRP period.
6. Meantime, on 04.09.2019 one Mr. Samir Prasad – director of the Corporate Debtor filed application being CA(IB)No.1186/KB/2019 under Section 60(5) IBC for direction to the Operational Creditor to withdraw the proceeding on the ground that of settlement by offering to pay entire amount operational debt (as claimed). We directed the applicant to approach CoC with such request as per Section 12A of IBC. It appears from the perusal of the proceeding that CoC did not consider the request of the Corporate Debtor and did not permit withdrawal.
7. Ld. Counsel Mr. Anirban Roy appeared on behalf of the applicant in CA(IB)No.1186/KB/2019. He submitted that the Operational Creditor is the only CoC member. His client is ready to pay the operational debt as claimed but the original applicant that is the Operational Creditor which is also member of CoC refused to accept its request of settlement. Hence, this Authority may direct the CoC and the original applicant to enter into settlement.
8. We fail to understand how this Authority does have jurisdiction to force such settlement if otherwise not agreed upon by the parties to the proceeding. We cannot give in our inherent jurisdiction under Rule 11 of NCLT Rules such directions. We expect from Ld. Counsel appearing in the matter for the applicant for the director of the Corporate Debtor to make submission based on provisions of law. Ld. Counsel also requested to adjourn the matter for two weeks for settlement but we find that the Operational Creditor has not consented for such settlement. CIRP period of 270 days is already completed on 10.10.2019. This Authority cannot keep pending such proceeding for

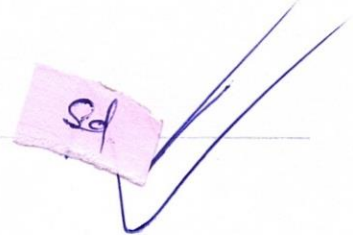


indefinite period hoping that the parties may settle the dispute one day or the other particularly when the applicant, Operational Creditor did not file on record its submissions stating that it may consider proposal of settlement. We also find that CA(IB)No.1186/KB/2019 is not maintainable under Section 60(5) IBC or under Section 12A of IBC or for that matter under Rule 11 of NCLT Rules. CA(IB)No.1186/KB/2019 stands rejected.

9. CA(IB)No.1564/KB/2019 is filed by the RP claiming her total fee of Rs. 12,04,244/- (Rupees Twelve Lakh Four Thousand Two Hundred and Forty Four Only) including CIRP cost. This Authority by order dated 20.08.2019, directed the CoC to pay the RP the fees of Rs. 1 Lakh per month. This order was challenged by way of appeal no. 1115 of 2019. However, Hon'ble NCLAT dismissed the appeal by order dated 23.10.2019 directing the CoC that is the applicant herein to pay fees at the rate of Rs. 1 Lakh to RP. In view of above orders, this application filed by the RP stands allowed.
10. In this case, CIRP period of 270 days got over on 10.10.2019. The RP and the CoC did not receive any resolution plan. This Authority left with no option but to pass order of liquidation of the Corporate Debtor as conferred under Section 33(1) of IBC. Hence, we pass the following order: -

ORDER

1. By this order, Corporate Debtor- Marina Projects Pvt. Ltd. is liquidated.
2. Ms. Sonu Jain, having registration no. IBBI/IPA/001/IP-P00575/2017-2018/11016 is appointed as the Liquidator.



3. The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.
4. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.
5. The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.
6. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.
7. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
8. Upon proceeding with the liquidation the Liquidator shall file a **preliminary report** as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file **progress reports** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.
9. The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

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10. Registry is hereby directed to communicate the order to the RP, Financial Creditor, Corporate Debtor and the Liquidator by Speed Post and also by email for information and for taking necessary steps.

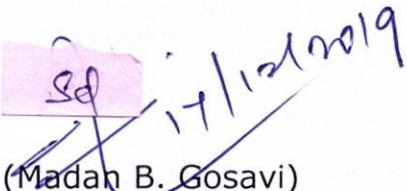
11. CA(IB) No.1186/KB/2019 filed by the director of the Corporate Debtor directing the Operational Creditor to enter into settlement stands rejected.

12. CA(IB)No.1564/KB/2019 filed by the RP claiming fees of Rs. 12,04,244/- (Rupees Twelve Lakh Four Thousand Two Hundred and Forty Four Only) is allowed. We direct the CoC/applicant-Operational Creditor to pay above amount to RP within 7 days failing which the amount shall carry interest at the rate of 9% per annum from the date of appointment as the RP to the release of debt.

13. CP(IB)No.1366/KB/2018 is disposed of as the Corporate Debtor (Marina Projects Pvt. Ltd.) is liquidated.

Let the certified copy of the order be issued upon compliance with requisite formalities.


(Virendra Kumar Gupta
Member(T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 17th December, 2019.

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