

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

27. I.A. 1134/2022

I.A. 09/2022

I.A. 2106/2021

IN

C.P.(IB)-1400(MB)/2019

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **14.11.2022**

NAME OF THE PARTIES: Crab & Taur Pvt Ltd

V/s

Mercator Oil & Gas Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Ms. Daisy Dubash a/w Mr. J. P. Kapadia, Mr. O. Mohandas, Ms. Maitri Yadav
i/b Little & Co., counsel for the Applicant in I.A. 2106/2021 and Mr. Rohit
Bhattacharya, Mr. Rohit Shankar and Ms. Jimisha Dalal, i/b Singularity
Legal, counsel for the Respondents in I.A. 2106/2021 and Mr. Shahbaz
Malbari i/b Mr. Devanshu P Desai, counsel for the Applicant in I.A. 09/2022
and Mr. Jayesh Desai, counsel for the Resolution Professional & Applicant in
I.A. 1134/2022 are present through virtual hearing.

I.A. 09/2022

The counsel appearing for the Resolution Professional sought oral permission
to withdraw the above Interlocutory Application. Permission is granted.

Accordingly, the above Interlocutory Application is **disposed of as withdrawn.**

I.A. 1134/2022

The above application is filed by Resolution Professional for liquidation of the Corporate Debtor company.

Heard the counsel appearing for the Applicant and the above Interlocutory Application is **allowed. Detail order would follow:**

I.A. 2106/2021

The above Interlocutory Application is filed by the Applicant for seeking the following reliefs:

- i. This Hon'ble Tribunal be pleased to grant permission to the Applicant to pursue the Commercial Arbitration Petition (L) No. 4957 of 2021 filed by the Applicant under Section 37 of the Arbitration and Conciliation Act, 1996 which is pending before the Hon'ble Bombay High Court.
- ii. This Hon'ble Tribunal be pleased to permit the Applicant to initiate, file and pursue proposed action to be initiated by the Applicant by way of a suit or any other appropriate Application/Petition against the Corporate Debtor and Axis Bank Ltd. to challenge the validity of the litigation funding arrangement/agreement entered into between them and for declaration that the same is null and void and for consequential reliefs including for payment of damages suffered by the Applicant.

- iii. Pass such further and other orders and/or directions as this Hon'ble Tribunal may deem fit, just and proper;
- iv. Any other relief which this Hon'ble Tribunal may deem fit and appropriate given the facts and circumstances of the matter;
- v. This Application has been served on the Corporate Debtor.

In view of the passing liquidation order against the Corporate Debtor in I.A 1134/2022. The above Interlocutory Application has become infructuous and **stands disposed of.**

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT-III**

IA. No. 1134 of 2022

IN

C.P.No.(IB)1400(MB) of 2019

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

Mercator Oil & Gas Ltd.

.... CORPORATE DEBTOR

I. A. No. 1134 of 2022

Mr. Adesh Kumar Gupta

.... Applicant/Liquidator

Order delivered on 14.11.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Adv. Jayesh Desai & Associates,
Mr. Adesh Kumar Gupta, RP

1. The above application I.A. No. 1134/2022 is filed by Resolution Professional, *Mr. Adesh Kumar Gupta* (hereinafter referred to as the "Applicant") seeking liquidation of ***Mercator Oil & Gas Ltd.*** (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

- a. *This Hon'ble Tribunal may be pleased to allow the present Application under Section 33 of the Insolvency and Bankruptcy Code, 2016;*
- b. *This Hon'ble Tribunal may be pleased to pass appropriate orders permitting the initiation of liquidation process of the Corporate Debtor;*
- c. *That this Hon'ble Tribunal be pleased to appoint applicant as Liquidator under section 34(1) of the Insolvency and Bankruptcy Code, 2016;*
- d. *That this Hon'ble Tribunal may be pleased to pass appropriate orders under Regulation 39B TO 39D of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016;*
- e. *Any other orders / directions as deemed fit and necessary by this Hon'ble Tribunal in the interest of justice and equity.*

2. The brief facts of the application are as follows:

- A. The present Application has been preferred by Crab & Taur PTE Ltd. ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code,2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, namely Axis Bank has resolved to liquidate the Corporate Debtor.
- B. On 27.07.2021, in the first meeting of the Committee of Creditors (hereinafter referred to as the "CoC") the Applicant was duly appointed by this Tribunal as the Interim Resolution Professional and conducted the meeting accordingly.

- C. The Applicant states that pursuant to the Constitution of COC by IRP on 21.07.2021 in accordance with the provisions of section 21 of the Insolvency and Bankruptcy Code, 2016, the claims were received from two Financial Creditors as well as one Operational Creditor. As one of the Financial Creditor is a related party, and based on the valid and accepted claims, the COC consists of sole Financial Creditor i.e. Axis Bank Ltd.
- D. The Applicant stated that in the 5th COC Meeting the one Resolution Plan which was received from DEV Land & Housing Pvt Ltd, which was broadly viewed and discussed in the 4th COC meeting, wherein RP on 22.12.2021 discussed with the Resolution Applicant for clarification and increase the offer including cover of CIRP Cost, Subsequent to which RP followed up with Resolution Applicant, but the Resolution Applicant did not provide any additional information and the resolution plan does not provide for the payment of even 100% of the CIRP Cost.
- E. Thus, it was further stated that as RP has not received any reply from Resolution Applicant. As the Resolution plan is not compliant of the section 30 read with regulations 37, 38 and 39 of the Regulations, thus the RP was unable to put Resolution plan for the approval/voting of the COC.
- F. The Applicant informed that Regulation 39C of CIRP Regulations requires that if the plan is not approved and an order for liquidation is passed under Section 33 of the Code; the CoC may recommend that the Liquidator first explores sale of the corporate debtor as a going concern under clause (e) of regulation 32 or sale of the business of the corporate debtor as a going concern under clause (f) thereof. It was further decided that the fees payable to the Liquidator shall

be Rs 50,00,000(Rupees Fifty Lakh) for the Liquidation period out of which Rs. 3 lakh per quarter is payable (invoice will be raised in the beginning of the quarter) upto a period of 2 years and balance amount will be payable from the arbitration proceeds. In the event, the arbitration proceeds are received before 2 years, the balance amount payable (after deducting the amount paid in previous quarters) will be paid from arbitration proceeds. The Resolution was unanimously approved with 100 % votes

- G. It is further submitted that the CoC chose to pass a resolution to initiate liquidation as by operation of law under Section 33(2) of the Code, the CoC of Corporate Debtor may opt for Liquidation of Corporate Debtor any time during the Corporate Insolvency Resolution Process after the constitution of Committee of Creditors but before confirmation of Resolution Plan including at any time before the preparation of the Information Memorandum. The CoC therefore instructed the Applicant to file a Liquidation Application with this Hon'ble Tribunal. Therefore, as per the provisions of Section 33(2) of the Code, an order of liquidation is required to be passed against the Corporate Debtor.
- H. In the 6th CoC Meeting the members decided to unanimously opt for Liquidation. The relevant extract of the resolution is reproduced herein below for ready reference:-

Item 10 :- To discuss and approve provisions for liquidation scenario – Liquidation of the Corporate Debtor

***“RESOLVED THAT,** as no resolution plan has been approved with the requisite majority, in terms of the provisions of Sec 33(1)(a) of the insolvency and*

Bankruptcy Code,2016 the Corporate Debtor is hereby proposed to be liquidated”.

“RESOLVED FURTHER THAT *Mr. Adesh Kumar Gupta, Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be considered necessary to give effect to the above resolution.”*

Accordingly, the resolution received 100% votes in favor. Therefore, the resolution was approved unanimously.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 6th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor and requested to appoint liquidator from the list of IBBI panel available with this bench. This bench, therefore allows the above Interlocutory Application Number 1134 of 2022 and passed the following:

ORDER

1. The above I.A. No. 1134/2022 is Allowed, and the Corporate Debtor Mercator Oil & Gas Ltd. is ordered to be liquidated as a going concern.
 - a. **Mr. Sanjeev Kumar** (IP Registration No. IBBI/IPA-002/IP-N01202/2021-2022/13996 and having email id cs.sanjeev@gmail.com, having mobile no. 9665022275 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according

to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.

- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, 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.

- i. 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.
- j. Registry is directed to communicate this order to the Liquidator.

With the above observations and directions, the above Application No. 1134 of 2022 is hereby allowed and stands disposed of and I.A. No. 2106 of 2021 becomes infructuous in view of allowing I.A. 1134 of 2022.

Sd/-
Anuradha Sanjay Bhatia
MEMBER (TECHNICAL)

Sd/-
H.V. Subba Rao
MEMBER (JUDICIAL)