

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI (SPECIAL) BENCH**

(33) MA 3223/2019 MA 3352/2019 MA 3524/2019
MA 3966/2019 MA 240/2020 IN C.P. (IB)-1414(MB)/2018

CORAM:

SHRI CHANDRA BHAN SINGH
Member (Technical)

SMT. SUCHITRA KANUPARTHI
Member (Judicial)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **23.01.2020**

NAME OF THE PARTIES: International Marine & Energy DMCC
V/s
Great Unison Contractors Pvt Ltd

SECTION: 9 OF THE INSOLVENCY AND BANKRUPTCY CODE.

ORDER

1. The Learned Representative for RP, COC Member and Yes Bank are present.
2. MA-3524/2019 – This Application is preferred by RP against ICICI Bank. The RP is seeking refund/reversal of claims to the extent of Rs. 15,39,616/- (Rupees Fifteen Lakhs Thirty-Nine Thousand Six Hundred Sixteen Only) appropriated toward the EMI from the Corporate Debtor.
3. The Learned Counsel appearing for ICICI Bank mentions that this amount has already been remitted to the Corporate Debtor's Company account. In view of this MA-3524/2019 is **disposed** of.
4. MA-3352/2019 – This Application is preferred by RP against Yes Bank. The RP is seeking appropriated/set off dues to the extent of Rs. 43,17,345/- (Rupees Forty-three Lakhs Seventeen Thousand Three Hundred Forty-five Only) appropriated towards the Corporate Debtor.
5. The Learned Counsel appearing for Yes Bank mentions that this amount has already been remitted to the Corporate Debtor's Company account. In view of this **MA-3352/2019 is disposed of**.
6. MA-3966/2019 –This is an Application by the RP placing before this Bench the Resolution of the COC for Liquidation of the Corporate Debtor's Company under section 33 of I&B Code :-



The Resolution of the COC dated 27.11.2019 mentions that in the sixth time the Resolution plan of the prospective Resolution Applicant was discussed and has been rejected. The relevant extracts from the Minutes of the Fifteenth Meeting of the COC held on 20.11.2019 is as under :-

" The final 6th time Revised Resolution Plan was circulated amongst the Members on 27th November, 2019 and the same was discussed. The Representative of Financial Creditor Mr. Bhavesh Gala informed the committee that, the Resolution Plan is not acceptable to them and the YES Bank Ltd. is rejecting the same. The Resolution Applicant i.e. Mr. Senthil Kumar then asked for the reason and basis why the plan got rejected by the Financial Creditor, Mr. Bhavesh Gala stated that it is commercial decision taken by the Bank.

*The Chairperson stated that, if the Corporate Debtor will go under the Liquidation in that case whether it should be going concern. The Financial Creditor stated that, as decided in the 12th COC Meeting held on 7th October 2019 once again confirms that, the bank is not able to contribute and to provide any more financial support to run the business in Liquidation at this juncture and it should go **under Liquidation as a not-going concern**. The Chairperson noted the same.*

Further, the Chairperson given her consent to act as a Liquidator which is accepted by the Financial Creditor as the remuneration of Rs. 5,50,000/- including GST as applicable. The Chairperson also stated that her fees should be released either by Corporate Debtor or by Financial Creditor on monthly basis if she will not get payment of her fees on per month basis then she does not intend to continue as Liquidator. The Financial Creditor noted and agreed to the same."

The Chairperson further stated that, in the 12th COC meeting held on 07th October, 2019 she had already informed the members of the committee that if, the Corporate Debtor go under the Liquidation then as per Regulation 2A under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 it is mandatory to contribute the Liquidation Cost. As the Corporate Debtor does not have any funds and going under liquidation as a not-going concern in that case, it is the duty of the Financial Creditor to contribute the funds towards the liquidation cost. The estimated cost of the Liquidation has been already circulated and decided amongst the members of the committee. The Financial Creditor confirmed the same."

7. The following resolutions were passed unanimously :-

" Resolved that the Resolution Plan submitted by Mr. Senthil Kumar is rejected by the Financial Creditor, which is their Commercial Decision hence the Resolution Plan is rejected and the Financial Creditor with 100% voting agreed for the Liquidation as non-going concern.

Resolved that the Advocate Mayur Agarwal has been appointed for Appearing and filing necessary application u/s 33 of Insolvency and Bankruptcy Code, 2016 for Liquidation before the Hon'ble NCLT, the Resolution Professional is authorized to fix the remuneration of the same.

Resolved that the Resolution Professional has given her consent to act as a Liquidator at the remuneration of Rs. 5,50,000/- including GST as applicable which agreed by the Committee of Creditors."

8. As per the decision of the COC the present RP Ms. Dipti Mehta has been appointed as Liquidator for the Corporate Debtor Company. The remuneration of the Liquidator would be Rs. 5,50,000/- including GST as approved by the COC and payable on monthly basis. Hence **MA-3966/2019** is **disposed of**.
9. CP-240/2020 – This Application is filed under section 14 r/w 25 and Rule 11 of NCLT Rules seeking direction against Respondents i.e. GST Authority to



remove the provisional attachment from the accounts maintained at ICICI Bank and State Bank of India of the Corporate Debtor at the earliest. Notices were served on the Respondents. Despite service of Notice no representation from the side of the Respondents.

10. The Respondent i.e. Department of Goods and Service Tax (Government of Maharashtra) vide Orders dated 21.12.2019 and 26.12.2019 and has provisionally attached the accounts of Corporate Debtor holding Account Nos. 00000062411656578 and 00000062411545798 in State Bank of India SME and Account No. 196205000065 in ICICI Bank.
11. The Corporate Debtor is undergoing CIRP vide Order of "Admission" dated 08.01.2019 and in view of the Moratorium under section 14 of the I&B Code there shall be stay on all pending proceedings against Corporate Debtor.
12. It is directed that the accounts of Corporate Debtor holding Account Nos . 00000062411656578 and 00000062411545798 in State Bank of India SME and Account No. 196205000065 in ICICI Bank vide Orders dated 21.12.2019 and 26.12.2019 shall be vacated by Order of this Bench. The Respondents may file its claim before the RP, if any. **MA-240/2020 is Allowed.**
13. MA-3223/2019 – This Application has been filed by the RP for contribution towards the CIRP Process. In this regard the Counsel for the COC seeks time to file Reply. Time is granted. Matter is adjourned to **19.03.2020.**

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

23.01.2020

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Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)



Certified True Copy
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On 10.02.2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench