IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 879 OF 2021

Under Section 33 of Insolvency & Bankruptcy Code, 2016

Filed by
Mr. Rajkumar Mahto
Resolution Professional of:
M.S. Shipbreaking Private Limited
...Applicant

In the matter of
C.P. No. 918 of 2019

Gandhi Gas Service
B-3, Sunflower Building, Old C.S.T. Road, Kalina, Santacruz (East), Mumbai - 400029
...Petitioner

Versus

M.S. Shipbreaking Private Limited
B-9, Jyoti Building, Gantop Hill Road, Wadala (East), Mumbai - 400037
...Corporate Debtor

Order delivered on: 23.11.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:
For the Resolution Professional: Mr. Rajkumar Mahto

राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
सत्यमेव जयते
मुंबई न्यायपीठ
MUMBAI BENCH

1. The above application I.A. No. 879/2021 is filed by Resolution Professional, Mr. Rajkumar Mahto seeking liquidation of M.S. Shipbreaking Private Limited (hereinafter referred as Corporate Debtor) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

    a. *That this Hon'ble Tribunal be pleased to approve the liquidation in terms of Section 33(1) of the Insolvency and Bankruptcy Code, 2016;*
    b. *That this Hon'ble Tribunal be to pass such other or further order, as this Hon'ble Tribunal may deem fir in the facts and circumstances of the case.*

2. The brief facts of the application are as follows:
    A. The applicant mentioned that this Tribunal vide its order dated 18.11.2019 in Company Petition No. 918 of 2019 admitted the petition under Section 8 & 9 of the Code read with Rule 6 of Insolvency and Bankruptcy (Application to Adjuducating Authority) Rules, 2016 (hereinafter called as "the Rules"), filed by Gandhi Gas Service (hereinafter referred to as the "Financial Creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against M.S. Shipbreaking Private Limited, (hereinafter called as the "Corporate Debtor"). The applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order dated 18.11.2019.

B. It is further mentioned by the Applicant that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 10.09.2020 in Free Press Journal (English) and Navshakti (Vernacular) and 10.11.2020 was being the last date for submission of Resolution Plan. Thereafter, no EoI was invited.

C. The CoC in its 7th meeting which was held on 11.02.2021 decided to liquidate the Corporate Debtor since no Expression of Interest was received from any prospective resolution applicant and the maximum statutory time allowed for resolution of Corporate Debtor was about to expire (considering exclusion of time). Therefore, the Committee of Creditors also resolved to liquidate the Corporate Debtor and an application under Section 33(1) of the Code was preferred. Thereafter, the Committee decided to put the following resolution for e-voting, the relevant extract of the resolution and voting result is reproduced herein below for ready reference:-

TO LIQUIDATE THE CORPORATE DEBTOR

*"**RESOLVED THAT** Pursuant to Section 33, sub section (2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any, of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Committee of Creditors hereby decides that M.S. Shipbreaking Pvt Limited, ("Corporate Debtor") under Corporate Insolvency Resolution Process be liquidated."*

*"**RESOLVED FURTHER THAT** the Committee of Creditors hereby directs Mr. Rajkumar Mahto Resolution Professional to intimate the Adjudicating Authority the decision of the Committee of Creditors to liquidate the Corporate Debtor.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Mr. Rajkumar Mahto Resolution Professional to seek legal assistance from external consultant to give effect to this resolution and the cost incidental to give effect to this resolution, as presented at the meeting, to be treated as Insolvency Resolution Process Cost of the Corporate Debtor.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby to incur/ disburse/ reimburse the said cost/ fee/ expenses and authorize Mr. Rajkumar Mahto, Resolution Professional to undertake debit transactions for the same from the bank accounts of M.S. Shipbreaking Pvt Limited.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Rajkumar Mahto, Resolution professional to do all acts, deeds and matters as may be necessary to give effect to this resolution."*

APPOINTMENT OF LIQUIDATOR

*"**RESOLVED THAT** in continuation to the resolution passed for liquidator of the M.S. Shipbreaking Pvt. Ltd. and in pursuance with Section 34 of the Insolvency and Bankruptcy Code, 2016, Mr. Rajkumar Mahto having Registration No. IBBI/IPA-002/IP-N00723/2018-2019/12209 be and is hereby appointed to act as the liquidator of the Corporate Debtor, in the event where order for*

liquidation is passed by the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT *the Committee of Creditors hereby authorize Mr. Rajkumar Mahto, Resolution Professional to do all acts, deed and matters as may be necessary to give effect to this resolution."*

TO APPROVE THE FEES OF LIQUIDATOR

RESOLVED THAT *in continuation to the resolution passed for liquidation of the M.S. Shipbreaking Pvt Limited and in pursuance to Section 34 of the Insolvency and Bankruptcy Code, 2016 and in accordance with the Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016, read with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016 ("Liquidation Process Regulations"), where an order for liquidation is passed by the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016 the Committee of Creditors, hereby fix the fee payable to the Liquidator for a consolidated fee of Rs. 150000/- plus GST for Liquidation of Corporate Debtor. And also 80% of IBC chart rate as stipulated in Regulation 4 on relation and distribution.*

TO DETERMINE BEST ESTIMATE OF AMOUNT REQUIRED TO MEET LIQUIDATION COST, IN CONSULTATION WITH RESOLUTION PROFESSIONAL

"The Chairman apprised that as per regulation 39B (1) of the CIRP Regulations the committee may make a best estimate of the amount

liquidation is passed by the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT *the Committee of Creditors hereby authorize Mr. Rajkumar Mahto, Resolution Professional to do all acts, deed and matters as may be necessary to give effect to this resolution."*

TO APPROVE THE FEES OF LIQUIDATOR

RESOLVED THAT *in continuation to the resolution passed for liquidation of the M.S. Shipbreaking Pvt Limited and in pursuance to Section 34 of the Insolvency and Bankruptcy Code, 2016 and in accordance with the Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016, read with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016 ("Liquidation Process Regulations"), where an order for liquidation is passed by the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016 the Committee of Creditors, hereby fix the fee payable to the Liquidator for a consolidated fee of Rs. 150000/- plus GST for Liquidation of Corporate Debtor. And also 80% of IBC chart rate as stipulated in Regulation 4 on relation and distribution.*

TO DETERMINE BEST ESTIMATE OF AMOUNT REQUIRED TO MEET LIQUIDATION COST, IN CONSULTATION WITH RESOLUTION PROFESSIONAL

"The Chairman apprised that as per regulation 39B (1) of the CIRP Regulations the committee may make a best estimate of the amount

required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under Section 33 of the code.

*"**RESOLVED THAT** in continuation to the resolution passed for liquidation of the M.S. Shipbreaking Pvt Limited and in pursuance to Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), regulations, 2016 read any other applicable regulations and section 5(16) of the Insolvency and Bankruptcy Code, 2016 and Regulation 2(ea) of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 ("Liquidation Process Regulations"), considering that where an order for liquidation is passed by the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors, in consultation with the resolution professional, has made the best estimate of an amount that may be required to meet the liquidation costs.*

***RESOLVED FURTHER THAT** in accordance with Regulation 39B (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons), Regulations, 2016, considering that the estimated value of the liquid assets of the Corporate Debtor as on date being less than the estimated liquidation costs the committee of creditors hereby approved to contribute for meeting the difference between the Liquid asset and the estimated liquidation cost in proportion to the financial debts owed to them by the corporate debtor in accordance with Regulation 2A of the Liquidation Process Regulations.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Resolution Professional and/or Liquidator to do all acts, deeds and matters as may be necessary to give effect to this resolution."*

D. After hearing the submissions made by the Counsel appearing for the Resolution Professional and upon perusing the material available on record, it is observed from the minutes of the 7th CoC meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor. Since no resolution had happened even after lapse of statutory period.

E. The Applicant/ Resolution Professional Mr. Rajkumar Mahto, has agreed to act as liquidator to carry on the process of Liquidation and given his consent to act as Liquidator.

F. This bench has no option except to allow the above I.A. No. 879 of 2021 and shall pass an order of liquidation of Corporate Debtor. Accordingly we pass the following:

ORDER

1. The above I.A. No. 879/2021 is allowed and the Corporate Debtor M.S. Shipbreaking Pvt Limited is ordered to be liquidated.

    a. **Mr. Rajkumar Mahto,** having (Registration No. IBBI/IPA-002/IP-N00723/2018-2019/12209) and having office at: Krishna Kewal Housing Society, Flat No. O/16, 4th Floor, Kondhwa, Khrud, Pune - 48 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 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.

With the above directions, this application i.e. I.A. No. 879 of 2021 is hereby allowed and disposed of.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 21/12/2021

R. S. Sonawane
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

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