

**MA 631/2017 & MA 574/2018 in  
CP. No. 18/I&BP/NCLT/MAH/2017**

Under section 30, 31, 33 & 34  
of IBC, 2016

MA No. 631/17  
Mr. Sunil G Nanal  
Resolution Professional ... Applicant

MA No. 574/18  
Magnum Steel and Power Limited  
... Resolution Applicant

In the matter of

Facor Steel Limited  
... Corporate Debtor

Order delivered on : 26.06.2018



**Coram:**

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)  
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Applicant: Mr. Omkar Deosthale, CS.  
For the Resolution Applicant : Manoj Kumar Garg, Advocate

*Per V. Nallasenapathy, Member (Technical)*

**ORDER**

Facor Steel Limited, the Corporate Debtor herein was put into Corporate Insolvency Resolution Process U/s 10 of the Insolvency and Bankruptcy Code, 2016 by an order of this Adjudicating Authority dated 08.03.2017.

Initially, the Resolution professional filed application No. 631/17 on 01.12.2017 for approval of resolution plan as decided by the Committee of Creditors (hereinafter referred as COC) with 86% voting. The resolution plan provides that the resolution applicant agrees to deposit a sum of Rs.5.00 Crore on or before 11.12.2017 as earnest money deposit in a no lien account of the Corporate Debtor to be opened with the Bank of India at Vizag. Further, the resolution applicant agreed to pay Rs.1.50 Crores immediately on sanction of the Resolution Plan by the adjudicating authority.

1. This adjudicating authority heard the Misc. Application No. 631 of 2017 and orders were reserved on 11.12.2017. However, since the file was misplaced no orders could be passed and the resolution professional have also not mentioned the matter even though it was long pending. Subsequently, the Registry after a thorough search got hold of the papers and the matter was listed for further hearing on 12.06.2018. The resolution professional submitted that the Resolution applicant failed to deposit a sum of Rs.5.00 Crore as undertaken by it. The resolution applicant sought time to file an affidavit to that effect and this bench has directed the learned counsel appearing for the resolution applicant that the resolution applicant shall be present for the next hearing which was fixed on 22.06.2018.

2. The resolution professional filed an affidavit seeking for liquidation order U/s 33 (1) with a further prayer that he may be appointed as a liquidator U/s 34(1) of the Code.


3. The resolution applicant filed Misc. Application No.574 of 2018 praying for permission to withdraw the resolution plan dated 27.11.2017. Surprisingly, the Resolution Applicant also prayed for 6 Month time for arranging the amount to be paid to the Banker's/Financial Institution of Facor Steels Limited. This bench heard the submissions of the Counsel for the Resolution Applicant. The Resolution Applicant submits that if 6 Month time is given they will find a new investor who will pump in money for the Resolution of the Corporate Debtor. From the submissions it is clear that the Resolution Applicant does not have funds of its own to finance the resolution process. It is an admitted fact the Resolution Applicant could not generate the funds in the last 6 Months. Accordingly, Application No. 574 of 2018 is dismissed.

4. In view of the fact that the Resolution Applicant is not ready to bring the funds, sought for withdrawal of the resolution plan and the





Resolution Professional filed an affidavit seeking liquidation of the Corporate Debtor, this bench is of the view that the Corporate Debtor is to be liquidated. Accordingly, the Corporate Debtor is ordered to be liquidated as provided U/s 33(1)(b) of the Code with the consequential directions as below:-

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- a. 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.
  - b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
  - c. 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.
  - d. 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.
  - e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
  - f. 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.



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g. This liquidation order shall be a deemed to be 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.

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)

Sd/-

**B. S.V. PRAKASH KUMAR**  
Member (Judicial)



**Certified True Copy**

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On: 4/7/2018

  
Assistant Registrar

National Company Law Tribunal Mumbai Bench