

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

**MA 209/2018 in
CP 247 /I&BP/NCLT/MAH/2017**

Under Section 33 of the I&B Code, 2016

Resolution Professional
For Varun Resources Limited ...Applicant

In the matter of

Indian Bank	v/s.	...Financial Creditor
Varun Resources Limited	 Corporate Debtor

Coram: Hon'ble Mr V.P. Singh, Member (Judicial)
Hon'ble Mr Ravikumar Duraisamy, Member (Technical)

For the Resolution Professional: Mr. Animesh Bisht, Mr. Dhananjay Kumar, Ms. Saloni
Kapadia i/b Cyril Amarchand Mangaldas

Per V.P. Singh, Member (Judicial)

ORDER

1. This MA 209/2018 has been filed by the Resolution Professional under Section 33(1) of the IBC praying for liquidation of the Corporate Debtor namely Varun Resources Limited.
2. The Corporate Debtor was admitted into corporate insolvency resolution process by the Adjudicating Authority *vide* order dated 14.6.2017, and Mr Sanjeev Maheshwari was appointed as Interim Resolution Professional. The Committee of Creditors in the first meeting passed resolution to confirm Mr Sanjeev Maheshwari as the Resolution Professional. Since the statutory time period of 180 days was expiring on 10.12.2017, an application seeking an extension of 90 days was filed by the Resolution Professional and was allowed by this Bench *vide* order dated 19.12.2017.
3. The Resolution Professional has informed that the Managers and the Crew of the Vessels of the Corporate Debtor filed admiralty suits before the Hon'ble Bombay High Court seeking arrest of the Vessels on account of non-payment of their dues. Subsequently, the Hon'ble Bombay High Court directed arrests of vessels *vide* orders dated 8.9.2017. Further *vide* subsequent orders, directions were passed for selling off of the vessels and deposition of sale proceeds with the Prothonotary, Bombay High

Court. Further order was passed to pay the Managers and the Crew from the sale proceeds.

4. The Committee of Creditors was apprised of the developments in the admiralty proceedings and the Committee of Creditors decided their course of action in relation to the same accordingly.
5. The resolution plan received by the Resolution Professional was not approved by the requisite majority in the 17th meeting of COC dated 6.3.2018 within the extended statutory period of 270 days, therefore no resolution plan was presented before the Adjudicating Authority for approval. Therefore, the Resolution Professional filed an application u/s 33(1) on 12.3.2018 for liquidation of the Corporate Debtor.
6. After no resolution plan was approved by the Committee of Creditors within the statutory period and no plan was presented before this Tribunal for approval, the Resolution Professional has moved an application for an order of liquidation under Section 33(1) of the IBC, which is,

“Section 33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, - (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

...”

7. Section 34 which deals with the appointment of the Liquidator provided for the Resolution Professional to act as the liquidator. However, in view of the amendment, Section 34 of the IBC amended vide Act No. 26 of 2018 w.e.f 6.6.2018 reads as:

“Section 34. Appointment of liquidator and fee to be paid

- (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under [Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,]¹ shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under subsection (4).*

...”

8. In view of the amended Section 34 of the IBC, consent of the Resolution Professional to act as Liquidator is required, therefore notice is issued to the Resolution Professional, Mr Sanjeev Maheshwari to inform this Adjudicating Authority by

¹ Subs. by Act No. 26 of 2018, sec 26(a), for the words and figures “Chapter II shall” (w.e.f. 6-6-2018)

submission of a written consent if he is willing to be appointment as Liquidator within a period of 7 days.

9. The Registry is directed to immediately communicate this order to the Resolution Professional by speed post and email.
10. List this matter on 27.11.2018 for further orders.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

DT. 16th NOVEMBER 2018