

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

MA 665/2018, IA 678/2018 in
CP (IB) 1315/I&BP/2017

Under section 33(1)(a) r/w & 60(5) of
the IBC, 2016

In the matter of

Vinod Kumar Kothari,
Resolution Professional ... Applicant

Alchemist Asset Reconstruction
Company Ltd.
... Financial Creditor

v/s.

Abhijeet MADC Nagpur Energy Pvt. Ltd.
... Corporate Debtor

Order delivered on 31.8.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Adv. Richa Saraf on behalf of
CS Vinod Kumar Kothari, RP

For the Respondent Adv. Anuj Jhaveri i/b Adv. Abhishek Bhaduri
For Employees of the Corporate Debtor

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open court on 20.8.2018

1. It is MA 665/2018 filed u/s 33(1)(a) of I&B Code, 2016 seeking liquidation order for no resolution plan has been approved by CoC with requisite majority and since the CIRP period was expired on 4.7.2018.

HISTORICAL FACTS

2. On perusal of this MA filed by the Resolution Professional(RP), it appears that this Petition was admitted on 6.10.2017 filed u/s 7 of I&B Code appointing Mr. Vinod Kumar Kothari, (Applicant/RP) to carry out the duties of Interim Resolution Professional (IRP) during the Corporate Insolvency Resolution Period (CIRP) as envisaged under I&B Code. The CIRP period was extended for an additional period of 90 days vide order dated 3.4.2018.

3. During the course of CIRP, the Resolution Professional invited Expressions of Interest (EOI) from prospective Resolution Applicants (RA) at two instances. The first invitation of EOI was published on 26.12.2017. In response to which, the Resolution Professional received three EOIs seeking for Information Memorandum, out of which, one Resolution Applicant submitted Resolution Plan on 31.1.2018 and it was placed before Third meeting of CoC held on 13.2.2018.

4. Since the said Resolution Plan was not to the satisfaction of the CoC members, it was resolved for inviting another round of EOIs, accordingly subsequent invitation of EOI was published on 22.3.2018 in English and Vernacular language. In response to which, the Resolution Professional received Seven EOIs, however, out of them, only two RAs submitted their Resolution Plans on the last date for submission of resolution plan i.e., on 31.5.2018.

5. During its Fifth CoC meeting, the CoC members deliberated on the resolution plans basing on the evaluation matrix and assigned

score to both the plans. Since the resolution plan submitted by SREI Multiple Asset Investment Trust – Vision India Fund (RA) proposed better pay-out to the CoC, the said Resolution Applicant was declared as H1 bidder. In furtherance of it, the Resolution Applicant was called for negotiation on the Resolution Plan in the Sixth CoC meeting held on 6.6.2018, wherein CoC proposed certain amendments to the Resolution Plan, pursuant to which, further discussions were held with the Resolution Applicant in the Seventh and Eight CoC meetings on 12.6.2018 and 21.6.2018 respectively.

6. On the basis of various rounds of discussions and negotiations between members of CoC and representatives of SREI during 6th, 7th and 8th meetings of the CoC, final Resolution Plan was circulated amongst the members of the CoC vide an email on 26.6.2018, then put to vote through e-voting mechanism in terms of Section 30(4) of the Code r/w Regulation 26 of CIRP Regulations on 26.6.2018. The result of e-voting was declared on 27.6.2018, wherein the Resolution Plan submitted by SREI Multiple Asset Investment Trust – Vision India Fund, failed to obtain the approval of the requisite majority of 66% voting share of the CoC in terms of Section 30(4) of the Code, in the result, the applicant (RP) submitted his final report before this Bench on 27.6.2018.

7. On 27.6.2018, the Resolution Professional received a mail from one Mr. Joseph Thomas proposing to submit a resolution plan, looking at the mail, the Resolution Professional, after taking consensus of CoC

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Members, invited Mr. Thomas to indicate his proposal details without prejudice, and submit Earnest Money Deposit (EMD) 2.7.2018. for having agreed to again examine the Resolution plans, other shortlisted Resolution Applicants were also allowed to revise their plans. But on the scheduled day, the new RA, Mr Thomas having failed to submit EMDs, the CoC decided that since no EMD had been received from Mr. Thomas, and no revised plans came up from existing Resolution Applicants, and hardly any time being left for completion of the CIRP, since no Resolution Plan has been approved by the CoC as envisaged under section 30 (6) of the Code, and there being mandate u/s 33 of the Code to pass an order of liquidation, the instant Application is being filed by the Applicant.

8. In view of the reasons aforementioned, this Bench being satisfied of the application moved by the Resolution Professional for approval of the liquidation order against this company to liquidate it, this Bench hereby orders as follows:

- a. This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to appointment of Liquidator, the Resolution Professional i.e. the applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation with all powers of the Board of

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Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

c. Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.

d. that on the RP being appointed as Liquidator, for he has stated that the employees and security guards working in the company would continue as before on Retainership Agreement in between the Liquidator and the respective employees and security guards until disposal of the assets of the company, accordingly the liquidator is directed.

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e. This liquidation order shall be 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 is continued during the liquidation process by the Liquidator, subject to the directions given in clause (d) above.

f. The moratorium declared vide order dated 6.10.2017 ceased to exist.

9. That on Intervention Application 678/2018 moved by MADC, for there being consensus between the RP and Counsel appearing on behalf of MADC regarding the rights of MADC, the Liquidator, while dealing with liquidation of the assets of the company, shall not interfere or deal with the pre-existing rights of MADC and shall continue to manage switch yard and the transmission line as stated in the order dated 4.8.2017 passed by MERC and the Concession Agreement dated 7.11.2007 and shall carry out liquidation of the Corporate Debtor subject to the rights of MADC.

10. Accordingly, these MA 665/2018 and IA 678 of 2018 are allowed. The Registry is hereby directed to communicate this order to the parties, within seven days from the date order is made available.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

SD/-

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