

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

Final Report in CP 1487/I&BC/2017

Under Section 33(2) of IBC, 2016

Resolution Professional ... Applicant

In the matter of

ICICI Bank Ltd. ... Petitioner

Vs

Western India Shipyard Ltd ... Respondent

Order delivered on 26.07.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (J)
Hon'ble Shri Ravikumar Duraisamy, Member (T)

For the Applicant: Mr. Pradeep Dahiya alongwith Ms. Aarti Suvarna, Mr. Omprakash Kanoongo, Resolution Professional

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

ORDER

The Resolution Professional filed Final Report as 180 days of the Corporate Insolvency Resolution Process expired on 9.6.2018 and the Resolution Professional has not received any resolution plan during the Corporate Insolvency Resolution process, thus prayed for liquidation of the Corporate Debtor.

2. The facts given by the Resolution Professional in respect to the historical events happened from the date of admission till the date of filing this application are as follows:

Date	Particulars
12.12.2017	The Hon'ble Adjudicating Authority passed an order to initiate CIRP against the corporate debtor by admitting the petition in terms of section 7(5) of IBC, 2016.

	<p>This Tribunal, vide above order dated 12th December, 2017, appointed the Applicant as the Interim Resolution Professional ("IRP") to exercise all powers and perform all duties enjoined upon him as an IRP under IBC, 2016.</p>
28.12.2017.	<p>Pursuant to the appointment of IRP, in terms of the provisions of Section 17 of the IBC, 2016, the management of the affairs of the corporate debtor and all powers of the Board of Directors of the corporate debtor were suspended and they were bound to report to the IRP, as the applicant has been conferred with jurisdiction u/s 17 of the IBC, 2016 to manage the affairs of the Corporate Debtor informing the Financial Institutions/Banks about his appointment.</p>
31.01.2018.	<p>That in the first Committee of Creditors ("CoC") meeting, the Applicant was appointed as the Resolution Professional of the CD. In this meeting the Committee took note of the list of creditors prepared by applicant and decided the voting percentage of the financial creditors on the basis of the list of creditors was also decided and the ICICI Bank Limited being the only Financial Creditor was assigned 100% voting share.</p>
21.02.2018.	<p>The Applicant published an advertisement in two newspapers - Navhind Times at Goa and Business Standard having circulation Pan India, inviting</p>

	expression of interest (EOI) from prospective resolution applicants.
23.02.2018. – 10.04.2018.	Pursuant to the advertisement, the Applicant received EOIs from eight resolution applicants.
09.03.2018	The Resolution Professional provided the resolution applicants with all the necessary information required to submit their EOIs.
25.04.2018.	In the second meeting of CoC, the Committee took note of the updated list of creditors prepared by applicant and decided the 100% voting share of ICICI Bank Limited.
26.04.2018	The Resolution Professional informed all the eight resolution applicants about the order dated 19.03.2018 of the NCLT wherein the Resolution Professional had been restrained from proceeding against the land and water body of the CD as the lease agreement between the CD and MPT had expired. The Hon'ble NCLT order had further also directed the sale of the Floating Dry Dock thus making it unavailable to the resolution applicants.
28.05.2018.	In the third CoC meeting, the RP appraised the CoC of all the pending litigations, basing on which, the CoC decided their further course of action.
12.06.2018.	In the Fourth CoC meeting, the RP informed the CoC that no sustainable resolution plan had emanated during 180 days' period of CIRP, the same was taken note of as Item No. A11. The RP informed the CoC that in the absence of a resolution plan, the

	Corporate Debtor might go in to liquidation. He informed that a Final Report would be filed before the Hon'ble NCLT for their directions on the matter.
06.06.2018.	The RP filed an application under Section 66 of the IBC for fraudulent transactions indulged in by the CD.
	<p>The claims received and admitted by the RP are as follows:</p> <ul style="list-style-type: none"> • Financial Creditors claim: Claim amount received: Rs. 768,138,683/- Claim amount admitted: Rs. 768,138,683/- • Operational Creditors claim: Claim amount received: Rs. 361,442,502/- Claim amount admitted Rs. 296,647,336/- • Employees claim: Claim amount received: Rs. 86,117,433/- Claim amount admitted: Rs. 60,264,594/- • Workmen claim: Claim amount received: Rs. 1,072,806,752/- Claim amount admitted: Rs. 112,163,465/- • Grand Total: Claim amount received: Rs. 2,288,505,370/- Claim amount admitted: Rs. 1,237,214,078/-
21.06.2018	The RP filed the Final Report bearing Diary No. 20420.
	The RP received 2 Valuation Reports from RBSA Advisors and Best Mulyankan Consultants Ltd. RBSA Advisors valued the Liquidation Value of the CD at Rs. 12, 79, 27, 000/- (Rupees Twelve Crore, Seventy-

	<p>Nine Lacs, Twenty-Seven Thousand only) and Fair Value at Rs. 23, 65, 34, 000/- (Rupees Twenty-Three Crore, Sixty-Five Lacs, Thirty-Five Thousand only).</p> <p>Best Mulyankan Consultants Ltd. valued the Liquidation Value of the CD at Rs. 6, 48, 70, 000/- (Rupees Six Crore, Forty-Eight lacs, Seventy Thousand only) and Fair Value at Rs. 9, 93, 86, 000/- (Rupees Nine Crore, Thirty-Nine Lacs, Eighty-Six Thousand only).</p>
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3. Important developments during CIRP

- By an order dated 26.04.2018., this Hon'ble Adjudicating Authority passed an order for sale of the Plant & Machinery be carried out by the Mormugao Port Trust.
- On 12.06.2018, all Applications and Petitions filed in the Writ Petition of *Western India Shipyard Workers Union v. WISL & Ors.*, at the High Court of Bombay at Goa (Writ Petition No. 882/2017), were disposed of by a common order. Vide the order dated 12.06.2018, the Hon'ble High Court of Bombay at Goa disposed of all the Applications and Petitions holding that the Workers and the Employees had initially approached the Honourable High Court with the apprehension that if the assets were sold and the money was taken away by other claimants, the Workers and the Employees would become remediless, therefore after the auction, since the proceeds had been deposited in a Term Deposit by the Mormugao Port Trust, it would continue to hold the amount deposited and its disbursement would take place as per the directions of the

Tribunal. In view of those directions, the apprehension raised by the Workers' and the Employees' Union no longer survived, therefore it was held that it would not be necessary to keep their Petitions pending. In this back ground, when the learned Counsel for the parties stated that in case any relief necessary in respect of their dues or assets of the Shipyard, they would make necessary applications to the Tribunal, which the Hon'ble High Court of Bombay at Goa rightly accepted so with further directions that any further orders are required for the disposal of assets of the Corporate Debtor, they could be obtained from the Tribunal.

4. The following are the pending concurrent litigations of the CD:
 1. M. A. No. 530/2018 under Sec. 66 of the IBC in the Hon'ble NCLT.
 2. COMS/63/2016 WISL v. M. V. Quing & Ors. in the Hon'ble Bombay High Court.
 3. Application filed on 20.07.2018. under Sec. 60 (5) (c) of the IBC, bearing Diary No. 23182.
5. On perusal of the entire CIRP process carried out by the Resolution Professional, this Bench has noticed that the Resolution Professional proceeded in compliance with the provisions of the Code and Regulations thereof. He published an advertisement inviting Expression of Interest from the Resolution Applicants, though some persons turned to file their Expression of Interest, finally when nobody has come up with the resolution plan, the COC having come to a conclusion that there was no point in remain waiting for any resolution plan, the COC, on 12th June, 2018, passed resolution with 100% voting directing the Resolution Professional to file final report before NCLT for passing liquidation order for liquidation of the assets of the Corporate Debtor.
6. On perusal of this status report filed by the RP, this Bench having noticed that the report moved by the RP disclosed approval of the CoC for filing final report by the RP before this Bench for liquidation of this

company as envisaged under Section 33(2) of IB Code, 2016 and the Regulations thereof, this Bench hereby orders as follows:

- a. This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in this 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 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. 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.
 - e. The moratorium declared vide order dated 12.12.2017 ceased to exist.
7. Accordingly, the Liquidation Order is hereby passed.

SD/-

RAVIKUMAR DURAISAMY
Member(Technical)

SD/-

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