

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

MA 524 in C.P. 31/I&BP/2017

Under section 10 of the IBC, 2016

In the matter of
Gupta Coal India Pvt. Ltd.

Represented by
Resolution Professional
....Applicant

Order delivered on 01.01.2018

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

For the Petitioner : Ms. Ami Jain, Adv. & Mr. Abhay N. Manudhane,
Resolution Professional.

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

ORDER

Oral Order dictated in the open court on 01.12.2017

It is a Miscellaneous Application filed by the Resolution Professional reporting that no Resolution Plan has been approved by the Committee of Creditors (CoC), on the contrary, in the same meeting of CoC dated 03.10.2017, it has passed a Resolution with 87.08% voting share of CoC to proceed for liquidation directing the Resolution Professional to file its report intimating this Adjudicating Authority to pass appropriate orders on the resolution passed by the CoC on 03.10.2017.

2. In this Application, the Resolution Professional has reported that this Bench on 09.03.2017 admitted the Petition filed u/s IBC 2016 appointing the Interim Resolution Professional (IRP), in pursuance thereof, the IRP caused a public announcement on 28.03.2017 in two newspapers for initiation of Corporate Insolvency Resolution Process inviting claims from the financial/operational creditors and workers/employees of the company in terms of the IBBI Regulations. Thereafter, on having the IRP received claims from the creditors, CoC was constituted and called for a meeting on 28.04.2017 with the voting share as enclosed with this application.

Since valuers have to be appointed as per the Code, IDBI Capital Markets & Securities Ltd., *Merchant Banker*, and M.Y. Shastri & Co., *Chartered Accountants* were appointed as valuers to determine the value of the Corporate Debtor in accordance with the Regulations 27 r.w. Regulation 35 of IBBI. In furtherance of it, the Interim Resolution Professional prepared internal information memorandum as referred in Regulation 36(1)(a) of IBBI Regulation 2016 and circulated the same to the members of the CoC by e-mail dated 12.05.2017.

3. After holding CoC meeting on 28.04.2017, an advertisement was published in 'Lokmat Times' in Marathi on 18.08.2017 inviting expression of interest for submitting Resolution Plan from interested parties on or before 30.08.2017. In addition to it, Saxena & Saxena, Chartered Accountants were appointed to conduct special audit of the books of accounts of the Corporate Debtor. Since first CoC meeting unanimously decided to replace Interim Resolution Professional with Resolution Professional, Mr. Abhay N. Manudhane, this Adjudicating Authority appointed this Applicant as Resolution Professional on the confirmation given by IBBI.

4. Accordingly, this Applicant took over as Resolution Professional from 01.09.2017 onwards. In the meantime, for IRP had called second CoC meeting on 01.09.2017 as 180 days of CIRP was to end on 05.09.2017, this Bench extended 90 more days as mentioned u/s 12(2) of IBC, 2016, on 07.09.2017. Till such time, since no Plan came forward from anybody, the CoC extended time up to 15.09.2017 for submitting Resolution Plan. Though CoC extended time for submitting Resolution Plan up to 15.09.2017, no Plan came to the Resolution Professional on or before 15.09.2017.

5. However, a draft resolution plan subsequently having come up from the Promoters on 26.09.2017, it was immediately placed in the third meeting of CoC held on 03.10.2017. In addition to circulating this draft Resolution Plan before CoC, the Applicant simultaneously placed his observations before the CoC mentioning that this draft Resolution Plan is short of compliance as required u/s 30(2) of IBC

r.w. Regulation 37-38 of IBC. When this draft Plan and observations placed before the CoC, it was thread bear discussed, thereafter put to e-voting by providing 24 hrs time (03.10.17 to 5.10.17) as mentioned in the IBBI Regulations. In the e-voting, this draft Resolution Plan was rejected with 89.86% of the voting share of the financial creditors, wherein simultaneously another decision was taken directing the Resolution Professional to propose for liquidation of the Corporate Debtor before this Adjudicating Authority for the Insolvency Resolution Process period would come to end on 04.12.2017.

6. It has been further stated that since decision for sending it for liquidation process has been approved with 87.08% voting share of the Financial Creditors, this Resolution Professional has placed tables reflecting the voting share in respect to rejection of Resolution Plan and also in respect to approval for liquidation of the company, which are as follows:

Voting in respect of rejection of the Resolution Plan:

Sr. No.	Name of the financial creditor	For	Against	Abstained	Voting share	Remarks
1	Bank of India		√		28.28	
2	Punjab National Bank		√		14.23	
3	IDBI Bank Ltd.		√		16.78	
4	Allahabad Bank		√		8.1	
5	Indian Overseas Bank		√		6.21	
6	Union Bank of India		√		4.87	
7	Vijaya Bank		√		2.58	
8	ICICI Bank Ltd.			√	2.83	
9	SREI Infrastructure Fin.		√		2.2	
10	ICICI Bank Ltd.(OD)			√	4.67	
11	Axis Bank			√	2.82	
12	State Bank of India		√		2.6	
13	Punjab National Bank		√		1.02	
14	IDBI		√		0.5	
15	L&T Infrastructure Finance Company		√		2.33	
Grand Total of financial creditors entitled to vote		0	89.68	10.32	100	

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Voting in respect of approval of Liquidation Plan:

Sr. No.	Name of the financial creditor	For	Against	Abstained	Voting share	Remarks
1	Bank of India	✓			28.28	
2	Punjab National Bank	✓			14.23	
3	IDBI Bank Ltd.	✓			16.78	
4	Allahabad Bank	✓			8.1	
5	Indian Overseas Bank	✓			6.21	
6	Union Bank of India	✓			4.87	
7	Vijaya Bank	✓			2.58	
8	ICICI Bank Ltd.			✓	2.83	
9	SREI Infrastructure Fin.	✓			2.2	
10	ICICI Bank Ltd.(OD)			✓	4.67	
11	Axis Bank			✓	2.82	
12	State Bank of India		✓		2.6	
13	Punjab National Bank	✓			1.02	
14	IDBI	✓			0.5	
15	L&T Infrastructure Finance Company	✓			2.33	
Grand Total of financial creditors entitled to vote		0	89.68	10.32	100	

7. On having the Resolution Professional filed the report, the Counsel for the erstwhile management/Promoters appeared before this Bench on behalf of Promoters saying that the CoC did not consider the merger of the group companies of the Corporate Debtor namely; Gupta Coal India Pvt. Ltd. (Corporate Debtor herein), Gupta Corporation Pvt. Ltd., Gupta Energy Pvt. Ltd., Gupta Global Resources Pvt. Ltd., Indo-Krishna Green Fields Ltd. on the basis of the liquidation valuation given to the remaining companies by the promoters. When the said Counsel has made this submission, the Resolution Professional in person present before this Bench has categorically mentioned that these Promoters did not attend the CoC meeting held on 03.10.2017.

8. On hearing the Counsel appearing on behalf of the Promoters, the point that has come to our mind is whether this Counsel for Promoters has any locus to appear before this Bench in an Application

filed by the Resolution Professional saying that the CoC decided with super majority for liquidation of the company.

9. On perusal of Section 29 and 30, it is evident that no procedure has been given as to what would happen to the Resolution Plan if it has been rejected. This point has not even been envisaged in section 30 of the Code except proceeding to liquidation of the company. If we closely observe section 30(1), we find that the right of the Resolution Applicant is to submit Resolution Plan to the Resolution Professional basing on the information memorandum given by the Resolution Professional. Then the Resolution Professional has to examine the same in the light of sub-section 2 of section 30, to ascertain as to whether the same is in compliance of sub-section 2 i.e. in respect to provision for Insolvency Resolution Process costs, provision for repayment of debts of the operational creditors in the manner as specified u/s 53, provision for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan, the provision for the implementation and supervision of Resolution Plan, and to ensure that this Plan does not contravene the provisions of the Code and confirmation with such other requirement as stated by IBBI. When such plan is in compliance of section, then it will go before CoC as envisaged under sub-section 3 of section 30.

10. Though Resolution Plan is not in compliance of section 30(2) of the Code, here in this case, the Applicant placed the Plan before CoC, whereupon, the CoC rejected the Resolution Plan by a vote of not less than 75% of the voting share of the financial creditors.

11. If we go back to section 21 of the Code, it has been categorically mentioned that sub-section 8 of section 21 mandates that all decisions of the CoC shall be taken by a vote of not less than 75% of the Financial Creditors. In sub-section 4, CoC is given discretion to either approve or not to approve the Resolution Plan even after the Resolution Plan is in compliance with sub-section 2 of

section 30. It is not said anywhere that once the Resolution Plan is in compliance with sub-section 2 of section 30, the CoC has to approve the Plan. It is the prerogative of CoC as to whether to approve or not to approve the Resolution Plan.

12. If the Resolution Plan is approved under sub-section 4 of the section 30, Resolution Professional will submit such Resolution Plan as approved by CoC to this Adjudicating Authority to examine it u/s 31 of the Code.

13. Therefore, when a Plan has come to Resolution Professional, he has to ensure that Plan is in compliance of sub-section 2 of section 30, then it has to be placed before CoC, on such presentation, CoC will apply its discretion to approve or not to approve with 75% of voting share of the CoC. On such approval, it will come before this Adjudicating Authority through Resolution Professional, whereupon, jurisdiction lies with this Bench to go into merits of the Resolution Plan and the decision of the CoC. Otherwise, this Bench will not get jurisdiction to look into as to why the Resolution Plan has been rejected or why it has not been placed before this Adjudicating Authority. Since jurisdiction given to this Adjudicating Authority is limited to examine the Plan approved by the CoC, we do not believe that this Bench can interfere with the rights of CoC taking a call on the Resolution rejected by it.

14. In this backdrop, since this Resolution Applicant's Plan has been rejected by the CoC, the Resolution Applicant cannot be conceived as aggrieved taking cover under the right of filing plan with the Resolution Professional because the right of the resolution applicant is limited to present the Plan. If the Plan given by the Resolution applicant is not considered by the Resolution Professional to examine it under sub-section 30(2) of this Code, then he may raise an objection saying his Plan is not considered, having such consideration has already been given by the Resolution Professional,

the Resolution Applicant could not be considered as aggrieved under section 30(1) of the Code. That being legal proposition, what right this Applicant has to request this Bench not to initiate liquidation process against the Corporate Debtor herein. Though the Resolution Professional is of the opinion that the Plan is not in compliance of section 30(2), by abundant caution, the Plan was placed before the Committee for its decision, on which, the Committee rejected the Plan with super majority. Had it not been in place before the CoC, it could be understood that Resolution Professional rejected the Plan after examining it under section 30(2) of the Code. But the Professional having placed it before the CoC and it having rejected the plan, there could not be any figment of imagination to assume that the Resolution Applicant is aggrieved of the action of the CoC.

15. Since a report has already come before this Bench saying that no Resolution Plan has been approved by the CoC and the CIRP period is going to end by 04.12.2017 i.e. within two days hereof, this Bench, on the report filed by the Resolution Professional u/s 33(2) of the Code, shall pass liquidation Order as regard to sub-clauses 1,2,3 of Clause (b) of sub-section 1 of section 33.

16. For the RP has complied with the procedure laid under the Code r/w Regulations of CIRP, on verification, we are of the view that this case is fit to pass liquidation order as mentioned under sub-section 2 of section 33 of the Code.

17. Since the Committee of Creditors has recommended the same RP to continue as Liquidator, the same professional is hereby appointed as Liquidator to initiate the liquidation process as mentioned under Chapter III. 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 in the liquidator;

18. This Bench hereby directs the personnel of the corporate debtor to extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

19. Since Liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

20. This 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 business the Corporate Debtor carrying.

21. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation Process) Regulations, which forms part of the liquidation cost.

22. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Code 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations 2016.



V. NALLASEENAPATHY
Member (Technical)



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