

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 ...Financial Creditor
v/s.
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. Dhananjay Kumar a/w Mr. Ankush Mathkar 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

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statutory period of 270 days, therefore no resolution plan was presented before the Adjudicating Authority for approval. Subsequently, 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 of IBC which deals with the appointment of the Liquidator was amended vide Act No. 26 of 2018 w.e.f 6.6.2018, as a result of which the Resolution Professional's consent to act as liquidator is required. Therefore, vide our order dated 16.11.2018, the Resolution Professional was directed to submit written consent if he is willing to be appointed as the Liquidator of the Corporate Debtor. Thereafter, the Resolution Professional has filed an affidavit dated 27.11.2018 and annexed written communication to act as liquidator of the Corporate Debtor.
8. The application filed by the RP to seek liquidation of the Corporate Debtor under Section 33(1) of the IBC is allowed and this Bench hereby orders as follows:
- This Bench hereby orders that the Corporate Debtor be liquidated in the manner as laid down in the Chapter III of the IBC by issuing a Public Announcement as prescribed in Regulation 12 of the IBBI (Liquidation Process) Regulation, 2016 stating that the Corporate Debtor is in liquidation.
 - The Resolution Professional Mr Sanjeev Maheshwari is appointed as the Liquidator. 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 fees of Liquidator shall be by the Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2017.
 - 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

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Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the IBC.

- e) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- f) The moratorium declared vide order dated 14.6.2017 ceases to exist.
- g) The Liquidation costs shall be paid as per the regulations.
- h) A Monitoring Committee shall be formed consisting of the three Financial Creditors having highest voting share and one representative of the registered employees union, if available. The Liquidator shall perform day to day functions during liquidation, as and when required, in consultation with the Monitoring Committee. However, the Liquidator shall not be bound by the decision of the Monitoring Committee.

9. This MA is disposed of accordingly.

10. The Registry is directed to immediately communicate this order to the Liquidator and the Registrar of Companies under which this Company has been registered by speed post and email.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

DT. 4th December 2018

Sd/-

V.P. SINGH
Member (Judicial)

Sanjeev Maheshwari

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