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IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
NEW DELHI

No.(IB)-48(PB)/2017

SECTION: Under Section 9 of Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

AGARWAL MARKETING AND SERVICES (ENERGY) PVT. LTD.
18, NETAJI SUBHASH ROAD,
3RD FLOOR,
KOLKATTA-700 001.

....Operational Creditor

V/s

M/s Max-Tech Oil & Gas Services Pvt. Ltd.
A-26, Ground Floor,
Jawahar Park, Devli Road,
Khanpur, Delhi-110062.

..... Corporate Debtor

Coram:

R.VARADHARAJAN
Hon'ble Member (Judicial)

DEEPA KRISHAN
Hon'ble Member (Technical)



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For the Petitioner : Mr. Neeraj Chaudhry, Mr. Rajive R.Raj,
Mr. Anant A. Pavgi, Advocates

For the Respondent : Ms. Vanita Bhargava & Mr. Aseem Chaturvedi,
Advocates

For IRP : Mr. Abhishek Anand, Ms. Srishti Kapoor,
Advocates

Delivered on :12/06/2018

ORDER

Originally, it is seen from the records of this Tribunal that the Corporate Insolvency Resolution Process (CIRP) was initiated by this Tribunal by virtue of admitting the main Petition being Company Application No. (IB)-48(PB)/2017 vide order dated 1.5.2017 and appointed one Mr. Atanu Mukherjee as the Interim Resolution Professional (IRP) of the Corporate Debtor (CD) as named by the Operational Creditor (OC). Subsequently based on the application filed on behalf of the Committee of Creditors (COC) for the replacement of resolution professional one Mr. Anil Kohli was appointed as the Resolution Professional (RP) vide order dated 02.06.2017 passed by the Hon'ble Principal Bench which was also confirmed by IBBI vide its communication dated 12.06.2017 to this

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Tribunal. From time to time based on the applications and representations of RP, directions have been issued in relation to Corporate Debtor (CD) and for finalization of its annual accounts. During the hearing dated 13.9.2017, it was brought to the notice of this Tribunal that the Committee of Creditors (CoC) in their 3rd meeting held on 8.8.2017 convened by the RP has recommended by more than 75% of the financial creditors that the company should go in for the liquidation process. However, in relation to ICICI Bank Ltd. being one of the financial creditors no mandate had been exercised. While the liquidation was recommended by CoC, this Tribunal vide order dated 18.9.2017 ordered that the notice of petition be issued to ICICI Bank Limited having its office at NBCC Place, Pragati Vihar, Bhishma Pitamah Marg, New Delhi as well as to Gujarat Fluorochemicals Limited having its office at ABS Towers, Old Padra Road, Vadodra and pursuant to issue of notice, ICICI Bank Limited represented on 5.10.2017 that they have no objection to the liquidation process being initiated. In relation to Gujarat Fluorochemicals Limited, in spite of time taken however no objection has been filed to the liquidation process. Opportunities were also given to the Resolution Professional in relation to reconciling the physical assets available of the CD with the financial statement as on 31.3.2017 of the CD. On 23.11.2017 after hearing Ld. Counsel for RP, order was reserved. Subsequent to the order being reserved, an application in CA No.220(PB)/2018 has been filed by one of the Financial Creditors of the CD

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being Bank of India claiming to be the lead banker of the consortium of banks for placing on record subsequent developments and seeking further directions from this Tribunal. Perusal of the said Application as well as documents annexed there with shows that subsequent to the recommendation of CoC for the liquidation process and based on which recommendation the RP had filed its report seeking an order under Section 33 of the IBC,2016 for liquidation, it is brought to the notice of this Tribunal that in relation to assets being movables being located at different sites are lying along with assets of the Group Company, namely, Shiv Vani Oil & Gas Exploration Services Ltd. (SVOGL) engaged in oil exploration activities and that the said SVOGL had been wound up vide an order in CP No.466 of 2013 passed by the Hon'ble High Court of Delhi dated 28.7.2017. It is further represented that the Official Liquidator (OL) attached to the Hon'ble High Court have been appointed as the Provisional Liquidator and directions have been issued to the OL to prepare a complete inventory of all the assets of SVOGL and as already represented that since the assets of the CD and said SVOGL are lying mixed up at the operation sites, a request letter has been sent by Ld. RP herein to the Official Liquidator to have the assets of CD, at the time of taking inventory, to segregate and demarcate and de-seal the equipments of CD from the equipments of the company in liquidation i.e. SVOGL. Pursuant to the said letter, it is represented that there has been interaction between RP and OL in relation to the

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segregation of the assets of CD and that of SVOGL and since it was decided by the CoC on 13.3.2018 to apprise this Tribunal about the development which had taken place in relation to SVOGL, this Application has been filed to bring on record the above facts.

2. From the narration of above facts, it is evidenced that already CIRP has been initiated against the CD and that the CoC subsequent to the initiation of CIRP has also come to conclusion with requisite voting strength that liquidation process should be initiated as there is no chance of restructuring the operations of the CD and in the circumstances based on the recommendations of CoC, the Resolution Professional is seeking the CD to be put in the liquidation mode as provided under Section 33 of IBC, 2016. At this stage, it would be appropriate to look into the provisions concerning the liquidation process as provided under Section 33 of IBC, 2016 and the same is reproduced hereunder:

33. (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

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

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(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) 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.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

3. Perusal of the above provisions shows that in the absence of any resolution plan as contemplated under Sub-section (6) of Section 30, the CoC has resolved to recommend liquidation process to be initiated against the CD and in view of the same and in the absence of any Resolution Plan being put forth this Tribunal is required to pass an order requiring the CD to be liquidated in the manner as laid down in the chapter, namely, Chapter III of IBC,2016 and cause a public announcement to be made of the said proceedings as well as cause the communication of the order to the authorities with which the CP is registered. From the report of the RP, it is evident that the Company does not have any immovable property and the assets which are available have been enlisted in Annexure A-2 of the Application being CA No.220(PB)/2018 and the liquidation value it is stated to be to the extent of Rs.26.71 crores as against the total debt payable by the CD to the extent of Rs.213.70 crores which is evident from the reports of RP. Thus, it is evident that the company has become insolvent and taking into consideration the aspect that there is no scope for revival or possibility

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to restructure the operations of the CD as reported by RP and concurred with by CoC, the only course which is available is liquidation. In this regard, the Tribunal is guided by the decision of the Hon'ble Supreme Court in "Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited - 2017 SCC OnLine SC 1154", wherein it has been held that in relation to an insolvent company the balance shifts from the promoters to the creditors and under the circumstances the best judge to decide the fate of CD being the CoC who have taken a decision to go for liquidation rather than revival, we affirm the decision of CoC taken in the meeting held on 8.8.2017 wherein it has recommended liquidation.

4. This Tribunal taking into consideration the provisions of Section 33(2) of IBC,2016 and in view of the CoC in their meeting held on 08.08.2017 having unanimously approved for the liquidation of the Corporate Debtor, is thus constrained to order for liquidation of the Corporate Debtor M/s Max Tech Oil & Gas Services Pvt. Ltd. having CIN NO.U74140DL2000PTC107561, being the Identification Number as assigned by Registrar of Companies, NCT of Delhi & Haryana at the time of its incorporation and with whom the Corporate Debtor from the records it is seen to be registered with presently. This Tribunal further orders that the Liquidator for the purpose of liquidating the Corporate Debtor shall be Mr.Anil Kohli being the Resolution Professional hitherto in relation to the CD and who on being queried was

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willing to act as the Liquidator. The incidence of liquidation to follow in term of provisions of IBC,2016 and more particularly given in Chapter-III of IBC,2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 and further in terms of the said Regulations, the Liquidator shall file his report to this Tribunal as mandated therein. The Liquidator shall intimate Registrar of Companies, NCT of Delhi & Haryana forthwith in relation to the Liquidation Process of the Corporate Debtor being set in motion. Further in terms of Section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

5. The Corporate Resolution Process of the Corporate Debtor comes to a close and moratorium granted under Section 14 of IBC,2016 at the time of admission is also lifted but the provisions of Section 33(5) & 33(6) shall apply.

Sd/-
(DEEPA KRISHAN)
MEMBER (Technical)

U.D.Mehta
12.06.2018



Sd/-
12/6/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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13-6-2018
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