

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

M.A. 528/2017

C.P. NO.1A/I&BP/NCLT/MAH/2017

Under Section 30 and 10 of IBC, 2016

Mr. Sanjeev Maheshwari Applicant
(Resolution Professional)

In the matter of

U. B. Engineering Ltd. Corporate Debtor

Order delivered on 5.12.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Shyam Kapadia, Advocate, i/b Abhishek Adke

For the Respondent: Mr. Rathina Maravarman, Advocate, Mr. Ashish Pyasi, a/w Umang Thakar, i/b Dhir & Dhir Associates

For the Intervener: Mr. Sanjeev Maheshwari.

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

ORDER

M.A. No.528 of 2017 in CP 1A/I&BP/NCLT/MUM/2017

The Insolvency Resolution professional has filed Miscellaneous Application 528/2017 stating that the Resolution Plan filed by a Resolution Applicant has not been approved by not less than 75% of voting share of the Committee of Creditors and since the Committee of

Creditors has not approved the resolution plan even after completion of 270 days period already given, the Resolution professional has therefore, filed this MA 528/2017 reporting rejection of the plan by the CoC to be taken on record and pass orders accordingly.

2. On computation of 270 days' period given for insolvency resolution process from the date of admission, i.e. 18.1.2017 was over by 13th October, 2017. In these 270 days, the Committee of Creditors was validly constituted, thereafter several meetings of the CoC taken place, wherein a resolution plan given by the Resolution applicant namely Western India Erectors LLP was considered and thereafter on 10.10.2017, the Committee of Creditors rejected the said plan. For no resolution plan was approved by the Committee of Creditors, indeed CoC rejected the plan that came before it on 13.10.2017, this Resolution professional filed this MA intimating that no plan was approved within the resolution period granted to this Corporate Debtor.

3. Before going to say what call this Adjudicating Authority has to take when no resolution plan was not approved by the Committee of Creditors within the resolution period, it is essential to look into the section as to what mandate is given to the Adjudicating Authority to proceed further in respect to the Corporate Debtor, for which Section 33 of the Code say as follows:

"Section 33: Initiation of Liquidation:

1[(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;

(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.]”

4. By reading this Section, when no Resolution plan was approved by super majority in CoC, the question of Resolution Professional submitting Resolution Plan before Adjudicating Authority as contemplated u/s 30(6) of the Code will not arise, when no such plan has not been received from the RP by this Adjudicating Authority, then question of this Authority exercising its jurisdiction for approving the plan u/s 31 of the Code will also not arise. In the meanwhile if the Corporate Insolvency Resolution Process Period or maximum period permitted for completion of the Corporate Insolvency Resolution Process