ABHISHEK CORPORATION

www.abhishekcorporation.com

Bombay Stock Exchange Limited
Floor I, Rotunda Building, Dalal Street,
Mumbai 01

Kind Attn: Department of Corporate Services

BSE Code: 532831
FAX No. 022-22722039/37

National Stock Exchange of India Limited
"Exchange Plaza", Bandra –Kurla Complex,
Bandra (East),Mumbai 400051

Kind Attn: Listing Department

NSE Code: ABHISHEK
FAX No. 022-26598238/26598348

Sub: Intimation under regulation 30 under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir/Madam,

Please Find enclosed herewith order of Liquidation passed by NCLT, Mumbai bench for Abhishek Corporation Limited dated 11th March,2019.This is information under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Kindly acknowledge the same.

Thanking You,

Yours Faithfully

For Abhishek Corporation Limited

Sawani p. Sadalage
Company Secretary & Compliance Officer

Abhishek Corporation Limited
Regd Office : Gat no 148, Tamgaon, Kolhapur-Hupri Road, Tal. Karveer,
Kolhapur - 416 234, INDIA. Ph. -91-231-2676191, Fax: -91-231-2676194
Email : admin@abhishekcorporation.com
CIN : L51491PN1993PLC073706. GSTIN : 27AACCA 0323P1ZR

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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 887/2018 in
CP 1499/I&B Code/2017
Under Section 33 of I&B Code, 2016

In the matter of

Shri Karvir Nivasini Mahalaxmi Ispat Pvt. Ltd.

…Petitioner/
Operational Creditor

vs

Abhishek Corporation Ltd.
…Corporate Debtor

And in the matter of

Mr. Sameer Kakar
Resolution Professional
…Applicant

Order dated 11.03.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr Sameer Kakar, Resolution Professional, Adv. Ami Jain.

For Respondent: Adv. Shilpan Gaonkar, Adv. Vijay Hinge;
Adv. Rohit Gupta and Adv. Supriya Majumdar for ARCIL;
Adv. Paras Parekh, Adv. Rohit R. and Adv. Ravi Hegde for Resolution Applicant;
Adv. Rathina Maravarman and Adv. Supriya Singh for dissenting Financial Creditors;
Adv. Venatesh Dhondh, Sr. Counsel and Adv. Ashish Venugopal.

Perse; V.P. Singh, Member (Judicial)

ORDER

1. The Applicant herein being the Resolution Professional of the Corporate Debtor has filed this MA No. 887/2018 in CP No.1499/2017 under Section 33 of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**), seeking, *inter-alia,* initiation of liquidation of the Corporate Debtor namely Abhishek Corporation

Limited as no resolution plan could be approved by the CoC within the stipulated time for CIRP.

2. The Section 9 Petition filed by the operational Creditor namely, Shri Karvir Nivasini Mahalaxmi Ispat Pvt. Ltd. was admitted vide order dated 17.11.2017 by this Tribunal for committing default in the payment, thereby initiating Corporate Insolvency Resolution Process (**CIRP**) and appointing Mr Sandeep Singhal, as Interim Resolution Professional (**IRP**).

3. The IRP issued a public announcement of initiation of CIRP in Form A in 'Business Standard' in English and 'Daily Samaj' in the Marathi edition on 23.11.2017 and inviting claims from the creditors mentioning the last date for submission of claims against the Corporate Debtors as 06.12.2017. The IRP appointed Adroit Technical Services Pvt Ltd as valuer on 27.11.2017 and Crest Capital Group Pvt Ltd as valuer on 29.11.2017. The First Status Report was filed on 18.12.2017.

4. After having verified and admitted the claims received from the creditors, the IRP constituted a Committee of Creditors(CoC) comprising Asset Reconstruction Company of India Ltd., Edelweiss Asset Reconstruction Co. Ltd., Corporation Bank, State Bank of India, Bank of Baroda, Punjab National Bank, Axis Bank Limited, ASREC (India) Ltd. and Invent Assets Securitisation and Reconstruction P. Ltd. and conducted the first CoC meeting, on 22.12.2017.

5. During the first CoC meeting, the resolution for the appointment of IRP as resolution professional was rejected by 92.47% majority and it was resolved that the IRP shall continue as resolution professional till the appointment of new resolution professional.

6. The RP submitted Information Memorandum and second CoC meeting was conducted on 04.01.2018.

7. The CoC in its fourth meeting held on 28.02.2018 duly considered, discussed and affirmed all the parameters of the evaluation matrix and the same was approved vide e-voting concluded on 06.03.2018.

8. This Tribunal appointed Mr Sameer Kakar as Resolution Professional (**RP**) vide its order dated 08.03.2018. The new RP conducted the fifth CoC meeting on 26.03.2018. The CoC by e-voting resolved to seek an extension of CIRP by another 90 days. Accordingly, the application for the extension of the CIRP period was filed on 05.04.2018.

9. This Tribunal vide its order dated 10.04.2018 extended the CIRP period for further 90 days w.e.f. 16.05.2018. Accordingly, the last date of CIRP was 14.08.2018.

10. The invitation for submitting Expression of Interest (**EoI**) was published on 18.04.2018 in 'The Economic Times' (pan-India edition), 'Free Press Journal' and 'Navshakti'. The last date for submitting EoI was 28.04.2018.

11. At the sixth CoC meeting held on 03.05.2018, the RP among other things discussed the Forensic Report and the EoIs received.

12. The RP received ten different EoIs, out of which only four submitted resolution plans. Out of the four resolution plans, after due deliberations and discussions, the resolution plan of M/s Manibhadra Polycot was put for voting on 08.08.2018. However, the voting could not be concluded as Corporation Bank and State Bank of India, financial creditors of the Corporate Debtors applied for a stay of the e-voting. This Tribunal, vide its order dated 08.08.2018 stayed e-voting, and the stay was vacated vide order dated 10.08.2018 with a direction to consider the modified resolution plan before the completion of CIRP period.

13. Accordingly, thirteenth CoC meeting was convened on 11.08.2018, and again the resolution plan of M/s Manibhadra Polycot was voted upon. The voting concluded on 13.08.2018 with 57.481% voted in favour, and 42.519% voted against the resolution plan.

14. In the absence of any resolution plan been approved by the CoC within the CIRP period, the RP filed this MA no. 887/2018 on 17.08.2018 seeking order for the liquidation of the Corporate Debtor.

15. There are few other applications pending in this petition viz. MA no. 808/2018 being filed by resolution applicant, M/s Manibhadra Polycot, seeking, among other things, directions to CoC to approve the resolution plan dated 13.07.2018 on the ground that the CoC made vague, obnoxious and financially inviable demands purposefully to make it impossible for the resolution applicant to make its offer. The Resolution Applicant has stated that in the CoC meeting held on 06.08.2018, the Corporation Bank and SBI raised two primary issues for the first time in the entire course of negotiations with the resolution applicant:-

    a. The plan is not in compliance with section 29A as the resolution applicant is in concert with the guarantors by extending the lease tenures and reducing the lease rentals

in turn the personal guarantees of the guarantors were released.

b. One of the guarantor Mr R M Mohite has around 89 properties with values of ₹104 crores.

16. The MA 807/2018 was filed by Karvir Nivasini Kamgar Union for allowing them to intervene in the matter as they would be vitally affected by the decision of this tribunal and the CoC. The applicant herein, states that if the Corporate Debtor is liquidated then the members of the Intervener union will lose all its livelihood and their family members will be homeless and would starve to death for which neither the CoC nor the Corporate Debtor has given a single thought. It is stated that the gratuity payment of the members of this union is due to almost ₹4 crore.

17. The MA 1511/2018 was filed by Asset Reconstruction Company (I) Ltd., financial creditor of the Corporate Debtor, on 30.11.2018 u/s 60(5)(c) for opposing liquidation on the ground that the resolution plan has not been mindfully rejected and seeks directions for reconsideration of the Resolution Plan. The applicant states that this Tribunal ought to investigate the reasons for opposing the resolution plan and pass necessary directions for accepting the modified resolution plan. This application is filed upon the RP filing application for liquidation of the Corporate Debtor.

18. The Dissenting Financial Creditors who voted against the resolution plan have filed their reply to MA 1511/2018 stating that the proposal with a pre-condition that the guarantors' liabilities have to released and further in the valuation the factory land and building were not considered (as the same was construed as scrap value), the Banks opposed the said resolution plan. According to the Dissenting Financial Creditors, the Resolution Plan was favouring both the Resolution Applicant as well as the Guarantors at the cost of the Financial Creditors who were forced to give up their guarantee rights which were put-forth as the pre-condition in the proposal. It is further submitted that the resolution plan entails a hair-cut of more than 92.42% by the Financial Creditors which means that they are not recovering anything substantial out of the resolution plan and further forced to give up their rights to enforce the guarantee obligations as per the resolution plan put up for e-voting on 08.08.2018. It is stated that the modified plan again sought the release of the mortgage rights subsisting in favour of the Banks/Financial Creditors on the leasehold land and has further decreased the resolution plan from ₹53.36 crores to

₹48 crores thus again hit by section 29A as the resolution applicant is acting in connivance with the guarantors.

19. The MA 06/2019 was filed on **03.01.2019** by the Invent Assets Securitisation & Reconstruction Pvt. Ltd., financial creditor of the Corporate Debtor. The applicant in this application has stated that it has taken the assignment from State Bank of Patiala in the year 2014 and Punjab National bank and Axis Bank on 16.10.2018. It is sought in this application to refer the matter back to CoC for fresh reconsideration of the Resolution Plan.

20. Another application being MA no. 194/2019 was filed on 22.01.2019 by the Invent Assets Securitisation & Reconstruction Pvt. Ltd., financial creditor of the Corporate Debtor praying for orders to recall the order dated 21.01.2019 and permit the Senior Counsel to make submissions on the issue of whether the CIRP period was expired in the proceedings. The MA 195/2019 was filed on 22.01.2019 by the Resolution Applicant seeking same reliefs as that in MA 194/2019.

21. We have heard the arguments of all the sides and have perused the records and written submissions.

22. In light of the law laid down by the Hon'ble Supreme Court in ***K. Sashidhar vs Indian Overseas Bank &Ors.*** *In* ***CIVIL APPEAL NO.10673 OF 2018*** order dated 05.02.2019 the role of the Adjudicating Authority in matters challenging the decision of CoC, accepting or rejecting the resolution plan is limited to the grounds mentioned in section 30(2) and the purely commercial decisions of CoC cannot be adjudicated by the Adjudicating Authority as they are non-justiciable. The relevant portion of the said judgement is reproduced below:

> *"…*
>
> *30. Thus understood, no fault can be found with the NCLAT or having recorded the fact that the proposed resolution plan in respect of both the corporate debtors was approved by vote of "less than 75%" of voting share of the financial creditors or deemed to have been rejected. In that event, the inevitable corollary is to initiate liquidation process relating to the concerned corporate debtor, as per Section 33 of the I&B Code.*
>
> *31. Indeed, in terms of Section 31 of the I&B Code, the adjudicating authority (NCLT) is expected to deal with two situations. The first is when it does not receive a resolution plan*

under sub¬section (6) of Section 30 or when the resolution plan has been rejected by the resolution professional for non¬compliance of Section 30(2) of the I&B Code or also when the resolution plan fails to garner approval of not less than seventy-five per cent of voting share of the financial creditors, as the case may be; and there is no alternate plan mooted before the expiry of the statutory period. The second is when a resolution plan duly approved by the CoC by not less than 75% of voting share of the financial creditors is submitted before it by the resolution professional under Section 30(6) of the Code, for its approval.

…

33. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to

challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made nonjusticiable."

23. In the present case, the CoC, as it was on the day of last CoC meeting when the resolution plan was considered final, did not approve the resolution plan with 66% majority and hence as per the mandate of the I&B Code, the resolution plan stands rejected.

24. After the rejection of the resolution plan, and expiry of the CIRP period, the RP has filed the application seeking liquidation of the Corporate Debtor, and several other stakeholders have filed applications opposing the application for liquidation of the Corporate Debtor.

25. The mandate of the I&B Code provides that if during the CIRP period, no resolution plan, with the approval of the CoC, is presented before the Adjudicating Authority then it has to pass an order for the liquidation of the Corporate Debtor under section 33.

26. As per the observations, as mentioned above, the last date for the completion of the CIRP is 14.08.2018, i.e. 90th day from 16.05.2018 from where the Tribunal has extended the CIRP period under section 12 of the I&B Code.

27. The section 12(3) provides that the Adjudicating Authority may extend the CIRP period beyond 180 days if it is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days. Further, this extension cannot be for more than 90 days that too can only be granted once. Thus, only a restricted extension beyond 180 days is what is envisaged under the I&B Code.

28. On perusal of the entire CIRP process carried out by the RP, this Bench has noticed that the RP proceeded in compliance with the provisions of the Code and Regulations thereof. Requisite steps were taken, as per the Code, to find a resolution applicant with whom a resolution plan could be agreed upon by the CoC. However, despite all the efforts, a resolution plan could not be finalised, and thereby the RP has no other recourse than to file an application for initiation of the Liquidation of the CD on the resolution of the CoC.

29. This Bench having not received any resolution plan under sub-section (6) of section 30 before the expiry of the Corporate Insolvency Resolution Process period or the maximum period

permitted for completion of the corporate insolvency resolution process under section 12, there remains no other option but to order for liquidation of this company as envisaged under Section 33(1) of I&B Code, 2016 and the Regulations thereof, this Bench hereby orders that:

a. as the Corporate Debtor is a listed Company and a going concern employing more than seven hundred employees, it is hereby directed that the Corporate Debtor be liquidated as per provisions of Regulation 32(b) & (e) of the IBBI (Liquidation Process) Regulations, 2016 **which provides for sale of assets in a slump sale and sale of the corporate debtor as a going concern**, in the manner as laid down in Chapter III under Part II of I&B Code, 2016.

b. the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the I&B Code 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.

c. The Resolution Professional, in his application for liquidation of the Corporate Debtor, has expressed his unwilingness to act as Liquidator. This Bench hereby appoints Mr. Ashish Mukund Chandak an insolvency professional having registered number IBBI/IPA-001/IP/P-01446/2018-2019/12195 as Liquidator for the purpose of liquidation with all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to have an 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 I&B Code.

d. The maximum period applicable for trying the sale on a going concern basis of the Corporate Debtor will be only six months from the date of the order. In case the efforts to sell the company as a going concern fails during the stipulated period of six months, then the process of the sale of the assets of the company will be undertaken by the liquidator as

prescribed under Chapter- III of IBC, 2016 and the relevant regulations of IBBI.

e. Since this liquidation order has been passed, no suit or other legal proceedings 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 IBC.

f. 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.

g. The moratorium declared vide order of this Tribunal dated 17.11.2017 cease to exist.

30. The prayer sought in MA 808/2018, MA 1511/2018 and MA 6/2019 being for directions to CoC to reconsider the resolution plan cannot be accepted in light of the law laid down by the Hon'ble Supreme Court in *K. Sashidhar vs Indian Overseas Bank & Ors.(supra.)*. There is no merit made out in the MA 807/2018 filed by the intervening union of Corporate Debtor especially at the time of the order for liquidation. The employees and workers of the Corporate Debtor may file their claim before the Liquidator appointed. The MA 194/2019 and 195/2019 are filed seeking for orders to recall the order of this Tribunal dated 21.01.2019 and permit the Senior Counsel to make submissions on the issue of whether the CIRP period was expired in the proceedings. Such prayers cannot be granted as no purpose would be met by allowing such prayers as this Adjudicating Authority do not have powers to direct the CoC to reconsider the Resolution plan that it has once rejected on commercial or business reasons. Thus, all the said applications are rejected.

31. Accordingly, the MA No. 887/2018 is at this moment allowed with the above observations.

32. The Registry is at this moment directed to communicate this order by email and WhatsApp to the Applicant herein and the Liquidator and submit a compliance report today.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. Singh
Member (Judicial)

11th March, 2019