

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

CP (IB) 1499(MB)/2017
MA 1213/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 2.4.2019

NAME OF THE PARTIES: Shri Karvir Nivasini Mahalaxmi Ispat Pvt Ltd

Vs

Abhishek Corporation Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

1. **MA 1213/2019 INC.P (IB)- 1499(MB)/2017**

MA 1213/2019 has been filed by the Resolution professional under Section 60(5) of IBC, 2016, seeking appropriate order of the Tribunal in the matter of Abhishek Corporation Ltd., Corporate Debtor in Liquidation.

It is stated in the application that Petition filed by Shri Karvir Nivasini Mahalaxmi Ispat Pvt Ltd, Operational Creditor under Section 9 was admitted by order of this Tribunal dated 17.11.2017.

Mr Sameer Kakar was the Resolution Professional appointed by this Tribunal. This Tribunal, vide order dated 11.3.2019 passed an order under

Section 33(1) for the liquidation of the Corporate Debtor, and Mr Ashish Mukund Chandak, Resolution professional (having registration No.IBBI/IPA-001/IP/P-01446/2018-2019/12195) was appointed as Liquidator, for the liquidation of the Corporate Debtor. The said Insolvency professional, however, failed to take charge of the Corporate Debtor as a Liquidator.

The applicant stated that he has been looking after the Corporate Debtor as an interim caretaker since 11.3.2019 as Liquidator appointed by this Tribunal has not taken over the charge. The applicant is continuing the operations of the Corporate Debtor as a going concern as an interim caretaker.

The applicant further submits that in the absence of any power/authority under the Code to act as a Liquidator, he is unable to take any decisions concerning the Corporate Debtor/make payments to more than 700 workers/employees of the Corporate Debtor in the interim period. It is further stated in the application that an appeal against the order of this Tribunal is pending before NCLAT.

It is further stated in the application that the applicant conveys his willingness and consent to be appointed as the Liquidator in respect of the Corporate Debtor. Therefore, the Applicant has stated that in the instant application, the order may be passed on this application, so that the company may remain as a going concern. There is an urgency for the appointment of liquidator, in this case, to deal with the matters of salaries of 700 workers/employees which will become due and payable on 8.4.2019.

On perusal of the order passed by us, it is stated in the order that “*the Resolution Professional in his application for liquidation of the Corporate Debtor, has expressed his unwillingness to act as Liquidator. This Bench at this moment appoints Mr Ashish Mukund Chandak, an Insolvency professional having registered number IBBI/IPA-001/IP/P-01446/2018-2019/12195 as Liquidator for 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 at this moment vested in the Liquidator.*”

The Liquidator Mr Ashish Mukund Chandak sent an email dated 15.3.2019 wherein it is stated that *“at the outset, I am thankful for considering me for appointment as a Liquidator in the said matter. However, due to unavoidable health issues would want to withdraw from the said matter as a liquidator. Have already submitted my application in hard copy as on 14.3.2019 (Diary No.05499) for the same to your office in person. Kindly consider this most sympathetically and allow me the same.”*

The Liquidator Mr Ashish Chandak has shown his unwillingness to act as a Liquidator and has not taken over the charge of the Corporate Debtor as a Liquidator. The Resolution professional has also refused to act as a Liquidator, but now he has shown his willingness to act as a Liquidator. What was the change in the situation that prompted the RP to change his stand is not known to us. In the circumstances, we do not intend to appoint Mr Sameer Kakar as Liquidator.

We at this moment allow MA 1213/2019 and appoint Mr Kshitij Gupta, Insolvency Professional having Registration No. *IBBI/IPA-002/IP/N-00721/2018-2019/12140*, email id kshitijgupta@gmail.com, as the Liquidator of the Corporate Debtor.

Designated Registrar is directed to obtain the consent of Mr Kshitij Gupta and submit the same to us immediately.

It is to be clarified that till the new Liquidator takes over the charge of the Corporate Debtor, Mr Sameer Kakar is directed to discharge his duties.

MA 1213/2019 is disposed of accordingly.

Sd/-
RAVIKUMAR DURASAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)