

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

MA/289/2018 filed in TCP/10/IB/2017 by
Mr. S. Rajendran, Resolution Professional
under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016.

In the matter of **M/s. Nagarjuna Oil Corporation Limited**

M/s. Suzlur India Private Limited

Vs.

... Operational Creditor

M/s. Nagarjuna Oil Corporation Limited

... Corporate Debtor

Order delivered on 11th of December, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For RP: Mr. N. P. Vijaykumar and Ms. Savitha Devi, Counsel

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL):

1. The Miscellaneous Application No. 289/2018 filed in TCP/10/IB/CB/2017 has been presented by the Resolution Professional viz., Mr. S. Rajendran, under Section 33(2) of



the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. The prayers made by the Resolution Professional are as under: -

- a) *That the Committee of Creditors have decided unanimously with all 14 banks present with 100% voting to liquidate the Corporate Debtor (NOCL) as per Section 33(2) of IBC;*
- b) *That any other registered Insolvency Professional be appointed by the competent authority to act as Liquidator of the Corporate Debtor (NOCL) in view of the inability of the RP to continue as Liquidator of the Corporate Debtor for personal reasons;*
- c) *any other orders that the Hon'ble Bench be pleased to pass.*

3. Originally M/s. Suzlur India Private Limited (Operational Creditor) has filed Petition under Sections 433 (e) read with Sections 434 (1) (a) and 439(1)(b) of the Companies Act, 1956 before Hon'ble High Court of Madras against M/s. Nagarjuna Oil Corporate Limited (Corporate Debtor) and after the enforcement of the I&B Code, 2016,



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the case was transferred from Hon'ble High Court to NCLT and renumbered as TCP/10/(IB)/2017. This Adjudicating Authority vide its Order dated 25.07.2017, admitted the Application and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz., M/s. Nagarjuna Oil Corporate Limited, declared Moratorium and appointed Mr. V. Nagarajan as Interim Resolution Professional. Thereafter, the Applicant viz., Mr. S. Rajendran was appointed as Resolution Professional w.e.f. 22.09.2017.

4. It is averred that on receipt of the Order, the Resolution Professional had invited 'Expression of Interest' ('EoI') vide publication dated 17.10.2017 for submission of the Resolution Plans from the prospective Resolution Applicants by mentioning the last date as 17.03.2018. Pursuant to which two Resolution Plans were received from Bharat Petroleum Corporate Limited (BPCL) and Citax Energy DMCC and the same were placed by the Resolution Professional before the 6th meeting of Committee of Creditors (CoC) held on 23.03.2018.



5. The Resolution Professional has stated that the Resolution Plan submitted by Citax Energy DMCC was not considered by the CoC for want of Bank Guarantee as mandated in bid proceed flow, and in the case of BPCL, since the bid amount was too low in relation to the liquidation value, Resolution Plan submitted by BPCL was not accepted, however, the CoC provided BPCL an opportunity to participate in the rebidding process and fixed the date as 31.03.2018 for the rebidding process.
6. The Resolution Professional has stated that as there was no much change in the rebid amount, the CoC did not accept the Resolution Plan submitted by BPCL and in the 7th meeting of CoC held on 03.04.2018, the CoC has decided to invite for fresh "EoI" on the same criteria as stipulated in the earlier "EoI" keeping in view the maximization of value of assets and fixing 16.04.2018 as the last date for submitting the Resolution Plans.



7. It is averred that based on the fresh invitation for “EoI”, the Resolution Professional has received four (4) Resolution Plans from i) BPCL, ii) Citax Energy DMCC, iii) Haldia Petrochemicals Ltd. and iv) Gulf Petrochem FZC, out of four Resolution Plans, three have been rejected by the CoC in its 8th meeting held on 17.04.2018 and for the 4th Resolution Plan submitted by Haldia Petrochemicals Limited, the CoC has decided to give time till 18.04.2018 to submit improved bid amount.

8. It is averred that the Resolution Professional briefed the CoC members of the email received on 18.04.2018 from Haldia Petrochemicals Ltd., Kolkatta proposing additional offer to confer full encashable “share appreciation right” to the lenders on a block of 30 million shares with certain condition and under the said offer, there would be no allotment of shares to lenders but they would only get share appreciation rights to which in the 9th meeting of the CoC held on 19.04.2018, it has passed the Resolution with 98.13% of voting share as follows:



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“Resolved to reject the resolution plan received from Haldia Petrochemicals Ltd (being the H1 bidder) as the amount offered being far below the liquidation value and therefore, to go for liquidation.”

9. In the interregnum, Haldia Petrochemicals Ltd., Gulf Petrochem and CITAX Energy DMCC filed Miscellaneous Applications, and this Authority vide Order dated 28.05.2018 directed the Resolution Professional to place the Resolution Plans submitted by Haldia Petrochemicals Ltd., Gulf Petrochem and CITAX Energy DMCC before the CoC to consider the same. Pursuant to the said order, the Resolution Professional has placed the Resolution Plans submitted by Haldia Petrochemicals Ltd., Gulf Petrochem and CITAX Energy DMCC before the CoC in the 12th meeting of CoC held on 13.07.2018 by giving sufficient time to submit information and improve their Resolution Plans. The CoC in the 12th meeting of CoC held on 13.07.2018 passed the Resolution in respect CITAX Energy DMCC as follows:

“Various findings and observations presented by the RP on the resolution plan related documents of Citax render the Resolution Applicant ineligible. CoC concurs with the views of the RP for not considering his Resolution Plan for NOCL and therefore this Resolution Applicant is ineligible to be considered for submitting his resolution plan for NOCL.

Resolved that keeping in view the findings, the Resolution Applicant need not be invited to attend the CoC meetings for a presentation to the members.

Further resolved that a detailed application be filed immediately by RP enclosing the decisions of the CoC members along with the documents and voting results on this matter before the Hon’ble NCLT-Chennai”.

10. With regard to the other two Plans submitted by Haldia Petrochemicals Ltd. and Gulf Petrochem, the CoC had requested representative of Gulf Petrochem to consider upfront payment of the Resolution Plan amount proposed and the manner in which Gulf Petrochem would settle the liquidation value due to dissenting Financial Creditors. Similarly, the representative from Haldia Petrochemicals



Ltd. briefed the CoC about their revised Resolution Plan, however, the CoC expressed that there was no clarity on the payment terms which contained many conditions. After deliberations and discussions, on the request of the representatives of Haldia Petrochemicals Ltd. and Gulf Petrochem, the CoC has granted time to submit their clarifications and stand on improving the Resolution Plans.

11. In the 13th meeting of the CoC held on 19.07.018, the CoC reviewed the whole situation again, the Resolution Plan submitted by Haldia Petrochemicals Ltd., for Rs.1456 Crores contained several 'conditions precedent', the NPV was far less at Rs.708.30 Crores with Evaluation Matrix Score of 33/100, and likewise, the Resolution Plan submitted by Gulf Petrochem, the bid amount of Rs.655.61 Crores was Rs.641 Crores with Evaluation Matrix Scores of 45/100, however, considering its stand that the payment of bid amount would be made in 6 months, the Evaluation Matrix Score would be reduced to 37/100. After detailed discussions, the CoC members unanimously decided that



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they would present the details of the revised Resolution Plans as received from Haldia Petrochemicals Ltd. and Gulf Petrochem, to their respective competent authorities.

12. In the 14th meeting of CoC held on 24.07.2018, after deliberations, the CoC members, in the case of Gulf Petrochem, were of the view that the NPV of the bid amount offered was far below the liquidation value, the CoC was not in favour of the Resolution Plan submitted by Gulf Petrochem, and in so far as Resolution Plan of Haldia Petrochemicals Ltd., the CoC noted that though the bid amount offered was Rs.1456 Crores i.e. just above the liquidation value, it contained several 'conditions precedent' relating to payment that were leading to many uncertainties such as approval of Structured Financial Assistance Scheme by the Government of Tamil Nadu, transfer of all the assets including but not limited to land, leased/sub-leased, resolving of all litigations, satisfaction of security interest created by Corporate Debtor or the BOOT operators in favour of their lenders, exhausting due process of appeal on



all litigation issues etc., and further out of the total bid amount, a major chunk (Rs.1042) was proposed to be paid to secured Financial Creditors by issue of 1% non-cumulative preference shares redeemable after 9th, 10th and 11th year after the financial closure of the project which would itself take about two years after the approval of NCLT, and therefore, after considering all the aspects, the commercial viability of the Resolution Plans, decided to reject the Resolution Plans submitted by both Haldia Petrochemicals Ltd. and Gulf Petrochem. In the 14th meeting of CoC held on 24.07.2018, the CoC unanimously, with a vote of 100%, has passed a Resolution for Liquidation of the Corporate Debtor as follows:-

“RESOLVED to reject the resolution plans received from Gulf Petrochem FZC and Haldia Petrochemicals Ltd., as the bid amounts offered by them result in over 90% sacrifice by the secured financial creditors, no concrete and significant payment plans to other stakeholders, proposed terms of resolution plan involving several



“conditions precedent” resulting in uncertainty on payment, total payments proposed being for below liquidation value and payment schedule stretching over a longer period of time. Further resolved that the Resolution Professional be hereby authorised to file intimation to liquidate Nagarjuna Oil Corporation Ltd (the Corporate Debtor), to the Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.”

13. Accordingly, the Resolution Professional has filed the present Miscellaneous Application MA/289/2018 for liquidation of the Corporate Debtor viz. M/s. Nagarjuna Oil Corporation Limited and appointment of any other registered Insolvency Professional as Liquidator in view of his inability to continue as Liquidator.

ORDER

14. In view of the facts and circumstances recorded by the Resolution Professional in MA/289/2018 filed in TCP/10/IB/CB/2017, and the resolutions passed by the



CoC as referred hereinabove, this Authority in exercise of powers conferred under Sub-Clauses (i)(ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, proceeds to pass Order as follows:-

- I. This Authority orders for liquidation of the Corporate Debtor viz., M/s. Nagarjuna Oil Corporation Limited.
- II. This Authority appoints Mr. V. Mahesh as Company Liquidator, who shall file the declaration disclosure statement in the Registry of NCLT, Chennai Bench, within two working days from the date of the receipt of this Order and shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
- III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

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- IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- V. This Authority makes it clear that para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- VI. This Order 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.



- VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. V. Mahesh.
- VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- IX. The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings as has been approved by the CoCs.
- X. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, and Registered Office of the Corporate Debtor by the Company Liquidator viz., Mr. V. Mahesh, for information and compliance.

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15. In terms of the above, MA/289/IB/2018 in TCP/10/IB/CB/2017 filed by the Resolution Professional under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Nagarjuna Oil Corporation Limited, stands **disposed of.**

16. The Registry is directed to send a copy of this Order to the Company Liquidator with immediate effect for information and compliance.


17. Order pronounced in open Court.


[CH. MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P. ATHISTAMANI



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