

# ABG

April 30, 2019

To,  
BSE Limited  
Phiroze Jeejeebhoy Tower,  
Dalal Street, Fort  
Mumbai - 400 001  
Scrip Code - 532682

To,  
National Stock Exchange India Limited  
Exchange Plaza, C-1, Block G,  
Bandra Kurla Complex, Bandra (E),  
Mumbai - 400 051  
Symbol - ABGSHIP

Ref.: Before the Hon'ble National Company Law Tribunal (Ahmedabad Bench)  
IA 113 of 2019 in C.P. (I.B) No. 53 of 2017

In the matter of:

Mr. Sundaresh Bhat - Resolution Professional

...Applicant

ABG Shipyard Limited

versus

ABG Shipyard Limited

...Respondent

**Subject: Initiation of Liquidation of ABG Shipyard Limited**

Be pleased to take on file and record that pursuant to the 21<sup>st</sup> meeting of the Committee of Creditors ("CoC") of ABG Shipyard Limited ("ABG/Company/Corporate Debtor") held on 20<sup>th</sup> February 2019, approval of the members of the CoC was accorded to liquidate the Corporate Debtor and the Resolution Professional i.e. Mr. Sundaresh Bhat was authorized to file an application before the Hon'ble National Company Law Tribunal (Ahmedabad Bench) seeking liquidation of the Corporate Debtor. The Resolution Professional thereafter filed an application before Hon'ble National Company Law Tribunal (Ahmedabad Bench) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking directions of the Tribunal concerning liquidation of the Corporate Debtor.

The Hon'ble National Company Law Tribunal (Ahmedabad Bench) vide its order dated 25<sup>th</sup> April 2019, copy uploaded on the NCLT website on 29<sup>th</sup> April 2019, ordered liquidation of the Corporate Debtor. A certified true copy of the same has not yet been received by the undersigned. Hereto annexed and marked as "Annexure-A" is a copy of the said order dated 25<sup>th</sup> April 2019 issued by the Hon'ble NCLT Ahmedabad.



**ABG Shipyard Ltd.**

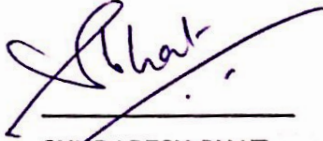
5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Mumbai 400 004, India. Tel.No.+91-22-66563000 Fax No.+91-22-66223050  
E-Mail: shipyard@abgindia.com Webpage: [www.abgindia.com](http://www.abgindia.com) CIN : L61200GJ1985PLC007730  
Regd.Office: Near Magdalla Port, Off Dumas Road, Surat 395 007, Gujarat, India Tel.No.+91 261 2725191

# ABG

Request you to kindly take the same on record and oblige.

Thanking you.

Yours faithfully,



**SUNDARESH BHAT**

**Liquidator of ABG Shipyard Limited**

**IP registration no. IBBI/IPA-001 /IP-N00077/2017-18/10162**

**Registered Address: BDO Restructuring Advisory LLP, Level 9, The Ruby, NW Wing,  
Senapati Bapat Marg, Dadar West, Mumbai - 400028**

**Email ID: [irp.abg@bdo.in](mailto:irp.abg@bdo.in); [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)**

## **ABG Shipyard Ltd.**

5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Mumbai 400 004, India. Tel.No.+91-22-66563000 Fax No.+91-22-66223050  
E-Mail: [shipyard@abgindia.com](mailto:shipyard@abgindia.com) Webpage: [www.abgindia.com](http://www.abgindia.com) CIN : L61200GJ1985PLC007730  
Regd.Office: Near Magdalla Port, Off Dumas Road, Surat 395 007, Gujarat, India Tel.No.+91 261 2725191

A-1  
BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

IA 113 of 2019 in  
C.P. (I.B) No.53 of 2017

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL  
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 25-04-2019**

Name of the Company: Sundaresh Bhat RP of ABG Shipyard Ltd  
Section of the Companies Act: Section 33(2) of the Insolvency and Bankruptcy  
Code

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**


1. MONAAL J. DAVAWALA Advocate Applicant Monaal

2

**ORDER**

The Applicant is represented through their respective learned Counsel(s).

The Order is pronounced in the open court, vide separate sheet.

  
MANORAMA KUMARI  
MEMBER (JUDICIAL)

  
HARIHAR PRAKASH CHATURVEDI  
MEMBER (JUDICIAL)

Dated this the 25th day of April, 2019.

vs



**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

I.A. No. 348 of 2017  
with  
IA No. 139 of 2018  
with  
I.A. No. 141 of 2018  
with  
I.A. No. 204 of 2018  
with  
I.A. No. 303 of 2018  
with  
I.A. No. 321 of 2018  
with  
I.A. No. 113 of 2019  
in  
CP(IB) No. 53 of 2017

**In the matter of:**

**IA 348/2017**

Sunil Kumar Jain & Ors.  
Employees and workman,  
ABG Shipyard Ltd.

...Applicant

**Versus**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Respondent

**IA 139/2018**

Liberty House Group PTE LTD  
8 Marina View,  
# 40-06, Asia Square Tower-1,  
Singapore-018960

...Applicant

**Versus**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Respondent

**IA 141/2018**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Applicant

**Versus**

M/s ABG Shipyard Ltd.

...Respondent

*Jain*



**IA 204/2018**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Applicant

**Versus**

M/s ABG Shipyard Ltd.

...Respondent

**IA 303/2018**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Applicant

**Versus**

Bank of Baroda,  
CFS, Mumbai Branch,  
1st Floor, Ballard Pier,  
3 Walchand Hirachand Marg,  
Mumbai - 400038

...Respondent

**IA 321/2018**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Applicant

**Versus**

1. ICICI Bank Ltd.  
Having its Office at  
Near Chakli Circle, Old Padra Road,  
Vadodara- 390007, Gujarat
2. Mr. Rishi Agarwal,  
Director & Chairman of ABG Shipyard Ltd.  
7A/B, Somerset Place, 61-D,  
Bhulabhai Desai Road,  
Mumbai-400026.
3. Mr. Syed Abdi,  
Managing Director and CEO,  
C/o Mr. S.S. R. Zaidi,  
18, Gali No-8, Ghaffar Manzil Extn  
Jamia Nagar Okhla,  
South Delhi - 110025

And

1500, Supreme Epitome,  
Dr. C.G. Road, Chembur East,  
Mumbai 400074.

4. Mr. Dhananjay Datar,  
Executive Director,  
B-1/61, Gagan Apartments,  
Opposite Minakshi Tower,  
Gokuldharm Goregaon (East),  
Mumbai - 400063

*J. Kumar*

5. Mr. S. Muthuswamy,  
Executive Director,  
B-1203, 12th Floor, Park Royal,  
B-Wing, Madan Mohan Malviya Road,  
Mulund (West), Mumbai-400080
6. Mr. Ashwani Kumar,  
Independent Director,  
Flat No. 601, CTS No. 166,  
Supreme Epitome, C.G. Road,  
Wadiwali Village,  
Opp. Cubic Mall, Chembur E,  
Mumbai- 400074
7. Mr. Sushil Agarwal,  
Independent Director,  
E-21, 102, Creek View,  
CHS Ltd. Yogi Nagar,  
Borivili West, Near Dena Bank,  
Mumbai-400091
8. Mr. Ravi Nevatia,  
Independent Director,  
303, Ganga Preet Building,  
ITI Road, Gaikwad Nagar,  
Behind Saraswat Bank,  
Aundh, Pune- 411007
9. Mr. Rajani Poddar,  
Director,  
B-23, Maheshwar Milan,  
N.P Thakkar Road next to Rajpuria Hall,  
Vile Parle,  
Mumbai- 400057.
10. Mr. Anil Raj Chellan,  
Nominee Director,  
B-23, Maker Kundan Gardens,  
Juhu Tara Road,  
Santacruz-West,  
Mumbai-400049
11. Ms. Ranjitha Godbole,  
Nominee Director,  
Flat 18B, Peregreen,  
Opp. Siddhi Vinayak Temple,  
VS Marg, Prabhadevi,  
Mumbai- 400025

...Respondent

**IA 113/2019**

Mr. Sundaresh Bhatt,  
Resolution Professional,  
ABG Shipyard Ltd.

...Applicant

**Versus**

M/s ABG Shipyard Ltd.

...Respondent

*Abhinar*



**Order delivered on 25<sup>th</sup> April, 2019**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**Appearance in I.A. No. 348 of 2017**

Sr. Advocate Mr. Saurabh Soparkar with Advocates Mr. Sahil Shah, Ms. Saloni Kapadia, Mr. Parth Shah is present for the COC.

Sr. Advocate Mr. Rashesh Sanjanwala with Advocate Ms. Komal Khushalani i/b Ms. Paurami Sheth is present for the Applicants.

**Appearance in I.A. No. 139 of 2018**

Sr. Advocate Mr. Rashesh Sanjanwala with Advocates Mr. Animesh Bisht, Mr. Sahil Shah and Mr. Parth Shah i/b Cyril Amarchand Mangaldas is present for the COC.

Sr. Advocate Mr. Saurabh N. Soparkar with Advocate Mr. Monaal J. Davawala is present for the RP.

Sr. Advocate Mr. Navin Pahwa with Advocates Mr. Raheel Patel, Ms. Kamyia Shah i/b Nanavati Associates is present for the petitioner.

**Appearance in I.A. No. 141 of 2018**

Advocate Mr. Maulik Nanavati with Advocate Ms. Manvi Damle is present for the applicant.

**Appearance in I.A. No. 204 of 2018**

Advocate Mr. Maulik Nanavati with Advocate Ms. Manvi Damle is present for the applicant.

**Appearance in I.A. No. 303 of 2018**

Advocate Mr. Maulik Nanavati with Advocates Ms. Manvi Damle and Ms. Mili Baxi is present for the applicant.

Advocate Mr. B.T. Rao with Advocate Mr. Daxy Patel is present for the Bank of Baroda.

**Appearance in I.A. No. 321 of 2018**

Advocate Mr. Maulik Nanavati with Advocate Ms. Manvi Damle is present for the applicant.

**Appearance in I.A. No. 113 of 2019**

Sr. Advocate Mr. Rashesh Sanjanwala with Advocates Mr. Animesh Bisht, Mr. Sahil Shah and Mr. Parth Shah i/b Cyril Amarchand Mangaldas is present for the COC.

*Utkar*



Sr. Advocate Mr. Saurabh N. Soparkar with Advocate Mr. Monaal J. Davawala is present for the Applicant.

**COMMON ORDER**

**[Ms. Manorama Kumari, Member (Judicial)]**

1. The instant application (IA) No. 113 of 2019 in CP(IB)No. 53/2017, is filed by the Applicant, the Resolution Professional of Corporate Debtor ABG Shipyard Limited, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 with the following prayers:
  - (a) to pass order to liquidate the Corporate Debtor.
  - (b) to pass appropriate orders for appointment of liquidator for Corporate Debtor.
  - (c) to grant leave to the Applicant to submit written consent to act as the liquidator for the purposes of liquidation of the Corporate Debtor, subject to finalization of terms and conditions of the appointment between the Applicant and the CoC.
  - (d) Pending hearing and final disposal of this application, to pass order for continuation of the Applicant as the Resolution Professional of the Corporate Debtor.
  - (e) to pass any other order in interest of justice which this Tribunal deems fit.
2. For the sake of brevity and convenience, it is mentioned herein that:
  - 2.1 **CP(IB)No. 53/2017** was filed by ICICI Bank, the Financial Creditor (Applicant), under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process against ABG Shipyard Limited (hereinafter referred to as "Corporate Debtor" having registered office at Magdalla Village, off Dumas Road, Surat, Gujarat – 395 007

*Manar*



- 2.2 The said CP(IB) No. 53/2017 was admitted on 01.08.2017 by this Adjudicating Authority and appointed Shri Sundaresh Bhat, as the Interim Resolution Professional (hereinafter referred to as "IRP").
- 2.3 The Resolution Professional, so appointed, made public announcement on 05.08.2017 as per the provisions of section 15 of the Code calling the claims from the creditors in view of the order dated 01.08.2017 of this Adjudicating Authority. Consequent upon public announcement, IRP received claims from different creditors, members, stakeholders, employees, the workmen etc.
3. It is stated that appointment of the Applicant as the Resolution professional was confirmed by the members of CoC through electronic voting on 7<sup>th</sup> September, 2017 pursuant to the first meeting of the CoC held on 4<sup>th</sup> September, 2017. On confirmation of IRP as RP, Expression of Interest (In short EoIs) were invited through newspaper advertisement as well as on the website of the Corporate Debtor [www. abgindia.com](http://www.abgindia.com) from the prospective resolution applicants, fixing 28th September, 2017 as the last date for submission of EoI. Pursuant to the advertisement and/or addendum to the advertisement, the Applicant received EoIs from the Liberty House Group Pte Ltd., ("LHG / Resolution Applicant"), Mahindra and Mahindra Ltd. and AFCONS Infrastructure ltd.
- 3.1 It is stated that the Applicant and CoC encouraged and supported all the three prospective resolution applicants to submit resolution plans for the Corporate Debtor. Site visits were arranged by the Applicant for the interested prospective resolution applicants, several discussions were carried out and requisite information sought by the prospective resolution applicants was provided. However, despite the best efforts of the Applicant and the CoC to facilitate the participation of maximum number of resolution applicants in the corporate insolvency resolution process of the Corporate Debtor, the sole resolution applicant was LHG.
4. It is stated that LHG submitted its resolution plan under the first bid process on 23<sup>rd</sup> March, 2018 and the Applicant facilitated several discussions amongst the CoC and the Resolution Applicant, however, the Applicant was constrained to disqualify the Resolution Applicant on 16<sup>th</sup> April, 2018. Thereafter, the Applicant and the CoC called for a fresh/second round of submission of resolution plans.

*Sharma*



- 4.1 Under the second bid process, the Applicant invited EoI from interested parties/prospective resolution applicants vide its newspaper advertisement on 18<sup>th</sup> April, 2018 with last date for submission of EoI as 19<sup>th</sup> April, 2018 and the last date for submission of Resolution Plan as 23<sup>rd</sup> April, 2018.
- 4.2 It is stated that pursuant to the advertisement inviting EoIs under the second bid process on 18<sup>th</sup> April, 2018, EoIs were received from LHG and Deccan Value Investors L.P. However, LHG was the sole resolution applicant pursuant to the second bid process and submitted its resolution plan under the second bid process on 23<sup>rd</sup> April, 2018.
- 4.3 In the meanwhile, the Resolution Applicant viz. Liberty House Group Pte Ltd. filed an IA No. 139 of 2018 on 19<sup>th</sup> April, 2018 challenging the decision of the Applicant in rejecting the resolution plan submitted by the Resolution Applicant under the first bid process on the basis of ineligibility under Section 29A of the Code and seeking interim relief restraining the opening of the bid under the second bid process.
- 4.4 This Tribunal vide order dated 20.04.2018 directed the Applicant (RP) to maintain status quo as on the date of order i.e. 20<sup>th</sup> April, 2018 in respect of opening of the second bid which was proposed to be opened on 23.04.2018 subject to final outcome of the IA 139 of 2018.
- 4.5 This Tribunal vide its order 23<sup>rd</sup> August, 2018 in IA 139 of 2018 directed the Applicant (RP) to place both the resolution plans submitted by the Resolution Applicant before the CoC for voting and to consider the votes of the CoC on the basis of the percentage of voting of the CoC. However, added that the decision of the Committee of Creditors is subject to orders be passed in pending IAs before this Bench.
- 4.6 It is stated that 19<sup>th</sup> Meeting of the CoC was held on 17.12.2018 and as per the directions of this Tribunal, both the Resolution Plans, received from the Resolution Applicant in response to the First Bid Process and the Second Bid Process were put before the CoC together with the requisite documents including feasibility and viability reports and certificate on status of compliances etc. However, both the Resolution

*Chinnar*



Plans were not approved by CoC with the requisite majority as required under section 30(4) of the IBC.

4.7 It is stated that vide order dated 18.02.2019, this Tribunal clarified that that there is no prohibition with regard to convening of meeting of the CoC and/or to pass any Resolution, either for liquidation under Section 33 of the insolvency and Bankruptcy Code and/or passing/accepting resolution Plan so as to take appropriate steps by way of filing application before this Adjudicating Authority for consideration. Accordingly, in the 21<sup>st</sup> Meeting of the CoC, approval of the members of the CoC of ABG Shipyard Limited, was accorded, to liquidate the Corporate Debtor and authorize the Resolution Professional to file an application seeking liquidation of the Corporate Debtor before this adjudicating authority.

5. ***Before filing of the instant application under Section 33(2) of the IB Code, various applications in the form of IA were / are filed viz. IA 139/2018, 348/2017, 141/2018, 204/2018, 303/2018, 321/2018 which need to be disposed of before passing any order in IA 113 of 2019 filed under Section 33(2) of IB Code. Those IAs are dealt herein below:***

**IA 139 of 2018**

5.1 The instant IA is filed by the Resolution Applicant under Section 60(5) of the IBC seeking a declaration that the Applicant is an eligible Resolution Applicant to submit or to have submitted a resolution plan for ABG Shipyard Limited, the Corporate Debtor under the provisions of the Code, including Section 29A of the Code and to seek directions to set aside the impugned order dated 16.04.2018 of the RP of the Corporate Debtor ABG Shipyard under Section 29A of the Code.

5.1.1 The aforesaid IA has been adequately dealt with in above referred paragraphs and the said IA becomes infructuous in view of the order dated 18.02.2019 of this Tribunal declaring that Resolution Professional of ABG Shipyard can convene meeting of the CoC and submit application for liquidation before this Adjudicating Authority, in case no resolution plan(s) are in the offing.

Accordingly, IA 139 of 2018 stands dismissed as being **infructuous**.





**IA 348 of 2017**

- 5.2.1. The instant IA has been filed by the employees and the workmen of the Corporate Debtor for payment of their outstanding salaries, wages and other dues and regular monthly payments since 1<sup>st</sup> August, 2017 and removal of the Resolution Professional and appointment of an alternate suitable person as the Resolution Professional to act in place of the existing Resolution Professional Mr. Sundaresh Bhat.
- 5.2.2 It is stated by the applicants of the instant IA that sometime in the year 2013, the respondent No. 1 i.e. Corporate Debtor started facing financial difficulties and consequently, the payment of salaries and other dues payable to the employees and workmen (including the applicants) became irregular. In or about the year 2014, efforts were made for the revival of the Respondent No. 1 through the process of Corporate Debt Restructuring ("CDR") and, subsequently, Strategic Debt Restructuring ("SDR"). However, the attempts did not result in bringing about a change in Respondent No. 1's financial predicaments/difficulties.
- 5.2.3 It is stated under the approved CDR Scheme; the ICICI Bank, the Petitioner, was appointed as the Monitoring Institution on behalf of all the CDR lenders. The entire financial control over Respondent No. 1 was exercised by the Petitioner through a Trust and Retention Account ("TRA") which was funded by Respondent No. 1's earnings as well as the finances released under the CDR Scheme. In spite of that, employee's and workmen's outstanding salaries, wages and other dues and regular monthly payments were not released to them.
- 5.2.4 The Resolution Professional in his submissions has stated that he is not averse or opposed to paying salary and wages to the workmen if interim finance to cover such payment is approved and released by the CoC or the CoC bring about infusion of funds from other sources. In the absence of financial resources, coupled with absolute non-cooperation by the existing staff of the company, it is not possible for the RP to pay the salary and wages of the workers, as prayed for by them in the application.

*Atkari*



**Findings:**

5.2.5 In this regard, it is to be mentioned that the employees/workers of the Corporate Debtor filed an application for the release of their salary. On receipt of application, the Resolution Professional relied and has also conceded before this Bench that they (RP and CoC) have received an amount of Rs. 9,55,82,571/- (Rupees Nine Crores Fifty-Five Lakhs Eighty-Two Thousand Five Hundred and Seventy-One) from the Coast Guard, through Controller of Defense. Since total amount cannot be released in favor of the workmen/employees as electricity dues, insurance and legal fees etc. are required to be cleared. Hence RP and CoC agreed to apportion Rs. 2,75,00,000/- (Rupees Two Crores Seventy-Five Lakhs) towards payment of workmen's dues. To that extent, specific order has been passed in IA 78 of 2018 in CP(IB) No. 53 of 2017 on 25.04.2018 with the directions to deposit the said amount of Rs. 2,75,00,000/- (Rupees Two Crores Seventy-Five Lakhs) with the Registry of the NCLT. ***In view of the above orders in IA 78 of 2018, IA 348 of 2017 stands disposed of.***

**IA 141 of 2018**

5.3.1 The instant application has been filed by the applicant (Original Respondent) through the Resolution professional under the provisions of Section 60(5) read with Section 43, 45 and 66 of the Code inter alia, for appropriate orders and directions in relation to transactions that can be classified as preferential and/or undervalued transactions and/or fraudulent/wrongful trading carried out by the Respondent Company before the insolvency commencement date.

5.3.2 The Corporate Insolvency Resolution Process ("CIRP") of the Respondent No. 1 company commenced on 1<sup>st</sup> August, 2017 and as per the provisions of the Section 12 of the Code was to be completed within a period of 180 days from the date of admission of the application to initiate such process. Subsequently, by an order dated 12<sup>th</sup> January, 2018 in CP(IB) 53 of 2017, the period of CIRP was extended by a period of 90 days beyond the 180 days.







5.3.3 The Resolution Professional has submitted the details of the preferential, under-valued and fraudulent transactions and the same are enumerated hereunder:

- a.1) The Respondent Company prior to the CIRP appears to have entered into a preferential transaction under Section 43(2) of the Code for the benefit of a creditor i.e. ABS Resources Private Limited ("ABGRPL") having a vendor code 3000020 in the books of accounts of the Respondent company. The said preferential transaction does not appear to be in the ordinary course of business and the said transaction has the effect of putting ABGRPL in a beneficial position than it would have in the event of a distribution of assets, if any.

The said transaction involves transfer of 7 vehicles by the Respondent company for a consideration, which seems to be significantly less than the estimated market value of such vehicles as enumerated in Section 45(2)(b) of the Code. Under the said transaction, the Respondent Company had transferred its right, title and interest in 7 vehicles in favor of ABGRPL on 31<sup>st</sup> March, 2016 prior to the commencement of the CIRP process for a consideration of Rs. 27,00,000/- and the said amount is still outstanding as on 01.08.2017 and in spite of that, the Respondent Company had transferred their right, tile and interest in the said 7 vehicles without the prior no-objection certificate from the secured creditors of the Respondent Company having a first charge of the movable and immovable assets of the Respondent Company.

Therefore, it appears that the said transaction is a preferential and undervalued transaction under Section 43 read with Section 45(2)(b), 46 and 49 of the Code with intent to defraud the creditors and/or for fraudulent purpose under Section 66 of the Code.

- a.2) The Respondent Company prior to the CIRP appears to have entered into a preferential transaction for the benefit of a creditor i.e. ABGRPL having a vendor code 300020 in the books of accounts of the Respondent Company. The said preferential transaction under Section 43(2) of the Code does not appear to be in the ordinary course of business and the said transaction has the effect of putting ABGRPL in a beneficial position than it would have in the event of of a distribution of assets, if any. Under the said transaction, the Respondent Company had transferred an amount of Rs. 15,96,85,475/- vide various transactions between

*Abhinav*



26.10.2015 to 06.04.2017 to ABGRPL through its bank accounts maintained with ICICI Bank and Vijaya Bank. ABGRPL being a company involved in the business of land developers, builders, contracts etc., only earned revenue of Rs. 5.67 crores and having a negative net worth of Rs. 158.22 crores for the financial year 2013.14. Upon review of the amounts transacted by the Applicant, it was ascertained that the said aggregate amount of Rs. 15,96,85,475/- was transferred to ABGRPL by the Respondent Company in the form of ad-hoc loans/advances. The purpose of the ad-hoc loans/advances made by the Respondent Company in favor of ABGRPL are not transparent/clear and appear to be advanced with an intent to defraud the creditors of the Respondent company. It is apparent from the financial position of ABGRPL that the said transactions were not in the ordinary course of business and it appears that ABGRPL does not possess the required financial capability to repay the amounts transacted by the Respondent Company.

- b) The Respondent Company in the course of business had advanced certain amounts to its vendor i.e. Mahavir Distributor Private Limited ("MDPL") having vendor code 232447 which appears to be for a fraudulent purpose as enumerated in Section 66 of the Code. Upon perusal of the books of accounts of the Respondent Company, it is ascertained by the Applicant that the Respondent Company had transferred an amount of Rs. 64,00,00,000/- to MDPL between the period of 21.04.2014 to 28.04.2014 through its bank account maintained with ING Vysya Bank Limited. Over and above the aforesaid transaction, the total outstanding balance as per books of accounts as at 01.08.2017 of the Respondent Company is an amount of Rs. 80,44,00,000/-. MDPL being a company involved in the business of commission agent, only earned revenue of Rs. 2.09 crores and having a negative net worth of Rs. 3.16 crores for the financial year 2015-16. further, one of the directors of MDPL is also one of the employees of M/s. Banal Investments private Limited, an ABG Group Company. similarly, the ex-directors of MDPL were also common directors in certain ABG Group Companies. In view of the above, it is clear that the aforesaid business transaction was entered into between the Respondent Company and MDPL for a fraudulent purpose and not in the ordinary course of business.
- c) The Respondent Company prior to the CIRP appears to have entered into a preferential transaction for the benefit of a creditor i.e. ABG

*Umar*



International Private Limited ("AIPL") having a vendor code 300000 in the books of accounts of the Respondent Company. The said preferential transaction under Section 43(2) of the Code does not appear to be in the ordinary course of business and the said transaction has the effect of putting AIPL in a beneficial position than it would have in the event of a distribution of assets, if any. Under the said transaction, the Respondent Company had transferred an amount of Rs. 34,66,93,250/- vide various transactions between 16.09.2015 and 16.04.2016 to AIPL through its various bank accounts. Out of the aforesaid amount of Rs. 34,66,93,250/-, the transactions amounting to Rs. 31,00,00,000/- were wrongly recorded against ABG Energy Himachal Pradesh Limited account in Respondent Company. Upon inspection of the amounts transacted, it was ascertained that the said aggregate amount of Rs. 34,66,93,250/- was transferred to AIPL by the Respondent Company in the form of ad-hoc loans/advances. The purpose of the ad-hoc loans/advances made by the Respondent Company in favor of AIPL are not transparent/clear and appear to be advanced with an intent to defraud the creditors of the Respondent company. In view of the above, it appears that the said transaction is a preferential transaction under Section 43(2) of the Code with an intent to defraud the creditors and/or for fraudulent purpose under Section 66 of the Code.

- d) The Respondent Company prior to the CIRP appears to have entered into a transaction for the benefit of a creditor i.e. Nor Crane & Winch Private Limited ("NCWPL") having a vendor code 210220 in the books of accounts of the Respondent Company. The said transaction does not appear to be in the ordinary course of business. Under the said transaction, the Applicant upon scrutiny of the books of accounts of the Respondent Company observed that the Respondent Company had advanced an amount of Rs. 97,18,00,000/- in March, 2013 to NCWPL. From further scrutiny of the books of accounts of the Respondent Company, the Applicant could not ascertain the nature of transaction recorded against the account of NCWPL in the books of accounts of the Respondent Company due to non-availability of relevant data. The record of the transactions are in the form of journal entries i.e. clearing entries documents generally used in the accounting software SAP which appear to have been carried out with an intent to falsify accounts of the Respondent Company. Further, upon inspection of the records of NCWPL with the ROC, it has come to the knowledge of the Applicant that NCWPL

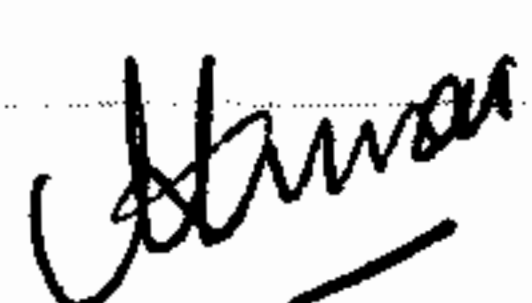
*Johnson*



was struck off from the ROC website. Further, NCWPL being a non-operation company had no revenue during the financial years 2009-10 2010-11 and have failed to file its financial statements from the financial year 2011-12 onwards. The total outstanding due and payable by NCWPL to the Respondent Company as on 1<sup>st</sup> August 2017 is an amount of Rs. 97,18,00,000/-. Further two directors of NCWPL are also employees of an ABG Group Company. Similarly, the ex-director of NCWPL was also the common director in some of the ABG group companies. In view of the above, it is clear that the said transaction is entered into between the Respondent Company and NCWPL with an intent to defraud the creditors and/or for fraudulent purposes under Section 66 of the Code.

**Findings:**

- 5.3.4 The Resolution Professional has submitted the details of the preferential, under-valued and fraudulent transactions and the same are enumerated in the above referred paragraphs.
- 5.3.5 The sub-section (1) of Section 25 casts a duty upon the Resolution Professional to preserve and protect the assets of the Corporate Debtor Company, including the continued business operations of the Corporate Debtor Company. Clause (J) of sub-section (2) of Section 25 casts duty upon the Resolution Professional (RP) to apply for the avoidance of any such transaction before the Adjudicating Authority. Section 66 casts duty on the Resolution professional to apply to the Adjudicating Authority in respect of fraudulent and wrongful transactions.
- 5.3.6 Further, sub-section (1) of Section 66 of the Code provides that if during the CIRP, it is found that any business of the Corporate Debtor has been carried on with the intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose, the Tribunal may on application of the Resolution professional pass an order directing any persons who were knowingly parties to carry on the business in such manner shall be liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. sub-section (2) of Section 66 states that if before the insolvency commencement date, a Director or partner know or sought to have known that there was no reasonable prospect of avoiding the commencement of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor; and such Director or partner did not





exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor, such director shall be liable to make such contribution to the assets of the Corporate Debtor.

5.3.7 We, the Adjudicating Authority, have gone through the each and every transaction submitted by the Resolution Professional, and after elaborate discussions, we have decided that impugned transactions mentioned in Para 7(a), (c) and (d) are preferential transactions as defined in the sub-section 2(a) of Section 43 of the IBC as these transactions have been executed within the look back period of two years before the commencement of Insolvency proceeding and are therefore covered under section 43(4)(a). However, the transactions mentioned in Para 7(b) and (e) are not preferential transactions as these transactions have been executed before the look back period of two years before the commencement of Insolvency Proceeding. As per Section 43 of the IBC, 2016, the relevant period (the Look Back period) for the impugned transactions is starting from 31<sup>st</sup> July, 2015 1<sup>st</sup> August, 2017.

5.3.8 Accordingly, the IA filed by the Resolution Professional under Section 43, 45 and 66 of the IBC is **allowed**.

5.3.9 No Order as to costs.

#### **IA 204 of 2018**

5.4.1 The instant application has been filed by the applicant (Original Respondent) through the Resolution professional under the provisions of Section 60(5)(c) of the Code inter alia, for appropriate orders and directions in relation to certain transactions which are uncertain in nature and may be prejudicial to the interest of the Respondent Company since the same were not in the ordinary course of business.

5.4.2 The Corporate Insolvency Resolution Process ("CIRP") of the Respondent No. 1 company commenced on 1<sup>st</sup> August, 2017 and as per the provisions of the Section 12 of the Code was to be completed within a period of 180 days from the date of admission of the application to initiate such process. Subsequently, by an order dated 12<sup>th</sup> January, 2018 in CP(IB)





53 of 2017, the period of CIRP was extended by a period of 90 days beyond the 180 days.

5.4.3 The Resolution Professional has submitted the details of certain transactions which are not in the ordinary course of business and the payments appear to be in the form of loans/advances given to parties. It appears that the Respondent Company may have entered into arrangements involving the concerned parties to fund their financial obligations. The Resolution Professional has alleged that despite persistent attempts, the Applicant was not provided with the requisite documents to ascertain whether the transactions were in the ordinary course of business of the Respondent Company. Hence, in order to take appropriate action/steps against the aforesaid transactions, the Applicant has filed the instant IA for appropriate reliefs from this Tribunal.

5.4.4 The Resolution Professional has submitted the details of the aforesaid transactions and the same are enumerated hereunder:

- a) The Respondent Company prior to the CIRP between the period of October 2012 and September 2014 the Respondent Company had transferred an amount of USD 63,517,662 amounting to Rs. 421,41,65,692/- to Varda Seven PTE Ltd. ("Varada") through its bank account maintained with Royal Bank of Scotland. It is not clear whether such transactions have been carried to service offshore loans availed by group companies of the Respondent Company. Further, upon perusal of the Special Audit Report of M/s. Desai Saksena & associates, it is inferred that such loans to the extent of Rs. 285,76,00,000/- were used towards payment of novation shipping contracts. It is also stated that Annual Report of the Respondent Company for the financial year 2015-16 clearly states that the said loans and advances were provided interest free. Therefore, the said transactions do not appear to be in the ordinary course of business.
- b) The Respondent Company prior to the CIRP between the period of September, 2015 and March, 2016 the Respondent Company had transferred an amount of Rs. 199,66,25,200/- and an amount of Rs. 125,70,88,435/- was transferred prior to the period of April, 2015 through its various bank accounts in the form of loans and advances to

*Adinar*



Banal Investments and Trading private Limited ("Banal"). Further, it is stated that Banal /- being a company engaged in the business of an investment company to purchase and sell shares, debentures, bonds etc and earned no revenue for the financial year 2011-12 and 2012-13. Further, it is stated that Banal has a negative net worth of Rs. 19.06 lakhs. In view of the above, it is clear that the aforesaid business transaction was entered into between the Respondent Company and MDPL for a fraudulent purpose and not in the ordinary course of business. Further, upon inspection of the records of Banal with the ROC, it has come to the knowledge of the Applicant that Banal was struck off from the Registrar of Companies on 28.04.2017 on the ground that Banal had not carried on business in the last two years from the date of strike off. It is stated that aforesaid amounts were transferred to Banal during the period when Banal did not carry on business.

**Findings:**

5.4.5 In this regard, it is to be mentioned that Resolution Professional has submitted the details of the preferential, under-valued and fraudulent transactions and the same are enumerated in the above referred paragraphs.

5.4.6 We, the Adjudicating Authority, have gone through both the transactions submitted by the Resolution Professional, and after elaborate discussions, we have decided that impugned transactions mentioned in Para 6(b) is open for investigation to ascertain the nature of the transaction as defined in the sub-section 2(a) of Section 43 of the IBC as this transaction has been executed within the look back period of two years before the commencement of Insolvency proceeding and are therefore cover under section 43(4)(a). However, the transaction mentioned in Para 6(a) is not preferential transaction as this transaction has been executed before the look back period of two years before the commencement of Insolvency Proceeding. As per Section 43 of the IBC, 2016, the relevant period (the Look Back period) for the impugned transactions is starting from 31<sup>st</sup> July, 2015 1<sup>st</sup> August, 2017.

5.4.7 Accordingly, the IA filed by the Resolution Professional under Section 43, 45 and 66 of the IBC is **allowed**.





5.4.8 No Order as to costs.

**IA 303 of 2018**

5.5.1 The instant IA is filed by the Applicant, the Resolution Professional of the Corporate Debtor, ABG Shipyard Limited under Section 50(5) read with Section 14 & 74 of the Code seeking necessary directions against the Respondent, the Bank of Baroda to deposit an amount of Rs. 9,73,83,818/- (Rupees Nine Crore Seventy-Three Lakh Eighty-Three Thousand Eight Hundred and Eighteen Only) appropriated by the Respondent Bank in violation of the order passed by this Tribunal on 01.08.2017 under Section 14 of the IBC.

5.5.2 It is stated by the Applicant that before passing of the aforesaid order by this Tribunal, Company, the Corporate Debtor, had maintained a fixed deposit of Rs. 9,73,83,818/- towards margin money with the Respondent Bank for various Non Fund Based facilities sanctioned and availed by the Company, the Corporate Debtor, the details of the same are given hereunder:

1.	FD No. 29100300001777	for Rs. 9,29,31,603/-
2.	FD No. 29100300001820	for Rs. 43,51,081/-
3.	FD No. 29100300001821	for Rs. 1,01,134/-
	<b>Total</b>	for <b>Rs. 9,73,83,818/-</b>

5.5.3 On enquiry by the RP with the Respondent bank about the status of the aforesaid FDs, it was stated by the Respondent Bank vide their email dated 19.07.2018 that the aforesaid FDs were terminated and appropriated by the Bank on 02.08.2017 towards loan liability.

5.5.4 It is stated by the Applicant that Respondent Bank was aware of the proceedings initiated by the ICICI Bank, the Financial Creditor against the Company, the Corporate Debtor and the Respondent Bank has also confirmed that as on 01.08.2017, an amount of Rs. 9.64 crores were kept as margin money and that the Respondent Bank would not be able to adjust the same if the application filed by ICICI bank is accepted by NCLT without the consent of the IRP/CoC.

*Uttam*

*[Signature]*



5.5.5 It is further submitted by the Applicant that pursuant to the declaration of the moratorium, the lead bank i.e. ICICI bank had vide email dated 03.08.2017 forwarded the order dated 01.08.2017 to all banks including the Respondent. The Applicant has submitted that despite received the aforesaid requests and having complete knowledge about the existence of the moratorium, the Respondent Bank – the Bank of Baroda, has failed to reverse / roll back the amounts of the aforesaid fixed deposits wrongfully appropriated by the Respondent Bank.

**Findings:**

5.5.6 We, the Adjudicating Authority, on the facts and circumstances of the case, agree with the Applicant that Respondent Bank was aware of the proceedings initiated by ICICI Bank, the Financial Creditor against the Company, the Corporate Debtor, therefore, the Respondent Bank should have exercised due diligence and respected the moratorium imposed by this Tribunal vide its order dated 01.08.2017.

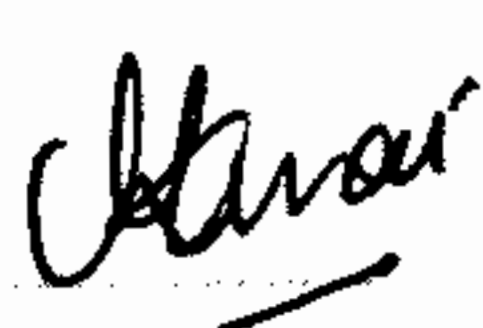
5.5.7 Accordingly, the instant IA is disposed of with the following directions:

a) The Respondent Bank is directed to roll back/reverse the wrongfully appropriated amount of Rs. 9,74,62,608/- (Rupees Nine Crore Seventy-Four Lakh Sixty-Two Thousand Six Hundred and Eight Only) into the TRA account of the Corporate Debtor Company maintained with ICICI Bank.

b) The Respondent Bank is directed to pay the Applicant accrued interest on the wrongfully appropriated amount of Rs. 9,74,62,608/- (Rupees Nine Crore Seventy-Four Lakh Sixty-Two Thousand Six Hundred and Eight Only) from the date of wrongful appropriation of the fixed deposit till the actual date of the reversal / roll back into the TRA account of the Corporate Debtor Company maintained with ICICI Bank.

5.5.8 Accordingly, the IA filed by the Resolution Professional under Section 60(5) read with Section 14 & 74 of the IBC is **allowed**.

5.5.9 No Order as to costs.





**IA 321 of 2018**

5.6.1 The instant application is filed under the provisions of Section 66 of IBC inter alia for appropriate orders and directions from this Tribunal in relation to transactions that can be classified as fraudulent/wrongful trading carried out by the Respondent Company, the Corporate Debtor and the transactions to defraud the creditors before the insolvency commencement date.

5.6.2 It is stated by the Applicant that upon review of the books and business of the Respondent Company, the Applicant has found that certain transactions appear to have been carried as fraudulent transactions, not in the ordinary course of business which may be covered under Section 66 of the Code. The details of the fraudulent transactions are listed herein below:

a) The Respondent Company prior to the CIRP appears to have entered into a fraudulent transaction under Section 66 of the Code with ABG Shipyard Singapore Pte. Limited (hereinafter referred to as "ASSPL") being a wholly owned subsidiary of the Respondent Company, incorporated on 8<sup>th</sup> February, 2010 in Singapore.

b) The Respondent Company in 2012 had invested in ASSPL by way of 42,97,100 1% redeemable preference shares of USD 1/- each at a premium of USD 9/- each amounting to USD 42,971,000/-. Further, the Respondent Company had also provided loans and advances to ASSPL amounting to USD 24,032,329/-. Accordingly, the total amount invested/funded by the Respondent Company into ASSPL amounted to USD 67,003,329/-.

c) Thereafter on 17.12.2012 the Respondent Company had redeemed 85,000 1% redeemable preference shares of ASSPL equivalent to USD 8,50,000/-. The above preference shares were redeemable at par, at the option of the Respondent Company at any time not later than 3 years from the date of allotment i.e. 22<sup>nd</sup> March, 2011 and each holder of preference share was entitled to cumulative dividend @ 1% per annum until redeemed and shall be payable on cumulative basis prior to any dividend or other distribution payable to ordinary shareholders. Further, in the liquidating or winding up of the company, the paid up amount of

*Abhinav*



preference shares were to be paid back to the preference shareholders before any payment was made to the ordinary shareholders.

d) It is stated that on the basis of the aforesaid investment/funding by the Respondent Company, ASSPL in 2012 had invested in 4,34,645.8558 units of Emerging Markets Diversified Fund of Standard Chartered Trust (Cayman) Limited of face value of USD 100/- per unit. Subsequent to the investment, the Respondent Company as per the Master Restructuring Agreement ("MRS") dated 28<sup>th</sup> March, 2014 executed between the Respondent Company and ICICI Bank Limited (monitoring institution) and a consortium of banks was to liquidate the investment made by ASSPL and repatriate the proceeds within two months from the date of the CDR Letter of Approval dated 23<sup>rd</sup> April, 2014. It is stated that further, in the joint lenders meeting held on 2<sup>nd</sup> September, 2014, the promoters of the Respondent Company had requested for an extension till 31<sup>st</sup> October, 2014 to liquidate the investment made by ASSPL in Standard Chartered Trust (Cayman) Limited.

e) It is stated that thereafter, in the meeting of the monitoring committee held on 18.11.2014, the promoters of the Respondent Company had informed the lenders that they had already made an application for the realization of investments and informed that the same was pending with the Standard Chartered Trust. It is stated the promoters of the Respondent Company further informed the RP that Respondent Company had certain outstanding liabilities relating to the above investments made by ASSPL which were required to be paid-off on realization and further requested for time till 31<sup>st</sup> March, 2015. Thereafter, in the monitoring committee meeting held on 29<sup>th</sup> July, 2015 the Respondent Company was directed to obtain a certificate from a concurrent auditor regarding corresponding liabilities, in order to deliberate upon a decision for waiver. However, the said certificate from a concurrent auditor was not obtained by the Respondent Company.

f) As per the financial statements of the Respondent Company as on 31<sup>st</sup> March, 2017 the entire outstanding liability by way of investment in preference shares and loans and advances in ASSPL amounts to USD 66,153,329/- which is fully recoverable by way of liquidation of the investment.

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5.6.3 The Applicant states that in view of the aforesaid findings, the Respondent Company had invested/given loans and advances to ASSPL, its wholly owned subsidiary and is entitled to recover an amount of USD 66,153,329/-. The aforesaid investments were to be recovered by the Respondent Company as recorded in the MRA and minutes of the meeting of the monitoring committee. However, the Respondent Company till date has failed to liquidate the investment and recover its money despite repeated assurances given to the monitoring committee and no reasonable steps have been taken by the erstwhile Directors of the Respondent Company (now under resolution process) who were responsible for and were actually carrying on the business of the Respondent Company to recover the money.

Thus, this aspect, coupled with the conduct of the erstwhile Directors of the Respondent Company (now under resolution process) in avoiding to offer any response to the legal notices served upon them or otherwise furnishing explanation or details of steps and measures taken and adopted by them as management of the Respondent Company appear to be tainted with malice and fraudulent intent of defrauding the company and the creditors of the company. Hence, the Applicant submits that the aforesaid transactions does not appear to have been made in the ordinary course of business but appears to have made for a fraudulent purpose, including intent to divest money from the Respondent Company to erode capital/assets of the company and thereby frustrate and defeat the legitimate claims of creditors of the Respondent Company with possible eventual objective of siphoning the money by adopting circuitous route for fraudulent purpose of causing or reaping personal gain as enunciated under Section 66 of the Code.

**Findings:**

5.6.4 We, the Adjudicating Authority, have gone through the transaction submitted by the Resolution Professional, and after elaborate discussions, we have decided that impugned transaction is open for investigation to ascertain the nature of the transaction and the intent behind execution of this transaction. The aforesaid transaction has the root and its execution before the look back period of two years before the commencement of Insolvency Proceeding. As per Section 43 of the IBC,

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2016, the relevant period (the Look Back period) for the impugned transactions is starting from 31<sup>st</sup> July, 2015 1<sup>st</sup> August, 2017.

5.6.5 Accordingly, the IA filed by the Resolution Professional under Section 66 of the IBC is **allowed**.

5.6.6 No Order as to costs.

6. Now, we the Adjudicating Authority will deliberate upon the IA 113 of Heard the Ld. Lawyer of the Resolution Professional, as well as Resolution Applicant at length along with the arguments extended by the respective Ld. Lawyers of the above numbered IAs. Also seen the documents annexed with the pleadings/and the IAs and replies/objections of the parties.

#### **IA 113 of 2019 – Application for Liquidation**

7. The present IA is filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) by the Resolution Professional (hereinafter referred to as “RP”) Mr. Sundaresh Bhat, in respect of the Corporate Debtor Company, viz., M/s. ABG Shipyard Limited.

7.1 We have examined the merits of the present application by perusing the documents annexed therewith and also in the light of the aforesaid IAs. As per record, it is undisputed position in the present matter that this Adjudicating Authority, vide its order dated 01.08.2017, admitted the main Company Petition (bearing No. CP (IB) No.53/NCLT/AHM/2017 at the instance of Financial Creditor ICICI Bank.

7.2 Pursuant to the above stated admission order passed by this Adjudicating Authority, a Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) was commenced in respect of the Corporate Debtor Company. Further, the CoC was constituted by the then Interim Resolution Professional (hereinafter referred to as “IRP”) and later on he was reappointed to act as Resolution Professional in order to complete the CIRP.

7.3 The Applicant in support of the present application has annexed copy of the order dated 18.02.2019 of this Tribunal in IA 139 of 2018 and the

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Minutes of 21<sup>st</sup> Meeting of CoC conducted by the RP, wherein approval of the members of the Committee of Creditors of ABG Shipyard Limited is accorded to liquidate the Corporate Debtor and authorize the RP to file an application/necessary documents seeking liquidation of the Corporate Debtor before the Adjudicating Authority as **Annexure K**. The RP has also annexed with the IA e-voting results for and against the resolution for liquidation of the Corporate Debtor as **Annexure L** showing 84.63 per cent of votes cast in favor of the resolution for liquidation of the Corporate Debtor.

7.4 We, being the Adjudicating Authority, take note of the above stated facts and state of affairs of the Corporate Debtor company.

7.5 Having heard the submissions of the Ld. Counsel for the RP as well as the Ld. Counsel for the Financial Creditors and by going through the material available on record, it establishes that the Corporate Debtor company, at present, is not a going concern. In our view, the CoC seems to have taken a conscious and wise decision. Hence, we did not find any contrary material available on record to take a different view from the CoC as the CoC has approved liquidation which is based on its commercial wisdom.

7.6 Further, we carefully examined the relevant provision of Section 33 of the Code, which reads as under;

**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;(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 approved by not less than sixty-six percent of the voting share 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

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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.

7.7 By following the above stated statutory provisions and in exercise of the power conferred to this Adjudicating Authority, we feel appropriate to confirm and approve the CoC's Resolution dated 20.02.2019 recommending for Liquidation of the Corporate Debtor Company and to pass an order for liquidation of the Corporate Debtor Company. At this juncture, we find it appropriate to refer the decision of the Hon'ble Supreme Court in Civil Appeal No. 10673 of 2018 in **K. Sasidhar v. Indian Overseas Bank & Ors.** It is held that supremacy of CoC and their commercial wisdom cannot be questioned. It is also observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the CoC to enquire into the justness of the rejection of the Resolution Plan by the dissenting financial creditors. While giving the decision, the Hon'ble Supreme Court has further observed that ".... Non-recording of reasons for approving or rejecting the Resolution Plan by the concerned financial creditor during the voting in the meeting of CoC would not render the final collective decision of CoC nullity per se...." Hon'ble National Company Law Appellate Tribunal in **Kannan Tiruvengandam v. M.K. Shah Exports Ltd. & Ors.** wherein it is held that commercial aspects of a resolution plan are to be dealt with by an expert body such as the Committee of Creditors. It was held that the Hon'ble NCLAT had no jurisdiction to sit

*Adnan*



in appeal over the same, unless such decision of the Committee of Creditors is perverse or contrary to the provisions of the Code or any other existing law. In this regard, it is also pertinent to refer to the recent decision given by

7.8 Therefore, it is hereby ordered that the Corporate Debtor Company, viz., **ABG Shipyard Limited, shall go into liquidation under Section 33 (2) of the Code,** with following observation/directions;

- i. That the Resolution Professional Mr. Sundaresh Bhat appointed for the Corporate Insolvency Resolution Process under Chapter II of the Code shall act as the Liquidator for the purpose of Liquidation in pursuant to Section 34(1) of the Insolvency and Bankruptcy Code, 2016 as approved by the CoC in their 22<sup>nd</sup> Meeting held on 01.03.2019 and his fees shall be as per the Schedule as contained in the IBC, 2016.
- ii. All the powers of the Board of Directors, Key Managerial Personnel and the Directors of the Corporate Debtor Company, as the case may be, shall cease to have effect and shall be vested in the Liquidator pursuant to Section 34(2) of the Insolvency and Bankruptcy Code, 2016.
- iii. That the personnel of the Corporate Debtor Company shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor Company.
- iv. Issue a public announcement stating that the Corporate Debtor Company is in liquidation.
- v. The Liquidator shall discharge his functions pursuant to the powers and duties under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016.
- vi. The Moratorium order passed by this Bench, vide its order dated 01.08.2017 in the matter of ICICI Bank Limited Vs. ABG Shipyard Limited shall cease to have effect by the provision of Section 14(4) of the Insolvency and Bankruptcy Code, 2016, from the date of this order.
- vii. However, a further direction is issued under Sub-section (5) of Section-33 of the Code, which read as under:

Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit, or other legal proceedings shall be instituted by or against the corporate debtor: Provided that a

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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.


7.9 It is pertinent to mention herein that an amount of Rs. 2,75,00,000/- (Rupees Two Crores Seventy-Five Lakhs) which has been received from the Coast Guard, Controller of Defense, is received towards the work done by the workers and the services rendered by the employees, which has been deposited by the RP vide order dated 25.04.2018 passed in IA 78 of 2018 in CP (IB) 53 of 2017. In our humble view, the amount received towards workers' dues and salary cannot form the part of the liquidation assets of the Company nor it should be dealt with under waterfall mechanism provided under Section 53 of the IB Code, and in our view, such amount is to be distributed amongst the workers and the employees towards the salaries of the workers and employees as per law in the light of Constitution Bench's decision of the **Hon'ble Supreme Court in the matter of National Textile Workers Vs. P.R. Ramkrishnan and Others and the Hon'ble Gujarat High Court decision in the matter of O.N.G.C. Ltd. Vs. O.L. of Ambica Mills Co. Ltd. & Ors.**


7.10 A copy of this order be sent to Registrar of Companies, Gujarat.

7.11 Thus, with the above stated directions / observations, the present **Interlocutory Application No.113 of 2019 in CP(IB)No.53/NCLT/AHMD/2017 is allowed and stands disposed of.**

7.12 No order as to costs.

Any other IA(s), if pending, also stand(s) infructuous and disposed of in view of the above order.

  
**Ms. Manorama Kumari,  
Adjudicating Authority  
Member (Judicial)**

  
**Harihar Prakash Chaturvedi,  
Adjudicating Authority  
Member (Judicial)**