

SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.04.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/96/2021 in CP (IB) No. 166/7/HDB/2019
NAME OF THE COMPANY	Suryajyothi Spinning Mills Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Suryajyothi Spinning Mills Ltd
UNDER SECTION	7 of IBC

ORDER

This application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II**

**IA No. 96 of 2021 in
CP (IB) No. 166/7/HDB/2019**
U/s.33(1) r/w 34 IB Code, 2016

**In the matter of State Bank of India
vs.
M/s Suryajyoti Spinning Mills Ltd.**

Between:

State Bank of India

... Financial Creditor

And

M/s Suryajyoti Spinning Mills Ltd.,
Burgul Village Farroqnagar Mandal,
Mahabubnagar District – 509020
Telangana

... Corporate Debtor

And in the matter of

Mr. Ram Ratan Kanoonge

... Applicant/Resolution Professional

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Coram:

Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)

Counsel/Parties present:

For the Applicant : Ayush J. Rajani
For the Respondent : Smt. Sandhya Rani

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[**PER: BENCH**]

ORDER

1. This application is filed seeking for an order for liquidation of the Corporate Debtor (CD) u/s 33(1) read with section 34(1) of the Insolvency & Bankruptcy Code, 2016,

2. Briefly the facts, so far as are relevant to the case, are as follows:

- i) The Corporate Debtor (CD) was taken to Corporate Insolvency Resolution Process (CIRP) by an order of this Tribunal dated 05/09/2019 in CP No. 166/7/HDB/2019 and an Interim Resolution Professional (IRP) was appointed.
- ii) Public announcement was made, inviting claims from all the creditors. Claims were received from both the Financial Creditors and Operational Creditors. The IRP constituted Committee of Creditors (COC) as per the Regulations 13(2)(d) and 17(1) of the CIRP Regulations and the IRP filed a report before the NCLT, Hyderabad. The IRP was confirmed and appointed as Resolution Professional in the first CoC meeting held on 10th October, 2019. The Registered Valuers, appointed by the RP, submitted their valuation report with regard to the fair market value and liquidation value of the CD. The liquidation value was arrived at Rs. 113.72 crores.

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- iii) The applicant issued invitation for expression of interest (EoI) and the last date for receipt of expression of interest was 30/11/2019. The first extension of Invitation for EoI was issued on 06/12/2019 fixing the last date as 26/12/2019 and the last date for submission of resolution plan was 30/01/2020. On the approval of CoC, the applicant further issued 2nd extension of invitation for expression of interest on 09/01/2020 and the last date for submission of resolution plan was on 04/03/2020. Resolution applicant has shown interest in submitting a resolution plan.
- iv) In the 5th CoC meeting held on 15/02/2020, the CoC decided to amend the bid valuation matrix to identify the best resolution plan and e-voting for approval of the modified evaluation was concluded on 25/02/2020.
- v) As per the Regulation 36B(3) of the Insolvency & Bankruptcy (Insolvency Resolution) Regulations, 2016, a minimum period of 30 days' time is to be provided to the prospective resolution applicant to submit a resolution plan. Last date for submission of resolution plan was extended till 25th March 2020. The resolution applicant (RA) vide email dated 20/03/2020 informed the RP that due to the restrictions/precautionary measures being placed to combat Covid-19, RA has not been able to visit the factories of the CD to conduct the due diligence and requested for extension of 30 days to submit the

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resolution plan. As such, the CoC approved for extension of 45 days and further allowed the extension period for submission of resolution plan by 30 days i.e. on 24/04/2020. Extension of 45 days for CIRP was sought for and obtained from the adjudicating authority. The RA was, still, unable to visit the manufacturing units of the company due to Covid-19 and, hence, time was extended till 31/07/2020, on which date, the resolution plan was received and CoC and RA discussed and negotiated the terms of the resolution plan in multiple CoC meetings. The CoC did not accept the resolution plan since it was not in compliance with the conditions under the RFRP since it was a conditional plan and no revised plan was received from the RA.

- vi) Considering Covid-19, exclusion of 135 days from the CIRP was sought for and obtained. Further extension of 62 days was also obtained. In the 16th CoC meeting, it was decided that considering the object of the Code to keep the CD as a going-concern and maximise the value for all the stakeholders, CoC members informed the RP that they have received an OTS proposal from one of the Corporate Guarantors of the CD, which is under active consideration and that due to Covid-19 restrictions, their sanctioning authority committee meetings are getting delayed. The application was moved u/s 12A of the Code.

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- vii) The members from SBI and IDBI informed that their External Screening Committees and Sanctioning Committees are located in Mumbai, where Covid-19 restrictions are still in force. The SBI informed that the OTS proposal was discussed and was cleared on 08/01/2021. OTS proposal has been referred to the Sanctioning Committee for necessary approval. Further, SBI has also highlighted, that in the event the CD goes for liquidation, it may derail the OTS process and the incoming external investor, namely, “Cantor Fitzgerald” with whom an “ESCROW” arrangements were already finalized by SBI. SBI, during 18th CoC meeting, unanimously informed the applicant RA that the OTS proposal is under active consideration and directed the RP to seek extension of 60 days of the CIRP period by filing an application before the NCLT, Hyderabad. The NCLT, Hyderabad disposed of the application as not maintainable on the ground that no resolution plans were pending before RP and CoC and since the OTS proposal is a matter between the CD and SBI.
- viii) Considering that the CIRP period has already expired on 13th January, 2021 and that there are no resolution plans for consideration of the CoC, the present application is filed seeking for liquidation of CD.

3. No counter was filed, but, both the learned counsel extended their arguments and filed written submissions.

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- i) The counsel appearing for the suspended director of the CD did not extend any argument, with regard to the necessity for ordering liquidation against CD, but he put-forth some technical objections.
- ii) He contends that there is no co ordination between the CoC and the RP and that there is no resolution passed by the CoC for liquidation of the CD.
- iii) As regards the background history of this litigation, he submits that in the 18th CoC meeting held on 11th January, 2021 CoC came up with a resolution directing RP to file an application before the adjudicating authority by 13th January, 2021 seeking extension of time for 60 days till 31st March, 2021 to conduct CIRP of CD. But, the RP failed to follow the instructions of the CoC. He filed I.A. No. 32 of 2021 belatedly. In the said application, it is stated that the exclusion is sought for due to the OTS submitted by CD. But, the said application was rejected on the ground that OTS is a subject matter of the CD and SBI and since there is no resolution plan pending before CoC and RP, the application was dismissed as not maintainable. He submits that the RP, without adhering to the resolution passed in the 18th CoC meeting, in the absence of consent from CoC, arbitrarily filed this IA, seeking for liquidation of CD. Opposing the stand taken by the RP, the CoC filed IA

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No. 97 of 2021 seeking to extend time line for conducting CIRP, which indicates that CoC is not in favour of the liquidation and that there is no coordination between the CoC and the RP. So long as the CD is under resolution process, the CoC takes decisions of the CD collectively and the RP should strictly adhere to such decisions taken by the CoC. The RP, since 11/01/2021, did not conduct CoC meetings. He contravened the mandatory IBBI Regulation 40 in respect of filing Form 7 i.e. CIRP status report of the CD. Pendency of the application filed u/s 33(1) for adjudication will not become a waiver for RP to file CIRP status report of the CD.

- iv) He submits that I.A. 97 of 2021 came up for hearing on several occasions and later it was dismissed as infructuous on the simple reason that CoC sought extension of CIRP and reserved for orders in IA No. 96 of 2021. The adjudicating authority extended the CIRP till 31/03/2022 and dismissed IA No. 97 as infructuous. The same analogy applies to IA No. 96 of 2021 which was filed on 24/02/2021. The RP did not file any application from 31/03/2022 to till date seeking extension or exclusion of time in CIRP of CD. But, he is drawing substantial amount as CIRP costs. As the locus of the respondent u/s 24(3) of IBC, contemplates that suspended Board of Directors are

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one of the participants in the CoC meeting, the RP issued CoC meetings notice to the suspended board of directors.

- v) The respondent's counsel relied on the judgment of the Apex Court in case of Vijay Kumar Jain Vs Standard Bank.

4. The Id. Counsel appearing for RP submits that SBI had already sent a letter dated 11th February, 2022 to Corporate Guarantor informing that even after providing sufficient time for arranging the funds, the CG has failed to arrange the funds towards the compromise proposal and hence, SBI has cancelled the compromise proposal and a letter was served to the suspended director. He contends that in view of the settled law that once the time limit as per section 12 of the Code expires, corporate insolvency and resolution process cannot continue beyond 330 days. As a corollary, initiation of liquidation process is mandatory. He submits that the SBI, in its meeting of the Wilful Defaulter Identification Committee – II held on 19th March, 2021 has resolved and concluded that the CD Mr. Arun Agarwal, Mrs. Neha Agarwal (suspended directors), Suryajyoti Infotech Ltd and Pangea Fabrics Pvt. Ltd. (Corporate Guarantors)(incomplete sentence in the written submissions)

5. The Id. Counsel for the respondent contends that these pleadings are taken afresh and cannot be considered. The counsel for the RP submits that even if the said argument and the documents filed along with the written arguments are not

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considered, the application can be allowed on the available material.

6. The ld. Counsel for the RP relies on the section 33(1) of IBC, to draw to support his contention that liquidation of CD can be ordered by the Hon'ble Tribunal where no resolution plan is pending before CoC, even in the absence of a resolution.

7. The ld. Counsel for the respondent by relying on the order passed in IA No.97 of 2021, which is dismissed as infructuous considering that the CIRP was extended, seeks to dismiss this IA. I.A No. 97 was filed by the CoC seeking to extend the time line for CIRP. I.A. No. 96 of 2021 was filed by the RP prior to 97 of 2021 seeking for liquidation. Considering that the CIRP was already extended, IA 97 of 2021 was dismissed. The ld. Counsel for the respondent submits that with the same analogy, this Application becomes infructuous since the CIRP was extended till 31/03/2022, while, this application is filed prior to 31/03/2022.

8. The question now before us is, whether an order for liquidation can be passed in this I.A. No. 96 of 2021 since it is still pending before us. The ld. Counsel for the respondent also raised another objection stating that there is no resolution passed by the CoC and that there is no coordination between the RP and the CoC and in such circumstances, no order for liquidation can be made.

9. As regards the second objection, ld. Counsel for the petitioner relies on the order of the NCLT, Hyderabad in I.A. No.

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114 & 118/2021 in CP(B) No. 520/9/HDB/2019 in the case of M/s Sathya Solutions Pvt. Ltd., dated 26/03/2021. A reading of the said order would project similar circumstances. In the said case also, the Members of the CoC avoided to respond to the RP for taking any decisions as per the provisions of the Code for smooth conduct of CIRP. The applicant approached the NCLT, Hyderabad for directions to the CoC for cooperation. Considering the non-cooperation of the Members of CoC, the Adjudicating Authority directed the Applicant/RP to file an application for liquidation of the Corporate Debtor on the ground that maximum period of CIRP of 330 days has expired and as no resolution plan was available for consideration before the CoC. In such circumstances, the NCLT, Hyderabad Bench ordered for liquidation by invoking powers u/s 33 of the Insolvency & Bankruptcy Code, 2016. (IBC)

10. The objections raised by the respondent's counsel with regard to the dismissal of the application on the ground that it has become infructuous is hyper technical. The object of the Code is certainly not to frustrate the proceedings by adopting hyper technical approach. The fact remains that there is no resolution plan pending before the CoC and in the 18th CoC meeting, the RP explained to the CoC that in the event, the NCLT, Hyderabad does not accede to the request of granting further extension of 60 days, the liquidation process u/s 33(1) of Code shall commence in line with the order dated 31/12/2020. The ld. Counsel for the petitioner relies on this part of the Minutes of

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the 18th CoC meeting to contend that resolution of the CoC has to be deemed as being made, since CoC also noted the explanation given by the RP with regard to the liquidation. However, the Hyderabad Bench of NCLT, in the similar circumstances, has ordered for liquidation without the resolution of the CoC for liquidation. The adjudicating authority considered that no resolution plan was pending before CoC and that the adjudicating authority did not receive any resolution plan under sub-section (6) of Section 30 of the I&B Code, 2016. Section 33(1) of I&B Code, 2016, is extracted hereunder for ready reference:

“(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.”

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11. The Id. Counsel for the respondent draws our attention to clause (2) of section 33, which is as under:

“(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).”

12. He contends that for an order to be passed under sub-section (1) of section 33, a resolution with 66% of voting is a precondition.

13. The Id. Counsel for the Petitioner counters the argument of the Id. Counsel for the respondent by contending that the said condition is applicable only when an application for liquidation is filed during the insolvency resolution process and when a resolution plan is pending and it does not apply when the maximum period permitted for completion of the corporate insolvency resolution process is over and when no resolution plan is received.

14. We are convinced with the above argument of the Id. Counsel for the petitioner, when, under section 33(1)(a), the Adjudicating Authority has power to order for liquidation when no resolution plan is submitted to it, it implies that the Adjudicating Authority has to only see whether any resolution

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plan has come up before it for approval prior to the order for liquidation under section 33(1)(a). As no resolution plan is received by the Adjudicating Authority, the questions whether CoC has resolved for liquidation or whether there is no coordination between RP and CoC, are immaterial for the Adjudicating Authority to order for liquidation u/s 33(1)(a).

15. In view of the above, we do not find any reason to reject the request made by the RP to order for liquidation of the Corporate Debtor.

16. As regards the contention that this application becomes infructuous, we are unable to accept the contention of the Respondent's counsel, it being, hyper technical. This application for some or the other reason has been kept pending and has now come up before us for adjudication by considering only the circumstances, which are relevant for granting the prayer in the application. Dismissing this application and driving the RP again before the CoC to get a resolution passed by the CoC would only be defeating the object of the I&B Code, which is that the Insolvency resolution process should be completed within the time lines. Hence, this application is allowed as prayed for. Accordingly, in exercise of the 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, we proceed to pass the order as follows:

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- (i) This Adjudicating Authority hereby order for Liquidation of M/s Suryajyoti Spinning Mills Ltd., which shall be conducted in the manner as laid down in Chapter III of Part II of the I&B Code, 2016;
- (ii) In the petition, the name of Mr. Ram Ratan Kannogo is mentioned for appointment of R.P., but, it can be seen that there is no resolution passed by the CoC for his appointment. Apart from that, his name is not found in the of R.Ps of State of Telangana, which is circulated by Insolvency & Bankruptcy Board of India. Hence, this Adjudicating Authority hereby appoints **Mr. Kondapalli Venkata Srinivas** bearing IBBI Registration No. IBBI/IPA001/IPP00520/2017- 2018/10945, his email id is : ip_kvs@assetsadvisory.com and his mobile No. 9959223615 to act as Liquidator in the present case. He is further directed to file the Authorisation for Assignment (AoA) within 7 days from the date of this order. He 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;
- (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

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of the Corporate Debtor, with the prior approval of this Authority.

- (v) We make it clear that para (iv) herein above shall not apply to the 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 in the Company Liquidator Viz., **Mr. Kondapalli Venkata Srinivas**. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (viii) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Company Liquidator as may be required by him in managing the affair of the Corporate Debtor.
- (ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall

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endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board of India (liquidation process) Regulations, 2016.

- (x) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fee for conducting the Liquidation proceedings shall be paid to the company liquidator from the proceeds of the liquidation estate.
- (xi) Copy of this order shall be sent to the concerned Registrar of Companies, RD, OL, Registered office of the Corporate Debtor and Company Liquidator viz., **Mr. Kondapalli Venkata Srinivas** for information and compliance.
- (xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

17. IA No. 96 of 2021 is filed with certain prayers in relation to cooperation by CoC and for smooth conduct of CIRP.

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18. However, in view of order of Liquidation in IA No. 96 of 2021, this IA is closed with liberty to the Applicant to approach afresh.

19. Accordingly, **I.A. 96/2021 in CP(IB) No. 166/7/HDB/2019 is allowed and stands disposed of.**

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)

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