

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**IB No. 400/ND/2017**

**TA No. 53/2018**

**CORAM: SHRI R. VARADHANRAJAN, MEMBER  
(JUDICIAL)**

**IN THE MATTER OF SECTION 7 OF IBC, 2016**

**ORDER PRONOUNCED ON: 16.11.2018**

**IN THE MATTER OF:**

**Union Bank of India**

**239, Vidhan Bhawan Marg,**

**Mumbai- 400021**

**.... Financial Creditor**

**VERSUS**

**M/s Ashoka Multiyarn Mills Ltd,**

**C-94, Lal Kothi Scheme,**

**Jaipur, Rajasthan- 302015**

**...Corporate Debtor**

**FOR PETITIONERS**

**: PINAKI SIRCAR, RP**

**BRIJESH KUMAR TAMBER, ADV.**

**FOR RESPONDENTS**

**: NONE-APPEARED**

Union Bank of India

Vs.

M/s Ashoka Multiyarn Mills Ltd.



**ORDER**

1. The matter is coming up for consideration of the Liquidation of the Corporate Debtor in view of the decisions taken by the Committee of Creditors (CoC) and in view of the rejection of proposed resolution plan by the CoC in its meetings held on 19.12.2017, 30.01.2018, 17.03.2018, 10.04.2018, 16.07.2018, 04.08.2018, 08.08.2018. Prior to the consideration of the recommendation of the Liquidation by the Committee of Creditors (CoC), an onus, which this Tribunal is of the considered view, has been placed on this Tribunal to consider as to how the Corporate Insolvency Resolution Process (CIRP) initiated by this Tribunal has unfolded. Based on the petition filed by one of the Financial Creditors of the Corporate Debtor, being the Union Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code") in view of the default committed by the Corporate Debtor relating to the facilities granted by the Financial Creditor. For this purpose, vide order dated 12.10.2018 the Resolution Professional (RP) appointed at the time of admission to carry forward the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was ordered to file the synopsis of dates and compliances mandated

under the code as well as attendant Regulations from the date of admission of the CIRP process and subject to the same the orders were reserved.

2. Pursuant to the said order, vide Diary No. 522/2018 dated 18.10.2018 a synopsis has been duly filed by the RP along with compilation of dates and events in relation to the CIRP process of the Corporate Debtor. Perusal of the said synopsis along with the status reports as has been filed by the RP from time to time discloses the following: -
3. On 15.11.2017 the petition as filed by the Union Bank of India was admitted and the CIRP process was initiated against the Corporate Debtor by the said order. The Interim Resolution Professional as proposed by the Financial Creditor was also appointed as an Interim Resolution Professional (IRP) by New Delhi Bench of this Tribunal. On 17.11.2017, a public announcement seeking for claims from the creditors of the Corporate Debtor as contemplated in relation to Insolvency Resolution Process for Corporate Persons (IRPCP) as prescribed by IBBI had been affected. Consequent to the publication by way of public announcement made in Times of India, Jaipur, Kolkata and Bhuvneshwar Editions and the Raj Express in Rajasthan, Aajkaal (Bengali) and Nitidin (Odia) where Registered Office, Principal Office and the Factory of the Corporate

Debtor were respectively situated. Pursuant to the public announcement the claims from both the Financial Creditors as well as Operational Creditors is stated to have been received by the IRP and as per the status report filed on 13.12.2017, it is seen that the Financial Creditors with the largest claims have been two in numbers with the value of the claim admitted being Rs. 28,07,20,888/- and in relation to Financial Creditor who had been classified as Financial Creditors-Related Parties is to the extent of Rs. 10,19,51,258/-.

4. Further, M/S Gangpur Weavers Co-operative Spinning Mills Limited ("Gangpur") have been shown as other Secured Creditor-holding mortgage on earlier sale of assets of Corporate Debtor but however, the claim of the said person had not been initially admitted. In relation to Operational Creditors, it is seen that the claim amount which has been admitted by the IRP is to the extent of Rs. 37,37,416/- and in relation to the workmen & employees even though, the amount claimed aggregates to Rs. 5,55,68,080/- the claim admitted by the IRP is to the extent of Rs. 72,68,080/- due to remarks of non-compliance given by the IRP in its report. Registered valuers for the purpose of valuation of the assets of the Corporate Debtor and to determine the liquidation value of the Corporate Debtor had also been appointed, the names of the Registered Valuers

appointed by the IRP then and the RP presently, being one Mr. Subrata Ray, a Chartered Engineer & Govt. Registered Valuer and one M/s Tech Mech International Pvt. Ltd also being Govt. Registered Valuers.

5. On 19.12.2017, the First CoC meeting based on the above claims from the creditors seems to have been conducted by the IRP wherein, it is seen from the records that both the Financial Creditors had participated in the said meeting and the minutes of the First CoC meeting filed with RP discloses that the voting percentage of these two Financial Creditors aggregates to 98 per cent of the total claim made by the Financial Creditors. In addition to the above, two other Financial Creditors, are also disclosed in the minutes of the First CoC meeting held on 19<sup>th</sup> December, 2017 one being an individual Financial Creditor by the name of Mr. Sushil Kumar Patodia <sup>who</sup> ~~we~~ had also participated in the First CoC meeting holding ~~with~~ 0.2 per cent voting share in the said meeting. The IRP was requested by CoC in its first meeting to formulate a plan of action by the participants in the said meeting for revival of the Company and place the same before the CoC.

6. However, upon a discussion on Interim Finance, it was deferred in the said meeting as disclosed in the report filed vide Diary No. 2713/2018 dated 09.05.2018 with this Tribunal by the RP of the Second Meeting of

Committee of Creditors (CoC) which was held on 30<sup>th</sup> January, 2018 and the minutes in relation to the same has also been enclosed, where from it is seen that other than three Financial Creditors already mentioned as above who attended in the First CoC meeting, one other financial Creditor was also permitted to attend the said CoC meeting. Perusal of the minutes of the Second CoC meeting discloses that in relation to the classification of Gangpur Weavers Co-operative Spinning Mills Limited ("Gangpur") there had been a difference of opinion as to whether it should be classified as a 'Secured Financial Creditor' or as an 'Operational Creditor'. Upon a detailed consideration of the provisions of IBC, 2016, the CoC reiterated the said person as an Operational Creditor having more than 10 per cent of the total debt claims received up to 25.01.2018. It is also evident that the request for Interim Finance for a sum of Rs. 25,00,000/- for payment of salaries to staff and for essential services were also made by RP.

7. However, no obvious decisions have been taken in relation to the same and the Second CoC meeting also took note, it is reported, of the revised list of creditors as compiled by the Resolution Professional (RP) up to 25.01.2018, which shows that the Financial Creditors had claimed to the extent of Rs. 29,46,42,140/- which had been admitted. In relation to

related parties classified as a Financial Creditor, the aggregate amount of claims comes to Rs. 9,33,35,006/- and the operational Creditor classified as a Secured Creditor being Gangpur is to the extent of Rs. 39,54,98,000/- and Operational Creditor (Unsecured Creditor) including the dues to workmen aggregates to Rs. 2,56,17,990 thereby giving a grand total of claims which has been admitted against the Corporate Debtor of Rs. 86,16,30,246/-.

8. It is pertinent to note that the percentage of the Financial Creditors, save the related parties, is to the extent of 34.20 per cent of the total claims and that of the Operational Creditor (Secured) is to the extent of 45.90 per cent to that of the total percentage of claims admitted by the RP. On 30.04.2018, compliance affidavit filed discloses that publication of expression of interest in Form-G prescribed under Regulation 38(6)(A) of the Insolvency Resolution Process for Corporate Persons was published. Prior to the publication of the expression of interest, it is seen that the Third CoC meeting of the Corporate Debtor had been held on 17<sup>th</sup> March, 2018 wherein, the Financial Creditors having a majority of voting strength exceeding 90 per cent, namely Union Bank of India and Infosoft Global Pvt. Ltd. have been in attendance along with the representative of the Secured Creditor-Operational Creditor having more than 10 per cent of

voting strength in relation to the total claims namely Gangpur has also attended the Third CoC meeting. In relation to interim Finance, it is seen that no decision was taken by the CoC as seems to have been the case in the earlier meetings as well.

9. Further, another CoC meeting being the Fourth CoC meeting had also been held on 10<sup>th</sup> April, 2018 as evidenced from the Minutes annexed with Diary No. 2713/2018 dated 09.05.2018, which was attended by Union Bank of India having 91.40 per cent voting share in the CoC and in this meeting, seems to have been attended by the Secured (Operational Creditor).
10. Further, in the said Fourth CoC meeting a Budgeted Resolution Cost of Rs. 21,50,000/- seems to have been also approved and funding in relation to the same it is stated shall be made by Union Bank of India in a separate escrow account maintained for the said purpose.
11. In relation to the Information Memorandum, it is seen that the RP had reported before the CoC that some time may be required for its preparation as necessary information could not be obtained from the Corporate Debtor due to absence of right manpower and also the employees who had remained with Corporate Debtor becoming hostile due to non-payment of their salaries or wages as the case may be.



12. The RP, it seen had also apprised the fourth CoC about the necessity for obtaining the expression of interest or in other words, invitation of resolution plans to be made in Form-G and for which purpose a resolution matrix seems to have been also placed to assist the Resolution Applicants as noted above in paragraph supra. Pursuant to all these deliberations in the CoC, publication of expression of interest in Form-G was made on 30.04.2018.

13. In the meanwhile, as the 180 days period as contemplated for completion of CIRP under Section 12 of IBC, 2016 was approaching, it is seen from the records of this Tribunal that consequent to the resolution passed on 07.05.2018 by the Financial Creditors comprising the CoC having a voting percentage of 95.30 per cent had resolved to approach this Tribunal seeking for extension of the time period of the CIRP of the Corporate Debtor by 90 days and pursuant to the same based on an application which had been filed in CA No. 178/C-2/ND/2018, this Tribunal had ordered the period of CIRP to be extended by a further period of 90 days vide its order dated 17.05.2018 when the matter was pending before the New Delhi Bench of NCLT wherein the plea made by the Resolution Professional that there was a very good chance of Resolution of the Insolvency of the Corporate Debtor was made in the said application and

it was also brought to the notice of this Tribunal that nearly 600 families were facing a hardship and that the revival of the unit could mitigate the hardships faced by these families. Further, along with the application seeking for extension of CIRP process of the Corporate Debtor, learned RP had also annexed the confidential agreement based on the expression of interest by one M/s Phoenix ARC Pvt. Ltd. dated 7<sup>th</sup> May, 2018.

14. On 16.07.2018, pursuant to the order of this Tribunal extending the CIRP process of the Corporate Debtor by a further period of 90 days vide order dated 17.05.2018, the Sixth COC meeting seems to have been held on 16<sup>th</sup> July, 2018 and from the minutes it is evident that even though consequent to the invitation of the Resolution Plans under Sub-Regulation 5 of Regulations 36(A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, two Resolution Applicants who had shown interest in participating in the CIRP of the Corporate Debtor had subsequently backed out and had not submitted any resolution plan and that in the circumstances as timelines were first approaching, decision was also taken that in the light of the recent amendments made to the Insolvency Resolution Process for Corporate Persons Regulations 2016, w.e.f 04.04.2018 could not be given effect too.



15. Consequent to the above decision of the CoC, it is also evident from the minutes of the Sixth CoC meeting held on 16.07.2018 that representation has also been made by the Directors constituting the Board of the Corporate Debtor that the unit being an "MSME" and in the circumstances they are qualified to submit a Resolution Plan by virtue of amendments made to Section 29A of IBC, 2016 and based on the above representation it is recorded in the minutes of Sixth CoC that keeping in mind the spirit/provisions of IBC, 2016, the CoC consented for the submission of Resolution Plan by the Directors of the Corporate Debtor.
16. Consequent to this decision of the CoC, a Resolution plan was took forward by one Sh. Mayank Patodia and Sh. Prateek Patodia dated 04.08.2018 and it seems to have been considered by the COC in its Seventh meeting held on 4<sup>th</sup> August, 2018 and the persons who had submitted their Resolution plans were addressed with several queries by the major Financial Creditor being, Union of India who had also sought for some time to critically examine the Resolution Plan in the said meeting held on 04.08.2018.
17. In the circumstances, it is seen that the eighth meeting of COC was fixed on 8<sup>th</sup> August, 2018. Consequent to the decision on 4<sup>th</sup> August, 2018, the eighth meeting of COC on 8<sup>th</sup> August, 2018 was duly held, wherein by Item



No. 5 as reflected in the minutes of the 8<sup>th</sup> CoC meeting, the Committee of Creditors seems to have considered and dealt with the Resolution Plan to the following effect: -

At the outset, the RP informed the members that in the previous meeting held on 04.08.2018, a resolution plan was submitted by the Corporate Debtor to the Committee of Creditors which the Committee accepted for evaluation. Then RP invited the comments of the committee on the Resolution Plan submitted by the Corporate Debtor.

At this juncture, the representatives of Infosoft Global Private Limited questioned the eligibility of the Corporate Debtor in submitting a resolution plan claiming to be an MSME having turnover of less than 20 crores. They further mentioned that there were certain shortcomings in the said plan also.

At this stage, the Principal Financial Creditor, Union Bank intervened and stated that the submitted Resolution was not acceptable to the Bank and asked for the Resolution Plan to be put to vote.

The voting was conducted, and the voting pattern was as under: -

Strictly confidential

Minutes No. 08/(IB)-400(ND)/2017/08.08.2018

In the matter of Union Bank of India Vs. Ashoka Multiyarn Mills Ltd. (Corporate Debtor)

Sin.	Committee of Creditors	% voting share	Decision
1.	Union Bank of India	91.4%	Resolution Plan Rejected
2.	Infosoft Global Pvt. Ltd.	3.9%	Resolution Plan Rejected
3.	Sudhir Kumar Patodia	0.2%	Resolution Plan Accepted

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4.	Sudhir Kumar Patodia HUF	1.3%	Resolution Plan Accepted
5.	Sushil Kumar Patodia	0.2%	Resolution Plan Accepted
6.	Sushil Kumar Patodia HUF	1.2%	Resolution Plan Accepted
7.	Positive Management Pvt. Ltd.	1.8%	Resolution Plan Accepted
Total		100%	

Result of Voting:

Votes cast for approval of Resolution Plan:	4.7%
Votes cast against approval of Resolution Plan:	<u>95.3%</u>
	<u>100.0%</u>

Therefore, on the basis of the above voting results, the Resolution Plan submitted by the Corporate Debtor was rejected with 95.3% voting share.

In the above view of the matter, the Committee of Creditors recommend that under the provisions of the Insolvency and Bankruptcy Code, 2016, the Hon'ble NCLT be approached for issue of necessary orders for liquidation of the Corporate Debtor, Ashoka Mills Limited.

It is pertinent to note that the said meeting of Committee of Creditors, being the eighth Meeting held on 8<sup>th</sup> August, 2018, was attended by the representative of the Financial Creditor having 100 per cent voting share. In addition to the Board of Directors of the Corporate Debtor whose powers stood suspended by virtue of admission of the CIRP of the Corporate Debtor on 16.07.2018 were also in attendance in the said meeting.

18. Consequent to the above Resolution passed wherein the resolution plan stood rejected by voting strength of 98.30 per cent which is in excess of that prescribed under the provisions of IBC, 2016, the resolution

Professional has filed Vide Diary No. 183/2018 dated 13.08.2018 in consonance with the decision of the COC with the following prayers: -

- A. Pass an order for liquidation of the Corporate Debtor in accordance with the provisions under Section 33 of the Code.
- B. Pass an order for appointment of liquidator for liquidation of the Corporate Debtor.
- C. Pass such other order as this Hon'ble Tribunal may deem fit and proper in the facts of the present application.

19. In the meanwhile, since the Company Petition stood transferred from New Delhi Bench, NCLT to this Bench, namely, Jaipur Bench of NCLT, upon notice to the RP about the transfer, on 24.08.2018, the RP was represented by its counsel and it was brought to the notice of this Tribunal of all the above facts as well as submitted that in view of the completion of 270 days period contemplated for completion of CIRP which stood exhausted and also in view of the rejection of the sole resolution plan submitted by the Board of Directors of the Corporate Debtor as Resolution Applicants, the only course available is to put the Corporate Debtor in the liquidation mode. There was no representation on the part of the Resolution Applicants whose resolution plans stood rejected by the COC before this Tribunal either on the said date or on subsequent dates as well, when the matter was listed before this Tribunal on 14.09.2018 as well as on 12.10.2018. It is further evident from the order dated

14.09.2018 that the willingness of the Resolution Professional was sought for by this Tribunal, in case if the Tribunal decides to liquidate the Corporate Debtor as sought for and as to whether the RP will be ready to act as a Liquidator in relation to the Corporate Debtor and when the matter was posted for the personal appearance of the Resolution Professional on 12.10.2018 his answer was in the affirmative and expressed his consent to act as a Liquidator in relation to the Corporate Debtor, if so appointed.

20. We have carefully taken note of all the above facts, even though, going by the rationale of the Hon'ble Supreme Court in a judgment recently rendered in the matter of Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors in Company Petition No. 9582 of 2018 wherein it has been held that in the interest of the Corporate Debtor and other stakeholders, every opportunity should be given for the Resolution of the Corporate Insolvency of a Corporate Debtor and that the liquidation should be a last resort.

21. In the present instance, we find that the sole resolution plan filed by the Board of Directors of the Corporate Debtor, namely, Mr. Mayank Patodia, Mr. Pawan Kumar Patodia & Mr. Prateek Patodia respectively had been considered and rejected by the COC in the meeting held on 08.08.2018

based on the resolution which has been fully extracted as above in paragraph supra.

22. It is also evident that two persons who had initially shown interest by answering to the invitation of resolution plans, however, had subsequently withdrawn from submitting the resolution plans which would have enabled the COC to consider the same and come to a conclusion.

23. As against the claim made by the Creditors including the Financial Creditors, Operational Creditors whether secured or not aggregating to a sum of Rs. 86,16,30,246 the fair value as well as the liquidation value as made available to this Tribunal based on its direction by the Resolution Professional does not even come to 1/5<sup>th</sup> of the amount claimed, taking into consideration, both the fair value and as well as the liquidation value which falls well below the total claims. At the cost of repetition, the resolution of the CoC made on 08.08.2018 to go in for liquidation mode after rejecting the sole Resolution Plan of the directors whose powers stood suspended had not been challenged by any of the parties before this Tribunal and in the circumstances, taking into consideration the provisions of Section 33(1) of IBC, 2016 and in view of the period of CIR process having expired, namely, 270 days period and since no resolution

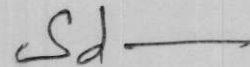


plan has been approved but on the other hand, the CoC has rejected the resolution plan under Section 31 of IBC, 2016 this Tribunal is constrained to pass an order requiring the Corporate Debtor, namely, Ashoka Multiyarn Mills Limited to be Liquidated in the manner as laid down under the provisions of IBC, 2016, more particularly given in Chapter III of IBC, 2016 and also in terms of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

24. Consequently, the Liquidator named being the present RP himself, namely, Mr. Pinaki Sircar having Registration No. IBBI/IPA-002/IP-N00063/2016-2017/10141 will act as the liquidator for the purpose of carrying forward the liquidation mode and is directed to issue a public announcement as envisaged under the provisions of IBC, 2016 read with Attendant Regulations stating that the Corporate Debtor is in liquidation and also communicate to Registrar of Companies, Jaipur forthwith, with whom the Corporate Debtor is registered in the register of Companies. Communication be also duly sent to the Income Tax Authorities as contemplated under Section- 178 of Income Tax Act, 1961 as well as to other revenue authorities which has a bearing on the operations of the Corporate Debtor. Liquidator to file reports from time to time before this

Tribunal as mandated and within the specific time period as contemplated under the provisions of IBC, 2016 and Regulations framed thereunder.

25. The CIRP of the Corporate Debtor comes to a close and moratorium granted under Section-14 of IBC, 2016 at the time of admission is also lifted. However, provisions of Section 33(5) and 33(6) of IBC, 2016 shall apply.



**(R.Varadharajn)**  
**Member(Judicial)**

**Vishwajeet Singh**