

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CA Nos. 9/2019 & 425/2018**

**IN**

**CP (IB) No.12/Chd/Pb/2018**

**(Admitted matter)**

**Application under Section 60(5)  
of the IBC**

**And**

**Application under Section 33 of  
the IBC**

**In the matter of:**

Kingfisher Industries Private Limited

...Corporate Debtor

Versus

ASREC (India) Limited

...Financial Creditor

**And in the matter of:**

**M/s Kapoor Woolen Mill,**  
through its Proprietor Shri Anil Kapoor,  
R/o 35-H, Ashok Nagar,  
Rishi Nagar, Ludhiana

...Resolution Applicant

**Order delivered on: 09.01.2019**

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)  
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Applicant : Mr. Karanveer Jindal, Advocate

For the Resolution  
Applicant : Mr. Pulkit Goyal, Advocate

For the Committee of  
Creditors : None.

**Per: R.P.Nagrath, Member (Judicial)**

**CA No. 9/2019**

**ORDER**

This is an application filed by M/s Kapoor Woolen Mill through its Proprietor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter to as the 'Code') seeking extension of time of Insolvency Resolution Process and to give permission to the applicant to submit the resolution plan.

2. Having heard learned counsel for the applicant at considerable length, we find that the application is frivolous and not tenable. We say this for the reason that the applicant cannot be an aggrieved person, who can maintain such a prayer before this Tribunal.

3. The petition under Section 10 of the Code titled Kingfisher Industries Private Limited Vs. Allahabad Bank, CP(IB) No.12/Chd/Pb/2018 was admitted by this Tribunal on 20.03.2018 declaring moratorium in terms of Section 14(1) of the Code and appointing Interim Resolution Professional on 27.03.2018. In the 6<sup>th</sup> meeting of the Committee of Creditors held on 11.09.2018 on Agenda Item No.5, the Committee after thorough discussion on the issue, resolved that in view of the non-cooperative attitude of the corporate debtor by not providing desired information to IRP/RP and there being several fraudulent transactions having been entered into by the corporate debtor, the application may be filed before the Adjudicating Authority for an order of liquidation in terms of Section 33 of the Code. The minutes of 6<sup>th</sup> meeting of COC are attached at Annexure-D with CA No.425 of 2018 filed by the

resolution professional with a prayer for passing of an order of liquidation of the corporate debtor. The period of 180 days as permissible for completion of the Insolvency Resolution Process under Section 12(1) of the Code expired on 16.09.2018.

4. The learned counsel for the applicant vehemently contended that the application could be filed for seeking extension of time beyond 16.09.2018 and that period in the normal course was to expire on 15.12.2018 but the Committee of Creditors did not pursue that cause. The learned counsel further submits that the period between the order of admission and the appointment of the Interim Resolution Professional may also be considered as excluded from the aforesaid total period.

5. We are of the considered view that the applicant who is a third person, has no locus standi to raise this contention, as an application for extension of the period of completing insolvency resolution process can only be moved by the resolution professional on the basis of decision of Committee of Creditors.

6. It is also not the version of the applicant, that in response to the publication inviting Expression of Interest, the applicant ever responded for his intention in submitting the resolution plan or in complying with the conditions laid down in the advertisement. The applicant has filed this application on 08.01.2019 much beyond even the period of 270 days of the commencement of insolvency proceedings.

7. Anyhow, the applicant cannot be an aggrieved person to raise all these issues. The learned counsel for the applicant has placed reliance upon

the judgment of the Hon'ble National Company Law Appellate Tribunal, New Delhi in **Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & others in Company Appeal (AT) (Insolvency) No.185 of 2018**. The Hon'ble Appellate Tribunal has laid down certain guidelines under which certain period could be excluded for calculating 270 days. Paragraph No.10 of the judgment of Hon'ble Appellate Tribunal reads as under:-

*“For example, for allowing good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-*

- (i) If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
- (ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.*
- (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.*
- (v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.*
- (vi) Any other circumstances which justifies exclusion of certain period.”*

8. That was a case in which the financial creditor had filed an appeal before the Hon'ble Appellate Tribunal for modification of an order dated 27.04.2018 passed by the Adjudicating Authority. So, in this situation the appellant before the Hon'ble Appellate Tribunal could be considered as an aggrieved person being a member of the Committee of Creditors. The Hon'ble

Appellate Tribunal in Paragraph No.9 of the judgment observed that the Resolution Professional or Committee of Creditors or any aggrieved person for justifiable reasons could seek extension of time and the Adjudicating Authority could exclude certain period for the purpose of counting the total number of 270 days. Case of the applicant, who is a third party, cannot be equated with the right of a financial creditor.

9. The learned counsel for the applicant has also referred to the judgment of National Company Law Tribunal, Kolkata Bench, Kolkata in the case of **RBL Bank Limited and others, CA(IB) No.270/KB/2017, CA(IB) No.238/KB/2018 and CA(IB) No.288/KB/2018 in CP(IB) No.170/KB/2017,** but that was also a case where there was a resolution plan and the dissenting financial creditors came up before the Tribunal for seeking certain directions for exclusion of the period. That case is also not helpful to the applicant who has approached the Adjudicating Authority much after the expiry of even 270 days.

10. We find that filing of the instant application is wastage of time of this Tribunal and the applicant, who is one among the members of the large society has no locus-standi and he must be dealt sternly by imposing exemplary costs while rejecting the application. The application is rejected with costs of ₹50,000/- (Rupees Fifty Thousand Only) to be deposited with the Mediation and Conciliation Centre of the High Court of Punjab & Haryana at Chandigarh within one month.

Copy of this order be supplied to the applicant as well as learned counsel for the Resolution Professional/Liquidator and in case the amount is

not deposited, the Resolution Professional or the Liquidator as the case may be is directed to take appropriate steps in ensuring the compliance.

CA No.9/2019 stands disposed of.

**CA No. 425/2018**

This application has been filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter to as the 'Code') for seeking order of liquidation of the corporate debtor on the basis of decision of Committee of Creditors held in the 6<sup>th</sup> meeting on 11.09.2018.

2. The petition under Section 10 of the Code bearing CP(IB) No.12/Chd/Pb/2018 filed by Kingfisher Industries Private Limited-corporate debtor was admitted by this Tribunal on 20.03.2018 and the moratorium was declared. By order dated 27.03.2018, the Interim Resolution Professional was appointed with certain directions.

3. The Resolution Professional moved an application i.e. CA No.185/2018 under Section 19(2) of the Code as there was allegedly non-cooperation from the Directors of the Suspended Board of Directors of the company and the Statutory Auditors. Thereafter, the only financial creditor constituting the Committee of Creditors filed CA No. 251/2018 for replacement of the Resolution Professional and the same was allowed on 31.07.2018. In CA No. 185/2018 directions already been issued and the said application is still pending for 25.01.2019.

4. It is stated in the application that the Resolution Professional has continued with Corporate Insolvency Process and conducted various meeting  
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of Committee of Creditors. In the meeting dated 11.09.2018 a decision was taken to liquidate the corporate debtor. It is submitted that the resolution professional prepared the information memorandum on 18.06.2018 and the expression of interest was invited by advertisement in Business Standard and in Punjabi Jagran dated 18.06.2018. Last date of submitting expression of interest was 27.06.2018.

5. It is further stated that the Resolution Professional received the interest from two proposed Resolution Applicants pursuant to the invitation in addition to the interest shown by the promoters of the corporate debtor. However, none of the Resolution Applicants was found eligible in terms of the criteria fixed by the Committee of Creditors as they failed to submit the refundable EMD amount and further the promoters of the corporate debtor were found ineligible in terms of the Section 29A of the Code. The decision was ultimately taken for liquidating the corporate debtor in the 6<sup>th</sup> meeting of COD held on 11.09.2018.

6. We have heard learned counsel for the Resolution Professional and perused the record.

7. It is submitted that the corporate debtor is not a going concern. It however, has some assets. Section 33(2) of the Code says that where the Resolution Professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a

liquidation order as referred in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code.

8. In the present case, the period of 180 days permissible under Section 12(1) of the Code was expiring on 16.09.2018 and no resolution plan complying with the conditions of the advertisement was submitted and ultimately the decision was taken by the Committee of Creditors to file an application for an order of liquidation.

9. When the matter was listed on 05.11.2018, it was submitted on behalf of the Resolution Professional that he has not given his consent as required under Section 34(1) of the Code, which is a mandatory requirement for his appointment as Liquidator. The Resolution Professional was thus, directed to amend the memo of parties for impleading the only financial creditor as a respondent. Accordingly, the Resolution Professional filed the amended memo of parties vide Diary No.4368 dated 12.11.2018 impleading ASREC (India) Ltd., the only financial creditor constituting the Committee of Creditors as the respondent. At the same time notice was also directed to be issued to the financial creditor.

10. When the matter was listed on 06.12.2018, the learned counsel for the Committee of Creditors filed the consent form in terms of Section 34 of the Code furnished by Mr. Tara Chand Sharma, the Resolution Professional, who is registered with IBBI bearing Registration No.IBBI/IPA-002/IP-N00218/2017-18/10670, giving the necessary particulars and we find the form to be in order. The Law Research Associate (LRA) of this Tribunal has also checked



credentials from the website of IBBI and it is informed that there is no adverse remark against him.

11. In view of the above, we order the liquidation of the corporate debtor Kingfisher Industries Pvt. Ltd. and appoint Mr. Tara Chand Sharma, bearing Registration No.IBBI/IPA-002/IP-N00218/2017-18/10670, as Liquidator for the purposes of liquidation of the corporate debtor in terms of Section 33(2) of the Code. His appointment will take effect from the date of receipt of copy of this order.

12. It is further observed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- (ii) That the provisions of sub-section (5) of Section 33 of the Code 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;
- (iii) That this order of liquidation under Section 33 of the Code 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;

- (iv) That 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 liquidator; and
- (v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

13. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

14. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

- “(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
- (b) on the website, if any, of the corporate debtor; and*
- (c) on the website, if any, designated by the Board for this purpose.”*

15. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

16. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

17. It is directed further that the entire record of the company, the assets, the minutes of the meeting, copies of the progress reports, another related record shall be handed over by the Resolution Professional to the Liquidator and the Liquidator shall take charge of the aforesaid property and the record by preparing the appropriate inventory on proper receipt.

18. The Resolution Professional would be at liberty to file his claim for his fee before the Liquidator who shall take appropriate steps at the earliest.

Copy of this order be supplied to the counsel for the Resolution Professional and copy be also sent at the e-mail address of Mr. Tara Chand Sharma as well as to the Registrar of Companies, Punjab and Chandigarh by the Registry.

CA No. 425/2018 stands disposed of.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

January 9, 2019  
Yashpal