

Sr. No. 23/2021

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

**Coram: MR. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER**

**MR. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IA No. 296/JPR/2020

In

CP No. 17/7/JPR/2018

**UNDER SECTION 33 and 34 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

IN THE MATTER OF

Reliance Commercial Finance Limited

...Financial Creditor

VERSUS

Maximum Synthetics Private Limited

...Corporate Debtor

AND IN THE MATTER OF

IA No. 296/JPR/2020

**Satyendra Prasad Khorania,
Resolution Professional of Maximum Synthetics Private Limited
Office at: 402, 4th Floor, OK Plus DP Metro,
Opp. Pillar No. 94, New Sanganer Road,
Jaipur-302019, Rajasthan**

...Applicant

For the Applicant: Mr. Amol Vyas, Adv.

Order Pronounced On: 09.02.2021

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Jaipur**
10.02.2021

ORDERPer: Shri Raghu Nayyar, Technical Member

1. The instant Application IA No. 296/JPR/2020 is filed by the Resolution Professional for Maximum Synthetics Private Limited ('Applicant / RP') under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 ('Code') for initiation of liquidation proceedings against Maximum Synthetics Private Limited ('Corporate Debtor').
2. The Adjudicating Authority vide order dated 17.05.2019 had admitted the application filed by Reliance Commercial Finance Limited under Section 7 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Rajiv Sharma as Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP constituted the CoC. The first meeting of the CoC was held on 12.06.2019, wherein the CoC unanimously resolved to replace the IRP i.e. Mr. Rajiv Sharma. Consequently, Mr. Satyendra Prasad Khorania was appointed as Resolution Professional ('RP') by this Adjudicating Authority vide its order dated 12.07.2019. It is also seen that RP had appointed two registered valuers to determine fair and liquidation values in accordance with Regulation 35 of the CIRP Regulations.

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4. It is submitted that the RP had initially done publication of Form G on 30.07.2019 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor and thereafter, since no resolution plan was received, again effected publication on 31.08.2019 and 23.11.2019 as resolved in the 3rd and 4th CoC meetings held on 28.08.2019 and 11.11.2019 respectively. Still, no resolution plan was received. In the 5th meeting of CoC, held on 29.02.2020, it was resolved to again issue a fresh invitation of the EOI. Accordingly, on 03.03.2020, the RP had again published Form G and called for EOI. Pursuant to the fresh EOI, two resolution plans were received from Mr. Vinod Kumar Jain with Ecco Industrial Town Ltd. (Jointly) and Royalene Sulz Pvt. Ltd.
5. It is submitted that RP convened the 6th meeting of CoC on 27.07.2020, to discuss the plan in detail and to seek vote of COC on the plan. After discussion and deliberation, it was decided by the COC members that the resolution applicants be given a chance to revise the plan in terms of value and time. Subsequently, the revised resolution plan was discussed in the 7th CoC meeting held on 31.07.2020 but both the plans were rejected unanimously for the reasons that the amount offered by the resolution applicants is much lesser than the valuation as well as the total dues of the Corporate Debtor. Copy of minutes of 6th and 7th meetings of CoC are annexed as Annexure 11 and 12 of the Application. Thus, in the 8th meeting

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of CoC held on 11.09.2020, the members had unanimously resolved to liquidate the Corporate Debtor. Copy of the minutes of 8th meeting of CoC is annexed as Annexure 13 of the Application.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows: -

"33. Initiation of liquidation. -

(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 creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the

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Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)''

7. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

8. **Prescribed period for filing application** - In the present case, the application under Section 7 of Code was admitted on 17.05.2019 and the present application is filed by the Resolution Professional on 28.09.2020. The time period elapsed between filing an earlier application (IA No. 275/JPR/2019) under Section 19(2) of Code from 28.08.2019 to 13.11.2019, i.e. total of 78 days was excluded from CIRP period vide order dated 15.11.2019. Thereafter vide order dated 29.01.2020, period of CIRP was extended by 90 days from 30.01.2020. The said extended CIRP period was ending on 29.04.2020.

9. In view of emerging situation of COVID-19 pandemic the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s). 3/2020* in

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Re: cognizance for extension of Limitation, vide order dated 23.03.2020,
passed following order: -

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

10. The Hon'ble National Company Law Appellate Tribunal in *Suo Moto- Company Appeal (AT) (Insolvency) No. 01 of 2020* vide order dated 30.03.2020, observed as under: -

"Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various persons, who were unable to physically file the same on account of

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complete lockdown declared by Government with effect from 25th March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in *Suo Motu Writ Petition (Civil) No(s).03/2020*, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in "*Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018*" decided on 8th May, 2018 do hereby order as follows: -

(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal."

11. Thereafter, the Insolvency and Bankruptcy Board of India, inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29.03.2020 and the same is as under:-

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“40C. Special provision relating to time-line

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process”

12. Similarly, the Insolvency and Bankruptcy Board of India, vide notification dated 20.04.2020, inserted Regulation 47 A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the said regulation reads as under:-

“Exclusion of period of lockdown

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process.”

13. In the circumstances, despite considering exclusion till 30.06.2020 and even in exceptional circumstances further exclusion of CIRP period till 31.07.2020, the instant Application and approval for filing the same by the CoC is beyond the CIRP period. There is no prayer for further extension or exclusion in the instant or any other application(s). In view thereof the Application under consideration is taken up under Section 33(1). Irrespective of the applicable sub-section under Section 33, this leads to liquidation of the Corporate Debtor.

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14. **Appointment of Liquidator and fee to be paid**– Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation. The relevant provisions of Sections 34(1) of the Code are as follows: -

“(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under [Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form,] shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under subsection (4).”

15. The present RP Mr. Satyendra Prasad Khorania is eligible to be appointed as Liquidator. The CoC had resolved to appoint the RP as the Liquidator. However, it is noted that liquidation proceedings herein, albeit not at the instance of CoC, due to expiry of CIR period, are automatically initiated due to prescription of statute. We do not find any reason to replace the existing RP. Mr. Satyendra Prasad Khorania, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 has filed his consent in Form -AA dated 11.09.2020 (Annexure A-14). Thus, Mr. Satyendra Prasad Khorania is appointed as the Liquidator.

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16. It is noted that status of the CoC members is rather uncertain after expiry of the CIR period. However, the Liquidator has to deal with the constituent members in their capacity as creditors. It is also seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
17. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The COC in its 8th meeting held on 11.09.2020 has not decided the estimated liquidation cost, rather concluded that the liquidation costs will be taken on actual basis which will be approved by the stakeholders committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the CIRP (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
18. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – The RP apprised the COC in its 8th meeting about Regulation 39C of CIRP Regulation, 2016. The members of CoC discussed and rejected the resolution to sell the Corporate Debtor as a going concern, as first option, or sell the business(s) of the Corporate Debtor as a going concern, as second option, before exploring other options as per Regulation 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation

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39C of CIRP Regulations, if an order of liquidation is passed by the Adjudicating Authority. Further the representative of State Bank of India had expressed that they might not relinquish the properties/ assets mortgaged with them and will realize the assets as per the provisions of SARFAESI Act.

19. Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016) –

In the 8th meeting of the CoC while passing a resolution for the fees of the Liquidator as per Regulation 39D of CIRP Regulations, the representative of SBI again stated the fact that they might not relinquish the assets mortgaged. Since, majority of assets have been mortgaged with the State Bank of India, the fees of the Liquidator cannot be paid as per the Regulation 39D as there will be no or negligible assets for the Liquidator to realise. Thus, the members of CoC after discussion have not passed the resolution. However, in the same meeting the members passed the resolution approving the fee of the Liquidator and fixed it to be Rs 74,000/- p.m. until dissolution of the Corporate Debtor.

20. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, Maximum Synthetics Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

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(i) 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 by or 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) 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; and

(iii) 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; and

(iv) 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) 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

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Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.

(vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the CIRP (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 stakeholders 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.

(vii) The announcement shall be published in accordance with Regulation 12(3) of the CIRP (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the CIRP (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15.

21. **Pending Applications, if any, and its / their effect-** It is seen that following IAs filed by RP before the Adjudicating Authority are pending:

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Sr. No.	IA NO.	SECTION	PRAYER
1	IA No. 275/JPR/2019	Under Section 19(2) of Code	To direct the Suspended Directors of the Corporate Debtor to provide all documents in record and also to cooperate with the RP.
2	IA No. 366/JPR/2019	Under Section 43 of Code	To declare certain transactions as preferential transaction and also to direct the respondent to reverse back such transactions.
3	IA No. 390/JPR/2019	Under Section 66 of Code	To declare certain transactions as fraudulent transactions and also direct the Respondents to reverse such transactions.

Since the above stated pending IA No. 275/JPR/2019, IA No. 390/JPR/2019 and IA No. 366/JPR/2019, have bearing on the issues in liquidation proceedings, they are directed to be listed along with the CP No. 17/7/JPR/2018 when the matter is next placed before this Adjudicating Authority. If so advised, the Liquidator may move appropriate applications for prosecution of the said applications by a suitable person / entity instead of the RP.

IA No. 111/JPR/2020: It is further seen that IA No. 111/JPR/2020 was filed by the RP to report the minutes of 5th meeting of CoC. The same was last listed on 19.03.2020 but could not be taken up further and is pending. The items of the said meeting of CoC and aspects related thereto have been considered in this Order. The same is not required for any further reference.

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Thus IA No. 111/JPR/2020 is also disposed of along with this order in IA No. 296/JPR/2020.

22. In view of the foregoing, IA No. 296/JPR/2020 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd—

**Mr. RAGHU NAYYAR,
TECHNICAL MEMBER**

Sd—

**Mr. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER**



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