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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA/(IBC)/2156/CHE/2023 in CP/IB/159(CHE)/2021

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of PKP Spintex Mills Private Limited

Santhanam Rajashree
Interim Resolution Professional of
PKP Spintex Mills Private Limited
B-1102, Metrozone, Anna Nagar,
Chennai – 600 040

... Applicant /Resolution Professional

Present:

For Applicant : *Raj Kumar Jhabakh, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 22nd November 2023

ORDER

(Heard through Video Conferencing)

This is an application filed under Section 33(2) and 60(5) of the
Insolvency and Bankruptcy Code, 2016 seeking reliefs as follows:

- (i) *That this Hon'ble Adjudicating Authority may be pleased to pass an order for Liquidation of the Corporate Debtor viz. M/s. Shri PKP Spintex Mills Private Limited*
- (ii) *That this Hon'ble Adjudicating Authority may be pleased to pass an order by appointing Mr. R. Raghavendran (IBBI/IPA-001/IP-P00211/2017-18/10411) as Liquidator*

for administering the Liquidation process of the Corporate Debtor; and

(iii) To pass such orders as this Hon'ble Tribunal may deem fit and necessary in the nature and circumstances of this case.

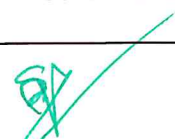
2. It is submitted that pursuant to an application filed under Section 7 of IBC 2016, the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor viz. M/s. PKP Spintex Mills Private Limited, by this Tribunal vide order dated 09.11.2022 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. It is stated that the Applicant made a Public Announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 16.11.2022.

4. It is submitted that based on the claims received from the stakeholders, the Applicant verified the claims and filed the report of constitution of the Committee of Creditors ("CoC") with this Tribunal on 30.11.2022 in due compliance with Regulation 17(1) of the IBBI (CIRP) Regulations, 2016.

5. It is submitted that the 1st CoC meeting was held on 01.12.2022. The Applicant had placed the resolution for appointment of the Interim Resolution Professional as the Resolution Professional and the same was approved by the CoC. Thereupon, the Applicant had pursuant to Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made the Publication of Invitation for Expression of Interest in Form G in "The New Indian Express" on 18.01.2023 fixing the last date for submission of Resolution Plan as 20.03.2023. The Applicant thereafter requested for extension of the time period for submission of Resolution Plan which was considered and approved at CoC meetings held on 21.03.2023 and 20.04.2023 until 28.04.2023.

6. It is submitted that the Resolution Plan from Prospective Resolution Applicant was finally submitted before CoC on 03.05.2023. However, due to the expiry of the 180 days' time frame for completion of CIRP period ending on 07.05.2023, the Applicant obtained an approval from the CoC on 02.05.2023 and thereafter preferred an application praying for the extension of the time period of CIRP by 90 days up to 05.08.2023. The said application was approved by the this Tribunal on 19.06.2023 and the CIRP was extended until 05.08.2023.



7. It is submitted that the CoC deliberated on the Resolution Plan placed before it by the Prospective Resolution Applicant and rejected the same in the 15th CoC Meeting held on 21.07.2023. Thereafter, the CoC in the same meeting discussed and unanimously decided to seek a further extension by 60 days to issue another Form G seeking resolution plans so that the Corporate Debtor can be revived in line with the objectives of the Code and liquidation should be the last resort.

8. In the meantime, the Applicant filed an application before this Tribunal seeking extension of CIRP period from 05.08.2023 to 04.10.2023 for a further period of 60 days. This Tribunal vide Order dated 03.08.2023 allowed the said application and the CIRP period was extended until 04.10.2023.

9. Thereafter, the Applicant issued a fresh Form G on 04.08.2023. The last date of receipt of the Resolution Plan by prospective resolution applicants was fixed on 25.09.2023.

10. It is submitted that on 25.09.2023, the Applicant received 1 (one) Resolution Plan from M/s. Annapoorani Textiles Private Limited. It is stated that the suspended director of the Corporate Debtor Mr. Pounraj

approached the CoC for a 12A settlement proposal. Therefore, in order to scrutinize and analyze the said Resolution Plan and the 12A proposal as per the Code, the Applicant filed an Application seeking extension of CIRP period beyond 330 days from 05.10.2023 until 03.11.2023 for an additional period of 30 days. This Tribunal vide its order dated 09.10.2023 extended the CIRP period for 30 days till 03.11.2023.

11. Thereafter, the CoC extensively discussed and analyzed the Resolution Plan submitted by the Prospective Resolution Applicant as well as the OTS Proposal by the suspended director. As far as the Resolution Plan, it was noticed by ARCIL, one of the members of the CoC that the value of the Resolution Plan is much below the liquidation value. Therefore, while ARCIL, one of the member of the CoC resolved to reject the Resolution Plan in their commercial wisdom, SBI abstained from voting as they had not received decision from their Corporate Office. Regarding the OTS Proposal, the Applicant received an email from ARCIL, one of the CoC members holding a voting share of 29.03% informing that they are in approval of the proposal by the suspended director. However, SBI, holding 70.97% voting share informed the Applicant that the said proposal submitted by Mr. Pounraj was rejected by their committee without sanction.

12. Considering the above-mentioned, the CoC in its 20th CoC Meeting dated 01.11.2023 passed a resolution to reject the said Plan. It is stated that CoC upon left with no options whatsoever, unanimously decided to recommend the Corporate Debtor to liquidation and the same was approved with 100% voting power. It has been resolved that, as per Section 33 of the IBC, the Corporate Debtor is to be liquidated and the Applicant shall file an application before this Tribunal praying for Liquidation of the Corporate Debtor.

13. It is submitted that the CoC has also recommended to appoint Mr. R. Raghavendran as the Liquidator of the Corporate Debtor in accordance with the IBC. The said Liquidator has also provided the written consent to act as the Liquidator of the CD in Form AA. Further Authorization for Assignment for the said Liquidator is valid till 29.10.2024.

14. The Applicant has also filed the Compliance Certificate in Form H under Regulation 39(4) of the Ibbi (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on and the same is appended as Annexure 15.

15. Heard the submissions made by the Learned Counsel for the Applicant.

16. It is seen that the CoC in its wisdom rejected a Resolution Plan on the ground that the Resolution Plan is less than the Liquidation value. The Settlement proposal of the promoter under Section 12A of IBC, 2016 was considered and rejected by the CoC. Under such circumstances, the CoC, left with no other option, unanimously passed a Resolution to liquidate the Corporate Debtor. Further, the Hon'ble Supreme Court in the matter of **K. Sasidharan –Vs– Indian Overseas Bank (2019) SCC OnLine SC 257** has held that the commercial wisdom of CoC in approving / rejecting a Resolution Plan or for recommending for Liquidation of the Corporate Debtor cannot be subjected to judicial review by the NCLT.

17. As a consequence, the Corporate Debtor is ordered for liquidation as per Section 33(1)(a) of IBC, 2016. **Mr. R. Raghavendran** with *Reg. No. IBBI/IPA-001/IP-P00211/2017-2018/10411* is appointed as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

18. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

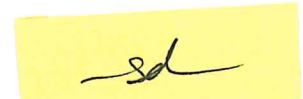
19. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

20. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

21. With the above said directions, this IA(IBC)/2156/CHE/2023 filed for Liquidation of the Corporate Debtor stands **allowed**.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond