



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

IA (IB) No. 348/CB/2023

IN

CP (IB) No. 18/CB/2023

[An Application under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 39B, 39C, and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016]

In the matter of:

PAYAL AGARWAL

Reg Number: IBBI/IPA-001/IP-P-02254/2021-2022/13571

Registered address:

Old College Lane, Nimchouri,

Cuttack-753002, Odisha

Resolution Professional of

Roopam Textiles Pvt. Ltd

.....Applicant/Resolution Professional

Roopam Textiles Pvt. Ltd.

CIN No.: U18101OR2004PTC007579

Having its registered address at:

One Janpath Kharvela Nagar, Bhubaneshwar,

Dist: Khurda- 751002, Odisha

.....Respondent/Corporate Debtor

Order Pronounced on: 25.04.2025

**Coram: DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)
BANWARI LAL MEENA, MEMBER (TECHNICAL)**

Appearance:

For Applicant: Jaish Joshi, Advocate

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ORDER

1. This Application bearing IA (IB) No. 348/CB/2023 is filed by Payal Agarwal, Resolution Professional ("**Applicant**" / "**RP**") for Roopam Textiles Pvt. Ltd ("**Corporate Debtor**") under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for passing an order of Liquidation.
2. It is seen that the Corporate Debtor itself had filed an Application under Section 10 of the Code seeking initiation of the Corporate Insolvency Resolution Process ("**CIRP**"). This Adjudicating Authority *vide* order dated 31.07.2023 in CP (IB) No. 18/CB/2023 admitted the said application and appointed Payal Agarwal as the Interim Resolution Professional ("**IRP**").
3. In compliance with the provisions of the Code, the IRP constituted the Committee of Creditors ("**CoC**") comprising the sole Financial Creditor, Canara Bank. The 1st meeting of the CoC was held on 29.08.2023, at which the appointment of IRP as the RP was approved with 100% voting by the members of the CoC.
4. It is submitted that the Applicant published Form-G under Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. However, it did not receive any Expression of Interest ("**EOI**").
5. Thereafter, the CoC in its 4th meeting held on 04.11.2023 approved for the Liquidation of the Corporate Debtor with a 100% vote in accordance with Section 33(2) of the Code. The Applicant has further submitted that in case this Adjudicating Authority passes the order of Liquidation of the Corporate Debtor, then the Applicant, be allowed to act as a Liquidator of the Corporate Debtor. In this regard, the Applicant has filed her written consent to act as a Liquidator in Form AA with the present Application.

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6. During the course of the hearing of this Application, it was observed by this Adjudicating Authority that the Applicant has not furnished any particulars regarding compliance with Regulation 39B, 39BA, 39C, and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. As a result, this Adjudicating Authority vide order dated 08.01.2024 directed the Applicant to furnish the details about the compliances made concerning the abovementioned Regulations.

7. In furtherance of this, the Applicant filed an Additional Affidavit dated 22.04.2024, by which the Applicant has placed on record the minutes of the meeting of the 12th CoC meeting held on 10.04.2024 which reflects the CoC's deliberations on Regulation 39B, 39BA, 39C, and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 concerning the present Corporate Debtor.

8. The deliberations of the CoC regarding Regulation 39B, Regulation 39BA, Regulation 39C, and Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are summarised below:

- (i) **Meeting Liquidation Cost (Regulation 39B):** As per the CoC, the best estimate of the amount required to meet the liquidation costs is **Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand Only)**, and the best estimate of the value of the liquid assets of the Corporate Debtor is **Rs. 1,93,395/- (Rupees One Lakh Ninety-Three Thousand Three Hundred Ninety-Five Only)**. Therefore, the estimated value of the liquid assets is less than the estimated liquidation costs, hence, the CoC has resolved to bear the difference amount of liquidation costs, i.e., **Rs.**

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4,56,605/- (Rupees Four Lakhs Fifty-Six Thousand Six Hundred Five Only).

(ii) **Assessment of Compromise or Arrangement**

(Regulation 39BA): In the present case, the CoC has decided not to recommend any compromise or arrangement as referred to under sub-regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

(iii) **Assessment of sale as a going concern (Regulation 39C):**

As per this Regulation, the CoC shall consider/discuss the selling of the Corporate Debtor as a going concern or the selling of the business of the Corporate Debtor as a going concern. In this regard, the CoC has opined that the Corporate Debtor is not a going concern, and it would be difficult to identify any of its assets that could be sold as a going concern.

(iv) **Fee of the Liquidator (Regulation 39D):** The CoC in its 12th meeting held on 10.04.2024, has made an estimate of Rs. 3,50,000/- towards the fee payable to the Liquidator concerned.

9. Further, vide order dated 26.07.2024, this Adjudicating Authority directed the Applicant to furnish the details of the claims filed by the Financial Creditors and the Operational Creditors, as well as a copy of the balance sheet reflecting the assets and liabilities of the Corporate Debtor. In compliance with the order dated 26.07.2024, the Applicant filed an Additional Affidavit dated 21.08.2024, by which claims of the Financial Creditors and Operational Creditors, as well as audited financial statements of the Corporate Debtor, are placed on record by the Applicant.

10. We have heard and considered the arguments of the learned counsel for the Resolution Professional and perused the records &

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affairs of the Corporate Debtor and the relevant provisions of Section 33(1) of the Code, which are stipulated 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.”

11. The Learned National Company Law Appellate Tribunal, in **Praveen Kumar Nanda Kumar v. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 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 the 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”.

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12. It is to be ascertained whether the present Application is filed within the stipulated timelines. In the present case, the Application under Section 10 of the Code was admitted on 31.07.2023 by this Adjudicating Authority, and the RP filed the present Application on 16.11.2023. Hence, the present Application is filed within the prescribed period.

13. It is relevant to reproduce Section 33(2) of the Code, which is as under:

“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).”

14. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of the Resolution Plan approaches the Adjudicating Authority with the decision of the CoC approved by not less than sixty-six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case, the CoC, with 100% votes, approved the resolution for the liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation of the Corporate Debtor under Section 33(2) of the Code. For the aforesaid reasons, **IA (IB) No. 348/CB/2023** is **ALLOWED**.

15. We observe that the Applicant/Resolution Professional has given her consent to act as the Liquidator of the Corporate Debtor, which has been approved by the CoC at its 4th meeting. However, the Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-

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12011/214/2023-IBBI/840 dated 18/07/2023 has recommended that an Insolvency Professional other than the Resolution Professional/Interim Resolution Professional may be appointed as Liquidator in all the cases where a Liquidation order is passed.

16. However, we are of the view that, since CoC has resolved to appoint the Applicant/Resolution Professional as the Liquidator for the Corporate Debtor and we are of the opinion that it is in the best interest of the Corporate Debtor to proceed with the current Resolution Professional as the Liquidator of the Corporate Debtor.

17. As aforesaid, **IA (IB) No. 348/CB/2023** is **ALLOWED** with the following directions:


(i) The Corporate Debtor, Roopam Textiles Pvt. Ltd is ordered to be liquidated with immediate effect under Section 33 (2) of the Code.

(ii) **Payal Agarwal**, having IBBI Registration No. **IBBI/IPA-001/IP-P-02254/2021-2022/13571**, having address at: Old College Lane, Nimchouri, Cuttack-753002, Odisha, e-mail ID: agarwalpayal2008@gmail.com, is hereby appointed as the Liquidator of the Corporate Debtor. This appointment is subject to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

(iii) The Liquidator's fee shall be paid in accordance with relevant laws and regulations, and in particular, as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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(iv) The Liquidator shall initiate the liquidation process as envisaged under Chapter III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(v) The Liquidator is directed to adhere to Section 33(1)(ii) & Section 33(1)(iii) of the Code and discharge her powers and duties as specified under Section 35 to 41 of the Code and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

(vi) The Liquidator is directed to cause a Public Notice as contemplated under Section 33(1) of the Code stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments, such as Income Tax, GST, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order promptly. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workmen/employees can also be informed of this liquidation order through their association.


(vii) All the powers of the Board of Directors of the Corporate Debtor and its key managerial personnel shall cease to exist as per Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.

(viii) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.

(ix) On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be

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instituted by or against the Corporate Debtor, save and except the liberty to the Liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

(x) In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

(xi) In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies-cum-Official Liquidator, Odisha, at Cuttack, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies-cum-Official Liquidator, Odisha, at Cuttack.

(xii) This Application bearing **IA (IB) No. 348/CB/2023** shall stand disposed of in accordance with the abovementioned directions.

(xiii) The Registry is directed to send e-mail copies of the order forthwith to all the parties.

(xiv) A Certified Copy of this Order may be issued, if applied for, upon compliance with all requisite formalities.



BANWARI LAL MEENA
MEMBER (TECHNICAL)



DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)