

SL.No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 30.06.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/739/2023 in CP (IB) No.166/7/HDB/2019
NAME OF THE COMPANY	Suryajyothi Spinning Mills Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Suryajyothi Spinning Mills Ltd
UNDER SECTION	7 of IBC

ORDER

This application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.739 of 2023 in
CP(IB) No.166/7/HDB/2019
Under Section 60(5) of IBC, 2016

In the matter of:

State Bank of India,
SAM Branch,
H.No.5-9-76, 2nd Floor,
Prabhat Towers, Opp: Amaravathi LHO,
Chapel Road, Gunfoundry,
Hyderabad – 500 001.

.... Applicant

Vs.

Dr. Kondapalli Venkat Srinivas,
Liquidator of M/s. Suryajyothi Spinning Mills Limited,
#402, 4th Floor, 6-3-249/6,
Alcazar Plaza & Towers,
Road No.1, Banjara Hills,
Hyderabad – 500 034.

.... Respondent /
Liquidator

Date of order: 30.06.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Mr. V.V.S.N. Raju, Advocate

Respondent/Liquidator : Dr. Kondapalli Venkat Srinivas,

Heard on : 19.06.2023

[PER: BENCH]
ORDER

1. This application is filed by the State Bank of India against the Respondent who is the Liquidator of the Corporate Debtor (CD) M/s. Suryajyothi Spinning Mills Limited, seeking to replace the Liquidator with one Mr. Madhusudhan Rao Gonugunta.

2. Briefly, the facts so far as relevant to decide this application, are as follows:
 - a. The Applicant has filed an application, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the CD and the application was admitted. IRP was appointed and the CoC confirmed him as Resolution Professional (RP) in its first meeting held on 10.10.2019. Later on, the CD was ordered for liquidation. As no Resolution was passed by the Committee of Creditors (CoC) for appointment of RP Mr. Ram Ratan Kanoongo as the Liquidator and as his name was not found in the list of the Insolvency Professionals for the State of Telangana, the present Liquidator Dr. Kondapalli Venkata Srinivas was appointed as the Liquidator of the CD.

- b. The present Applicant is holding majority voting share in the CoC and hence this application is filed, seeking for the change of Liquidator. Even in the first meeting of stakeholders held on 26.04.2023, the Applicant stated that they are willing to change the Liquidator and when opinion was sought by the Applicant with the other lenders, they also indicated that as SBI is the lead banker, they will go by the decision of the lead Bank.
- c. For change of Liquidator, the Applicant has to follow the procedure under the provisions of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016. The Liquidator is sought to be changed due to lack of confidence and that the Liquidator herein drags the process of liquidation which may lead to lower realization of value of assets of the CD. It is clarified that the Applicant is not levelling any allegations or incompetency on the part of the Liquidator. However, as public money is involved at large, with the commercial wisdom, the Applicant is seeking to change the Liquidator.
- d. The Liquidator filed his Counter contending that the application is not maintainable and that without levelling any allegations, the change of the Liquidator cannot be permitted. It is further stated that the Applicant is not co-operating in transacting the regulatory

business as mandated under Regulation 31A(1)(a) to (e). As on date, the Applicant had neither filed its claim or relinquished its security interest to be part of the Consultation Committee for taking any steps further.

- e. The Liquidator was appointed by the Tribunal, but not by any suggestion from the stakeholders. The Liquidator after receiving the Order of his appointment, complied with the requirements of the code and conducted the proceedings within given timelines. Liquidator called for a meeting within 7 days of liquidation commencement date. Before taking up the agenda items, the Applicant wanted to know how the Liquidator was appointed, when they have not recommended for his appointment. When the Applicant expressed his grievance on the appointment of the Liquidator, the Liquidator suggested that he has to approach the Honb'le NCLAT by way of an appeal. When the Applicant enquired whether he can replace the appointed Liquidator, the Liquidator suggested that he can do so after he constitutes the Stakeholders Consultation Committee (SCC) in accordance with the provisions of Regulation 31A(1)(a) and after collating the claims received from the creditors.

- f. The Applicant enjoying the majority voting rights of 73.76%, instead of complying with the requirements of the Code and extending its cooperation, moved this application. The replacement of the Liquidator was not put to vote as mandated under Regulation 31A(11) and 66% of the voting should be there for change of Liquidator. The Applicant ought to have waited till the constitution of SCC. The application is premature, hence is liable to be dismissed.
3. Heard both the Counsel and perused the written submissions filed on either side. In the written submissions, both the Counsel reiterated the contents of the pleadings.
4. Both sides have relied on certain judgements in support of their respective contentions. The judgement relied upon by the Appellants rendered by the *Hon'ble NCLAT, Chennai in Company Appeal (AT) (CH) (INS) No.319/2022 in the matter of Dr. K.V. Srinivas, Resolution Professional of M/s. Sainath Estates Private Limited*, would help us in deciding the issue.
5. Before appreciating the judgement, it can be seen that there is no provision for change of Liquidator as in the case of the

Resolution Professional which is under Section 27 of the I & B Code. But the discretion for the Adjudicating Authority to change the Liquidator is always vested in it. Here is a case where, without throwing any aspersions on Liquidator, the Applicant who is the majority stakeholder wishes to change him on the ground that, he would protract the proceedings. As to how, he could form that opinion is not evident, but the fact remains that he has no confidence on the Liquidator. The liquidation process can be effectively carried forward, only when there is complete confidence between the SCC and the Liquidator.

6. The contention of the Counsel for the Liquidator is that unless SCC is constituted within 60 days and unless a Resolution is passed for change of the Liquidator, the Liquidator cannot be changed. But in our considered opinion, when there is no provision for change of Liquidator and when it is only with the discretionary powers of the Tribunal, the change of Liquidator can be effected, constitution of the SCC cannot be taken as a pre condition for change of the Liquidator.
7. The Application against the CD was moved by the Applicant himself. The present Liquidator got to be appointed, as the name proposed by the Applicant was not found in the list of the

Insolvency Professionals for the State of Telangana. If the Applicant had named another Liquidator, the Adjudicating Authority would have appointed the said person. Since, no opportunity was provided to the Applicant while the Liquidator was being appointed, he had to file this Application for change of the Liquidator. The Hon'ble NCLAT, Chennai in the above cited case observed as follows:

“Be that as it may, that in the present case, despite, the fact that the Minutes of the Joint Lenders Meeting, that took place on 26.04.2022, were silent as regards the Lenders Expression of Dissatisfaction, relating to the Discharge of Duties, by the Resolution Professional and therefore, another Individual, be Replaced and Appointed, to function as Liquidator, there is no embargo in Law, for the Replacement of present/current Resolution Professional as Liquidator, by another Resolution Professional, on grounds/reasons, other than those specified under Section 34(4) of the I&B Code, 2016 (especially, when the Lenders in their commercial decision and wisdom, had opted for such a Replacement of the existing Resolution Professional, as Liquidator by another Resolution Professional, which carries due weightage and the same cannot be brushed aside so lightly.

It also observed that the Adjudicating Authority therein had applied its mind and exercised its Judicial Discretion, in the impugned order dated 08.07.2022 in IA No.71 of 2022 in CP No.651/7/HDB/2018 by making a pertinent observation that the graceful exit of the present Resolution Professional, will

pave way for the smooth liquidation process of the CD and permitted the plea of the Lenders and passed an order of liquidation against the CD.”

8. It is true that Section 276 of the Companies Act lays down certain parameters for change of Liquidator, but the judgement of the Hon'ble NCLAT, Chennai is to effect that apart from the grounds mentioned for change of Liquidator, change can be done on grounds other than those mentioned under Section 34(4) of the I & B Code, 2016. The same analogy can be applied to Section 276 of Companies Act also.

9. It is the commercial wisdom of the SCC that was held to be prevailing by umpteen number of judgements. Hence, when the Applicant chooses to change the Liquidator, as observed by the Hon'ble NCLAT, the graceful exit of the present Resolution Professional would be a welcoming gesture. The judgement relied upon by the Liquidator rendered by the *Hon'ble NCLAT reported in 2022 SCC Online NCLAT 1616 in Company Appeal (AT) (CH) (Ins.) No.269/2022 & IA Nos. 571, 572 & 623/2022 between Mr. V. Venkata Sivakumar Vs. IDBI Bank Limited*, is not on similar facts. The Hon'ble NCLAT has observed that the Principal Bench of

NCLAT in Order dated 13.10.2022 in Company Appeal (AT) (Ins.)
No.1234 of 2022 held that;

“The Liquidator does not have any personal right to continue in the Liquidation Process and the reasons which have been noted in the order are sufficient to exercise even the inherent power by NCLT to replace the Liquidator. It is not a fit case to interfere in exercise of our Appellate Jurisdiction.”

10. Saying so, the NCLAT refused to interfere in the order passed by the NCLT therein. Hence, a combined reading of all the judgements relied upon by both the Counsel, would lead to an irresistible conclusion that a Liquidator cannot be directed to be continued against the wishes of the members of the SCC. Hence, this application is allowed and the Liquidator is replaced by Mr. Madhusudhan Rao Gonugunta.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

VL