**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH COURT-III**

**I.A. 4441/2023**

**IN**

**C.P.(IB)289/MB/2022**

Under Section 33(3) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016.

**Vishnu Kant Kabra**
Chartered Accountant & )
Insolvency Professional, )
B-402, La Chapelle, )
Evershine Nagar, Malad(West),)
Mumbai – 400064. ) **Applicant/Resolution Professional**

**IN THE MATTER OF**

**Glamour India Pvt. Ltd.**
502/F/3, )
Sundervan Complex, )
Lokhandwala Link Road, )
Andheri (West), )
Mumbai - 400053. ) **Applicant/Resolution Professional**

**Vs.**

**Shree Sai OTO Tubes Mill Limited.**
Having its Registered Office at,
104/A, Jagannath Apartment,
Rokadia Lane, Borivali (West)
Mumbai - 400092. **...Respondent**

**Order Pronounced on: 08.01.2025**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

**For the Applicant:** Adv. Abhismita Goswami

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

1. The present Application has been filed under Section 33(3) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016 hereinafter referred to as "**the Code**" by Mr. Vishnu Kant Kabra ('Liquidator/Applicant') seeking the following reliefs: -

"*a. Delay if any in filing the present Application be condoned;*

*b. Pass an order to allow the present application and initiate the liquidation proceedings of the Corporate Debtor;*

*c. Take on record the FORM AA i.e., written consent to act as liquidator for Corporate Debtor and allow the Applicant to act as the liquidator upon initiation of the liquidation proceedings;*

*d. In the alternative direct the CoC to consider the agendas in the 13th CoC.*"

**Brief Facts**

2. The Company Petition No. 289 of 2022 was filed by the Financial Creditor i.e., Glamour India Pvt. Ltd. as per Section 7 of the Code to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor i.e., Shree Sai OTO Tube Mills Limited. The abovementioned Company Petition was admitted by this Tribunal vide its order dated 08.04.2022 and as per the provisions of section 14 of the Code, moratorium was issued against the Corporate Debtor. Accordingly, the Applicant i.e., Vishnu Kant Kabra was appointed as the Interim Resolution Professional hereinafter referred to as ("IRP") by this Tribunal.

3. In compliance with Section 13 and 15 of the Code read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, a public announcement was made on 10.05.2022 in Free Press, Mumbai Edition (English Newspaper) and Navshakti, Mumbai Edition (Marathi Newspaper) to disclose that the CIRP had been initiated against the Corporate Debtor and calling the Creditors to submit their proof of claims.

**Committee of Creditors Meetings**

4. The 1st Committee of Creditors ("**CoC**") Meeting was conducted on 09.06.2022, where the Applicant constituted the CoC with one Financial Creditor i.e., Glamour India Private Limited, whereas, the claim of another Financial Creditor i.e., Canara Bank was under verification. In the same meeting, the IRP was appointed as the Resolution Professional ("**RP**") with 100% voting share. As per the minutes of the 1st CoC Meeting annexed, the IRP being the Chairman of the Meeting stated that, 2 claims were received from the Financial Creditors namely Glamour India Private Limited and Canara Bank and one Operational Creditor namely State Tax Department. However, due to the non-availability of Canara Bank's supporting documents, their claim was under verification, due to which Canara Bank did not have any voting rights at the CoC Meeting. Therefore, Glamour India Private Limited was the only Financial Creditor to form the CoC. The claims received from Financial Creditors and Operational Creditor by the IRP have been reproduced from the minutes as follows:

| Sr. No. | Type of Creditors | Name of Creditor | Claim Received (Amount in Cr.) | Claims verified by IRP till date of constitution | Claim Status | Voting Percentage |
|---|---|---|---|---|---|---|

| | | | | of Committee (Amount in Cr.) | | |
|---|---|---|---|---|---|---|
| 1. | Financial Creditor | Glamour India Private Limited | 155.09 | 155.09 | Verified & confirmed | 100% |
| 2. | Financial Creditor | Canara Bank | 130.59 | Under verification | Under verification | - |
| 3. | Operational Creditor | State Tax Department | 2.02 | 2.02 | Verified & confirmed | NA |

5. In the 2nd CoC Meeting conducted on 20.07.2022, the RP proposed the appointment of a Transactional Auditor to ascertain Avoidance Transactions as per section 43,45,50 or 66 of the Code. As per the minutes of the meeting, the RP placed quotations received from 3 companies to conduct the Transaction Audit of Shree Sai OTO Tubes Mill Limited for the last 2 Financial Years. The lowest quote was proposed by Jain Vinay & Associates who were appointed as the Transactional Auditor of the Corporate Debtor by passing the following resolution:

> *"**RESOLVED FURTHER THAT** M/s Jain Vinay & Associates bid was the lowest bid among all the bids produced before CoC and therefore the CoC has appointed them as Transactional Auditor of Shree Sai Oto Tubes Mill Limited (Corporate Debtor) for the Corporate Insolvency Resolution Process)."*

6. In the 3rd CoC Meeting conducted on 15.09.2022, the CoC was reconstituted, and Canara Bank was admitted as the Financial Creditor with 12.74% voting share. The reconstituted CoC along with the verified and admitted claims have been listed below:

| Sr. No. | Type of Creditors | No. of Claimants | Claims verified & admitted by RP (Amount in Cr.) | Voting Percentage |
|---|---|---|---|---|
| 1. | Financial Creditor: Glamour India Private Limited | 1 | 155,09,90,382 | 87.26% |
| 2. | Financial Creditor: Canara Bank | 1 | 22,62,37,748 | 12.74% |

7. As per the minutes of the 3rd CoC Meeting, the RP explained the need of 'Interim Finance' to the CoC Members and the severe difficulties faced by the Company as going concern due to insufficient funds in the accounts of Shree Sai Oto Tubes Mill Limited. Therefore, the Suspended Directors requested the RP in their letter dated 04.09.2022 to raise 'Interim Finance' to run the Company as a going concern. Accordingly, approval was sought from CoC members for raising 'Interim Finance'. However, in the 4th CoC Meeting, with respect to raising Interim Finance, the following resolution was passed: -

> *"**RESOLVE THAT**, the Hon'ble NCLT has verbally directed the RP not to pass any resolution with regards to the Interim Finance and it will be kept in abeyance till the next order given by Hon'ble NCLT bench."*

8. The 4th CoC Meeting was conducted on 11.10.2022 in which it was decided that RP shall publish the invitation for Expression of Interest (EoI) in Form G as per Regulation 36A of CIRP Regulations in leading newspapers.

9. The 5th CoC Meeting was conducted on 31.10.2022, wherein the CoC decided to approve the extension of the CIRP Period by 90 days beyond the period of 180 days. Pursuant to this decision of the CoC, the RP filed

an Interlocutory Application No. 3317 of 2022 as per section 12(2) of the Code read with Regulation 40 of the CIRP Regulations for extension of 90 days beyond 180 days for computing the CIRP of the Corporate Debtor. As per Interim Order dated 13.12.2022, the Counsel for the Applicant submitted that the Final Order initiating CIRP against the Corporate Debtor was passed on 08.04.2022 which was uploaded on 05.05.2022, however, the Order was communicated to the Applicant on 10.05.2022. In the same Interim Order, the Applicant was also seeking an exclusion of 22 days.

10. Meanwhile, Canara Bank who were aggrieved by the limited admission of their claim by the Applicant, filed an Interlocutory Application No. 1961 of 2022. The Tribunal allowed this application on 02.03.2023 and Canara Bank's voting percentage in the CoC increased to 45.71%. The revised voting percentage among the creditors has been reproduced below: -

| Sr. No. | Type of Creditors | No. of Claimants | Claims verified & admitted by RP (Amount in Cr.) | Voting Percentage |
|---|---|---|---|---|
| 1. | Financial Creditor: Glamour India Private Limited | 1 | 155,09,90,382 | 54.29% |
| 2. | Financial Creditor: Canara Bank | 1 | 130,59,00,000 | 45.71% |

11. The 6th CoC Meeting was conducted on 13.03.2023, wherein the Applicant raised the following agendas for voting: -

a) To approve further 30 days' time for submission of Resolution Plan.
b) To approve to grant time to other PRAs to submit EoI.
c) To approve re-published Form G.



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d) To approve extension of moratorium of CIRP by additional 60 days in addition.

12. Glamour India Pvt. Ltd. voted in favour of all the agendas, whereas Canara Bank had a dissenting view for all the above-mentioned agendas. The Applicant submitted that, the agendas were rejected by Canara Bank despite that there were prospective bidders willing to give their plans.

13. The Applicant further submitted that the present petition was filed for seeking liquidation of the Corporate Debtor under section 33 of the Code because the applicant did not receive appropriate approvals from the CoC and also that the time period prescribed under the Code had come to an end.

14. The Applicant placed on record the Valuation Report by way of an Additional Affidavit dated 26.11.2024 in compliance with Interim Order dated 06.09.2024. The Valuation Reports procured from the IBBI Registered Valuers annexed in the Additional Affidavit giving details of following assets along with their Fair Value and Liquidation Value.

| Sr. No. | Name | Category |
|---|---|---|
| 1. | Pensar Valuation Private Limited | SFA |
| 2. | Mohit Sagar | SFA |
| 3. | Pensar Valuation Private Limited | Land & Building |
| 4. | Anil Kumar Saxena | Land & Building |
| 5. | Pensar Valuation Private Limited | Plant & Machinery |
| 6. | Ompal Singh | Plant & Machinery |

15. The present Application has been filed as per Section 33 (3) of the Code, for initiating liquidation proceedings against the Corporate Debtor. In the present case, originally the CIRP period expired on 13.12.2022, however, after grant of 90 days' extension, the CIRP period expired on 15.03.2023. In the 6th CoC Meeting, the resolution for extension of the CIRP period

was put up for voting before the CoC Members which was not passed by the requisite majority of 66% as laid down under the Code. At present, the period for CIRP has expired and no Resolution Plan has been received.

16. The following Interlocutory Applications are pending before this Tribunal under the C.P. No. 289 of 2022: -

| **Interlocutory Application No.** | **Section & Regulation** |
|---|---|
| 2068 of 2023 | Filed under 30(6) of the Code by Canara Bank |
| 4431 of 2023 | Filed under 60(5)(c) of the Code r.w. Regulation 33 & 34 of the CIRP Regulations by Mr. Vishnu Kant Kabra |

17. Although no resolution has been passed in the CoC Meeting for initiating liquidation against the Corporate Debtor, we are of the considered opinion that after adhering to the law laid down under the Code, in natural consequence, the Corporate Debtor shall be admitted for liquidation with the following directions: -

**ORDER**

a. The Corporate Debtor is directed to be liquidated in accordance with the provisions of the IBC and applicable regulations.

b. We note that the written consent of the Insolvency Professional along with Authorization for Assignment has been annexed to the present application, however we shall appoint an Insolvency Professional from the IBBI Panel. **We hereby appoint Mr. Ritesh R Mahajan** bearing Registration No. **IBBI/IPA-002/IP-N00048/2017-2018/10132** and having address at; B-203, Devgiri, Ganeshmala Sinhagad Road, Pune, Maharashtra – 411030, as the Liquidator in terms of Section 34 of the Code. His Authorization for Assignment is valid up to 31.12.2025.

c. The fees entitled to the Liquidator shall be as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Registry is directed to send a copy of the order to the Registrar of Companies, Mumbai and the Insolvency and Bankruptcy Board of India.

e. A fresh moratorium shall commence under Section 33(5) of the Insolvency and Bankruptcy Code.

f. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the IBC Code, 2016.

g. The Liquidator is directed to proceed with the process of liquidation as laid down under Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) regulations, 2016.

i. The Liquidator appointed under section 34 of the Code shall have all the powers of the Board of Directors, Key Managerial Personnel and the existing Board of the Corporate Debtor, the Key Managerial Persons and the partners shall cease to have effect.

j. The personnel of the corporate debtor shall extend all co-operation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.

k. A copy of the said order shall be sent to the Financial Creditors, Corporate Debtors and the Liquidator for taking necessary steps.

18. While referring to Regulation 32(e) of the Liquidation Regulations which envisage the sale of the Corporate Debtor as a going concern, the Hon'ble Supreme Court in the matter of ***Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. Writ Petition (Civil) No.99 of 2018***, observed that:

> *"What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. ... It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."*

Accordingly, we suggest that, in order to maximise the value of the Corporate Debtor's assets, the Liquidator shall endeavour to explore the viability of selling the business of the Corporate Debtor as a going concern under clauses (e) or (f) of Regulation 32 of Liquidation Regulations, as the case may be.

19. In view of the above, prayer at clause *(a)*, *(b)* and *(c)* stand allowed. Since prayer *(d)* is an alternative prayer, same stands dismissed in view of other prayers in the application being allowed.

20. Accordingly, the **I.A. No. 4441 of 2023** in C.P. No. 289 of 2022 is **allowed** in above terms.

**Sd/-**
**Charanjeet Singh Gulati**
**Member (Technical)**

**Sd/-**
**Lakshmi Gurung**
**Member (Judicial)**

Vaishnavi, LRA

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Certified True Copy
Date of Application 24/01/2025
Number of Pages 11
Fee Paid Rs. 55/-
Applicant called for collection copy on 30/1/2025
Copy prepared on 30/01/2025
Copy Issued on 30/1/2025

30/01/2025
Deputy Registrar
National Company Law Tribunal, Mumbai Bench