

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – I, CHENNAI

IA/1249/IB/2020 in CP/593/IB/2017

(Filed under Section 54(1) of the Insolvency and Bankruptcy Code, 2016 r/w
Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 and Section 60 of
IBC, 2016

In the matter of VIJAI MAHALAXMI SPINNING MILLS INDIA PRIVATE LIMITED

Mr. Vengarai Seshadri Sowrirajan,
Liquidator of Vijai Mahalaxmi Spinning Mills India Pvt Ltd
C-2, Vijayrengaa Apartments, 64,
West Adayavalanchan Street,
Srirangam, Trichy – 620 006

... Applicant

Order Pronounced on 31st May 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

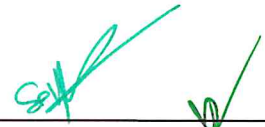
For Applicant(s): R.Rajesh, Advocate

ORDER

(Hearing conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This IA/1249/IB/2020 has been filed by the Applicant under
Section 54(1) of the Insolvency and Bankruptcy Code (IBC), 2016 r/w
Regulation 45 of Insolvency and Bankruptcy Board of India,
(Liquidation Process) Regulations, 2016 and Section 60 of IBC, 2016
seeking reliefs as follows;





i. To order Dissolution of the affairs of the Corporate Debtor Vijai Mahalaxmi Spinning Mills India Private Limited

ii. That all and any consequent orders pursuant to the order of Dissolution of the said VIJAI MAHALAXMI SPINNING MILLS INDIA PRIVATE LIMITED be passed.

iii. For costs, and

iv. For such other and further reliefs as the nature and circumstances of the case may require

2. This Tribunal vide order dated 07.11.2017 had ordered commencement of CIRP of the Corporate Debtor, viz, Vijai Mahalaxmi Spinning Mills India Private Limited, on the application filed by an Operational Creditor namely Anant Agro Industries (Jaivik Krishi Pariyojana). One Mr. Vengarai Seshadri Sowrirajan was appointed as the Interim Resolution Professional (IRP) vide order dated 20.11.2017.

3. Pursuant to the order of CIRP, the IRP caused Public Announcement inviting stakeholders to submit claims, verified claims received and constituted Committee of Creditors (CoC) (including the Sole Financial Creditor State Bank of India). Thereafter, the Applicant herein was appointed as Resolution Professional (RP) by the Committee of Creditors at the First Meeting of Committee of Creditors held on 19.12.2017.



4. The applicant valued the assets of the Corporate Debtor and issued paper advertisement in the newspaper "Business Standard" on 26.02.2018 inviting Expression of Interest in respect of the Corporate Debtor.

5. Since no viable Resolution Plan was received, the CoC in its Third Meeting held on 09.04.2018 resolved to liquidate the business of the Corporate Debtor and therefore an application bearing MA/27/2018 was filed for liquidation and the same was allowed by this Tribunal vide order dated 27.04.2018 by appointing the applicant herein as the Liquidator of the Corporate Debtor.

6. Pursuant to the order of Liquidation the Applicant had caused Public Announcement on 08.05.2018 by inviting claims from the stakeholders. Further, the Applicant sent intimations about liquidation order of the CD to all the statutory authorities i.e. Regional Director, Southern Region (Ministry of Corporate Affairs), Chennai, Official Liquidator, the Register of Companies, Coimbatore, Income Tax Officer Ward II (1), Tirupur and the Superintendent GST, Tirupur.



7. The Applicant verified all the claims received from Stakeholders and no claim was withdrawn or modified by the claimants. Upon such verification, the total admitted claims stood at Rs. 69,27,50,448/- to Secured Financial Creditors, Rs 5,31,18,498/- to Unsecured Financial Creditors and Rs. 2,06,10,505/- to Operational Creditors. The Applicant Liquidator duly intimated all the Stakeholders about the acceptance of claims.

8. On 29.05.2018, State Bank of India, Stressed Asset Management Branch, Coimbatore (Sole Secured Financial Creditor), sent communication to the Liquidator exercising option under Section 52 (4) of the IBC, 2016 to stand outside the Liquidation Process and recover their dues under the SARFAESI Act, 2002. The copy of the communication received from the State Bank of India is enclosed as Annexure 3 of the application typeset.

9. The Liquidator sent a Consent and Mandate Letter on 02.06.2018 to State Bank of India to stand outside from the Liquidation Process and recover their dues under SARFAESI Act, 2002. The copy of the communication sent by the Applicant to the State Bank of India is enclosed as Annexure 4 of the application typeset.



10. We have heard the Learned Counsel for the Applicant/ Liquidator and perused the documents placed on record.

11. Since the entire movable and immovable properties of the Corporate Debtor were charged to the State Bank of India, which exercised the option to recover its dues outside the Liquidation Process, the Applicant did not form any Liquidation Estate and proceed with the recovery process.

12. Since the business operations of the Corporate Debtor is discontinued and State Bank of India took over the possession of the Factory Premises on 17.03.2016, the applications relating to preferential, avoidance of undervalued transactions and extortionate transactions were not filed.

13. The Financial Creditor conducted various auctions to recover their dues and sent intimation to the Applicant regarding date of e-auction and the price at which it proposed to sell the assets and realise their dues.

14. Since the Liquidator had not formed any Liquidation Estate and the recoveries were made by the Financial Creditor outside the Liquidation Process, no application under Regulation 10 of the IBBI



(Liquidation Process) Regulations 2016, for disclaimer of onerous property was made.

15. Since the Corporate Debtor never declared any Dividend and there was no unclaimed dividend or undistributed proceeds in the books of account of the Corporate Debtor, the provision relating to deposit of unclaimed dividends and undistributed proceeds to the Corporate Liquidation in the Public Accounts of India was not invoked.

16. The details of the relevant compliances as mandated under Section 54 of the IBC, 2016 read with the IBBI (Liquidation Process) Regulations, 2016 are hereunder:-

S. No	COMPLIANCE	AVERMENTS	PAGE NO. IN THE APPLICATION
1	Regulation 12	Public Announcement in Form B in Indian Express and Dinamani dated 08.05.2018	Annexure 2 at Page No. 23-24
2	Regulation 35(2)	Appointment of Registered Valuers where no valuation conducted during CIRP	Page No.4
3	Regulation 31(2)	List of Stakeholders within 45 days of the Liquidation Commencement Date	Annexure 5 at Page No. 31-35
4	Regulation 31A	Constitution of Stakeholders Consultation Committee (SCC) <i>Not Applicable since Regulation 31A was introduced only from 25.07.2019</i>	-----
5	Regulation 13	Preliminary Report dated 10.07.2018	Page No. 5
6	Regulation 34	Preparation of Asset Memorandum dated 10.07.2018	Page No. 5



7	Regulation 41	Opening of Bank Account in the name of the company in Liquidation in a Scheduled Bank <i>Not Applicable since the Financial Creditors exercised option to recover dues outside Liquidation Process. No assets were available to the Liquidator and hence there was no need to open an Liquidation Account.</i>	-----
8		Proof of Closure of the above Bank Account and other account in the name of the Company <i>Not Applicable</i>	-----
9	Regulation 15	Quarterly Progress Reports and proof of filing the same before this Tribunal	Page No. 5
10	Regulation 36	Asset Sale Reports after sale of Reports and the same can be seen in 7 th Progress Report <i>Not Applicable since the Financial Creditors exercised option to recover dues outside Liquidation Process and no assets were available to the Liquidator for realization</i>	-----
11	Regulation 42(2)	Proof of Distribution within Ninety days from the receipt of realization <i>Not Applicable since the Financial Creditors exercised option to recover dues outside Liquidation Process and no assets were available to the Liquidator for realization</i>	-----
12	Regulation 45 (3)	Final report dated 15.10.2020	Annexure 8 at Page No. 39-42
13	Regulation 5 (1) (e)	Compilation of Minutes of SCC <i>Not Applicable</i>	-----
14	Regulation 15	Audited Accounts of receipts and Payments <i>Not Applicable</i>	-----
15	Regulation 37	Completion of Liquidation Process within one year from Liquidation Commencement Date or extension if any, date of the order & period	19/10/2020 Time Limit was 2 years from LCD at that time. Last date was 26/04/2020. Due to Corona Lockdown the last date after excluding



			lockdown period 26/10/2020.
16		Form-H dated 15.10.2020	Annexure 9 at Page Nos. 43 - 55

17. Since the Liquidator had not formed any Liquidation Estate and the recoveries were made by the Financial Creditor outside the Liquidation Process, **no distribution was made to the Stakeholders as per details given below:**

✓

(The content of this section is redacted with a large green diagonal line.)

✓



Sl. No.	Stakeholders under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Costs	0	0	0	0	The Financial Creditors, State Bank of India, borne the entire CIRP cost and did not submit any claim. Recoveries made outside Liquidation Process.
2	(a): Liquidation Costs	0	0	0	0	The Financial Creditors, State Bank of India, borne the entire Liquidation cost and did not submit any claim. Recoveries made outside Liquidation Process.
3	(b)(i) Workmen due for the period of 24 months preceding the liquidation commencement date	0	0	0	0	The Company had no workmen as on liquidation commencement date
4	(b)(ii) Debts owed to a secured creditor who has relinquished security interest	0	0	0	0	The lone Financial Creditors, had opted to recover dues outside the Liquidation Process and did not relinquish any security interest. Hence, the Liquidator could

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5	(c) Wages and unpaid dues owed to other than workmen for the period of 12 months preceding the liquidation commencement date	0	0	0	0	not form any Liquidation Estate. 0 The Company had no employee as on liquidation commencement date
6	(d) Financial debts owed to unsecured creditors	5,37,70,759	5,31,18,498	0	0	
7	(e)(i) any amount due to the Central and the State Government in respect of the whole or any part of the period of two years preceding the liquidation commencement date	0	0	0	0	0 No Statutory Authority has made any claim in respect of any dues payable to them or responded to any communication sent by the Liquidator.
8	(e) (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest	0	0	0	0	
9	(f) any remaining debts and dues	2,06,10,505	2,06,10,505	0	0	0 Dues represent claims made by Operational Creditors and admitted by the Liquidator
10	(g) Preference Shareholders	0	0	0	0	0 The Corporate Debtor has no preference shareholders
11	(h) Equity Shareholders	0	0	0	0	0 The Corporate Debtor has a paid-up capital of Rs. 18.50 Crores contributed by three promoters and no amount is payable to them.
Total		7,43,81,264	7,37,29,003	0	0	

Note: Claim made by the Financial Creditors, State Bank of India, to the extent of Rs. 69,27,50,448 /- and admitted by the Liquidator is not included in the above table since they have chosen to recover dues outside the Liquidation Process and no claims were submitted by them subsequent to their decision.

18. It is relevant to point out that the State Bank of India had filed an application bearing IA/837/CHE/2022 seeking the following directions:



a) Direct the liquidator to give consent to the applicant to sell the secured asset of the CD Company to the investor M/s. Anitha Textcot (India) Private Limited in terms of Section 52(4) of IBC read with Regulation 37(7) of IBBI (Liquidation Process) Regulations, 2016 and thus render justice.

b) Direct the liquidator to execute the sale of the secured asset of the company in favour of the investor M/s. Anitha Textcot (India) Private Limited by way of registration.

c) To pass such further or other orders may deem fit and proper and thus render justice.

19. This Tribunal vide order dated 05.12.2022, disposed of the application and the order is captured hereunder:

IA/837(CHE)/2022

The present Application is filed by SBI. The Reply filed by the Liquidator makes the issue very clear.

The reply is taken on record. The Applicant is directed to act as per the law.

In our considered view, the cause for filing the present Application does not survive.

Accordingly, **IA/837(CHE)/2022** stands **dismissed**.

20. It is pertinent to point out that the Liquidator had filed a Report on Sale of Assets vide S.R.No.1196 dated 17.03.2023. Clause 11 of the Report on Sale of Assets is extracted hereunder:

SBI hereby confirm that all assets of the Corporate Debtor have been sold and proceeds fully realized. No assets are available with it for sale and no further realizations are possible.



21. Since the Financial Creditors have been realizing their dues outside the Liquidation Process and the Liquidator has not formed any Liquidation Estate, the Liquidator did not open any Bank Account to conduct the Liquidation Process. Further the Liquidator did not enter into any Cash Transaction in connection with the Liquidation Process. The Liquidator did not make any payment to any person/entity/authority relating to the Liquidation Process. Accordingly, Receipts and Payment Account of Liquidation Process is Rs. NIL. The Chartered Accountant certificate in respect of the above is enclosed as Annexure 7 of the Application typeset and in additional typeset vide S.R.No.6006 dated 16.12.2021.

22. Section 54 of the IBC, 2016 provides as under: -

Section 54

"(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

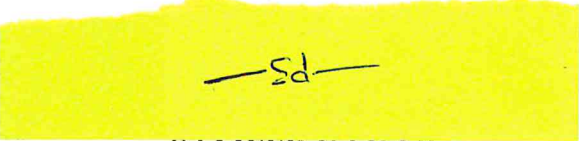
(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered."



23. From the averments made in the Application and on perusal of the final report and the Compliance Certificate filed in Form-H by the Applicant, it is seen that the Corporate Debtor has been completely liquidated. In the circumstances as averred and as prayed for by the Applicant, an order for dissolution is required to be passed by this Tribunal under Section 54 of the IBC, 2016.

24. Accordingly, we order for the dissolution of the Corporate Debtor viz., **Vijai Mahalaxmi Spinning Mills India Private Limited**. The Liquidator is directed to forward a copy of this Order to the RoC concerned and also to the IBBI for its records within a period of 7 days from the date of this Order.

25. In terms of the above, this IA/1249/IB/2020 stands **allowed**.



— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)



— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)