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

IA/(IBC)/1213/CHE/2021 in IBA/883/2019

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

In the matter of ***Kamachi Industries Limited***

Mr. Vikas Gupta

Resolution Professional of
Kamachi Industries Limited
Regn No. IBBI/IPA-001/IP-P00501/2017-2018/10889
Having office at G-19, Shreewardhan Complex,
Mezzanine Floor, Besides Landmark Building,
Ramdaspath, Wardha Road,
Nagpur, Maharashtra- 440 010

... Applicant /Resolution Professional

Along with

**IVN.P (IBC)/1(CHE)/2022 IN
IA/(IBC)/1213/CHE/2021 in IBA/883/2019**

*(Filed under Section 60(5) (c) of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the NCLT Rules, 2016)*

In the matter of ***Kamachi Industries Limited***

Vinod Kothari,

No.10, 1st Cross Street,
Sylvon Lodge Colony, Kilpauk,
Chennai – 600 010

... Applicant/ Proposed Respondent

-Vs-

Mr. Vikas Gupta

Resolution Professional of
Kamachi Industries Limited
Regn No. IBBI/IPA-001/IP-P00501/2017-2018/10889
Having office at G-19, Shreewardhan Complex,
Mezzanine Floor, Besides Landmark Building,
Ramdaspath, Wardha Road,
Nagpur, Maharashtra- 440 010

... Respondent/Applicant



Along with

IA/(IBC)/1074/CHE/2021 in IBA/883/2019

(Filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***Kamachi Industries Limited***

KCT Global PTE Limited

Rep by its Director/Authorized Signatory
Mr. Mnaoj Kumar Jain,
80 Robinson Road,
Singapore – 068898

... Applicant

-Vs-

1. Kamachi Industries Limited

(Formerly known as Kamachi Sponge & Power Corporation Limited)
No.664, TH Road,
Tondiarpet,
Chennai – 600081

2. Mr.Vikas Prakash Gupta

Interim Resolution Professional
New No. 37/4, Vasantham II Main Road,
Alwarthiru Nagar Annexe,
Chennai – 600 087

... Respondents

Along with

IA/(IBC)/1075/CHE/2021 in IBA/883/2019

(Filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016)

KCT Global PTE Limited

Rep by its Director/Authorized Signatory
Mr. Mnaoj Kumar Jain,
80 Robinson Road,
Singapore – 068898

... Applicant

-Vs-

1. Kamachi Industries Limited

(Formerly known as Kamachi Sponge & Power Corporation Limited)
No.664, TH Road,
Tondiarpet,
Chennai – 600081

2. Mr.Vikas Prakash Gupta

Interim Resolution Professional



New No. 37/4, Vasantham II Main Road,
Alwarthiru Nagar Annexe,
Chennai – 600 087

... Respondents

Order Pronounced on 09th December, 2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant: Lilly Francis, Advocate in IA/1213/CHE/2021

S.R.Raghunathan, Advocate in IVN.P(IBC)/1(CHE)/2022

S. Karthikey Balan, Advocate in IA/1074 & 1075/CHE/2021

*For 2nd Respondent: Lilly Francis, Advocate in IVN.P(IBC)/1(CHE)/2021
& IA/1074 & 1075/CHE/2021*

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

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

- (i) To pass an order of Liquidation of the Corporate Debtor as a going concern under Section 33(2) of the Code and in accordance with the decision of the COC;
- (ii) To appoint a liquidator of the Corporate Debtor as this Hon'ble Tribunal may deem fit as per provisions of the code;
- (iii) To issue a Public Announcement stating that the Corporate Debtor is in liquidation;



- (iv) To require such order to be sent to the Registrar of Companies with which the Corporate Debtor is registered.
- (v) To direct that till the disposal of this Application, the moratorium imposed in accordance with Section 14 of the Code to continue, to protect and preserve the assets of the Corporate Debtor;
- (vi) To pass such other order or orders as this Hon'ble Tribunal may deem fit in the interest of Justice.

I. FACTS OF THE CASE IN IA/1213(CHE)/2021:

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated under section 7 of the IBC, 2016 and the Applicant herein namely Mr. Vikas Gupta was appointed as IRP vide order of this Tribunal dated 19.02.2020. IRP caused public announcement calling for the claims from the Creditors of the Corporate Debtor by virtue of publication dated 27.02.2020. Thereafter the CoC comprising five Financial Creditors was constituted on 16.03.2020 with claims to the tune of Rs. 1489.54 crore and as per the updated list of Creditors, 82 claims were received from the Operational Creditors amounting to Rs. 28.73 Crore besides the 5 Financial Creditors.

3. It is averred in the application that the appointment of the applicant as the Resolution Professional was confirmed in the 2nd CoC meeting held on 09.06.2020.



4. It is further averred in the application that the Applicant prepared the Information Memorandum and invited Expression of Interest (EOI) vide Form G publication on 11.08.2020. The last date for submission of the EOI was extended to 22.10.2020 vide Form G publication dated 28.08.2020.

5. It is seen from the application that since the initial 180 days of CIRP came to an end during the COVID-19 Pandemic, the Applicant had filed two applications seeking exclusion of the period of lockdown from 23.03.2020 to 30.09.2020 and the applicant also sought further extension of CIRP by 90 days and the same was allowed by the common order of this Tribunal dated 31.03.2021 which extended the period of CIRP till 24.05.2021.

6. It is further seen from the application that the extended CIRP period of 270 days was exhausted during the 2nd wave of COVID-19 Pandemic, the RP had filed an further extension period of 60 days from 10.05.2021 to 31.07.2021 and the same was allowed by the order of this Tribunal vide order dated 16.09.2021.

7. During the extended period of CIRP, Resolution Plans from three Resolution Applicants were tabled for consideration before the CoC in 26th meeting dated 14.09.2021 of which only two Resolution plans were approved by the CoC to be placed for voting as Item Nos. 1 and 2 of voting items in the same meeting with the



voting lines open till 08.10.2021 and in result the CoC by 100% voting rejected both the Resolution Plans.

8. The CoC in its 26th meeting had also considered the possibility of liquidation of the Corporate Debtor as a going concern in the event of rejection of both the Resolution Plans. Pursuant to the 26th Meeting of CoC, the same was put to vote as Item No.3 and the CoC unanimously by a majority of 100% of the Voting share, voted in favour of the liquidation as a going concern and the resolution passed by the CoC is reproduced hereunder;

"RESOLVED THAT where the resolution plans put for vote are not approved by the CoC members, in such case, in accordance with section 30 read with section 33 of the Insolvency and Bankruptcy Code, 2016 read with regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 approval of the Committee of Creditors of Kamachi Industries Limited (the Corporate Debtor), be and is hereby accorded for Liquidation of the Corporate Debtor as a going concern.

RESOLVED FURTHER THAT upon approval of the Liquidation of the Corporate Debtor by the CoC members, the Resolution Professional be and is hereby authorized to submit an application to the Hon'ble National Company Law Tribunal (NCLT) for Liquidation of the Corporate Debtor as a going concern."



The voting results are appended at page no 80 of the Application typeset and the extract of the voting results is reproduced hereunder:

S.NO	FINANCIAL CREDITOR	% VOTING	VOTES CASTED IN FAVOUR	VOTES CASTED AGAINST
1	Punjab National Bank	26.57%	26.57%	0.00%
2	Union Bank of India (along with erstwhile Andhra Bank)	18.79%	18.79%	0.00%
3	State Bank of India	34.85%	34.85%	0.00%
4	Canara Bank	8.44%	8.44%	0.00%
5	Bank of India	11.35%	11.35%	0.00%
Total		100.00%	100.00%	0.00%

Threshold Limit for approval : 66%

Result : Approved

9. It is further seen from para 14 of the application that the CoC has proposed Mr.Subrata Maity, as the Liquidator of the Corporate Debtor and the same was included as Item No.4 and the extracts of the resolution is reproduced hereunder;

"RESOLVED THAT where the resolution plans put for vote are not approved by the CoC members in such case the approval of the Committee of Creditors of Kamachi Industries Limited be and is hereby accorded for appointment of Insolvency Professional, Mr. Subrata Maity as Liquidator of the Corporate Debtor in the event an order for liquidation is passed under section 33 of the Insolvency and Bankruptcy Code, 2016."

10. It is further averred in para 15 of the application that when the aforesaid approval was placed for voting, 56.71% of the CoC member voted in favour of appointment of Mr.Subrata Maity as Liquidator of the Corporate Debtor. The E-Voting Results with regard to the same is reproduced hereunder:



S.NO	FINANCIAL CREDITOR	% OF VOTING	VOTES CASTED IN FAVOUR	VOTES CASTED AGAINST
1	Punjab National Bank	26.57%	26.57%	0.00%
2	Union Bank of India (along with erstwhile Andhra Bank)	18.79%	18.79%	0.00%
3	State Bank of India	34.85%	0.00%	34.85%
4	Canara Bank	8.44%	0.00%	8.44%
5	Bank of India	11.35%	11.35%	0.00%
Total		100.00%	56.71%	43.29%

11. Under such circumstances, the Applicant has filed the present Application under Section 33 of IBC, 2016 seeking liquidation of the Corporate Debtor.

II. IVN.P(IBC)/1(CHE)/2022:

12. In relation to IVN.P(IBC)/1(CHE)/2022, it is an application filed by Mr. Vinod Kothari, who is an erstwhile promoter, shareholder and suspended Director of the Corporate Debtor under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016 seeking relief as follows:

- (i) To permit the Applicant to intervene and make submissions in IA/1213/2021 preferred by the Resolution Professional seeking liquidation of the Corporate Debtor Company;
- (ii) To reimburse cost to this Applicant
- (iii) For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case



12.1. The main contention of the applicant is that if the liquidation of the Corporate Debtor is ordered, severe hardship and prejudice would be caused to the Applicant and the other members of the Suspended Board of Directors of the Corporate Debtor.

12.2. Further, it has been submitted by the applicant that as per Section 230(12) of the Companies Act, 2013, the Applicant is an aggrieved party and is entitled to file an application before this Tribunal in the event of any grievance with respect to the takeover offer of the Company. Though, there is no takeover offer yet on the table and even assuming liquidation takes place, it will be an ineffective remedy as the liquidation will be done on a piece meal basis and there will be no effective solution to a going concern.

12.3. It was further submitted by the Applicant that an appeal has been preferred by the applicant in Company Appeal (AT) (INS)/328/2020 and the same is pending for adjudication before the Hon'ble NCLAT.

12.4. Heard the submissions made by the Learned Counsel for the Intervenor. Further, the CoC in its commercial wisdom, after examining the viability and feasibility of two Resolution Plan, has rejected both the Resolution Plans unanimously and decided to liquidate the Corporate Debtor. Thus, it is a settled law that the



decision of the CoC cannot be called into question by this Adjudicating Authority. Further, the Hon'ble NCLAT in the matter of ***Rakshit Dhirajlal Doshi vs IDBI Bank Limited in Company Appeal (AT) (Insolvency) No. 296 of 2022*** wherein it was held in para 10 and 11 of the judgement as follows;

"10. It is further submitted that the Committee of Creditors in its meeting have resolved to initiate liquidation of Corporate Debtor and accordingly Resolution Professional had filed the IA bearing No. 769/2021 under Section 31 of the IBC and the same is pending for consideration. As the CoC by applying its commercial wisdom, had already proposed liquidation of the Appellant Company, therefore, the present appeal has become infructuous. Based on these submissions, the Adjudicating Authority has rightly passed the impugned order, therefore, there is no merit in the present Appeal, the Appeal is fit to be dismissed as the recommendation of the CoC to liquidate the Company is pending for consideration before the Adjudicating Authority.

11. After hearing the parties and going through the pleadings made on behalf of the parties, we agree with the reasons given by the Adjudicating Authority while passing the impugned order and as the CoC has recommended for liquidation of the Company for which I.A. is pending before the Adjudicating Authority, hence this Appeal has become infructuous. The Impugned Order dated 31.08.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in C.P. (IB) No. 59/7/NCLT/AHM/2019 is hereby affirmed. The instant Appeal is hereby dismissed.

12.5 Taking in to consideration above Judgement and since the CoC has unanimously passed a Resolution for Liquidation of the Corporate Debtor, we are left with no other option than to liquidate the Corporate Debtor in terms of Section 33 of IBC, 2016 and accordingly IVN.P(IBC)/1(CHE)/2022 stands ***dismissed***.



III. CLAIM APPLICATION FILED BY THE KCT GLOBAL PTE LIMITED:

13. The following are the claim applications filed by the Applicant namely KCT Global PTE Limited:

- a) IA/1074(CHE)/2021 &
- b) IA/1075(CHE)/2021

13.1. In relation to **IA/1074(CHE)/2021**, it is an application filed by one KCT Global PTE Limited under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows :

- (i) Directing the 2nd Respondent to condone the delay of 477 days in filing the claim before the Resolution Professional of the Corporate Debtor and admit the claim of the Applicant;
- (ii) Direct the Respondents to make payment of a sum of Rs. USD 19,433 (Nineteen Thousand Four Hundred and Thirty Three US Dollars) towards the Applicant's claim.
- (iii) For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

13.2. In relation to **IA/1075(CHE)/2021**, it is an application filed by one KCT Global PTE Limited under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows :

- (i) Directing the 2nd Respondent to condone the delay of 477 days in filing the claim before the Resolution Professional of the Corporate Debtor and admit the claim of the Applicant;
- (ii) Direct the Respondents to make payment of a sum of Rs. USD 5,85,891.87/- (Five Lakh Eighty Five Thousand and Eight Hundred and Ninety One and



Eighty Seven cent US Dollars only) towards the Applicant's claim.

- (iii) For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

13.3. Heard the Learned Counsel for the Applicant. Since we are inclined to order liquidation of the Corporate Debtor, the applicants in IA/1074 & 1075 (CHE)/2021 are directed to file their claim before the Liquidator in accordance with relevant provisions and attendant Regulations under IBC, 2016. Accordingly, IA/1074/(CHE)/2021 & IA/ 1075 (CHE)/2021 stands **disposed of** .

14. In so far as Liquidation is concerned, since there is no unanimity of passing resolution with respect to the appointment of the Liquidator and further it is seen from the website of the IBBI, Mr. Subrata Monindranath Maity does not hold a valid Authorization of Assignment (AFA). Thus, as a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. As per the latest list provided by the IBBI for the period from July 2022 to December 2022, we hereby appoint **Mr. Ganesan.V**, with (**Reg. No: IBBI/IPA-003/IP-N00330/2021-2022/13537** and e-mail Id: **ganesanvenkataramaniyer@gmail.com**) (**AFA is valid up to 05.06.2023**) 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 Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) 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.



- g) 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.
- h) 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.
- i) 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.
- j) The Liquidator is directed to take necessary steps to sell the Corporate Debtor as a Going Concern as per Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016
- k) 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.

15. Accordingly, IA/1213/CHE/2021 filed for Liquidation of the Corporate Debtor stands **allowed**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Sriram Ananth .V

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT