

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

**IA(IBC)/429(CHE)/2023  
IN  
IA(IBC)/643(CHE)/2021  
IN  
IBA/902/2019**

*(Filed under Sections 33(3) & 74 of the IBC, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016)*

***In the matter of M/S. Topknit Processing Mill Private Limited***

Mr. A R Ramasubramania Raja,  
Monitoring Professional of  
M/s. Topknit Processing Mill Private Limited  
No.3, Sundaram Brothers Layout,  
Opposite to All India Radio,  
Trichy Road, Ramanathapuram,  
Coimbatore – 641 045.

*... Applicant*

**Vs**

1. Mr. C. Sivasami  
Resolution Applicant/Promoter,  
M/s. Topknit Processing Mills Pvt. Ltd.,  
No.1/131, Senathipathi chetty palayam,  
Kallipalayam, Morattuapalayam, Uttukuli RS,  
Tiruppur – 638 752.

2. Mr. S. Jana Bharathi,  
Resolution Applicant/Promoter,  
M/s. Topknit Processing Mills Pvt. Ltd.,  
No.1/131, Senathipathi chetty palayam,  
Kallipalayam, Morattuapalayam, Uttukuli RS,  
Tiruppur – 638 752.

*... Respondents*

*For Applicant* : *A.G. Sathyanarayana, Advocate*  
*For Respondent* : *Sankar Varadharajan, Advocate*

**CORAM:  
SANJIV JAIN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

***Order Pronounced on 26<sup>th</sup> July, 2023***



## **ORDER**

(Hearing conducted through Video Conferencing)

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by Mr. A R Ramasubramania Raja, Monitoring Professional of M/s. Topknit Processing Mill Private Limited seeking the following reliefs:

- a) *Consequential Order under Section 33(3) to liquidate the CD in a manner laid down under Chapter III of Part II of the Code;*
- b) *Pass an order by appointing Shri A.R. Ramasubramania Raja (IBBI/IPA-002/IP-N00635/2018-19/11982) as liquidator for administering the liquidation process of the corporate debtor;*
- c) *That this Hon'ble Tribunal may be pleased to refer the matter to IBBI for initiating necessary action against the Respondents for contravention of the approved resolution plan; and*
- d) *To pass such order or further orders which this Hon'ble Tribunal may deem to be fit and proper in the interest of justice.*

2. The Corporate Insolvency Resolution Process against the corporate debtor commenced vide order dated 21.11.2019 and culminated in the approval of Resolution Plan by the CoC of the Corporate Debtor in its 10<sup>th</sup> CoC meeting held on 29.06.2021. The resolution plan was approved by this Tribunal vide order dated 20.06.2022 in IA(IBC)/643(CHE)/2021.

3. As per the approved resolution plan, the respondents were to bring in Rs.46.25 lakh at the time of submission of the plan. The balance amount of Rs.964.75 lakh was to be brought in within 180 days of the date of the approval of the plan by this Tribunal. The said amount of Rs.1011.00 lakh was to be paid as under:



Sl. Nos.	Category of Stakeholder	Liability Proposed by Resolution Applicant (Rs. In Lakh)
1	CIRP Costs	30.00
2	Financial Creditors	980.00
3	Operational Creditors	1.00
Total		1011.00

4. It is stated that the Resolution Applicant paid the initial amount into separate escrow account which was under the control of the Monitoring Committee of the corporate debtor.

5. But thereafter the resolution applicant did not remit the balance amount within the due date as per the approved plan, contravening Section 74 of the code.

6. It is stated that in 10<sup>th</sup> Monitoring Committee meeting held on 15.02.2023, detailed discussions regarding the contraventions in implementing the plan were held and the following resolution was passed:

*"Since the 180 days of implementing the Resolution Plan and 60 days cure period for rectifying the default in paying the resolution amount by resolution applicant allowed will expire on 15.02.2023, and no settlement of dues received from the promoter group, MC with 100% voting from SIDBI decided to initiate liquidation process of the company as per IBC 2016".*

It is to be noted that SIDBI is the sole financial creditor of the corporate debtor holding 100% of voting in the Monitoring Committee.

7. It is stated that the Successful Resolution Applicant has so far remitted a sum of Rs.103.25 lakh. Out of the amount received, Rs.1.00 lakh was paid to the operational creditor in priority and a sum of Rs.50.00 lakh was paid to the secured financial creditor after deducting the CIRP costs.

8. It is stated that ~~the~~ the forfeiture letter was issued on 17.02.2023 to the respondents stating that as per the approved resolution plan, the total amount of Rs.103.25 lakh including the security deposit of Rs.46.25 lakh paid by the respondents along with the resolution plan, shall be forfeited.

9. It is stated that in terms of the decision of the monitoring committee, the present application has been filed seeking liquidation of the corporate debtor and appointment of the applicant herein as the liquidator of the corporate debtor. Form-AA along with AFA is attached along with the application.

10. This application was heard on 23.03.2023, 10.04.2023 & 01.05.2023. In all these hearings, there was no representation on behalf of the respondents. The respondents made appearance through Advocate Mr. Sankar Varadharajan and one authorised representative of the successful resolution applicant on 22.06.2023 and stated that a sum of Rs.1.00 crore would be deposited before 30.06.2023 and balance would be deposited by

15.07.2023. Successful Resolution Applicant was directed to file an undertaking to the above and the matter was thereafter posted for hearing on 27.06.2023.

On 27.06.2023 the respondents filed an affidavit. The respondents in the affidavit have given the following time schedule for payment:

- a) will deposit a sum of Rs.2.00 crore on or before 30.06.2023.
- b) will deposit the remaining amount of Rs.7.00 crore plus any other dues on or before 15.07.2023.

The affidavit was taken on record. The matter was posted for hearing on 07.07.2023 where the applicant and the respondents confirmed during the hearing that no amount was deposited on or before 30.06.2023. The matter was thereafter posted on 17.07.2023.

11. The matter was taken up on 17.07.2023. Both sides confirmed during the hearing that no amount has so far been paid.

12. Heard the counsel for the applicant and the respondents.

In the present case, Applicant has attached along with the application, minutes of the 8<sup>th</sup> monitoring committee meeting held on 20.01.2023, attended by the representatives of the financial creditors and the successful resolution applicant. From the

minutes of the monitoring committee meeting, we find that it was brought to the notice of the resolution applicant that there was delay in payment of the balance amount under the resolution plan. The monitoring committee clearly has pointed out that the resolution plan period is already over by 17.12.2022 and despite extra time given, successful resolution applicant has not paid the balance amount. It is also recorded that successful resolution applicant has communicated to the monitoring committee that they will be able to settle the entire payment by 22.02.2023. It is seen that successful resolution applicant miserably failed to adhere to the time schedule of payment.

No doubt is left in our mind that the resolution plan approved by this Tribunal vide order dated 20.06.2022 has not been adhered to by the respondents herein and that they have miserably failed to honour the payments as per the approved resolution plan. Multiple opportunities were given by the monitoring committee as recorded above and also by this Tribunal vide order dated 22.06.2023, however the respondents continued to be in breach of the resolution plan.

13. In the matter of Kridhan Infrastructure Pvt. Ltd., Hon'ble Supreme Court in Civil Appeal No 3299 of 2020, decided on 01.03.2021, their Lordship have written and we quote:-



*"The appellant has been unable to raise the funds. The fact of the matter, as it emerges from Mr Vishwanathan's submissions, is that the appellant will be unable to raise funds from the Term Lenders who are insisting that the status of the Company should change from a company under liquidation to an active status. The order of liquidation has not been set aside. Ultimately, what the request of the appellant reduces itself to, is that it would raise funds on a mortgage of the assets of the Company and unless the Company is brought out of liquidation, it would not be in a position to raise the funds. This is unacceptable. At this stage, the order of liquidation has only been stayed, but a final view was, thus, to be taken by this Court. Sufficient opportunities were granted to the appellant earlier during the pendency of the proceedings both before the NCLT and NCLAT. The orders of the NCLT and NCLAT make it abundantly clear that despite the grant of sufficient time, the appellant has not been able to comply with the terms of the Resolution Plan. Since 9 October 2020, despite the passage of almost five months, the appellant has not been able to deposit an amount of Rs 50 crores. Time is a crucial facet of the scheme under the IBC. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However a resolution applicant must be fair in its dealings as well. The appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the Civil Appeal any further. The consequence envisaged under the order of this Court shall accordingly ensue in terms of the forfeiture of the amount of Rs 20 crores. As a consequence of this order, the management shall revert to the liquidator for taking steps in accordance with law. The Civil Appeal is accordingly dismissed."*



14. **Section 33 (3) & (4) of the Insolvency & Bankruptcy**

**Code, 2016**, reads as under:-

*(3) Where the resolution plan approved by the Adjudicating Authority (under section 31 or under sub-section (1) of section 54L) is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).*

*(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (1), (ii) and (iii) of clause (b) of sub-section (1).*

15. In the instant case, a concrete finding has been given by this Tribunal that the successful Resolution Applicants have contravened the Resolution Plan. The same was also brought to our knowledge by the Managing Committee in terms of Section 33(3) of IBC, 2016.

Keeping in mind the provisions of Section 33(4) of IBC, 2016 and the fact that the resolution plan has not been implemented and has been blatantly violated as discussed supra, this Tribunal is left with no other choice but to order for liquidation of the Corporate Debtor as from this day. Moreover it is also seen that opportunity was given by Managing Committee and by this Tribunal to the Successful Resolution Applicant but despite promise, the Successful Resolution Applicant miserably failed on the undertaking given to the Managing Committee and later to this Tribunal.

In the light of what has been stated above, **we order liquidation of the corporate debtor.**

This Tribunal appoints **Mr. A R Ramasubramania Raja** having Registration No. **IBBI/IPA-002/IP-N00635/2018-2019/11982,(email id: arrsraja@yahoo.com)** as the Liquidator to carry out the liquidation process of the Corporate Debtor 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 including Insolvency regulations (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.

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) 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, viz., company-in-liquidation.

16. As regards Prayer "c", the **Registry of this Tribunal is directed** to forward a copy of this order to IBBI and Ministry of Corporate Affairs for their information and further actions, if any.

17. Accordingly, IA(IBC)/429(CHE)/2023 stands **disposed of**.

— Sd—

**SAMEER KAKAR**  
**Member (Technical)**

— Sd—

**SANJIV JAIN**  
**Member (Judicial)**

Harikrishnan