IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 701

IA/1062/2023 In IB-1626/PB/2019

IN THE MATTER OF:

M/s. L & T Housing Finance Limited

...Applicant/Finance Creditor

Versus

M/s. Cosmopolitan Technofab Textiles Private Ltd.

...Respondent/Corporate Debtor

Order under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.

Order delivered on 31.08.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA/1062/2023 stands allowed.

SD/- **SD/-**

(Rahul Bhatnagar)
Member (Technical)

(Bachu Venkat Balaram Das)
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 1062/2023

IN

Company Petition No. (IB) – 1626/(PB) /2019

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

In the matter of:

M/s. L & T Housing Finance Limited

...Applicant/Finance Creditor

Versus

M/s. Cosmopolitan Technofab Textiles Private Ltd.

...Respondent/Corporate Debtor

And in the matter of:

Harish Taneja

Resolution Professional of M/s. Cosmopolitan Technofab Textiles Private Limited

...Applicant

Order Pronounced on: 31.08.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Mr. Harish Taneja

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an application filed by the Resolution Professional, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of Corporate Debtor, M/s. Cosmopolitan Technofab Textiles Private Ltd.

2. The facts in brief are that the Financial Creditor of the Corporate Debtor, M/s. L & T Housing Finance Limited had filed an application under Section 7 of the Code, bearing number IB-1626/(PB)/2019, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on 05.11.2019, thereby initiating CIRP against the Corporate Debtor and therein, appointing Mr.

Harish Taneja as the Interim Resolution Professional (IRP).

3. Thereafter, the IRP had issued a public announcement in Form-A, which was published in the 'Financial Express' in English edition and in 'Jansatta' Hindi edition both dated 08.11.2019, calling on the creditors to submit their claims along with proofs. On receipt of claims and their verification/collation, the Committee of Creditors (CoC) was constituted by the IRP.

4. The IRP prepared a List of Creditors after verification of claims received pursuant to the Public Announcement dated 08.11.2019, filed the List of Creditors along with the Report certifying constitution of the Committee of Creditors with this Adjudicating Authority.

5. That in terms of Section 18(1)(a) of the Code, the Interim Resolution Professional collated all claims submitted by creditors pursuant to the Public Announcement and after the determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of all financial creditors of the Corporate Debtor within the time provided under the Code and scheduled the First Meeting of the Committee of Creditors (hereinafter, the "CoC") on 04.12.2019. In the said meeting he placed the agenda for the appointment of IRP as the Resolution Professional or to replace the IRP with another Resolution Professional in terms of the Section 22 (2) of the Code, before the members of Committee of Creditors. That the Committee of Creditors discussed the proposal of the IRP and confirmed the appointment of the IRP as the Resolution Professional of the Corporate Debtor.

6. That in the 5th meeting of the CoC, the RP informed to the CoC members that since the complete details of the Corporate Debtor are not available, after due discussion and deliberation by the CoC members it was decided that, the option of liquidation may not be viable as the company does not have that much assets and very minimal recoveries will be made from the liquidation process. The CoC members stated that they will consult this with their management and will take decision on this in the next CoC meeting.

7. That in its 7th meeting, the Committee of Creditors discussed and deliberated upon the agenda related to the filing of application with this Tribunal under regulation 33(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the initiation of liquidation and/or dissolution of corporate debtor and to appoint the existing resolution professional as the liquidator and to fix the fee of liquidator thereof. That on the said matter it was opined by the CoC that since the Corporate Debtor has no assets at all which can be realized during the process of liquidation, so they should directly go for the Dissolution of the Corporate Debtor and should file an application with this Tribunal requesting for the dissolution of the Corporate Debtor directly and if the Adjudicating Authority do not allow for the direct dissolution of the Corporate Debtor then the steps should be taken up for the Liquidation of the Corporate Debtor and after that, Dissolution of the Corporate Debtor will take place. The members further stated that although they do not have any objection on the appointment of Resolution Professional as Liquidator but doing so will create an extra burden of fees of Liquidator considering there are no assets in the Corporate Debtor which could be realized and some recoveries can be made.

8. That the application for dissolution U/s 54 of the Insolvency & Bankruptcy Code, 2016 was filed on 09.03.2021 vide IA/1317/2021 and order was pronounced on 02.02.2023 whereby the NCLT, Principal Bench dismissed the Dissolution Application stating that the Order of Liquidation will only be passed when the Application was filed by the Liquidator and the Resolution Professional cannot skip the process of Liquidation and go straight for Dissolution of the Corporate Debtor after the CIRP Process

9. That in the light of order passed by this Tribunal dated 02.01.2023, the Applicant called the 8th meeting of CoC which was held on 17.01.2023 wherein, the CoC discussed and deliberated on the matter and it was decided to file an Application for Liquidation of the Corporate Debtor U/s 33(1) of the IBC, 2016.

10. That the maximum permissible limit of CIRP Process as prescribed under Section 12 of the Code has already expired and as no asset is available for recovery of Financial Creditor, the Resolution Professional is filing this present Application for Initiation of Liquidation Process against the Corporate Debtor under Section 33(1) of the Code.

11. Pursuant to the provisions of Section 34 of the IBC, 2016, Mr. Amit Talwar (IBBI Reg. No.: IBBI/IPA-002/IP-N01178/2021-2022/13887) is eligible and has submitted his consent to act as the Liquidator accordingly.

12. Thus from the facts of the present case, it is seen that the present case is a case where the Resolution Professional is seeking Liquidation of the Company u/s 33(2) of the IBC, 2016 on the ground that the Corporate Debtor has no assets.

13. The Hon'ble NCLAT vide order dated 25.11.2021 in *Company Appeal (AT) (Insolvency) No.470 of 2019 in the matter of Innovative Construventures Private Limited and Anr. Vs Brainer Trade and Fin-Tech Private Limited and Ors.* held that the IBC empowers the Committee of Creditors to liquidate the Corporate Debtor any time after its constitution under Section 21 and before confirmation of Resolution Plan including any time before the preparation of Information Memorandum.

14. In the matter of *Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors.,* the Hon'ble NCLAT in para 7 stated as under: -

The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. ***The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs.*** *We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision.* ***CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see no good ground to interfere at the instance of the Appellant.*** *However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.*

15. It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. In the present situation extension of time will only result in unnecessary expenses. Further the resolution for liquidation of CD was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.

16. In view of the above, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. Cosmopolitan Technofab Textiles Private Ltd. with following directions:

a. That Mr. Harish Taneja, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.

b. That Mr. Amit Talwar, holding Registration No. *IBBI/IPA-002/IP-N01178/2021-2022/13887*, is appointed as the Liquidator in terms of Section 32(1) of the Code;

c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section

33(5) of the Insolvency and Bankruptcy Code shall commence;

e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

h. The Liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

i. The Liquidator shall submit 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;

j. Copy of this order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps;

k. I.A. 1062/2023 filed in IB- 1626/PB/2019 is disposed of in terms of the aforesaid terms.

SD/-	**SD/-**
(RAHUL BHATNAGAR)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**