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

IA (IBC)/110 (CHE)/2022 in MA/623/2018 in CP/104/IB/2018

(Filed under Regulation 47A of the Liquidation Process Regulation read with Rule 11 of the NCLT Rules, 2016)

Along with

IA (IBC)/116 (CHE)/2022 in MA/623/2018 in CP/104/IB/2018

(Filed under Section 54 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***Harshavardhan Cotton and Synthetics Private Limited***

C.Ramasubramaniam
Liquidator of Harshavardhan Cotton and Synthetics Private Limited
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore – 641 045

... Applicant

Order Pronounced on ***17th November 2023***

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: M.Jayaprakash, Advocate
Pavithra, Advocate

COMMON ORDER

(Hearing Conducted through VC)

IA/110(CHE)/2022

IA/110(CHE)/2022 is an application filed by the Liquidator seeking exclusion of the COVID-19 lockdown period from 25.03.2020 to

14.03.2021 and 10.05.2021 to 30.06.2021 from the liquidation period (being 407 days) and extend the liquidation period up to 31.03.2022 with respect to the Corporate Debtor viz., Harshavardhan Cotton & Synthetics Pvt Ltd. The reasons for the same are stated in para 10 to 14 of the application and the same are extracted hereunder:

> 10. It is submitted that the liquidation period expired on 03.12.2020 [without considering the COVID-19 lockdown exclusions]. It is submitted that the liquidator would not conclude the liquidation of assets within the said period on account of the following reasons:
>
> A. Petition filed before PRL.District and Sessions Court, II and Addl. Civil Judge, Belagavi, Karnataka by M/s. Hejjegar Cotton Company against the CD for dishonor of cheque issued by the corporate debtor (M/s.Hejjegar Cotton Company Vs M/s. Hrashavardhan Cotton & Synthetics Private Limited in OS No.190/2018)
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> B. Petition filed before District judge under Section 34 of the Arbitration and Conciliation Act, 1996 by the CD against the Cotton Corporation of India and the sole arbitrator-Mr.S Shunmugam for setting aside the order passed on 30.04.2014. Request was made for closure of the case citing the reason of closure and dissolution of the CD, but it's still pending (Case no.A.O.P No.224 of 2014 pending before the Hon'ble District Judge of Coimbatore).
>
> C. Follow-up and realization from the remaining debtor and the Loans & Advances. The company records show balance advance realizable of Rs. 0.50 Lakhs from M/s. Kirloskar Pneumatics and Rs.4.02 Lakhs from Lakshmi Machine works Coimbatore. Although the Valuers have given the realizable value as Nil, like all other receivables, the liquidator pursued both the entities for realization. However, both the parties have declined for any payment citing the reason as contract closure and adjustment of the amount towards order cancellation. The liquidator's efforts to categories this advance as an NRRA and make it realizable for other assignee is also not possible, as

the concerned parties have already closed the balances in their books toward contract cancellation.

11. It is submitted that due to the above pending Litigations and due to the lockdown imposed on account of COVID-19 by the central government and state government. [25/03/2020 to 14/03/2021-1st Lockdown, 10/05/2021 to 30/06/2021-2nd Lockdown] the process of dissolution was delayed. It is further submitted that the Hon'ble Supreme Court had also excluded the period granted from 15/03/2020 to 28/02/2022 vide its Suo-moto order dated 10.01.2022 with respect to the period of limitation prescribed under any general law or special law.

12. It is submitted that, the attempt of the Liquidator to recover the pending old advances (although liquidation value is NIL as given by the Registered valuer) were futile. The effort to categorize it as NRRA and assign it to a third party for some realization is also not workable as the parties have adjusted these advances against the contract cancellation and the closed the accounts. Due to COVID-19 pandemic issues, the co-ordination with these parties was delayed as these matters are older dues in the parties' books. After repeated personal visits and follow-ups, the balances are traced to contract cancellations and complete closure in the parties' books. As further proceeding on legal grounds is not a viable option, the liquidator has decided to write off the same as per the registered valuers report and close the books of accounts.

13. It is further submitted that, during the interim period, liquidator pursued both the parties M/s. Hejjegar Cotton Company and M/s. Cotton Corporation of India for closure of both the pending cases. M/s. Hejjegar Cotton company intends to pursue the case against the directors and had not withdrawn the case. M/s. Cotton Corporation of India is not providing any response and continues the case before the court. The Liquidator made his best efforts to realize all the possible debtors and advances. Except the last two advances, the liquidator has realized Rs. 920.57 Lakhs from various debtors (including preferential transaction recovery) and settled the financial creditors due partly. As the remaining two advances are no longer realizable, based on the valuers nil valuation, the same is being written off and closed herewith.

14. Under the circumstances, the liquidator is seeking the exclusion of the time period pertaining to the COVID-19 lock-down being from 25.03.2020 to 14.03.2021 [being 355 days] and from 10.05.2021 to 30.06.2021 [being 52 days] and extend the liquidation period upto 31.03.2022 accordingly. It is submitted that if the application is not allowed it would cause serious hardship to the stakeholders and the Company in liquidation. The Company is at present ripe to be dissolved on this Hon'ble Tribunal excluding the time limit.

2. The reasons stated by the Applicant appears to be plausible. Accordingly, IA(IBC)/110/(CHE)/2022 stands **allowed**.

3. **IA/116(CHE)/2022**

This Application has been filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 by the liquidator of the Corporate Debtor herein seeking for an order for Dissolution of the Corporate Debtor viz., *HARSHAVARDHAN COTTON AND SYNTHETICS PRIVATE LIMITED.*

4. It is stated that CIRP of the Corporate Debtor was initiated by this Tribunal vide order dated 12.03.2018 and one Mr.Raghuram Mani was appointed as Interim Resolution Professional (IRP). Thereafter the applicant herein Mr.Mahalingam Suresh Kumar was appointed as Resolution Professional (RP).

5. It is stated that the Liquidation of the Corporate Debtor was ordered by this Tribunal on 03.12.2018 in MA/623/2018 and the Applicant herein was appointed as the Liquidator.

6. Pursuant to the order of Liquidation, the Applicant caused the Public Announcement on 07.12.2018 in Form –B of Schedule II by inviting the claims from all the stakeholders and fixed the last date for submission of claim as 03.01.2019.

7. It is stated that the Applicant received claims from the following stakeholders of the Corporate Debtor. The details of Claims admitted are given as under:

Sl.No	Name of the Person filing the Claim	Amount Admitted
	Financial Creditor:	
1.	City Union Bank	14,39,79,354.00
	Government Dues:	
1.	Employees Provident Fund Organization	6,34,816.00
2.	Income Tax Officer	2,10,294.00
	Operational Creditor:	
1.	Venkatesh Cotton Trading Company	7,57,210.49
2.	Sree Ganapathy Traders	7,49,927.00
3.	Sri Mahalaxmi Cotton Company	11,59,782.00
4.	Kiran Trading Co	5,42,069.00
5	Ramraghav Spintex Pvt Ltd	46,88,768.00
6.	S N Setty Commercial Corporation	6,92,935.00
7.	Bhadresh Trading Corporation Limited	1,19,37,062.00
8.	Hari Cotton Traders	18,02,374.00
9.	Raja Cotton Trading Company	7,61,805.00
TOTAL		**16,79,16,396.49**

8. It is stated that the Liquidator verified and admitted the claims pursuant to which the list of stake holders was prepared. The list of stake holders was filed before this Tribunal on 20.02.2019 which is well within the 45 day period stipulated under Regulation 31 (2).

9. It is stated that the Applicant had collated the following list of assets which were to be liquidated as per the IBC,2016.

a) **<u>Details of assests:</u>** The Company does not have any immovable/movable assets (excluding some receivables), as the assets were sold before the commencement of CIRP.

10. It is stated that the assets were determined after the formation of the Liquidation Estate. This formed the basis for the preparation of the Asset Memorandum. Only Financial Assets were valued in accordance with Regulation 35 by registered valuers. Thereafter, the Applicant took steps for recovery of the receivables (Financial Assets) from various sundry debtors including the related parties of the Corporate Debtor. It is stated that the Liquidator has realized a total sum of Rs.9,20,57,356/- in the liquidation account from various customers, ex-Directors of the Corporate Debtor and their associate concerns (Related parties), which includes the realization from Directors & related parties on account of Preferential Transactions, which were available for distribution to the stakeholders as per Sec 53.

11. It is stated that after the finalization of list of stake holders and the filing of the asset memorandum before this Tribunal, the Applicant distributed the assets to the stake holders after adjusting the Insolvency

Resolution Process costs in accordance with Regulation 42 read with Sec.53. The following is the manner of distributing the proceeds to the stake holders:

MANNER OF DISTRIBUTION

S.No	SECTION	PARTICULARS	AMOUNT
1	53(a)	CIRP and Liquidation costs	20,47,132
2	53(b)	Secured Financial Creditor	9,03,26,173
		Wages and Unpaid Dues to Workmen	Nil
3	53 (c)	Wages and Unpaid Dues to Employees (other than workmen)	Nil
4	53(d)	Unsecured Financial Creditors	Nil
5	53 (e)	Government Dues	Nil
		Dues to Secured Financial Creditor (to the extent unpaid after enforcement of security interest)	Nil
6	53(f)	Remaining Dues (Operational Creditors)	Nil
7	53(g)	Preference Share holders	Nil
8	53(h)	Equity Share holders	Nil

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

S. No	COMPLIANCE	AVERMENTS	PAGE NO. IN THE APPLICATION
1	Regulation 12	Public Announcement in Form B in Indian Express and Dinamani dated 11.04.2018	46

2	Regulation 35(2)	Appointment of Registered Valuers where no valuation conducted during CIRP	S.No. 12 of Form H in Page No 176 Valuation done during CIRP
3	Regulation 31(2)	List of Stakeholders within 45 days of the Liquidation Commencement Date	166
4	Regulation 31A	Constitution of Stakeholders Consultation Committee (SCC)	S.No. 16 of Form H in Page No 177 Not Applicable as the provisions came in to effect from 25.07.2019
5	Regulation 13	Preliminary Report dated 15.02.2019	55
6	Regulation 34	Preparation of Asset Memorandum within Seventy-Five days from LCD dated 15.02.2019	66
7	Regulation 41	Opening of Bank Account in the name of the company in Liquidation in "City Union Bank"	S.No. 15 of Form H in Page No 176
8		Proof of Closure of the above Bank Account and other account in the name of the Company	165
9	Regulation 15	Quarterly Progress Reports and proof of filing the same before this Tribunal	70,76,83,88,94,103,114,120,126,132,141,148 & 154
10	Regulation 36	Asset Sale Reports after sale of Reports	S.No. 24-26 of Form H in Page No 177
11	Regulation 42(2)	Proof of Distribution within Ninety days from the receipt of realization	182
12	Regulation 45 (3)	Final report dated 12.01.2022	10 & Page N.176 in Form H
13	Regulation 5 (1) (e)	Compilation of Minutes of SCC	S.No. 16 of Form H in Page No 177 No SCC Meetings were held during the liquidation process as the provisions came in to effect from 25.07.2019
14	Regulation 15	Audited Accounts of receipts and Payments	174
15	Regulation 37	Completion of Liquidation Process within one year from Liquidation Commencement Date or extension if any, date of the order & period	Liquidation period ended on 03.12.2020. After considering Exclusion of 407 days and Extension of 76 days. Liquidation period ends on 31/03/2022
16		Form-H –Compliance Certificate	176

13. We have heard Ld. Counsel for the Applicant and perused the report and synopsis filed by the Liquidator.

14. In the instant case, no applications are pending before this Tribunal for avoidance, Preferential, Undervalued or Fraudulent Transactions. The Applicant had initially filed IA/1336/IB/2020 under Section 66 of the code. However, the same was dismissed as withdrawn on 20.10.2022.

15. The liquidator has filed the synopsis showing the distribution which are reproduced as under:

(Amount in Rs. lakh)

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	CIRP Costs U/s 53(1)(a)	8.62	8.62	8.62	100%	
2	Liquidation Costs U/s 53(1)(a)	-	11.85	11.85	100%	
3	Debts owed to Secured Creditor U/s 53(1)(b)(ii) in the event such secured creditor has relinquished security in the manner setout in Section 52	1443.17	1439.79	903.26	62.59%	
4	Government Dues U/s 53(1)(e)	8.45	8.45	0	0	
5	Operational Creditors U/s 53(1)(f)	458.35	230.92	0	0	
	TOTAL	1918.59	1699.63	923.73	48.15%	

16. From the averments made in the Application along with the 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. Accordingly, we order for the dissolution of the Corporate Debtor viz., ***Harshavardhan Cotton & Synthetics Private Limited.*** The Liquidator is directed to forward the 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.

17. In terms of the above, this IA (IBC)/116/CHE/2022 stands **allowed** and CP/104/IB/2018 also stands **disposed of**.

-Sd- -Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)