

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

IA (IBC)/ 245/KOB/2023

In

CP (IBC)/45/KOB/2021

In the matter of:

An application under Sections 33 (2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 & Rule 32 of NCLT Rules, 2016;

-And-

In the matter of:

Mr. K. Easwara Pillai, Resolution Professional of **Savute Textiles Private Limited**, (CD) having office at -52, M.R Square, D.H Road, Jos Junction, Kochi-682 016;

...Applicant

-In-

In the matter of:

Sulpa International,

...Operational Creditor

-Versus-

Savute Textiles Private Limited .

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through Video Conference)

For the Applicant : Mr. Hari Kumar G Nair, Adv.
Mr. Akhil Suresh, Adv.

Order reserved on: 28.06.2023

Order pronounced on: 06.07.2023

ORDER

1. This application has been filed by **Mr. K. Easwara Pillai**, Resolution Professional of Corporate Debtor – Savute Textiles Private Limited. The applicant averred in the application, that the Corporate Insolvency



Resolution Process (**CIRP**) against the corporate debtor under Section 9 of IBC, 2016 was admitted by this Adjudicating Authority on 11.03.2022 in CP (IBC)/45/KOB/2021 and consequently, the CIR Process commenced on the said date with Mr. Babu Abraham Kallivayail appointed as Interim Resolution Professional subsequently, the applicant was appointed as Resolution Professional in the third CoC meeting held on 04.07.2022. The CoC in its 4th meeting held on 04.07.2022 passed resolution with 100% voting share to replace the IRP with new RP Mr. K. Easwara Pillai. Thereafter, IRP Mr. Babu Abraham Kallivayali was replaced by RP Mr. K. Easwara Pillai by this Adjudicating Authority on 25.08.2022 in IA (IBC) 197/KOB/2022. The applicant made necessary paper publications, took over the assets of the corporate debtor, verification of the claims as well as constituted the Committee of Creditors (**“CoC”**).

2. In pursuance of CIRP order the IRP effected public announcement in *“Business Standard”* (English Daily) and *“Deshabhimani”* in (Vernacular Daily) both on 19.03.2022. In response to the said newspaper publications claims were received. It is stated that the IRP had filed an application in IA (IBC) /256/KOB/2022 to bring on record the certificate of registration of the incoming RP in compliance of the order of the Adjudicating Authority. The Adjudicating Authority directed the IRP to inform the new RP about the submission of the certificate and accordingly dispose of the application by taking the certificate on file.
3. The applicant submits that it is only pursuant order dated 15.09.2022, that the applicant herein effectively took charge as Resolution Professional of the corporate debtor. At this juncture, it is pertinent to note that CIRP against the corporate debtor commenced on 11.03.2022 and the expiry of 180 days in terms of Section 12 of IBC, 2016 was on 12.09.2022.
4. It is noted that though the committee of creditors decided to appoint the applicant herein as the Resolution Professional of the Corporate Debtor on



14.07.2022, there was considerable delay by erstwhile RP in filing the application. The applicant was finally appointed as an RP on 15.09.2022 which was after 74 days from the date of Resolution.

5. The applicant submits that the applicant had took charge of the affairs of the corporate debtor after the expiry of 180 days. However immediately on taking charge as the RP, the applicant herein call for a 5th CoC meeting on 10.10.2022. At the time of the handover of the matter from the IRP to the applicant, the applicant enquired about the assets of the corporate debtor and its handover to him. It was informed by the IRP that no assets of the corporate debtor have been taken under his custody. It was further notices that the IRP had not conducted any visit to the factory and registered office of the corporate debtor. Accordingly, the applicant is yet to receive the control and custody of the assets of the corporate debtor. The applicant apprised the members of the CoC about his visit along with the Official of Canara Bank on 07.10.2022 to the registered office of the corporate debtor. Mr. Vinesan Gopinathan, Director (Power suspended) and Company Secretary Mr. Nandu Chandra Kumar also present at the maintained registered address on the same day for assisting the applicant.
6. However, the applicant could not find books of accounts and other relevant documents there. The applicant further observed that no information pertaining to the books of accounts or even the name of the company was exhibited on the said location.
7. The applicants teams and the officers of the financial creditor visited the factory side of the corporate debtor at Savute Textiles Pvt. Ltd, on 20.10.2022 and found out that the corporate debtor is actively doing manufacturing and all business functions in full swing in the factory building measuring 50,00 sq. ft. leased in the name of the corporate debtor in the same address. The applicant submitted a preliminary report dated 26.10.2022.



8. The applicant submits that the Interim Resolution Professional who was appointed by the Adjudicating Authority ought to have appointed a valuer for the purpose of valuation, prepared an information memorandum detailing the assets and liabilities of the corporate debtor, make determinations and file applications before the adjudicating authority on preferential/avoidance/fraudulent transactions and publish Form-G. Further, the applicant did not prepare a detailed EOI, RFRP, and BID Evaluation Matrix documents. However, the fact remains that the Interim Resolution Professional did not perform any of his duties as prescribed under the IBC, Code 2016 and the regulations therein at the time of handover to the applicant herein.
9. The applicant submits that from the facts narrated above, it is abundantly clear that the IRP had consumed the entire CIRP period of 180 days without performing his duties and leaving the applicant with no further time to make a reasonable attempt in resolution of the corporate debtor.
10. Consequently, the applicant filed an application for exclusion of 70 days from the CIRP period from 04.07.2022 to 12.09.2022 *vide* IA (IBC) 422/KOB/2022. The applicant had also moved an application for an extension of 90 days from the last date of expiry of the CIRP period *vide* IA(IBC) 418 /KOB/2022. This Adjudicating Authority after taking note of extraordinary circumstances which were beyond the control of the applicant herein had allowed an exclusion of 63 days from the CIRP period in IA (IBC) 422/KOB/2022 and an extension of 90 days in IA (IBC) 418/KOB/2022 *vide* a common order dated 01.12.2022. Accordingly, the period of CIRP shall now end on 11th Feb 2023.
11. The applicant had thereafter issued a fresh Form-G and had received 18 expressions of interest from Companies/entities. Further, the applicant submits that though the CIRP had commenced on 11.03.2022, the applicant in effect had only 63 days to take control of the assets, prepare information



memorandum and evaluation matrix, publish Form-G etc. and complete the CIRP process. Despite receiving expression of interest from 10 prospective resolution applicants, the resolution professional is unable to invite resolution plan.

12. In the 8th CoC meeting held on 06.02.2023 where the applicant had sought for extension of 90 days in the CIRP process. Thereafter, on the application IA(IBC)/96/KOB/2023 filed by the applicant, this Adjudicating Authority *vide* its order dated 16.03.2023 allowed an extension of 90 days from 11.02.2023 to 12.05.2023.
13. The last date of submission of the Resolution plan was 09.05.2023 and have received two plans through email and via courier by that date from Vinesn Gopinathan (suspended board of director) and Abbas K.A along with an Earnest Money Deposit (EMD-2) of INR 25 Lakhs each, by NEFT respectively, as mentioned in the detailed EOI/RFRP. Two applicants submitted detailed resolution plan. The initial scrutiny by the Resolution Professional noticed more details required and requested them to submit such details on commercials and accordingly both the applicants availed the opportunity.
14. Since the CIRP period was expiring on 12.05.2023, the applicant had filed yet another application for extension of CIRP period from 12.05.2023 to 11.06.2023 so as to enable the resolution professional to approve the resolution plan and consequently file the same before the Tribunal. The said application is pending.
15. Thereafter, in the 12th CoC meeting held on 01.06.2023, the committee of creditors had rejected the resolution plans submitted by both Mr. Vinesan Gopinath (suspended board of director) and Mr. Abbas K.A because it is not in accordance with Section 30 of the IBC, 2016 read with rule 39 of CIRP regulation in the matter of Savute Textiles Private Limited.



16. Since the CoC had rejected both the resolution plans and the CIRP period had already crossed 427 days from the date of initiation of CIRP, it was decided in the very same meeting to liquidate the assets of the corporate Debtor and initiation of liquidation of the Corporate Debtor and to appoint the existing RP, who also has given consent to act as liquidator, as the liquidator of the CD and the fee for the liquidation has also been fixed by the CoC.
17. It is submitted that the CoC has also resolved to appoint Mr. K. Easwara Pillai, as the Liquidator of the Corporate Debtor. The said Mr. K Easwara Pillai /Applicant has also consented to act as the Liquidator of the Corporate Debtor and given his consent in writing.
18. This present application is filed for liquidation with 100% voting of CoC members; further, the two-resolution plans received were rejected by CoC. Further CIRP was ordered on 11.03.2022, now almost 15 months expired, hence there is no other alternative except to accept the applicant and order liquidation under Section 33 (2) of IBC, 2016.
19. In the result, **Savute Textiles Private Limited**, corporate debtor is **ordered to be liquidated**.
- i. The applicant **Mr. K. Easwara Pillai**, Resolution Professional of corporate debtor, Savute Textiles Private Limited, having his office at: 52, M R Square, D.H Road, Jos Junction , Kochi- 682 016 under section 34(1) with Registration No- IBBI/IPA-001/IP-P00448/2017-18/10791 and Email Id: **keaswaran@aaainsolvency.com** is appointed as liquidator of corporate debtor Savute Textiles Pvt Ltd, **subject to his filing of written consent as provided in section 34(1) of IBC ,2016 within 5 days from date of this order**, he shall then proceed with liquidation order.
 - ii. The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take



necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

- iii. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC,2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
- iv. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.
- v. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34 (2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
- vi. On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- vii. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA (IBC)/ 245/KOB/2023

In

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- viii. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kerala at Ernakulam, within whose jurisdiction the Corporate Debtor is registered.
- ix. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.
- x. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.
- xi. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,
- xii. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.07.06 14:31:46 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.07.06 14:47:14 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, 06th day of July, 2023.

Supriya_P. S