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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 26.05.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 136/BB/2018	For hearing IA 168/2020 - CIRP	Sec 9 of I&B code 2016	M/s Bannari Amman Spinning Mills Ltd	N Gowtham Raghunath Advocate	My Choice Knit & Apparels Pvt Ltd	Shri Ramanahalli Shivanna Doddabyre Gowda, RP

ADVOCATE FOR PETITIONER/s: *Ramanahalli Shivanna
Doddabyre Gowda, RP.*

ORDER

ADVOCATE FOR RESPONDENT/s:
Heard Shri Ramanahalli S. Doddabyregowda, learned Resolution
Professional, through Video Conference.

I.A.No.168/2020 and C.P. (IB)No.136/BB/2020 are disposed of
by separate order.

[Signature]

MEMBER (T)

[Signature]

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.136/BB/2018
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

And

I.A No.168/2020
U/s. 54(1) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016.

Ramanahalli S. Doddabyregowda

Resolution Professional of

M/s. My Choice Knit & Apparels Pvt. Ltd.

No.350, 1st Cross,

Canara Bank Layout,

Kodigehalli, Vidyaranyapura,

Bengaluru – 560 097.

- Applicant/RP

In the matter of:

M/s. Bannari Amman Spinning Mills Ltd.

Regd. Off: No.252,

Mettupalayam Road,

Coimbatore,

Tamil Nadu – 641 043.

- Petitioner/Operational Creditor

Versus

M/s. My Choice Knit & Apparels Pvt. Ltd.

No.26/08/011, 4th Road,

1st Cross, Begur Road,

Bommanahalli,

Bangalore – 560 068.

- Respondent/Corporate Debtor

Date of Order: 26th May, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)


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Parties/Counsels Present:

Resolution Professional : Ramanahalli S. Doddabyregowda

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.168/2020 in C.P.(IB)No.136/BB/2018 is filed Ramanahalli S. Doddabyregowda, Resolution Professional of M/s. My Choice Knit & Apparels Pvt. Ltd. ('Applicant/Resolution Professional') U/s. 54(1) of the IBC, 2016 R/w Rule 11 of NCLT Rules, 2016, by inter alia seeking to dissolve the Corporate Debtor (M/s. My Choice Knit & Apparels Pvt. Ltd.) as a special case as the Company is no more going concern, having no employees, operations were shut down since March, 2019 etc.

2. Brief facts of the case, as available on records of the case, which are relevant to the instant case, are as follows:

(1) Initially, C.P.(IB)No.136/BB/2018 was filed by M/s. Bannari Amman Spinning Mills Ltd. (Petitioner/ Operational Creditor) U/s. 9 of the IBC, 2016 read with Rule 6 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. My Choice Knit and Apparels Private Limited (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.1,07,27,295/- (Rupees One Crore Seven Lakhs Twenty Seven Thousand Two Hundred and Ninety Five only). After considering the case, Adjudicating Authority initially dismissed the case vide order dated 04.04.2019. Aggrieved by the order, the Petitioner has filed Appeal before the Hon'ble NCLAT vide Company Appeal(AT) (Insolvency)




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No.513 of 2019, which was allowed by an order dated 03.09.2019 by setting aside the order by directing the Adjudicating Authority to admit the case, if there was no settlement reached between the Parties. Since there was no settlement, was admitted by an Order dated 18.10.2019, by initiating CIRP in respect of the Corporate Debtor; appointing Shri Ramanahalli S. Doddabyregowda, as IRP, imposing moratorium etc. Subsequently, the CoC of the Corporate Debtor in their first meeting held on 21.11.2019 decided to continue the IRP as the Resolution Professional. Accordingly, the Adjudicating Authority, vide its Order dated 10.12.2019, confirmed the IRP as RP.

- (2) In compliance with Section 13, 15 and other applicable Sections of the Code R/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a public announcement is made in Form-A dated 25.10.2019 and 26.10.2019, by calling Creditors to submit their proof of claims , in Financial Express (national English newspaper) and Samyukta Karnataka (Vernacular newspaper) in region of Registered office of the Corporate Debtor) respectively.
- (3) In pursuant to the above notification, the IRP has received the claims from the Financial Creditors in Form C, and the same were scrutinized by the IRP, as under

Sl No.	Name of Creditor, Address, Contact Person's Number and Email ID of the Concerned Person	Amount claimed (In Rs.)	Amount Admitted (In Rs.)	Security Interest, if any	Remarks
1	M/s. Techniks India Plot No.T-4 Shop No.1&2 1 st Stage	4,00,000 (under verification)	4,00,000 (under verification)	NIL	Interest on Debt at 9% not


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	Peenya Industrial Estate Peenya Police Station Main Road, Bengaluru – 560 058 Mob No.9845373462 Email: techniksindia@yahoo.com				claimed
2	M/s. Aaryan Klothing Co., 1 st Floor, No.26/08/011, 4 th Road, 1 st Cross, Begur Road, Bommanahalli, Bangalore – 560 068 Mob: 9880255444 Email: aartiboob.aaryanklothing@gmail.com	1,25,00,000 (under verification)	1,25,00,000 (under verification)	NIL	1. Interest on Debt at 9% not claimed 2. Related Party
3	Mr. Balkishan Boob Flat No.1162 One Bangalore West Apartment No.1, Dr. Rajkumar Road, Bengaluru – 560 010 (Ex-Director) Mob: 9880200222 Email: bkboob123@gmail.com	1,19,50,090 (under verification)	1,19,50,090 (under verification)	NIL	1. Interest on Debt at 9% not claimed 2. Related Party

(4) The Operational Creditor i.e. M/s. Bannari Amman Spinning Mills Ltd., claimed an amount Rs.1,61,08,284/-, which was admitted for an amount of Rs.84,77,311/-, after verification. The public notice also sought proof of claims from Operational Creditors in Form D/E as stipulated in Regulation 9 of the Regulations, and the last date of claim (i.e. November 6, 2019). However, the IRP has NOT received any claims from the workman/employee/Authorized representative of workmen and employees.



(5) In compliance with Section 21(1) of the Code, the Resolution Professional certifies the constitution of the Committee of Creditors, which consists of the following creditors, namely:

- a. Mr. Mohammed Shakir, Sole Proprietor, Techniks India (Financial Creditor), represented by Mr. Ravi Shankar Devarakonda holding 100.00% of the Voting Rights and other Financial Creditors viz., Aaryan Klothing Co., & Mr. Balkishan Boob are not eligible to be Members of Committee of Creditors (CoC) as they are Related parties to Corporate Debtor, as per the provisions of Section 21 (2) of IBC, 2016.
- b. M/s. Bannari Amman Spinning Mills Ltd., the Petitioner/Operational Creditor, holding aggregate dues not less than 10% of the Debts, is allowed to attend the meeting of COC without being Member having no voting right, in terms of provisions of Section 24 of Code.

(6) Ultimately, 5th CoC meeting was held under Regulation 19(1) and applicable provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 18.03.2020. In compliance of Section 22(1) of the IBBI, the Agenda/Actions of the meeting is as follows:

- i. The items of Agenda/Actions requiring approval of the committee as per Regulation 25(2) and applicable provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, was put to vote in the meeting by the Committee after discussion on the same.



Under Agenda No. 4 & 5 of the CoC meeting following were discussed and deliberated.

- The Resolution Professional brought to the notice of the members that there were NO Resolution Applications received, as per Section 33 of the Code, and there is no Potential Resolution Applicants interested in submitting Resolution Plan, all the major assets have already been sold by CD to clear Bank Debt in 2018-19, and the Company is no more a going concern, CD has no employees, operations were shut down since March, 2019 and Fixed Assets of Company were sold by way of private sale as permitted by CoC in the previous CoC meeting.
 - Two sets of valuation submitted by Valuers, shows the fair value and liquidation value of the assets of the CD, which will cover CIRP cost.
 - The CIRP is expiring on 20th April, 2020 and as there is no resolution plan received, there is no option left with the Corporate Debtor to repay the liabilities outstanding and also no assets left with CD for liquidation, it is appropriate to go ahead with Dissolution of the Corporate Debtor as a special case.
- (7) The CoC discussed the above matter in detail, considering time (6-7 months) and Liquidation cost (Rs.2 to 3 lacs) to be invested if Liquidation route is opted. And in pursuant to Section 54 and other Applicable provision of the IBC Code, 2016 and Rules and Regulations made there under, the Committee of Creditors decided to dissolve the Corporate Debtor during the CIRP period itself.



(8) On distribution of Assets, as per the Provisions of Section 53 of the Code, for payment of the Claimants in terms of Section 53 of the IBC, *Workmen's dues for the period of twenty-four months preceding the Dissolution order date*, will have the next priority after the insolvency resolution process costs paid in full.

(9) CoC in the Fifth Meeting held on 21.03.2020 passed the following Resolutions:

RESOLVED THAT *the approval of the CoC meeting be and is hereby accorded to dissolve the Corporate Debtor M/s. My Choice Knit & Apparels Private Limited without going for the process of Liquidation.*

RESOLVED FURTHER THAT *Resolution Professional Mr. Ramanahalli S. Doddabyregowda be and hereby authorized to file necessary application before NCLT, Bengaluru Bench, to consider the decision of the CoC as a special case in the present circumstances, which there are no assets in the Company and Company is left only with liabilities.*

RESOLVED FURTHER THAT *the Committee of Creditors be and is hereby authorize the Resolution Professional Mr. Ramanahalli S Doddabyregowda to submit the Application to the Adjudicating Authority, with prayer to pass order as approved by the Committee of Creditors for payment of Workmen's dues for the period of twenty-four months preceding the Dissolution order date on pro-rate basis, if the Amount left over do not cover the payment of claim obligation of workmen.*

(10) Total assets of the Company, as per Books of accounts are realized.

- i. The total outstanding amount payable by Corporate Debtor to Creditors was Rs.8,17,19,714.00 as on date of Admission, out of which IRP/RP received total claim amounting to Rs.4,31,14,104.00;

The total realizable Assets value of the Company as per the valuation done by the IBBI approved Valuers in terms of Regulation 27 is Rs.8,00,234.00, against which Resolution Professional has recovered Rs.8,70,479.19, which is over and above the liquidation and Fair Value.

The details of Assets realization is furnished below:

Sl. No.	Particulars	Amount in Rs.
1	By Cash Realized from inoperative account with Union Bank of India	Rs.29,918.19
2	By Book Debt Amount realized from Roopa & Company	Rs.7,52,886.00
3	By Sale of Fixed asset at above Liquidation Value-Private sale as per regulation 29 of IBBI (CIRP of Corporate Persons)	Rs.77,175.00
4	Cash in Hand	Rs.10,500.00
	TOTAL	Rs.8,70,479.19

- ii. On liquidation of Assets, proceeds are to be distributed, as per the provisions of Section 53 of IBC with following having the Priority, as decided in the Fourth CoC meeting held on 12.02.2020.

- (a) The insolvency resolution process costs and the liquidation costs paid in full;
- (b) The following debts which shall rank equally between and among the following:-



- i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;
- (c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) Financial debts owed to unsecured creditors;
- (e) The following dues shall rank equally between and among the following:-
- i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) Any remaining debts and dues;
- (g) Preference shareholders; if any; and
- (h) Equity Shareholders or partners, as the case may be.

Accordingly following payments (Rs.4,82,778/-), were made on 20.03.2020:

1. Towards IRP/RP Professional Fee – Rs.3,35,000.00



2. Towards Publication cost (reimbursement to IRP) – Rs.29,778.00
3. To Valuers (4 Nos.) with GST – Rs.1,18,000.00

Above amount were disbursed to the Respective Bank Accounts of Service Providers.

Therefore, the Resolution Professional may be permitted to pay an amount of Rs.3, 72,363.00 to workmen on pro-rata basis by making provision of Rs.15,338.19 towards Bank service charges levied by the Bank. following, out of the balance amount of Rs.3,87,701.19, as decided and approved by CoC in the meeting held on 21.03.2020.

3. Heard Ramanahalli S. Doddabyregowda, learned Resolution Professional, through Video Conference. We have carefully perused the pleadings of the party along with extant provisions of the Code and the Rules made thereunder.
4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder. Section 33(2) of Code reads “Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)”. **Section 54 of the Code reads “54.** (1) Where the assets of the



Corporate Debtor have been completely liquidated, the liquidator shall make an Application to the Adjudicating Authority for the dissolution of such Corporate Debtor. (2) The Adjudicating Authority shall on Application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. (3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered”. **Rule 14 of IBBI (Liquidation Process) Regulations, 2016** reads as “**14. Early dissolution.** Any time after the preparation of the Preliminary Report, if it appears to the liquidator that - (a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and (b) the affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”. **Rule 11 of NCLT Rules, 2016** confers inherent powers on NCLT, which reads as “Rule, 11- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. “**Section 64 of Code** ordains the Adjudicating Authority to dispose of Applications/Petitions filed under the provisions of Code as expeditiously, within the prescribed under this Code”.

5. In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is

either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case, justify there would not serve any purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, can pass appropriate order(s) in the interest of speedy justice.

6. In the light of above provisions of law, as detailed supra, the total outstanding amount payable by Corporate Debtor to Creditors was Rs.8,17,19,714.00 as on date of Admission, out of which IRP/RP received total amount of Rs.4,31,14,104.00. The total realizable Assets value of the Company as per the valuation done by the IBBI approved Valuers in terms of Regulation 27 is Rs.8,00,234.00, against which Resolution Professional has recovered Rs.8,70,479.19, which is over and above the liquidation and Fair Value. Therefore, the Resolution Professional paid Rs.4,82,778/- on 20.03.2020 with breakup of, IRP/RP Professional Fee – Rs.3,35,000.00; Towards Publication cost (reimbursement to IRP) – Rs.29,778.00; To Valuers (4 Nos.) with GST-Rs.1,18,000.00. Therefore, the balance amount is Rs.3,87,701.19, which is to be disbursed to the workmen as decided and approved by CoC in its meeting held on 21.03.2020. However, the total claim of workmen is Rs.5,29,203.00, which covers the period of twenty-four months preceding the Dissolution order date. Therefore, it would be just and proper to permit the Resolution Professional to pay an amount of Rs.3,72,363.00 to workmen on pro-rata basis, on making provision of Rs.15,338.19 towards Bank service charges levied by the Bank.



7. The above facts and circumstances of the Case justified that there would be no useful purpose be served, by placing the Corporate Debtor under Liquidation process, under the extant provisions of Code. Since the Assets of Company were realized and realised amounts were also distributed to the respective claimants except workmen, the liquidation process under the provisions of Code is deemed to have completed under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company subject to finally distribute the remaining amounts, as stated by Resolution Professional. The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra.
8. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 and other connected Provisions of Code, and the Rules made thereunder, C.P. (IB)No. 136/BB/2018 and I.A.No.168/2020, are hereby disposed of with the following directions:
- (1) It is hereby dissolved the Applicant Company, **M/s. My Choice Knit & Apparels Pvt. Ltd.**, with immediate effect.
 - (2) The Resolution Professional is Permitted and directed to pay an amount of Rs.3,72,363.00 on pro-rata basis, as expeditiously as possible, as against their total due amount of Rs.5,29,203/-, on making provision of Rs.15,338.19 towards Bank service charges levied by the Bank, out of balance amount of Rs.3,87,701.19, as decided and approved by CoC in the meeting held on 21.03.2020.
 - (3) The Registry is directed to forward a copy of this Order to



the Registrar of Companies, Karnataka, Bengaluru, within a period of two weeks from today;

- (4) The Resolution Professional is also directed to forward copies of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.
- (5) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Aggrieved party/Parties are liberty to continue or to take appropriate legal course of action against them.
- (6) No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi