



SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 23.11.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/908/2023 in CP (IB) No.166/7/HDB/2019
NAME OF THE COMPANY	Suryajyothi Spinning Mills Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Suryajyothi Spinning Mills Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/908/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

SD/-

MEMBER (T)

SD/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

IA. No.908/2023

In

CP (IB) No. 166/7/HDB/2019

*[U/s.60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of
National Company Law Tribunal Rules, 2016]*

In the matter of M/s. Suryajyothi Spinning Mills Ltd (in liquidation)

In the matter of:

Mr. Kare Ramakrishna S/o Kare Janaiah
Working as Manager, Administration
At Suryajyothi Spinning Mills Limited, Burgula
D.No. 1-41/2, Vijaya Nagar Colony,
Shadnagar, Farooqnagar. Mahaboobnagar District

..... Applicant

Vs

1. Suryajyothi Spinning Mills Limited
Represented by its Liquidator Dr.K Venkata Srinivas
IBBI Registration No. IBBI/IPA-001/IP-P00520/2017-2018/10945
Having his office at 402, 4th Floor, 6-3-249/6,
“Alcazar Plaza & Towers” , Road No.1, Banjara Hills

And also at
Suryajyothi Spinning Mills Limited
Represented by its Liquidator Dr.K Venkata Srinivas
IBBI Registration No. IBBI/IPA-001/IP-P00520/2017-2018/10945
7th Floor, Surya Towers, 106, S.P. Road,
Secunderabad – 500 003



2. The State Bank of India (Lead Bank)
Stakeholders Consultation Committee
Stressed Assets Management Branch,
5th Floor, Rear Block of HMWSSB Compound
D.No. 6-2-915, Khairatabad

..... Respondent

Date of Order: 23.11.2023

CORAM:

Hon'ble Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : G. Sethu Rama Rao

For the Respondent No.2 : Juris Prime Law Services

[PER: Sanjay Puri]

ORDER

1. The present application is filed on behalf of Mr. Kare Ramakrishna, Working as Manager, Administration at Suryajyothi Spinning Mills Limited, being applicant herein u/s 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016, praying this Hon'ble Tribunal to direct the respondent to keep the Corporate Debtor as a going concern, pay February, March, April and May, 2023 salaries to employees and also prays to direct Liquidator and Stake



Holders Consultation Committee to take all such measures to restore power supply to Corporate Debtor.

Submissions of the Applicants:

2. The current application is directed against the Respondents, who are identified as the Liquidator and Stake Holders Consultation Committee, respectively, of the Corporate Debtor. Corporate Debtor, a public limited company established in 1983 under the Companies Act, 1956, engaged in the manufacturing of wearing apparel. The Adjudicating Authority admitted I.A. No. 96 of 2021 on April 18, 2023, thereby placing the Corporate Debtor under Liquidation. The liquidator assumed control on April 20, 2023, succeeding the Resolution Professional.
3. During the Corporate Insolvency Resolution Process (CIRP) phase, the applicant contends that M/s Yashash Commodities entered into a Job Work agreement with the Resolution Professional, allowing the Corporate Debtor to sustain commercial production at the Burgul plant. However, the other two spinning units and the fabric unit were forced to cease operations due to a lack of working capital and workforce.
4. Despite the financial challenges, the Burgul Plant remained self-sufficient in meeting employee salaries, CIRP costs, and other expenses. The applicant emphasizes that around 500 employees at the Burgul Plant, along with 20 security personnel at the other units, have dedicatedly served the Corporate Debtor for two decades. The Resolution Professional paid salaries up to January 2023 but halted payments thereafter, after he started pursuing liquidation.
5. The applicant underscores the educational and socioeconomic background of the employees, many of whom lack formal education beyond the 10th



standard and are unfamiliar with legal intricacies. With most hailing from rural areas and possessing specialized skills suitable only for spinning units, the applicant argues that their employment prospects outside the Corporate Debtor are bleak, leaving families in dire circumstances.

6. The applicant asserts that with concerted efforts from the former management, Resolution Professional, Liquidator, or lenders, the Corporate Debtor could operate in three shifts, turning the company profitable and fulfilling obligations to creditors. Despite running only a single shift daily under Yashash Commodities, the Corporate Debtor has managed to cover its expenses and generate profits, as evidenced by a turnover exceeding 50 crores in the last three years.
7. In criticizing the current state of affairs, the applicant contends that the Liquidator has not taken measures to instill confidence among employees. Furthermore, the absence of any visits to the plant has left over 300 employees, residing with their families in staff quarters, feeling neglected and unheard amid the liquidation process.
8. Additionally, it is asserted that on April 26, 2023, TSSPDCL disconnected the power supply to the Corporate Debtor, causing significant disruption to the workforce at the plant and the staff residing in quarters. Despite this critical situation, the Liquidator and Lenders remained silent and took no remedial action. Consequently, the employees, faced with the absence of support, approached the former promoters, appealing for assistance. In response, the Promoters/Managing Director stepped forward and expended Rs. 12,00,000/- from April 26 to May 6, 2023, covering expenses related to purchasing diesel to operate generators, ensuring power supply to staff quarters, water provision, ration, and other miscellaneous needs.



9. The applicant contends that, subsequent to these events, the Liquidator filed I.A. No 740 of 2023, which was granted with an order to reinstate power to the Corporate Debtor. However, despite this judicial directive, TSSPDCL again terminated the power supply to the Corporate Debtor. As of the filing of this application, the power supply has not been reinstated. It is further asserted that, in the interim, covering the months of February, March, April, and up to the filing date of this application, the erstwhile promoters expended an additional sum exceeding Rs. 40,00,000/- to procure diesel for power supply, water, and ration, ensuring the basic needs of the employees were met.
10. The applicant, in their written statement, contends that it is well-established in legal doctrine that the Insolvency and Bankruptcy Code (IBC) cannot function as a replacement for other valid jurisdictions and should not be employed to encroach upon the jurisdiction of another court. In support of this argument, reference is made to a pertinent judgment by the Hon'ble Supreme Court of India in the case of *Embassy Property Developments Pvt. Ltd vs. State of Karnataka*.¹
11. Applicant in his written submissions also relied on the judgement given by Hon'ble Bombay High Court in *Reliance Communication Limited Vs. Rajendra P. Bansal*² where it was held as follows:

(i) The NCLT cannot exercise jurisdiction over every issue concerning the corporate debtor simply because the corporate debtor is in insolvency. It is only those issues which arise solely out of the insolvency of the corporate debtor that can be adjudicated upon by the NCLT under Section 60(5)(c) of the IBC.

¹ Order dated 03.12.2019 in Civil Appeal No. 9170 of 2019 @ SLP(C) no. 22596 of 2019

² Order Dated 04.01.2023 in Interim Application No.1161 of 2020 in First Appeal No.1539 Of 2012



(ii) The Interim Resolution Professional/ Resolution Professional cannot short-circuit its obligation under Section 25(2)(b) of the IBC of representing the corporate debtor in judicial/ quasi-judicial proceedings by bringing all matters before the NCLT. Wherever the matter in question falls outside the purview of the IBC, it is the forum which is otherwise vested with jurisdiction in law that is the right forum to adjudicate upon the said matter.

12. The applicant asserts that, within the jurisdiction of Telangana, where the Corporate Debtor's factory is located, eviction matters are regulated by the Civil Procedure Code. Consequently, parties are obligated to address such matters exclusively before the relevant court. The applicant contends that, in line with section 33(5) of the IBC, the liquidator may, at most, seek permission from the Honorable NCLT to initiate eviction proceedings before the appropriate forum. However, the misuse of the liquidator's position to circumvent the established eviction procedures under the applicable law is impermissible.
13. The applicant also cites the Hon'ble Hyderabad High Court's ruling in *Deccan Chronicle Holdings Limited vs. Indiabulls Housing Finance Ltd*³ to elucidate the implications of section 33(5) of the Code, where the court made the following observation:

Section 33(5) stipulates that subject to Section 52, when a liquidation order has been passed, no Suit or other legal proceeding shall be instituted by or against the corporate debtor. Under the proviso thereto, a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.

³ Order dated 26.10.2018 in WP No.29732 OF 2018 : (2108) ibclaw.in 55 HC



14. The applicant contends, based on the Supreme Court's judgment in Embassy and the Telangana High Court's decision in Deccan Chronicles, that the Liquidator cannot misuse powers to circumvent other judicial forums or escape compliance with existing laws. Section 238 of the IBC, as interpreted by the Supreme Court, does not grant the Liquidator the authority to disregard other laws, as long as they align with the IBC and employees' constitutional rights.
15. The applicant refutes the misleading claim by Respondents No.1 and No.2 that the "Status-quo" order hinders liquidation progress. The Liquidator attempted an e-auction during the order's enforcement, but it failed due to an exorbitant quoted price. Additionally, the Liquidator's actions, such as changing security staff and taking control of CD assets, contradict their statement, reflecting an attempt to mislead and undermine employees' constitutional rights. The applicant emphasizes that the Liquidator cannot evict employees without following legal procedures, highlighting the absence of evidence supporting due process. The use of force to displace impoverished employees is deemed malicious and unlawful, warranting dismissal.
16. The applicant asserts that electricity is an essential service for the Corporate Debtor, and the Liquidator's failure to restore it infringes on the maximization of value principle and constitutional rights. To ensure a beneficial liquidation, the Liquidator should be directed to restore electricity and strive for a going concern sale, following legal eviction procedures and refraining from using force.
17. Based on these grounds, the applicant requests the application's approval, prohibiting the unauthorized use of force by the Liquidator for eviction and



directing the restoration of essential amenities to the Corporate Debtor's premises.

Submissions of Respondent 1

18. Contrary to the petitioner's arguments, Respondent No.1 contends that the current application lacks maintainability and should be dismissed, asserting that the applicant lacks the requisite locus to file it. Respondent No.1 highlights that, in response to the Liquidator's application (IA.No 740 OF 2023) seeking TSSPDCL's direction, this Hon'ble Tribunal ordered power restoration and instructed the Liquidator to clear pending dues within four weeks in two instalments.
19. Respondent No.1 asserts a lack of available funds to settle TSSPDCL payments, claiming Financial Creditors refused to contribute to CIRP costs, leading to a directive advising parties to claim during the liquidation process. Additionally, the Respondent No.1's attempts to secure financial institutions' contributions to liquidation costs, as per IBBI (Liquidation Process) Regulation, 2016, have been met with no response. The lack of power and water supply has rendered staff quarters uninhabitable for past workers, compelling Respondent No.1 to cease factory operations due to safety concerns, prompting a request for workers to vacate the quarters.

Submissions of Respondent 2

20. In contradiction to the petitioner's contentions, Respondent No.2 argues that prior to the liquidation order, exhaustive efforts were made by the Resolution Professional (RP) for the Corporate Debtor's revival, but no viable plan was received, and attempts by the corporate guarantor to settle the lenders' dues proved unsuccessful. Consequently, liquidation became the only recourse for recovering amounts owed to stakeholders.



21. Respondent No.2 emphasizes that as per Section 33(7), the liquidation order serves as a discharge notice for officers, employees, and workmen, unless the liquidator continues the business during the process. The application, filed by the applicant as the manager of the Corporate Debtor, lacks merit and stands liable for dismissal, as the CD was not conducting any business at the time of the liquidation order.
22. It is clarified by Respondent No.2 that the liquidator's responsibility is to facilitate the sale of the CD as a going concern, a term with distinct implications in the liquidation and Corporate Insolvency Resolution Process (CIRP) contexts. Addressing the power supply issue, Respondent No.2 contends that it is a matter between the liquidator and the power supplier, and the applicant has no locus-standi in this regard. It is emphasized that the liquidator will adhere to the provisions of the IBC in discharging their duties.

The Decision

23. Having considered the arguments presented by both counsels and reviewing the records, the primary issue before us is whether the Applicant possesses the legal standing to file the present application. Regarding this matter, it is well-established that, as per Section 33(7), the order for liquidation operates as a notice of discharge for the officers, employees, and workmen of the corporate debtor unless the business is continued by the liquidator during the liquidation process.
24. Under Regulation 32 and 32A of the IBBI (Liquidation Process) Regulations, 2016, which deal with realisation of assets of the Corporate Debtor on liquidation, it is provided that:

“32. Sale of Assets, etc.



The liquidator may sell -

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*
- (f) the business(s) of the corporate debtor as a going concern.”*

&

“32A. (1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.”

25. From the above, it is clear that upon the issuance of a liquidation order, the Liquidator is mandated to oversee the sale of the Corporate Debtor's assets in compliance with Regulation 32. In cases where the Committee of Creditors recommends a sale under Regulation 32(e) or 32(f)—specifically, the sale of the Corporate Debtor as a going concern—or if the Liquidator deems that a going concern sale would maximize the value of the Corporate Debtor, the primary focus is on pursuing such a sale.
26. However, in the present circumstances, neither the Liquidator nor the Committee has recommended the sale of the Corporate Debtor as a going concern, citing significant losses and substantial claims from the electricity department.
27. Given that a Liquidation Order⁴ has been issued and there is no stipulation for the Corporate Debtor to be sold as a going concern, the officers, employees, and workmen of the Corporate Debtor are already under notice

⁴ I.A. No. 96 of 2021 on 18th April, 2023



of discharge. Additionally, the liquidator has confirmed that no workmen are currently residing in the staff quarters.

28. The applicant, not being a part of the Stakeholders Consultation Committee or holding the position of the Liquidator, lacks the legal standing to file the current application. The exclusive authority to determine the mode of sale, as per the mentioned regulations, rests with the Liquidator, in consultation with the Committee of Creditors or the Consultation Committee.

The judgments cited by the Applicant do not apply

*Embassy Property Developments Pvt. Ltd vs. State of Karnataka*⁵

29. The present case differs significantly from the Embassy Property case, where the Interim Resolution Professional (IRP) sought an extension of the mining lease under the Mines & Minerals (Development and Regulation) Act, 1957 (referred to as the MMDR Act, 1957) for the Corporate Debtor. In that scenario, a notice for the premature termination of the lease had already been issued by the Government of Karnataka, alleging violations of statutory rules and lease deed terms and conditions, before the initiation of the Corporate Insolvency Resolution Process (CIRP). The National Company Law Tribunal (NCLT) had granted the extension sought by the IRP, a decision that was subsequently challenged. Importantly, the current case is rooted in a different factual context. Here, the Liquidator has adhered to the law, and no conflicts with any other law has been demonstrated.

*Reliance Communication Limited Vs. Rajendra P. Bansal*⁶

30. This was a case where the challenge was on the effect of moratorium u/s 14 of IBC on the money deposited in the Trial Court pursuant to the order of

⁵ *Supra*

⁶ *Supra*



the High Court prior to the date of commencement of CIRP and the powers of NCLT vis-à-vis the High Court were examined. In the present case no such conundrum exists. The Liquidator has not been shown to be acting in a manner that that puts IBC in conflict with any other law.

*Deccan Chronicle Holdings Limited vs. Indiabulls Housing Finance Ltd*⁷

31. In this case also, the examination centered around the impact of the moratorium under Section 14 of the IBC on assets for which an Advocate Commissioner had been appointed under an application pursuant to the SARFAESI Act before the commencement of the CIRP. The circumstances of the present case are much different. None of the actions taken by the Liquidator have been shown to create a conflict between the IBC and any other applicable law.

In light of the foregoing, we hereby dismiss this application.

Sd/-
Sanjay Puri,
Member (Technical)

Sd/-
Rajeev Bhardwaj,
Member (Judicial)

NS/RK

⁷ *Supra*