

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

**MA/386/2019
IN
CP/468/IB/CB/2017**

Application filed under sections 35(1)(d), 35(1)(n) of the IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

In the matter of M/s. Tiruppur Surya Hitec Apparel Private Limited

Mr. G.V Ravikumar, Liquidator
For M/s. Tiruppur Surya Hitec Apparel Private Limited

--- Applicant

Vs

M/s. Shark Dyeing Mills & 3 Others

---Respondents

Order delivered on: 19.08.2019

CORAM:

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
ANIL KUMAR. B, MEMBER (TECHNICAL)**

For the Applicant : *Shri. B. Dhanaraj, Advocate*
For Mr. G. V Ravikumar, Liquidator
Counsel for R-1 : *Ms. Swapna Sundari, Advocate*
For Mrs. Ambili Menon, Advocate
Counsel for R-2 : *Ms. Deepika. B, Advocate*
Counsel for R-3&R-4 : *Shri. Rohan Rajasekaran, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on 09.08.2019

It is an MA, Liquidator filed on 03.04.2019 against a Partnership firm called M/s. Shark Dyeing Mills (R1) claiming itself

as lessee to an Unit of the Corporate Debtor (the Debtor), Chairman of Tamil Nadu Pollution Control Board (R2), Mr.K. Kuppusamy (R3) and Mrs. K. Radambigai(R4), suspended Directors of the Debtor Company, seeking relief for removal of sludge and effluents accumulated in the Dyeing Unit of the Corporate Debtor (admittedly run by R1) at their own cost and funds under the supervision of an expert person i.e., Professor Mrs. Jayanthi, Environmental Department, Government College of Technology, Coimbatore or any other expert from the relevant field, appointed by this Bench in accordance with Tamil Nadu Pollution Control Board guidelines.

2. Though this MA was filed on 03.04.2019, it appears, till date R1 has not filed reply, as to R2, Pollution Control Board (R2) regulating this dyeing unit run by R1, R2 Counsel says on 06.07.2018 itself, R2 Board has issued proceedings for immediate closure of the unit and for immediate disconnection of this dyeing unit.

3. To explain how R1 is connected to this liquidation initiated against the Corporate Debtor, says that R1 was running this dyeing business upon the premises belonging to the Corporate Debtor until before this business was closed.
4. The liquidator counsel says that this business was initially run by a partnership firm, M/s. Surya Textile Processing Mills. To do this business, since consent of Pollution Control Board (R2 – hereinafter referred as the Board) is essential to remain accountable to the Board with regard to sludge and effluents discharged while doing this business, this Partnership obtained consent from the Board. Over a period of time, this Partnership Firm converted into Tirupur Surya High Tech Apparel Pvt. Ltd. i.e., the Corporate Debtor herein, but this business was running upon the consent obtained in the name of Partnership, though it has no more been in existence. This consent initially given remained in force until 12.12.2017, thereafter this consent was extended up to 31.03.2018. As to this unit has remained in the name of the Corporate Debtor, perhaps because the Partnership converted into Debtor Company.

5. In the meanwhile, R1 herein in the year 2015/2016 took this unit on lease on "*as is where basis is*", ever since it was admittedly continuing until before R1 was ordered to hand over the possession of the unit on 14.03.2019. It is pertinent to mention here that CIRP has been initiated against the debtor company on 14.06.2017, thereafter ordered for liquidation on 11.02.2018. Therefore, it clearly indicates that R1 continued with the possession of the unit until before order was passed by this Bench in MA 221/2019 On 14.03.2019. It is also pertinent to mention that this business was all through run on the consent obtained in the name of the partnership, which was long before converted into Corporate Debtor, but the plant and machinery of this unit has been in the name of the Corporate Debtor.

6. When this Unit applied for renewal of the Consent on 19.06.2018, Tamil Nadu Pollution Control Board has inspected the Unit on 25.06.2018. During their inspection, for the Board noticed irregularities in running the business and not clearing sludge from

the premises, it has categorically noted the irregularities after seeking explanation from R1, which are as follows:-

Sl.No.	Violations mentioned in the show cause notice dated 26.06.2018	Unit's reply dated 27.06.2018
1.	The media filters connected to the RO II&RO III are not in operation and these filters are not filled with media for filtration.	We kindly inform you that we are going to connect the media filters for RO II and III for filling. Filter media filling work will be completed before 03.07.2018.
2.	RO I stage should have 70% recovery. Whereas the RO I stage proved. In the unit has only 47% recovery. Hence, the load on the downstream treatment systems such as RO II stage, RO III stage, NF and evaporators will get increased, affecting the efficiency of ZLDS.	RO I stage membranes will be renewed within a week (before 30.06.2018) which leads to RO recovery raises from 47% to design recovery 70%. After membrane renewal our RO I treatment system is operated efficiently.
3	RO I stage feed TDS was measured as 8500 mg/l and the RO I stage reject was measured as 10860 mg/l and the permeate TDS was measured as 1480 mg/l. This shows that the RO I treatment system is not operated efficiently.	RO I stage membranes will be renewed within a week (Before 30.6.2018) which leads to RO I stage permeate TDS will come below 350 mg/l and RO I stage reject TDS will come 14000 mg/l. After membrane renewal our RO I treatment system is operated efficiently.

4	RO III stage feed TDS was 14290 mg/l the permeate TDS was 1837 mg/l and reject TDS was 16000 mg/l. This shows that the RO III treatment system is not operated efficiently.	RO III stage membranes will be renewed within a week (before 30.06.2018) which leads to RO III stage permeate TDS will come around 500 mg/l. and RO III stage reject TDS will come 45000 mg/l. After membrane renewal our RO III treatment system is operated efficiently.
5	The Unit has accumulated sludge quantity of 1028 T within the premises. The Unit has not obtained authorization for the transportation and disposal of accumulated sludge.	We are applied hazardous waste authorization for disposal of accumulated sludge. After getting approval from TNPCB the same sludge will be transported within two months.
6	Directions were issued to the Unit to connect the EMFMs to water quality watch centre before 31.07.2018 vide Board's proc. Dated 28.03.2018. However, the Unit has not taken any effective step for connecting the EMFMs to water quality watch centre in time.	We kindly inform you that we have planned to connect EMFMs to water quality watch centre in our Plant. We have discussed with water quality watch persons for connecting EMFM in our plant and same will be completed on or before 31.07.2018
7	The TDS value of water / suspected effluent sample collected from the open drain within the premises of the Unit was found as 16500 mg/l. This shows that Unit might	We kindly inform you that we are operating and maintaining the ZLDS plant efficiently and continuously. We assure you that this issue will not

	<i>have discharged effluent into the drain for disposal.</i>	<i>occur in future.</i>
8	<i>The Unit has not operated the evaporator. The entries in the evaporator log book were found false.</i>	<i>Due to evaporator feed tank level low. We are unable to operate evaporator during PCB official inspection on 25.06.2018. We assure you that this issue will not occur in future.</i>
9	<i>The Unit is not operating the crystallizer and not recovering salt from the effluent.</i>	<i>We kindly inform that we will operate crystallizer and recover salt from crystallizer before 31.07.2018.</i>
10.	<i>The SEP residual salt is not stored properly.</i>	<i>The SEP residual salt is shifted to proper closed shed area before 30.06.2018.</i>

The reply furnished by the Unit vide reference third cited for the show cause notice was not satisfactory and the unit was not operating the ZLDS efficiently to achieve zero liquid discharge.

In view of the above, the DEE, TNPCB, Tirupur (North) has recommended for the issue of closure and disconnection of power supply to the member unit of the said CETP Company, Tirupur under section 33 A of Water (P&CP) Act, 1974 as amended.

In light of the above said fact and exercise of the powers conferred under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988; it is decided to issue directions for closure and disconnection of power supply of the said Unit.

Now, therefore, in exercise of powers conferred under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988, it is hereby directed that the Unit M/s. Surya Textile Processing Mills, SF No.662/1 and 2, Chettipalayam Village, No.5, M.P. Nagar Extension, Surya Prabha Garden, Tirupur North Taluk, Tirupur District shall be closed with immediate effect and that the electricity supply to the above said unit shall be disconnected with immediate effect."

The receipt of the proceedings may be acknowledged and the action taken in this regard may be intimated to this office early.

Chairman ((FAC)

7. By reading this chart, it is evident that R2 Board categorically observed that R1 completely flouted the norms to be maintained in containing and clearing the pollution of hazardous waste piled up in the unit premises and failed to take precautions in treating the pollution generated in running the unit. In furtherance of it, Tamil Nadu Pollution Control Board (R2) has on 06.07.2018 recommended for issuance of water disconnection and power supply disconnection to the Unit of the CETP Company u/s 33A of the Water (P&CP) Act, 1974. In the same cancellation notice, the Tamil Nadu Pollution Control Board has given direction saying "*M/s. Surya Textile Processing Mills, SF No.662/1 and 2, Chettipalayam*

Village, No.5, M.P. Nagar Extension, Surya Prabha Garden, Tirupur North Taluk, Tirupur District shall be closed with immediate effect and that the electricity supply to the above said unit shall be disconnected with immediate effect”.

8. In the inspection report, it is evident that sludge in this Unit accumulated to 1028 tons within the premises, in spite of being accumulated more than one thousand tonnes, and this unit did not obtain authorization for transportation and disposal of the accumulated sludge. When this issue came up in MA 221/2019, R1 (lessee) replied that it applied for authorization for disposal of accumulated sludge and it would transport the sludge within two months after getting approval from Tamil Nadu Pollution Control Board. As against this, Tamil Nadu Pollution Control Board counsel has stated that Board has already given permission to this unit stating that under Hazardous and Other Waste Management and Trans-boundary Movement Rule, 2016 to remove all the sludge till date, but sludge has not been completely removed from the

Plant either by R1 or by the Corporate Debtor or by the suspended Directors of this Corporate Debtor.

9. Now R1 (lessee) Counsel, in this MA, submits that since they have already handed over the possession of the Plant to the Liquidator on 14.02.2019 on the order passed by this Bench on 05.02.2019, they could not implement the order passed by the Pollution Control Authority i.e., R2. In addition to this, R1 has categorically mentioned in her reply in MA/221/2018 stating that the Liquidator instructed his security not to permit R1 to dispose of the waste; therefore R1 could not dispose of the hazardous waste. If the alleged objection of the liquidator restrained from clearing the sludge and effluents from the premises, as the Liquidator himself has filed this MA seeking direction against R1 for disposal of this waste, there should not be any difficulty for R1 for disposal of this waste as per the orders passed by Tamil Nadu Pollution Control Board.

10. Fact of the matter is, though R1 has orally stated that liquidator raised objection to disposal of the sledge, no material is

on record showing Liquidator obstructed R1 from clearing sludge from the premises on the orders passed by R2. Since it is an order passed by R2 against the unit of the Debtor, for the same being admittedly run by R2, it is understandable that duty is cast upon the person run the business to remove sludge from the premises. Moreover, R1 itself having said in reply in MA221.2019 that it could not clear the hazardous waste from the unit premises because the liquidator objected from clearing it, now R1 could not disown its earlier statement that liquidator was impediment in clearing the sludge by now changing it to saying that Liquidator has to clear it because the Liquidator has taken possession of the premises.

11. Now, when this MA come from the Liquidator asking for removal of this sludge, R1 Counsel cannot say that she wants to file counter saying it is the duty of the Liquidator to remove the sludge because possession has been taken over by the Liquidator for two reasons, one – R1 statement through its counsel in this MA is inconsistent and diagonally opposite to its reply in MA 221/2019, two – it is the duty of a person causing wrong to set it right. Since

the liquidator himself says for clearance of the sludge from the premises, for R1 being the cause for accumulation of hazardous waste on the premises of the unit, R1 cannot shy away from its responsibility on the ground the possession was handed over to the liquidator. When these statements of R1 are set against each other, it is evident that R1 keeps changing its stand suitable to it.

12. It has been mentioned by the Liquidator that in case this sludge is left in the premises, that sludge being hazardous waste as recorded in the order passed by R2, it is not only hazardous to the staff present in the premises but also to the public at large because Tamil Nadu Pollution Control Board has already observed that the TDS value of a water / suspected effluent sample collected from the open drain within the premises of the unit was found as 16500 mg/l. This clearly indicates that this unit discharging effluent into the drain for disposal. It has also been stated that this Unit has not operated the evaporator, and that entries in the evaporator log book are found false. It is stated that the Unit is operating the crystallizer

and not recovering salt from the effluent and the SEP residual salt is not stored properly.

13. By looking at this bizarre situation, we do not think that we need more material to believe that this sludge is hazardous to the public and it was not properly treated by R1 who was continuing as lessee of this Unit. And another aspect apparent on record is this Unit was continuing with the consent given to a partnership firm which is no more in existence.

14. The consent or license given for this kind of business, every time when such business is changed hands, it is imperative that person newly running the business shall take fresh consent from the Pollution Control Board because permissions/licenses will go along with a person, not with unit. If it is a lease, it goes along with property/unit, whereas when it is a license, it goes along with a person taken such license.

15. In this case, this consent being initially taken in the name of a Partnership Firm, that was long before converted into Debtor Company, that consent should have been transferred in the name of

the debtor company. That has not happened. Thereafter, it was given on lease to R1, then also this consent continued in the name of the Partnership firm which is not in existence.

16. It is an admission case on section 10 petition the Corporate Debtor filed, afterwards, it took more than one year for eviction of R1 from the premises of the Corporate Debtor. Since it is a relief asked for removal of the sludge hazardous to human life, unless such sludge is immediately removed by a person who caused it, there could be a possibility for anything to happen causing danger to the people residing in that vicinity. Moreover, since it was already observed by the Pollution Control Board that this sludge is leaking into public drain, action should be taken immediately.

17. When this Bench has asked the liquidator counsel under what provision order is to be passed, he has drawn our attention to the powers and duties of the Liquidator u/s 35 of the Code, citing Section 35 (1) (d) of the Code to say that liquidator is conferred with a duty to take measures to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary, for

this unit being the asset of the Corporate Debtor, he has to take appropriate action for liquidation of the asset. To take such action, since liquidator is directed under Section 35 (1) (n) of the Code to apply to this Adjudicating Authority for orders, upon such request, if this Bench is of the view, orders are required to effectuate the duties cast upon the liquidator, it shall pass orders. In this case, it is essential to pass orders immediately because it is not only connected to the liquidation of the asset, but also connected to the health of the public exposed to that area.

18. Therefore, in the interest of the Corporate Debtor and in the interest of the public, the liquidator has rightly exercised the right to protect the asset of the Corporate Debtor, and right to apply for relief before this Bench under Clause (1) n of Section 35 of the I&B Code, 2016.

19. The Tamil Nadu Pollution Control Board Counsel has stated that as of now 100 tons of sludge is remained in the premises as per their records. As against the statement, the Liquidator states that it cannot be sure that only 100 tons lying in the premises, it would be

even more also. It does not matter whether it is 100 tons or more than 100 tons, whatever that is lying there shall be cleared immediately.

20. Therefore, this Bench hereby directs R1 to clear the sludge from the premises on their own cost under the provisions of this Code immediately. To comply with this order, R1 shall clear the sludge i.e., left in the premises by giving a notice to the Liquidator so that Liquidator will remain present at the site at the time of removal of this sludge from the premises.

21. Soon after clearing that sludge from the premises, R2 is hereby suggested to inspect the premises to find out as to whether all hazardous material has been taken out from the premises, if so, R2 shall issue certificate to the Liquidator certifying that sludge has been removed from the premises. In this regard, compliance report shall be filed before this Bench. Accordingly, this Application is hereby disposed of.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)