



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

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 223/JPR/2021**  
**In CP No. (IB)- 239/9/JPR/2019**

**IN THE MATTER OF:**

**LEOMINE ORGANICS PVT. LTD.**

**...Operational Creditor**

**VERSUS**

**M/S KHATOR FIBRE AND FABRICS LTD.**

**...Corporate Debtor**

**MEMO OF PARTIES**

**Garima Diggiwal**

91, Moji Colony, Malviya Nagar,  
Jaipur- 302017 (Rajasthan)

**...Applicant/ Resolution Professional**

**Leomine Organics Private Limited**

24, Shree Diamond Centre, Lbs  
Marg, Near Punjab & Sindh Bank,  
Vikhroli (West), Mumbai- 40083.

**...Operational Creditor**

**Versus**

**M/s Khator Fibre and Fabrics Limited**

G-67, Modi Nagar, Ajmer Road,  
Jaipur- 302019

**...Corporate Debtor**

For the Applicant : Nitesh Shrivastava, Adv.  
Garima Diggiwal, RP.

**Order Pronounced On:28.07.2022**

**ORDER****Per: Shri Prasanta Kumar Mohanty, Technical Member**

1. This Application bearing IA No. 223/JPR/2021 has been filed by the Resolution Professional of M/s Khator Fibre and Fabrics Limited ('Applicant'/'RP') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ('Code'/'IBC') for passing an order of Liquidation against M/s Khator Fibre and Fabrics Limited ('Corporate Debtor').
2. The Adjudicating Authority vide order dated 23.03.2021 had admitted the Application filed by Leomine Organics Private Limited ('Operational Creditor') under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Ms. Garima Diggiwal as Interim Resolution Professional ('IRP').
3. The appointment of the applicant as RP was approved by the Committee of Creditors ('CoC') meeting held on 19.04.2021 and resolution voted upon on 30.04.2021. In the 4<sup>th</sup> CoC meeting held on 11.06.2021, the CoC members and majority Financial Creditor- Union Bank of India specifically instructed RP not to publish Form G in newspapers as they do not wish to incur any further cost in CIRP of Corporate Debtor on account of non-availability of sufficient assets for realisation to CoC members and non-availability of any assets to cover the CIRP cost.



4. In the 6<sup>th</sup> meeting of CoC, the CoC member Union Bank of India, SAM Branch, having 96.42% voting rights, voted and resolved to liquidate the Corporate Debtor due to the non-availability of sufficient assets for realisation to CoC members, as it would not even cover CIRP cost which was discussed in the 4<sup>th</sup> CoC meeting held on 11.06.2021.
5. It has been submitted that the Corporate Debtor is not having assets and all the assets of the Corporate Debtor including Plant & Machinery and Factory properties has already been sold by the Union Bank of India under SARFAESI Act, 2002 by way of auction on 15.10.2020 and 21.04.2502 respectively. Thereby no material assets are available in the Corporate Debtor and therefore, it is not feasible to proceed further with the CIRP and incur additional costs.
6. At the time of filing the present application it was submitted that the proposal for appointment to act as a Liquidator in the matter by the existing RP had been rejected by the CoC in its 5<sup>th</sup> Meeting held on 16.06.2021. Thereby, the Application submitted that the name of other Insolvency Professional for acting as a Liquidator will be filed in due course. Hence, the Applicant preferred a Supplementary Affidavit vide Diary No. 1972/2021 dated 28.09.2021 whereby Ms. Megha Agrawal, holding Registration No. IBBI/IPA-001/IP/01456/2018-2019/12272 was recommended to be appointed as the Liquidator of the Corporate Debtor.



7. Further, the Applicant vide Diary No. 2665/2021 dated 10.12.2021 filed additional documents in compliance of Order dated 16.11.2021. The additional documents include the minutes of the 7<sup>th</sup> CoC meeting dated 30.11.2021 and Fresh Form-2 of Ms. Megha Agarwal, Proposed Liquidator.
8. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provision of Section 33 of IBC, 2016 is as follows: -

*“33. Initiation of liquidation. —*

- (1) Where the Adjudicating Authority, -*
- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30, or*
  - (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, if shall -*
    - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter,*
    - (ii) issue a public announcement stating that the corporate debtor is in liquidation, and*
    - (iii) require such order to be sent to the authority with which the corporate debtor is registered.*
- (2) 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 creditor approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1).”*



9. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.*

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

10. ***The prescribed period for filing Application*** - In the present case, the Application under Section 9 of the Code was admitted on 23.03.2021, and the RP filed the present Application on 05.08.2021 which is before the date for completion of CIRP from 23.03.2021.

11. ***Appointment of Liquidator and fee to be paid*** - Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for liquidation.

The relevant provisions of Section 34(1) of the Code are as follows: -

*“(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form,*



*shall act as the Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”.*

12. The proposed RP, Ms. Megha Agrawal, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of CoC, are initiated due to prescription of statute. Ms. Megha Agrawal, Resolution Professional with IBBI holding Registration No. IBBI/IPA-001/IP/01456/2018-2019/12272 has filed her consent in Form-AA dated 09.09.2021 to act as the Liquidator vide Dairy No. 1972/2021 dated 28.09.2021. Thus, Ms. Megha Agrawal is appointed as the Liquidator.
13. It is also seen that Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') have been inserted by notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
14. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** - The Liquidator vide Dairy No. 2665/2021 dated 10.12.2021 has submitted additional documents whereby the CoC in its 7<sup>th</sup> meeting held on 30.11.2021 has decided the estimated liquidation cost to be Rs. 10,00,000/-. The necessary action following IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs have been followed.
15. ***Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** - Under Section 35 of the Code, the Liquidator shall



have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, the regulation 32A of the Liquidation Regulations, 2016 lay down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority. The CoC in its 7<sup>th</sup> meeting has discussed selling the Corporate Debtor as a going concern, as the first option under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations, 2016') or sale of business of the Corporate Debtor as a going concern under clause (f) thereof. Further it has been resolved that if the Liquidator is unable to sell the Corporate Debtor or its business under clause (e) or (f) of Regulation 32 of the Liquidation Regulations, 2016 within ninety days from the Liquidation commencement date, the Liquidator shall proceed to sell the assets of the Corporate Debtor under Clause (a) to (d) of Regulation 32 of the Liquidation Regulations, 2016.



16. *The fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)* - It is seen that the CoC, in consultation with the resolution professional, has failed to fix the fee payable to the liquidator. Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.

17. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, M/s Khator Fibre and Fabrics Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter alia include: -

- (i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- (iii) This order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and



workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator; and

- (iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator; and
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the liquidator.
- (vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.



(vii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15.

18. ***Pending Applications, if any, and its / their effect*** - The learned counsel for the Applicant has stated that there are no pending applications which has any bearing on the order of liquidation.
19. In view of the foregoing, IA No. 223/JPR/2021 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Jaipur forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

DEEP  
CHANDRA  
JOSHI

Digitally signed by  
DEEP CHANDRA JOSHI  
Date: 2022.07.28  
17:10:40 +05'30'

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2022.07.29  
17:36:11 +05'30'

**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**