IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/352/2020 in CP/729/IB/2018 filed under *Section 33* of the Insolvency and Bankruptcy Code, 2016

In the matter of ***M/s. Briar Knoll Mills Private Limited***

Arumugam Arumugam
Resolution Professional of
M/s. Briar Knoll Mills Private Limited
1/56. Market Road, Devi Stores,
1st Floor, Kelambakkam,
Chennai – 603 103

... Applicant /Resolution Professional

Order Pronounced on 22nd February, 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *K. Moorthy, Advocate*

O R D E R

Per: **ANIL KUMAR B, MEMBER (TECHNICAL)**

1. This is an application filed under Section 33 of the Insolvency and Bankruptcy Code 2016 (in short 'IBC, 2016') seeking relief as follows:

(i) To order Liquidation order under section 33 of IBC, 2016 of the Corporate Debtor /s. Briar Knoll Mills Private Limited.

(ii) To pass such other orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.

2. In Section 7 application filed by the Financial Creditor under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) against the Corporate Debtor viz., Briar Knoll Mills Private Limited, this Tribunal vide order dated 25.02.2019 initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor and appointed one Mr. Swarnamai Ramasamy as the Interim Resolution Professional (IRP) and subsequently on 10.04.2019 appointed the Applicant herein as Resolution Professional (RP).

3. It is averred in the application that the Applicant had filed MA/1028/2019 for grant of extension of 90 days for the CIRP period and this Tribunal vide order dated 27.09.2019 granted extension of 90 days. It is further stated in the Application that a total of 10 CoC meetings were held and the Expression of Interest was called for two times and the Applicant has received two Resolution Plans. Since the discussion of the Resolution Plans was in progress and the 270 days CIRP time period was about to expire, the Applicant filed another MA/1280/2019 seeking to exclude 49 days from the CIRP timeline

and this Tribunal vide order dated 20.12.2019 allowed the said Application and directed the Applicant to complete the CIRP on or before 09.01.2020.

4. It is stated in the Application that the 9th CoC meeting was held on 30.12.2019 and the Applicant received Resolution Plans from one M/s. Sai Lakshmi Cotton Mills and M/s. Marks Studio India Private Limited. However, it is stated that both the Resolution Applicants have failed to deposit the Earnest Money Deposit (EMD) and the CoC decided to hold negotiations with the Resolution Applicant in the next CoC Meeting. In the 10th Meeting of the CoC held on 09.01.2020, the negotiations were held with M/s. Sai Lakshmi Cotton Mills, however no decisions were taken but the CoC have approved a resolution for seeking permission for exclusion of 33 days from the CIRP period.

5. It is averred in the Application that the CIRP period in relation to the Corporate Debtor got completed 330 days on 09.01.2020 and since this Tribunal vide order dated 20.12.2019 has specifically mentioned that no further extension or exclusion will be granted, the Applicant has filed the present Application under Section 33 of IBC, 2016 to order for Liquidation of the Corporate Debtor.

6. It is further averred in the Application that the Total claims received by the RP comes to the tune of Rs.26,17,50,080/- and the total Liquidation value of the assets of the Corporate Debtor comes to the tune of Rs.5,47,65,000/-. It is also stated that the Applicant has expressed his willingness to act as the Liquidator of the Corporate Debtor and has also filed his consent in Form – AA.

7. Subsequent thereof, the Applicant has filed a memo before this Tribunal on 16.11.2020 stating that the Applicant has received a show cause notice from IBBI and as such the Applicant was suspended from 10.07.2020 under Regulation 11 and as such the Applicant is not entitled to take up any new Assignment and has sought to withdraw his consent given in Form – AA.

8. In so far as the Liquidation of the Corporate Debtor is concerned, from the facts narrated above, it is seen that this Tribunal vide order dated 20.12.2019 passed in MA/1280/2019 has stated that no further extension beyond 09.01.2020 will be granted to the CIRP period. Further, it was also brought to the notice of this Tribunal that the 330 days of the CIRP period also came to an end on 09.01.2020. At this juncture, it is relevant to refer to Section 33(1)(a) of IBC, 2016, which is extracted hereunder;

33 (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, it 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.

9. Section 33(1) of IBC, 2016 contemplates that this Tribunal can pass an order of Liquidation of the Corporate Debtor if the maximum period permitted for the completion of the CIRP is over. Admittedly, in the present case, the 330 days of the CIRP period of the Corporate Debtor came to an end by 09.01.2020 and as such by operation of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is necessarily required to be ordered for liquidation as stipulated under 33(1)(b)(i) of IBC, 2016.

10. Since the Resolution Professional, due to the reasons stated above has withdrawn his consent to act as the Liquidator of the Corporate Debtor, this Tribunal as per Section 34(5) of the IBC, 2016 hereby directs the Insolvency and Bankruptcy Board of India (IBBI) to propose the name of another Insolvency Professional to be appointed as a liquidator. As per Section 34(6) of the IBC, 2016, the IBBI, is directed to propose the name of another Insolvency Professional along with written consent from the Insolvency Professional in the specified form within 10 days from the date of receipt of this order.

11. Upon the name being proposed by the IBBI for the appointment of an Insolvency Professional as a liquidator, the IA/352/2020 will be taken up for passing an order of liquidation by appointing such insolvency professional as the liquidator.

12. Post IA/352/2020, awaiting order from IBBI on **10.03.2021**.

-Sd-	-Sd-
ANIL KUMAR B	**R. VARADHARAJAN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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