



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-I  
KOLKATA**

**CP (IBPP) No. 01/KB/2022**

*An Application under section 54A of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021.*

***In the matter of:***

**Shreemati Fashions Private Limited**

CIN: U18204WB2016PTC209487

... Corporate Debtor

**Date of pronouncement: 05 January 2024**

***Coram:***

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

***Appearances (via hybrid mode):***

For the Corporate Debtor

Mr. Gopal Pitti, FCA

**ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Court convened through hybrid mode.
2. C.P. (IBPP) No. 01/KB/2022 is a petition filed under section 54A of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with rule 4 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 ("**PPIRP Regulations**"), by Visnu Pitti, director of Shreemati Fashion Private Limited authorised *vide* resolution passed in the Extra-Ordinary General Meeting held on 17 March 2022<sup>1</sup>, seeking initiation of Pre-Packaged Insolvency


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<sup>1</sup> Annexure K at Page 40 of the CP

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Resolution Process of Shreemati Fashion Private Limited (***“Corporate Debtor”***).

3. It is submitted that the Corporate Debtor was incorporated on 02 February 2016, having a Share Capital of Rs.5,00,000/- and Paid-up Share Capital of Rs.4,00,000/-.
4. The Corporate Debtor is duly registered under the Micro, Small and Medium Enterprises Act, 2002 in the category of “small enterprise” and has UDYAM Registration Number being UDYAM-WB-10-0006859. Therefore, the Corporate Debtor is eligible to filed this application as per section 54 A of the Code.
5. The total debt raised is Rs.35,47,626/- and the amount in default is Rs.29,11,359/-
6. The Corporate Debtor entered into several borrowing agreement with various lenders since April 2018 to avail loan as per the business requirements of the Corporate Debtor. The Corporate Debtor entered into a borrowing agreement with Indian Bank on 17 September 2019 to avail Cash Credit Facility of Rs. 75,00,000/- (Rupees Seventy-Five Lakh only). The Corporate Debtor had applied for renewal of the open cash credit facility with Indian Bank on 14 September 2020 but instead of renewal, Indian Bank dishonored eight cheques with the reason “insufficient funds” without routing the cheques through open cash credit account of the Corporate Debtor. Indian Bank accepted the same after several reminders.
7. The cheques that were dishonored has cheques amounting to Rs.1090/- (Rupees One Thousand and Ninety only) and Rs. 3,00,000/- (Rupees Three Lakh only), which were issued to Hena Vincom (P) Ltd. and after the cheque was dishonored, Hena Vincom (P) Ltd. stopped the supply



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of sarees. Hena Vincom (P) Ltd. had supplied sarees worth Rs.1,01,94,910/- and demanded the full payment for the said amount.

8. This led to an unforeseen chain of events, other suppliers stopped the supply and the regular customers also stopped placing orders.
9. Further, the Corporate Debtor was unable to make payment of installment to TATA Capital Financial Services Limited for Rs.1,30,491/- (Rupees One Lakh Thirty Thousand Four Hundred and Ninety One only) on 05 October 2020. The Corporate Debtor received a recall notice from TATA Capital Financial Services Limited on 18 January 2021 for Rs.29,11,359/- (Rupees Twenty Nine Lakh Eleven Thousand Three Hundred and Fifty Nine only).
10. A special resolution to initiate Pre-Packaged Insolvency Resolution Process of Shreemati Fashion Private Limited has been passed by the shareholders of the Corporate Debtor in its Extra-Ordinary General Meeting held on 17 March 2022<sup>2</sup>.
11. The meeting of the non-related Financial Creditors of the Corporate Debtor was held on 25 March 2022 wherein the Hena Vincom (P) Ltd. having 10.65% of the debt proposed the name of Purvee Anoop Mehrotra for the appointment as Resolution Professional. As reflected in Form P3<sup>3</sup>, in compliance with section 54A(2)(e) of the Code, 52.87% of the non-related Financial Creditors approved the appointment of Purvee Anoop Mehrotra, having Registration no. IBBI/IPA-001/IP-P-02389/2021-2022/13659, for appointment as Resolution Professional to conduct the Pre-Packaged Insolvency Resolution Process and to discharge duties as envisaged in section 54F of the Code.

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<sup>2</sup> Annexure K at Page 40 of the CP

<sup>3</sup> Annexure H at Pp. 34-35 of the CP

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12. This Adjudicating Authority had sought clarification with respect the voting percentage as given in Form P4 and whether it was in compliance with section 54A(3) of the Code. As section 54A(3) of the Code, the financial creditors not being related parties, representing not less than sixty-six percent in value of the financial debt due to such creditors shall give approval for filing an application for initiating pre-packaged insolvency resolution process.
13. The Corporate Debtor filed a Supplementary Affidavit on 07 June 2023 stating that section 54A(3) of the Code stipulates that 66% voting is with respect to the Financial Creditors who are attending the meeting. The Authorised Representative placed reliance on the judgment passed by the Hon'ble NCLAT in *Tata Steel Limited v. Liberty House Group Pte. Ltd. & Ors.*<sup>4</sup> wherein it was observed that if some members of the Committee of Creditors remained absent, their shares should not have been counted for the purpose of counting the voting shares of the Committee of Creditors. Reliance is also placed on *IDBI Bank Limited v. Mr. Anuj Jain, IRP, Jaypee Infratech Ltd. and Anr.*<sup>5</sup>, the Hon'ble NCLAT held that if any of the Financial Creditor remains absent from voting, their voting percentage should not be counted for the purpose of counting the voting share.
14. The learned Authorised Representative submitted that in view of the above, the voting of the Financial Creditors who are present in the meeting shall be counted. Hence, the voting percentage with respect to the Financial Creditors who were present in the meeting is tabulated hereunder:

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<sup>4</sup> Company Appeal (AT) (Ins.) No. 198 of 2018

<sup>5</sup> Company Appeal (AT) (Ins.) No. 536 of 2019




Name of the Financial Creditor	Debt in Rs.	% of total debt	Assent	Dissent
S.K. Growth Fund Pvt. Ltd.	2,18,00,000/-	17.98%	17.98%	--
Hena Vincom Pvt. Ltd.	55,00,000/-	71.28%	71.28%	--
Tata Capital Financial Services Limited	32,81,530/-	10.74%	--	10.74%
<b>TOTAL</b>	<b>3,05,81,530/-</b>	<b>100%</b>	<b>89.26%</b>	<b>10.74%</b>

Thus, 89.26% have approved the proposal for appointment of the Resolution Professional.

15. The Corporate Debtor has two Directors, viz. Mr. Sunny Pitti and Mr. Vishnu Pitti. The Directors have given their declaration dated 25 March 2022<sup>6</sup> for filing an application for initiating Pre-Packaged Insolvency Resolution Process of Shreemati Fashion Private Limited as envisaged in section 54A(2)(f) of the Code in Form P6 of the PPIRP Regulations.
16. The Resolution Professional has given consent in Form P1 as envisaged in regulation 7(1) of the PPIRP Regulations. The Resolution Professional has submitted a report in Form P8 dated 08 April 2022<sup>7</sup> under section 54(B)(1)(a) of the Code read with regulation 17 of the PPIRP Regulations.

<sup>6</sup> Annexure J at Pp. 38-39 of the CP

<sup>7</sup> Annexure M at Pp. 43-44

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17. In compliance with section 53C(3)(c) of the Code read with regulation 16(2) of the PPIRP Regulations, a declaration has been given in Form P7<sup>8</sup> regarding the non-existence of avoidance transactions relating to the Corporate Debtor and its directors.
  18. An Affidavit affirmed on 12 April 2022<sup>9</sup> has been filed by the Director of the Corporate Debtor in compliance with section 54A(2)(d) of the Code along with regulation 45 of the PPIRP Regulations, stating that the Corporate Debtor is eligible under section 29A of the Code to submit a Resolution Plan.
  19. The audited financial statements of the Corporate Debtor have been filed for the financial years 2019-2020, 2020-2021<sup>10</sup> in compliance with section 54C(3)(d) of the Code, along with the provisional financial statements for the financial year 2021-2022<sup>11</sup>.
  20. On perusal of the financial statements for the financial year 2020-2021, this Adjudicating Authority observed that the Corporate Debtor is a profit making unit till March 2021. The Corporate Debtor was asked to explain the reason for the present position of the Corporate Debtor. The Corporate Debtor filed a Supplementary Affidavit affirmed on 19 December 2022, wherein the Corporate Debtor has stated that it had obtained three loans and an MSME loan from Indian Bank. The said loans were enhanced on 14 September 2020 thereafter the Bank dishonored eight cheques of the Corporate Debtor. It is further stated that the Indian Bank classified all the accounts of the Corporate Debtor as Non-Performing Asset from 11 February 2022 by notice dated 21 February 2022 under section 13(2) of the SARFAESI Act.

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<sup>8</sup> Annexure N at Page 45

<sup>9</sup> PP. 46-48 of the C.P.

<sup>10</sup> Annexure Q at Pp. 50-87

<sup>11</sup> Pp. 88-98 of the CP



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21. On perusal of the applications and the documents, we find that the Corporate Debtor has produced all the required documents in compliance with the provisions of the Code. The application is complete in all respects and meets all requirements of the law. Hence, we are inclined to admit this application under section 54C of the Code.
22. We admit this Company Petition and pass the following orders:
- a. The Company Petition for the initiation of Pre-Packaged Insolvency Resolution Process of Shreemati Fashions Private Limited stands admitted under section 54C of the Code.
  - b. The moratorium shall have effect from the date of this order till the completion of the Pre-Packaged Insolvency Resolution Process or until this Adjudicating Authority approves the resolution plan, as the case may be.
  - c. **Purvee Anoop Mehrotra**, having Registration no. IBBI/IPA-001/IP-P-02389/2021-2022/13659 is appointed as the Resolution Professional to conduct the Pre-Packaged Insolvency Resolution Process as per the provisions of the Code and the PPIRP Regulations, subject to her possessing a valid AFA. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under section 54F of the Code.
  - d. The Resolution Professional shall make a public announcement of the Pre-Packaged Insolvency Resolution Process of the Corporate Debtor as per section 54A of the Code for invitation of claims from the creditors of the Corporate Debtor.
  - e. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Resolution Professional as provided in section 54F(5) of the Code.



- f. The Resolution Professional shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- g. Additionally, the Corporate Debtor shall serve a copy of this Order on the Resolution Professional and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
23. **CP (IBPP) No. 01/KB/2022** to come up on **06.02.2024** for filing the periodical report.
24. The Registry is directed to send e-mail copies of the order forthwith to all the Corporate Debtor and their learned Authorised Representative for information and for taking necessary steps.
25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

This order is pronounced on the 5<sup>th</sup> day of January 2024.

GGRB\_LRA