BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.Nos.87, 443 of 2020
U/S. 33(3) of the IBC, 2016
U/Regulation 39(9) of IBBI
(IRP for Corporate Persons) Regulation, 2016
R/w Rule 11 of the NCLT Rules, 2016
I.A.No.29 of 2021
U/ss.60 (5) (c) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016
in
C.P. (IB)No.68/BB/2018
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

I.A.Nos.87 & 443 of 2020

Canara Bank
Rep. by its Senior Manager &
P.A.Holder Mr. Ashish Sagar
Prime Corporate Branch,
No.18, 3rd Floor,
Ramanashree Arcade,
Near Trinity Circle,
M. G. Road,
Bengaluru – 560 001 - Applicant/Financial Creditor

And

1. Scotts Garments Limited
R/o. at 481-B, IV Phase,
Peenya Industrial Area,
Bengaluru – 560 058 - Corporate Debtor/Respondent No.1

2. Lenin Art Private Limited
Rep. by its Authorised Signatory
Mr. M. Goenka

Tex Centre Premises Society,
Gala 202 H Wing,
26/A, Chandivali Road,
Opp. Saki Vihar Road,
Sakinaka,
Mumbai – 400 072 - Resolution Applicant/ Respondent No.2

Between:

I.A.No.29 of 2021

Linen Art Private Limited
Rep. by its Authorised Signatory
Mr. Sayed Habibulla - Applicant/Resolution Applicant

And

Canara Bank
Rep. by its Senior Manager,
And P.A.Holder, Mr. Ashish Sagar, - Respondent/Financial Creditor

Order Pronounced on: 9th March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

I.A.Nos.87, 443 of 2020 & 29/2021

For Canara Bank	:	Shri Hemanth R. Rao
For Linen Art Pvt Ltd	:	Shri N.L.Rajah, Senior Counsel with Ms. Tahura Anzar

COMMON ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.87 of 2020 is filed by Canara Bank ('Applicant/Financial Creditor'), U/R 39(9) of IBBI (IRP for Corporate Persons) Regulation,

2016 R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to direct Resolution Applicant/R-2, to implement Resolution Plan and provide performance security. Subsequently, it has filed I.A.No.443 of 2020, U/S. 33(3) of the IBC, 2016, by inter alia seeking to liquidate the Corporate Debtor and appoint Mr. M. V. Sudarshan as Liquidator of the Corporate Debtor.

2. I.A.No.29 of 2021 is filed by Linen Art Private Limited ('Applicant/ Resolution Applicant), U/s.60 (5) (c) of the IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to direct the Respondents to consider the modified Resolution Plan.

3. Brief facts of the case, as mentioned in I.A.Nos.87 & 443 of 2020, which are relevant to the issue in question, are as follows:

(1) As per the Resolution Plan, the Applicant had to be paid a total sum of Rs.130.93 crores from the R-2. Further, the Resolution Applicant had agreed to pay a sum of Rs.40,00,00,000/- to the Financial Creditors within 30 days and another Rs.20,00,00,000/- within 90 days from the date of approval of the Plan. The R-2 has failed to pay Rs.40 crores within 30 days and Rs.20 crores within 90 days. On the contrary, the R-2 has paid only a sum of Rs.9,00,00,000/- to the Financial Creditors instead of paying Rs.70 Crores as stipulated in the Plan. The payments made by the Resolution Applicant are shown below in tabular form:

Sl No.	Date	Amount (Rs.)	CB (Rs.)	SBI (Rs.)	IDBI (Rs.)
1.	22.11.2019	4,50,00,000.00	3,68,24,063.00	59,56,875.00	22,19,063.00
2.	29.11.2019	1,75,00,000.00	1,43,20,468.00	23,16,562.50	8,62,968.75
3.	07.12.2019	1,25,00,000.00	1,02,28,906.25	16,54,687.50	6,16,406.25
4.	10.12.2019	80,00,000.00	65,46,400.00	10,59,200.00	3,94,400.00
5.	11.12.2019	70,00,000.00	57,28,100.00	9,26,800.00	3,45,100.00
Total Amount Paid		9,00,00,000.00	7,36,47,937	1,19,14,125	44,37,938

(2) Thereafter, the Applicant sent a Letter dated 31.12.2019 demanding to the Resolution Applicant to pay balance amount of Rs.51 Crores within 2 days from the date of receipt of the Letter. The R-2 inspite of receiving the Letter failed to comply with the demand made therein. The R-2 replied to the Applicant by its Letter dated 06.01.2020, stating that on 23.12.2019, they had received an email from SBI informing them that SBI was initiating forensic audit on the Corporate Debtor. The R-2 further informed that they *"will not going to infuse any further capital till all matters are settled."* Thus, the R-2 has made that it is not interested in implementing the Plan. Again the Applicant has sent another Letter dated 14.01.2020, clarifying to the R-2 that as per the amended Section 32A of the Code, the liability of the Corporate Debtor for an offence committed prior to the commencement of resolution process will cease once the Resolution Plan is approved by the Adjudicating Authority. Thus, any forensic audit would affect only the earlier management of the Corporate Debtor and not the current management/ Corporate Debtor/Resolution Applicant. It is also stated that the Respondents have no intention of implementing the Plan.

(3) Subsequently, Canara Bank has filed Memo dated 13.10.2020 by seeking to withdraw IA No.87 of 2020 and sought for initiation of liquidation proceedings in respect of Corporate Debtor.

4. Brief facts of the case, as mentioned in the I.A.No.29/2021, are as follows:

(1) Initially, C.P.(IB)No.68/BB/ 2018 filed by Saravana Distributors (Petitioner/Operational Creditor), U/s.9 of the Code, by seeking

to initiate CIRP in respect of the Corporate Debtor, was admitted by the Adjudicating Authority vide its Order dated 13.08.2018. In pursuance to initiation of CIRP, on 24.07.2019, the Resolution Applicant had submitted a Resolution Plan and had agreed to make payments to its stakeholder on or before May, 2022, and the same was allowed by this Adjudicating Authority on 16.09.2019 vide order passed in I.A.No.391 of 2019. State Bank of India (one of the Financial Creditors) had challenged the allocation before the Hon'ble NCLAT, and the same is still pending for adjudication.

(2) The Financial Creditor and SBI, after the approval of the Resolution Plan, and after the Applicant had taken over the management of the affairs of the Corporate Debtor, had also requested for the conduct of Forensic Audit by an independent Chartered Accountant, which also forced the Respondent to put a hold on the payments to be made to the Financial Creditors. Further the issues faced by the Applicant was also brought to the notice of the Monitoring Committee and mentioned that it is ready and is in a position now to meet the commitments under the Resolution Plan subject to revised time frames and payment schedules. The management of the Corporate Debtor i.e., Scotts Garments have been transferred to the Resolution Applicant. The Resolution Applicant has always been willing and ready to implement the process and to reset the organisation.

(3) Due to the impact of COVID-19 pandemic since March-2020, Resolution Applicant could not operationalize the plants of the Corporate Debtor. Therefore, the Resolution Applicant has disbursed Rs.28.05 Crores in the year 2020 towards CIRP Cost, Employees Dues, Refurbishments payments to Financial Creditors and Operational Creditors.

(4) On 28.01.2021, when the present Petition was posted for hearing on an Application filed U/s.33 of the Code, the Resolution Applicant in order to show their bonafide and willingness to make repayments, have also undertaken to pay Rs.35 Crores upfront. Post infusion of upfront money, the SRA commits to make the balance payment of Rs.168.50 Crores in next 15 months i.e. by May-2022. Any shortfall in the cash flow will be made good by the SRA in the form of additional unsecured loan. The changes are set out hereunder:

(5) Changes in Section 5 C & 5 D of the Original Plan, as under:

a. Payment of CIRP cost- The same has already been paid and closed.

b. Payment to Financial Creditors: The revised plan proposes no change in the overall tenure of the loan for repayment. The Terminal date of Repayment has been mapped with the original Plan. Hence, last repayment shall be May, 2022 (FY 2023) which is in line with the original plan. The balance period left for repayment, as at present, is 15 months i.e. up to May, 2022.

Till date, the FC have been paid Rs.9 Cr. The SRA now proposes to pay Rs.160 Cr. to the FC with additional interest (calculated @ 10% p.a.) payable on quarterly basis as summarized below.

(Rs in Cr)	**FY21**	**FY22**	**Up to May FY23**	**Total**
Principal	20.00	80.00	60.0	160.0
Interest (@10%pa)	-*	11.00	1.51	12.51
Total	20.0	91.00	61.51	172.51

* March 31, 2021 is the cut-off date assumed for NCLT approval.

c. Payment to Operational Creditors:- As against committed payment of Rs.5.94 Cr., Rs.4.87 Cr. has been paid and balance Rs.1.07 Cr., is due which shall be paid from the upfront money being brought in by the SRA in line with CIRP regulation 38(1).

(Rs in Cr)	FY21	FY22	FY23	Total
Amount to be Paid	1.07	-	-	1.07

d. Payment towards Labour Wages/Employee Salary: As against committed amount of Rs.10.00 Cr., towards labour wages and employees salary dues, Rs.9.35 Cr., has already been paid and the balance shall be paid from the upfront money being brought in.

(Rs in Cr)	**FY21**	**FY22**	**FY23**	**Total**
Amount to be Paid	0.65	-	-	0.65

e. Payments towards Statutory Dues: As per the revised plan we propose to pay Rs.5.85 Cr., from the upfront money and balance Rs.5.85 Cr., within 1 year i.e. by March 31, 2022.

(Rs in Cr)	**FY21**	**FY22**	**FY23**	**Total**
Amount to be Paid	5.85	5.85	-	11.69

f. Funds required for Capex and Working Capital: From the upfront money being brought in Rs.4.71 Cr. are proposed to be deployed towards capex and refurbishments. Also the working capital requirement of the business would be brought to the tune of Rs.12.86 Cr. For future years, working capital shall be brought in as and when required as per the operations of the CD.

(Rs in Cr)	**FY21**	**FY22**	**FY23**	**Total**
Capex	4.71	-	-	4.71
WC	0.11	12.76	-	12.86
Total	**4.82**	**12.76**	**-**	**17.37**

(6) Changes in Section 6.A2 & 6.A4 of Original Plan, as under:

- SRA proposes to change the time-line of sale of non-core assets (as identified in original plan) by the end of FY 2022.

Expected realization – Rs.42 Cr. (in line with original plan).

- Further, they propose additional sale of Peenya Plant (with 1500 sewing machines) which is a deviation from the original plan. Expected realization from sale of Peenya Plant– Rs.48.0 Cr.
- The proposal for sale of Peenya plant is to ensure the payments are made to the FC with the same Terminal date.
- Total Realization from sale of assets by end of FY 2022 is expected to be Rs.90 Cr., against book value of approx. Rs.45 Cr. Hence, there is a tax on sale of assets. This calculation of tax is in line with approved plan.
- The SRA stands committed that in case the assets are being sold earlier, the realizations to the FC shall be accelerated accordingly.
- Peenya plant was expected to generate an EBIDTA approx. Rs.9 Cr., by Terminal date. Now, on account of sale of Peenya plant the impact on business operations is marginal in term of EBIDTA contribution.
- Re-financing of Debt at the end of the plan i.e. in May, 2022 (FY 2023) has been considered at Rs.50.00 Cr. The CD is expected to have an EBIDTA of Rs.24 Cr., in FY 2022 which will ensure re-finance happens comfortably.

(7) Changes in Section 6B of the Original Plan, as under:

- The SRA took over the possession of the plant but could not start with the normal operations due to multiple reasons as stated above. The SRA has now started to operationalize the plant gradually and hence the operational efficiency for the current year has been quite low.
- However, considering the market scenario post COVID-19, the SRA and its technical team has revised the projections of

the Company as given below. Also, the projections factor the fall in business due to sale of the Peenya Plant.

(Rs. in Crore)

Year ending March 31	**2021**	**2022**	**2023**
Months of operations	2	12	12
Base case utilization: Own production (%)	1%	25%	25%
Base case utilization: Conversion (%)	10%	40%	60%
Sales			
Own production	0.6	95.1	99.8
Conversion	2.6	64.8	102.1
Total revenue	**3.2**	**159.9**	**201.9**
EBITDA	**0.36**	**24.24**	**30.71**
EBIDTA %	**11%**	**15%**	**15%**

The original Resolution Plan which was passed by the Adjudicating Authority on 16.09.2019 was of Rs.223.41 Cr. Based on fresh assessment with prevailing conditions, it is proposed to increase the Resolution Plan by another Rs.5.00 Cr., to Rs.228.41 Cr.

(8) It is contended that a severe hardship would be caused to all the stakeholders if the Corporate Debtor is liquidated. Interests of justice warrant the issue of appropriate directions to the Respondent holding 75.4% in the CoC to consider the modified Resolution Plan and permit the Applicant to make payments as per the modified Resolution Plan.

5. Heard Shri Hemanth R Rao, learned Counsel for Canara Bank and Shri N.L.Rajah, learned Senior Counsel for Resolution Applicant, **through Video Conference**. We have carefully perused the pleadings of parties and extant provisions of the Code and Rules made thereunder.

6. The learned Counsels for both the Parties, have once again reiterated their stands taken in their respective Applications, as briefly stated

supra. Therefore, they have urged the Adjudicating Authority to allow the Applications as prayed for.

7. As narrated supra, material facts of the case are not in controversy. Short points for consideration in the case are; whether the Resolution Applicant is entitled to consider the modified Resolution Plan as prayed for as a matter of right; Secondly, whether Canara Bank, the largest CoC Member, is justified in seeking to liquidate the Corporate Debtor, without properly considering genuine grievances of Resolution Applicant, as mentioned in its Application.

8. It is a settled position of law, it is the prerogative of CoC of the Corporate Debtor either to accept Resolution Plan or not, and the Adjudicating Authority, while approving Resolution Plan, as approved by COC with requisite majority, have limited judicial review power over it except in case, there are serious irregularities/illegalities takes place in considering Resolution plans received. Once, Resolution Plan is approved by the Adjudicating Authority, it is binding on all concerned parties. Therefore, it goes with ought saying that the Resolution Plan binds Resolution Applicant namely Lenin Art Private Limited, and the Plan was approved vide Order dated 16.09.2019 passed in I.A.No.391 of 2019, subject to terms and conditions therein. Therefore, Canara Bank can insist that the Resolution Applicant to implement Resolution Plan in question. However, it cannot refuse to consider genuine grievances of Resolution Applicant in view of object of Code.

9. As rightly pointed out Canara Bank that action of the SBI in initiating Forensic Audit on Scotts Garments (Corporate Debtor), would not affect come in the way of implementation of Resolution plan. However,

other contentions raised by the Resolution Applicant in I.A.No.29/2021 are required to be re-considered by Canara Bank. It is also necessary for Canara Bank to consider the facts about Resolution Applicant has already initiated steps to implement the Resolution Plan in question, and disbursement of Rs.28.05 Crores in the year 2020 towards CIRP Cost, Employees Dues, Refurbishments payments to Financial Creditors and Operational Creditors, willing to pay Rs.35 Crores upfront, and also Pandemic situation now plaguing every industry etc. While taking into consideration of the request of the Resolution Applicant, Canara Bank is required to keep in mind that putting the Company under liquidation may not ultimately benefit it or any stake holders, as the experience in liquidation proceedings will indicate it. Ultimately, the object of the Code is to revive the Company in the first instance, during the CIRP of the Corporate Debtor, and as a last and final resort, Corporate Debtor can be put under Liquidation process. Since Resolution Applicant coming forward with its revised proposals as mentioned in their Application, it would be just and proper to direct Canara Bank to reconsider the issue of Resolution Applicant in a dispassionate way by keeping in mind the object of the Code and by visualising benefits accrues in Resolution Plan vis a vis Liquidation process. Since Resolution plan in question is approved by Adjudicating Authority, pendency of before Hon'ble NCLAT would not come in the way of the Applicant to implement the Resolution Plan of the Applicant. It is bounden duty of Resolution Applicant to ensure the implementation of the Resolution Plan, subject to satisfaction of the CoC Members and other stakeholders.

10. For the aforesaid facts and circumstances of the case, we are of the considered opinion that request of the Resolution Applicant is to be re-considered by the CoC, especially by Canara Bank, basing on the

averments made in I.A.No.29/2021, and to take a balanced and reasonable decision, by keeping in mind the object of the Code.

11. In the result, I.A.Nos.87, 443 of 2020 and 29 of 2021 in C.P.(IB)No.68 /BB/2018 are hereby disposed of with the following directions:

(1) Canara Bank and other CoC Members are directed to re-consider the grievance of the Resolution Applicant, as mentioned in the I.A.No.29/2021, and to take a reasonable and dispassionate decisions on the issue by keeping in mind the object of the Code, within three months from the date of receipt of a copy of this Order;

(2) The Resolution Applicant is at liberty to submit any further submission to COC, in addition to averments made in I.A.No.29/2021, and the same may also take into consideration by COC, while taking decision. And the Resolution Applicant is directed to co-operate with COC Members to come to a balanced decision.

(3) No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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