



NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON 24.01.2023 at 10.30 AM THROUGH PHYSICAL HEARING

PRESENT: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
HON'BLE SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

IN THE MATTER OF : Sri Venkatram Spinners Pvt

MAIN PETITION NUMBER : IBA/216/2019

(IA/MA) APPLICATION NUMBERS

IA/985(CHE)/2022 IN IA/47/2021; IA/18/2021; IA/21/2021; IA/110/CHE/2021; IA/131/CHE/2021;
IA/132/CHE/2021; IA/133/CHE/2021; IA/134/CHE/2021; IA/1122/IB/2020; IA/309/CHE/2021;
IA/1047(CHE)/2022; IA/756(CHE)/2022 IN IA/47(CHE)/2021

S.NO. NAME (IN CAPITAL) DESIGNATION REPRESENTATION BY WHOM SIGNATURE

① M.S. SHANMUGA
SUNDARAM
COUNSEL FOR APPLICANT
IN IA 756 / 2022 &
IN IA 1047 / 2022
& COUNSEL FOR
RESPONDENT IN
IA 985 / 2022

2) A.C. Sathyanarayana For Applicant



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IA/985(CHE)/2022 IN IA/47/2021; IA/18/2021; IA/21/2021;
IA/110/CHE/2021; IA/131/CHE/2021 IA/132/CHE/2021;
IA/133/CHE/2021; IA/134/CHE/2021; IA/1122/IB/2020;
IA/309/CHE/2021; IA/1047(CHE)/2022; IA/756(CHE)/2022 IN
IA/47(CHE)/2021

ORDER

All the parties are present with their respective cases before this Tribunal.

IA/985(CHE)/2022 IN IA/47/2021:

This Application has been filed seeking the following relief:

- a) *Consequential order u/s 33(3) to Liquidate the Corporate Debtor in a manner laid down under Chapter III part of Part II of the Code;*
- b) *That this Hon'ble Tribunal may pleased to pass an order that the CA. Mahalingam Suresh Kumar, having Registration No: IBBI/IPA-001/IP-P00110/2017/18/10217 may be appointed as Liquidator of the Corporate Debtor;*
- c) *To impose costs on the Respondent contravention of approved resolution plan U/s. 74 of the Code; and*
- d) *To pass such other orders or further orders which may deemed to be fit and proper in the interest of justice.*

IA/1047(CHE)/2022:

This Application has been filed seeking the following relief:

This Hon'ble Court may grant stay of all further proceedings pursuant to the 6th meeting of Interim Monitoring Committee M/s. Sri Venkat Ram Spinners Pvt Ltd., held on 27.07.2022 of M/s. Sri Venkat Ram Spinners Pvt Ltd., and this render justice.

IA/756(CHE)/2022 IN IA/47(CHE)/2021

This Application has been filed seeking the following relief:

- a) *Grant extension of time of 30 days to the Applicant to pay 60% of the amount as per the schedule in the Resolution Plan amounting to a sum of Rs. 13.21 crores from the*

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date of disposal of the Company Appeal (AT) (Insolvency) No. of 2022 pending before the Hon'ble National Company Law Appellate Tribunal, Chennai Bench.

b) *Pass such other orders that this Hon'ble Tribunal may deem fit and proper and thus render justice.*

2. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 19.08.2018. During the CIRP proceedings, the COC of the Corporate Debtor approved the Resolution Plan on 10.12.2020 and the same was approved by this Tribunal on 17.02.2022.

3. The 1st Respondent is the Successful Resolution Applicant in respect of the Corporate Debtor and the terms of the Resolution Plan are as follows:

Tranche of Payment	Date of Payment	Amount (Rs. In Lakhs)
5% Resolution Plan amount by way of EMD	Along with Resolution Plan	110.15
10% of Resolution Plan amount as Performance Guarantee	15 days from the date of approval of CoC	220.30
I Tranche- 25% of the Resolution Plan amount	60 days from the date of approval by AA	550.75
II Tranche & Final Tranche- Balance 60% of the Resolution Plan amount	90 days from the date of deposit of 150 days from the date of approval by AA	1321.80

4. However, it is seen that the 1st Respondent out of the total Resolution Plan amount of Rs.22.03 Crore has paid only a sum of 8.80 Crore so far. Hence the Applicant vide its letter dated 06.08.2022 issued a notice for termination of Resolution Plan & Forfeiture of the



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plan amount to the 1st Respondent. The contents of the said letter is extracted hereunder:

Plan Approval Date		17-02-2022		
Payment Schedule		Due date	Amount in Lakhs	Remarks
15%	Pre-approval Payment		330.45	Received
25%	1 st Tranche (60 days)	18-04-2022	550.75	Received
60%	2 nd Tranche (150 th day)	17-07-2022	1,321.80	Not paid
Total			2,203.00	

- As per the above payment schedule in the approved resolution plan. The due date for payment of the Final tranche was 17/07/2022 (being Sunday date reckoned is 18/07/2022). But the amount due was not received from you.
- The said payment default of the final tranche was discussed in detail in 5th IMC meeting held on 19/07/2022. In the said 5th IMC meeting, considering the principle of natural justice, it was decided to issue a final notice of 7 days to the resolution applicant to make good the loss and pay the final tranche amount of Rs. 1321.80 Lakhs along with interest (incl. GST) on or before 26th July 2022.
- Whereas even on the final notice period of 7 days ending on 26 July 2022, the Final tranche amount was not received from you. Hence 6th IMC meeting was scheduled on 27/07/2022 to discuss the same
- In the 6th IMC Meeting held on 22/07/2022, after a detailed deliberations on the plan implementation defaults, it was decided to abide by the terms and conditions of the approved resolution plan and following actions are agreed:
- As per Clause 15 of PART V the IMC members in the IMC meeting held on 27/07/2022 have decided as under
- Declared the failure of the implementation of the Resolution plan as per its approved terms



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- Declared forfeiture of the EMD Performance Guarantee & Progress payments amounting to Rs. 8.81 Crs with immediate effect.
- Directed the Chairman of IMC to file appropriate application before Adjudicating Authority for consequential orders under IBC for plan implementation failure.
- Accordingly, the plan implementation failure & forfeiture are being intimated to you through this letter along with detailed replies for your various queries and letter in this subject
- Clarifications for your mail:

1) As per the definition of **'Implementation term of the resolution plan'**: **The definition clearly states that the duration of time on account of stay if any granted shall be excluded in computing the said period:** Whereas the same shall not apply to the subject approved resolution plan, as no stay is granted by the Appellate Authorities (NCLAT)

2) Though the hearing is pending before AA, as no stay is granted and hence the same shall not be excluded in calculation of the effective date.

3). Referring to clause 13 of Part V of the approved resolution plan, the same shall not apply to present scenario, as the resolution plan is already under implementation after the approval by both COC & Adjudicating Authority

4) IMC is bound to act by the terms and clauses of the approved resolution plan. Accordingly in terms of Clause 15 of Part V of the approved resolution plan, the IMC has declared the plan implementation as failed and forfeited the amount paid so far [Refer copy of the 6th IMC meeting minutes attached herewith]

5) Referring to the letter regarding the matter is "sub-judice". I intent to clarify that though the application is pending before AA, the plan implementation terms cannot be kept on hold, unless a specific "Stay" or "Status Quo" been ordered by AA.

6) The IMC is entrusted with the role of monitoring the implementation of die Resolution plan. As the said implementation is contravened by the Resolution applicant, the IMC is duty bond to declare termination & forfeit the amount as per the conditions stated in the approved



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Resolution Plan and seek the directions of AA for consequential orders under IBC.

7) As there was contractual breach in implementation of the Resolution Plan, the IMC has provided a Final Notice of 7 days seeking rectification of breach and payment of the Final Tranche amount keeping in mind the principles of natural justice. However, even after the 7 days Final notice, your company failed to implement the plan.

5. A perusal of the aforesaid letter would manifest the fact that the Successful Resolution Applicant had failed to deposit the balance amount as per the timelines stipulated under the Resolution Plan which was approved by this Tribunal on 17.02.2022. As per the timelines stipulated under the Resolution Plan, the last payment ought to have been made on or before 17.07.2022, however, till date the 1st Respondent has not placed on record any concrete documents to show that they are in a position to pay the balance Resolution Plan amount.

6. Be that as it may, on failure to comply with the terms of the approved Resolution Plan, the present Applications has been filed by the RP seeking to pass an order of liquidation and appoint a liquidator to proceed in the matter in accordance with law.

7. The Resolution Plan approval order passed by this Tribunal clearly mandates time frame for payment of amount as per the undertaken given by the Successful Resolution Applicant which has been admittedly breached in the present case.



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8. The first contention of the 1st Respondent Counsel Mr. Shanmuga Sundaram is that an appeal is pending against the approval of the Resolution Plan before the Hon'ble NCLAT. The second contention is that there was a loan which was approved by Punjab National Bank and that amount was not released in favour of the 1st Respondent on the ground that the appeal before Hon'ble NCLAT is pending and therefore, they are unable to make the commitment as per the timeframe stipulated under the Resolution Plan. On these two (2) grounds, the 1st Respondent seeks further extension of time and not to forfeit the amounts paid so far towards the Resolution Plan amount vide separate application viz. IA/756/2022 and IA/1047/2022.

9. We have perused the Resolution Plan approval order passed by this Tribunal dated 17.02.2022 and letter of the Applicant / RP dated 06.08.2022. Admittedly there is payment of 40% of the total Resolutoon Plan amount and it is an undisputed fact that the balance 60% is unpaid till now. The timeframe has been stipulated under the Resolution Plan and the 1st Respondent / Successful Resolution Applicant has breached the same.

10. The contention of the 1st Respondent that appeal is pending before Hon'ble NCLAT and therefore the Punjab National Bank has not released the amount is a spurious ground raised by the 1st Respondent and has no legal legs to stand since there is no stay or injunction granted by the Hon'ble NCLAT in this regard. Further, it is also required to be noted that



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no-where there is a condition in the Resolution Plan which states that the Resolution Plan amount would be paid subject to the loan granted by the Punjab National Bank and hence the issue of Punjab National Bank not disbursing the loan and therefore the Successful Resolution Applicant could not make the payment is a concocted and illusory defence raised by the 1st Respondent. Further, the loan in respect of Punjab National Bank was raised / sanctioned after the Resolution Plan was approved by this Tribunal and therefore a subsequent event cannot be placed as a ground for the 1st Respondent before this Tribunal for non-compliance of the timeline specified in the Resolution Plan.

11. The Resolution Plan approval order passed by this Tribunal clearly mandates the timeline and Clause 15 of Part – IV of the Resolution Plan stipulates the forfeiture clause, which is as follows;

“15. If the Resolution Applicant fails to remit the Resolution Plan amount in accordance with the payment schedule herein, the Resolution Plan shall stand terminated and the amounts paid thereunder shall stand forfeited in accordance with the RFRP issued”

12. In view of the above, we have no hesitation to hold that the 1st Respondent request for extension of time and not to forfeit the amount does not merit any valid consideration.

Accordingly, IA/756/2022 and IA/1047/2022 stands **dismissed**.

In so far, IA/985/2022 is concerned, it is seen that already the 1st Respondent has contravened the Resolution Plan by not adhering to the



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timelines stipulated thereunder and hence by operation of sub - section (3) of Section 33 of IBC, 2016 the Corporate Debtor is required to be liquidated in the manner laid down under Chapter III of Part - II of IBC, 2016. The Applicant has given his consent to act as the Liquidator of the Corporate Debtor in Form AA which is annexed along with the Application. Further, the Applicant has also annexed the Authorization for Assignment ('AFA') for the Liquidator is valid till 20.11.2023. Under such circumstances, we hereby appoint **Mr. Mahalingam Suresh Kumar** with **Reg. No. IBBI/IPA-001/IP-P00110/2017-2018/10217** the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall endeavour to explore the viability of selling the Corporate Debtor as a going concern in term of Regulation 32A of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- c) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.



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- d) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- e) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- f) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- g) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- h) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- i) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.




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- j) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- k) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

Though prayer (c) seeks imposition of the cost on the 1st Respondent under Section 74 of IBC, 2016, the Ld. Counsel Mr. A.G Sathyanarayana states that only a direction may be issued to the IBBI to proceed in the matter in accordance with law. Accordingly, IBBI is directed to take appropriate steps in accordance with law. The *Registry* of this Tribunal is directed to mark a copy of this order to IBBI.

Accordingly, **IA/985(CHE)/2022** stands **allowed**.

List all other matters on **07.03.2023** for further hearing.


[SAMEER KAKAR]
MEMBER (TECHNICAL)

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[JUSTICE RAMALINGAM SUDHAKAR]
(PRESIDENT)