

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through Web-Based Video Conferencing)

I.A No. 363/BB/2022 &
I.A No. 404/BB/2023 &
I.A No. 454/BB/2023
IN
CP (IB) No. 68/BB/2018

IN THE MATTER OF:
I.A No. 404 of 2023

Canara Bank,
Asset Recovery Management Branch,
Having registered office at:
Spencer Towers,
MG Road,
Bengaluru- 560 001.

... Applicant
Versus

1. State Bank of India,
Having one of its office at:
Commercial Branch,
Krishi Bhavan,
Hudson Circle,
Bangalore – 560 001

... Respondent No. 1

2. IDBI Bank Limited.,
Having one of its Branch office at:
Specialized Corporate Branch,
No. 102, Shakthi Comforts Tower,
KH Road
Bangalore 560 027.

... Respondent No.2

3. Mr. Radhakrishnan Dharmarajan
Monitoring Committee Agent
Scott Garments Ltd
No. 31, Third Floor, Krishna
1st Avenue, 100 feet Road,
Ashok Nagar,
Chennai 600 083.

... Respondent No.3

I.A No.363/BB/2022 &
I.A No. 404/BB/2023 &
I.A No. 454/BB/2023

I.A No. 363/BB/2022

Mr. Radhakrishnan Dharmarajan

Monitoring Committee Agent
Scott Garments Ltd
No. 31, Third Floor, Krishna
1st Avenue, 100 feet Road,
Ashok Nagar,
Chennai 600 083.

... Applicant

Versus

Linen Art Private Limited,

Tex centre premises society,
Gala, 202- H wing,
26/A, Chandivali Road,
Opp. Saki Vihar Road, Sakinaka
Mumbai 400 072.

... Respondent

I.A No. 454/BB/2023

Mr. Radhakrishnan Dharmarajan,

Monitoring Committee Agent
Scotts Garments Ltd

.. Applicant

Versus

Linen Art Private Limited

... Respondent

Order delivered on: 31st October, 2023

Coram: Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For I.A No. 363 of 2023 : Ms. Tahura Anzar, Adv

For I.A No. 454 of 2023 : Shri T. Ravichandran, Adv. For applicant

For I.A No. 404 of 2023 : Shri Hemanth Rao, Adv. For Applicant

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present applications **I.A No. 363 of 2022** and **I.A No. No. 404 of 2023** has been filed on 19.08.2022 and 12.06.2023 by the Monitoring Committee Agent of Scott Garments Limited and Canara Bank,

**I.A No.363/BB/2022 &
I.A No. 404/BB/2023 &
I.A No. 454/BB/2023**

financial creditor respectively; interalia praying for the Liquidation of the Corporate Debtor, Scotts Garments Limited. Canara Bank was also a part of the COC having 75.41% voting share; and also the sole Financial Creditor on the monitoring Committee constituted under the Resolution Plan. In **I.A No. 454 of 2023** filed on 21.06.2023 Monitoring Committee Agent has prayed for a direction to the respondent to hand over the management and control of the Corporate debtor to the applicant or any other resolution professional to be appointed by this Tribunal.

2. The brief facts of the case as narrated by the Applicants in I.A 363 of 2022 and 404 of 2023 is as follows:

3. It is submitted that, Saravana Distributors, Operational Creditor filed insolvency petition before this Tribunal, and vide order dated 13.08.2018 it was admitted and IRP was appointed. Further the RP invited an expression of interest for the Corporate Debtor and pursuant thereto, the resolution applicant submitted the Resolution plan on 31.12.2019.

It is pointed out that the date of submission of the Resolution Plan has been wrongly mentioned in the I.A 404 AS 31.12.2019, whereas the correct date of the submission was 28.06.2019.

4. Moreover, the CoC approved the Resolution Plan by a majority of 74% on 28.07.2019. Thereafter this Tribunal approved the Resolution plan vide order dated 16.09.2019. As per the approved Resolution plan, the Respondent had agreed to pay Rs. 40 Crores to Financial Creditor within 30 days, and the balance sum of Rs. 184 Crores within a period of Two and Half years from the date of approval of the Resolution Plan.

5. However, it is submitted that the resolution applicant failed to abide by the terms of the resolution plan on the pretext that a forensic audit had been initiated in respect of the Corporate Debtor. It is submitted that the financial creditor filed I.A No. 87/2020 on 05.02.2020 seeking implementation of the Plan, and I.A No. 443 of 2020 for grant of various reliefs. I.A No. 29 of 2021 was filed by the resolution applicant seeking intervention of this Tribunal to direct the Financial Creditors to

consider the proposed modification in the Resolution Plan. This Tribunal disposed all three I.A's with a direction to the CoC to consider the grievance of the resolution applicant mentioned in I.A No. 29/2021 and take "reasonable and dispassionate decisions keeping in view the object of the Code.

6. It is submitted that pursuant thereto, several rounds of discussions were held and the revised payment schedule was approved by the CoC. However, the resolution applicant failed to implement the Resolution plan.
7. Aggrieved by the non-implementation of the plan, the financial creditor filed I.A No. 53 of 2022 seeking a declaration that the Resolution Plan failed. And I.A No. 367 of 2022 was filed by the resolution applicant seeking extension of time to implement the resolution plan. This Tribunal vide common order dated 25.05.2023 held that Resolution Applicant has failed to implement the Resolution Plan and declared I.A No. 367 of 2022 as infructuous. Therefore, the application has been filed for liquidation of the corporate debtor.
8. We have heard both the parties and perused the records available.
9. It is seen that this Tribunal vide order dated 25.05.2023 in I.A No. 53 of 2022 has declared that the resolution plan has failed and has directed the Applicant to take necessary steps in accordance with law. At this juncture it is relevant to quote that section 33(3) mandated that *"Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order..."*
10. Accordingly, this tribunal is of the considerate opinion that the corporate debtor is to be liquidated in view of the failure to implement the resolution plan.
11. The applicant have suggested the name of Mr. M.V Sundarshan as the Liquidator; for which consent was also filed. Accordingly, this Tribunal

appoints Mr. M.V. Sudarshan, bearing registration number, IBBI/IPA-002/IP-N00561/2017-2018/11707 as the Liquidator of the Corporate Debtor. The Liquidator has to carry out the liquidation process of the corporate debtor subject to the following directions:-

- a. That 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 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;
- b. That 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
- c. That 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
- d. That 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
- e. That 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 provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
- f. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (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.
- g. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.

- h. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.
12. In terms of the above directions **I.A No. 404 OF 2023** is allowed.
13. Further, it is observed by this Tribunal that **I.A No. 363 of 2022** was filed on 19.08.2022 by the Monitoring Committee agent for Liquidation. This I.A was opposed by the Financial Creditor, Canara Bank, stating that the Applicant in the said I.A has filed the application without authorization from the CoC, and therefore the application is not maintainable in law. It is submitted by the Monitoring Committee Agent that sixth Monitoring Committee meeting dated 19.07.2022 has authorised the applicant to file liquidation of the corporate debtor. However, on perusal of the minutes of the meeting dated 19.07.2022 attached along with the application, it is seen that no authorisation has been given by the CoC to the Applicant to file the instant I.A. Hence it is concluded that **I.A No.363/BB/2022** is not maintainable. In any case since liquidation has already been allowed above in I.A No. 404 of 2023; this application has become infructuous and **dismissed** accordingly.
14. Further, **I.A No. 454/BB/2023** was filed by monitoring committee agent praying for direction to the respondent to hand over the management and control of the corporate debtor to the applicant, pending the decision in the application for liquidation. This I.A is declared as infructuous as liquidation has been ordered on the corporate debtor vide order in I.A No. 404 of 2023.
15. **Accordingly, I.A No.404 of 2023 is allowed, and I.A No. 363 of 2022 and I.A No.454 of 2023 are dismissed**

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**

**I.A No.363/BB/2022 &
I.A No. 404/BB/2023 &
I.A No. 454/BB/2023**