

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.04.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.669/2020 in CP(IB) No.562/7/HDB/2018
NAME OF THE COMPANY	Sri Lakshmikantha Spinners Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Sri Lakshmikantha Spinners Ltd
UNDER SECTION	7 of IBC

ORDER

IA No.669/2020

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A. No.669 of 2020 in
C.P. (IB) No. 562/7/HDB/2018
u/s. 33(1)(a) of IBC 2016

In the matter of:

M/S. STATE BANK OF INDIA

vs.

M/S. SRI LAKSHMI KANTHA SPINNERS LIMITED

Mr. Chinnam Poorna Chandra Rao,
Resolution Professional of
M/s. Sri Lakshmi Kantha Spinners Ltd,
Flat No.101, TVS Mahathi Apartments,
Opp. To Sampoorna Super Market,
Behind SR Digi School,
Lanco Hills Road, Manikonda,
Hyderabad – 500 089.

....Applicant

Date of Order : 18.04.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant : Mr. Deepak Bhattacharjee, Senior Advocate
Mr. G P Yash Vardhan, Advocate

Heard on : 29.02.2024

Per : Bench

ORDER

1. This is an Application filed by the Resolution Professional under Section 33(1)(a) of the Insolvency and Bankruptcy Code 2016,

seeking Orders for Liquidation of the Corporate Debtor **(CD) M/S. SRI LAKSHMI KANTHA SPINNERS LIMITED.**

Brief facts of the Application:

2. The CD was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide Order dated 01.08.2019 and the Applicant herein, was appointed as an Interim Resolution Professional (IRP).
3. On 09.08.2019, the Applicant issued public announcement in Form-A through daily newspapers, inviting claims from the creditors of the CD. Following this, the IRP established the Committee of Creditors **(CoC)**.
4. The CoC in its first meeting held on 31.08.2019 appointed the Applicant/IRP as Resolution Professional (RP) and the same was communicated to this Tribunal on 04.09.2019. Subsequently, RP repeatedly requested the Suspended Directors of the CD and also the Statutory Auditor to provide him the required information for conducting the CIRP, but the said requests were not materialized. Thereafter, with the approval of CoC, the RP appointed the Registered Valuer and shared the valuer's requirements with the CD/concerned persons. Despite vigorous follow up with the Suspended Directors of the CD to comply with the regulations of CIRP and to provide the information required by the Valuers to complete the valuation process, the same was not furnished by them.
5. The RP observed with the available information that, M/s. ATA Agro Commodities Limited (ATA) by holding 18.64% equity of CD, has provided the Corporate Guarantee to State Bank of India for extending the credit facilities to the CD and they have executed an

Agreement for job on 01.12.2017 with the CD. In this regard, the RP has requested ATA which is utilizing the manufacturing facilities of the CD, to provide information pertains to the reimbursement of various expenses as outlined in the job work agreement, the fixed monthly amount of Rs 10 lakhs to be received by the CD and the necessary accounting backup in Tally format, but they have not provided the same to RP.

6. The RP appointed the Transaction Auditor namely M/s Raju & Prasad to audit the transactions falling under Sections 43, 45, 50, and 66 of the IBC. In order to initiate the audit process, Transaction Auditor requested for information, but despite of personal interaction with the CD and the General Manager, they have not provided the same. In the absence of the said information, the Transaction Auditor could not commence the audit.
7. The RP published invitation in Form-G for Expression of Interest (EoI) from Prospective Resolution Applicants (PRAs) for submission of their Resolution Plans. Subsequently, based on the available information, RP prepared the Information Memorandum and due to lack of cooperation from the Suspended Directors of the CD in furnishing the required data, the RP was unable to form a conclusive opinion on preferential transactions under Sections 43, 45, 60, and 66 of IBC.
8. It is stated that, despite numerous requests made during the interactions and in CoC meetings to procure the necessary data from the Suspended Directors of the CD, all efforts were in vain. In view of this, IA No. 1061 of 2019 was filed before this Tribunal seeking directions to the Suspended Directors to provide required information to RP. As the Suspended Directors of the CD

undertook to provide the necessary cooperation as requested by RP, the said IA was disposed by this Tribunal by recording the said undertaking for future compliance. But, despite repeated requests made by RP, the Suspended Directors of the CD failed to cooperate with RP. In view of such non-cooperation, RP filed an IA No. 9 of 2020 before this Tribunal, requesting to take action against the Suspended Directors and other relevant parties for their conduct leading to the disruption of the CIRP concerning the CD.

9. It is averred that, due to non-cooperation from the Suspended Directors of CD, with the approval of CoC in its 4th CoC meeting held on 10.01.2020, the RP filed an IA No.107 of 2020 for extension of CIRP period for 90 days and the same was allowed by this Tribunal vide Order 29.01.2020. Following the extension of CIRP period by 90 days, despite relaxations sanctioned by the Governments due to COVID-19, the RP diligently managed the affairs of the CD and maintained the communication with Suspended Directors of the CD, seeking required information to proceed with the CIRP process. During this period, Prospective Resolution Applicant namely Triunity Impex Private Limited expressed interest in acquiring the CD, but he failed to submit any Resolution Plan within the time limit i.e. by 03.07.2020. Consequently, no Resolution Plan was received by the RP.
10. The Transaction Auditor was entrusted with a responsibility of audit the transactions under Sections 43, 45, 50 & 66 of IBC and any other transactions that effected the stakeholders of the CD for the period from 01.04.2016 to 01.08.2019. Despite the diligent efforts of the Transaction Auditor to obtain the information, only limited information was provided by the Suspended Directors of

the CD. The Transaction Auditor submitted their report dated 04.07.2020 to the RP and on perusal of the Transaction Audit Report particularly Pages 10 and 11, it becomes evident that various details crucial for the audit process were not provided by the Suspended Board of Directors. Further, despite discussions held during CoC meetings in the presence of the Suspended Director Mr. Rameswara Reddy Chirinarappa, RP had not received for the CD the monthly fixed amount of Rs 10 lakhs during the CIRP period from ATA Agro Commodities Limited as per the job agreement between the CD and ATA Agro.

11. The Suspended Director of the CD has failed to adhere to essential Statutory filings, obligatory for every company and the CD defaulted on its GST tax liabilities, resulting, the RP received a Notice from the Deputy Commissioner of Sanga Reddy GSTC Division demanding payment of tax liabilities amounting to Rs 35,13,848 (comprising CGST, SGST and IGST). Despite earnest attempts by the RP to negotiate with the Suspended Directors concerning the settlement of these amounts, such efforts proved futile due to lack of cooperation from the Suspended Director. Additionally, it is noted that, all other Statutory compliances and filings pertaining to the CD are pending and have not been completed by Suspended Director of the CD despite providing a categorical undertaking to comply with these requirements before the Adjudicating Authority.
12. It is averred that, the CD despite continuing its operations as a going concern, the CIRP failed to yield any Successful Resolution Plan from PRAs and from the inception of CIRP process, the Suspended Director of the CD has consistently hindered the Resolution Process and created obstacles for its smooth conduct.

It is further submitted that, no Resolution Plan was received after conducting the CIRP for a period of 270 days and the matter was deliberated in detail during the 7th CoC meeting¹ held from 07.07.2020 to 14.07.2020. The CoC concluded that, in the absence of any Resolution Plan, the only viable course of action was to proceed with Liquidation. Consequently, the CoC recommended the RP to file an application before the Adjudicating Authority, seeking for Liquidation Orders, thereby facilitating the sale of the CD as a going concern under Regulation 32 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

13. During the said CoC meeting, the RP presented the expenses incurred during CIRP from 01.08.2019 to 30.06.2020, which were thoroughly discussed and approved by the CoC. Additionally, the estimated expenditure for the CIRP from 01.07.2020 to 31.07.2020 was also presented by the RP and discussed by the CoC.
14. During the 8th CoC meeting ² held on 17.07.2020, the matter of appointing a Liquidator and determining the professional fee to be paid to the RP for the interim period between the filing of the application and the issuance of the Liquidation order was addressed. The RP conveyed his inability to serve as Liquidator due to prior commitments and requested the CoC to propose a suitable candidate for the position of Liquidator.
15. The CoC discussed the Resolution Fee under Section 23 of the IBC, for the period until the Liquidation order is passed. It was agreed that the RP would receive a fee of Rs 2,00,000/- plus GST

¹ Pg 21-47 of the Application (in page 38).

² Pg 48-53 of the Application.

which would come to Rs 2,36,000. Additionally, an amount of Rs 8,000 towards out-of-pocket expenses plus GST which would come to Rs 9,440, security charges of Rs 1,75,824 and insurance for the Land & Building of the CD amounting to Rs 23,00,000. This total amount would be disbursed to cover the Resolution Professional's expenses from date of expiry of the CIRP period i.e. 03.08.2020 till the receipt of Liquidation Order from the Adjudicating Authority, estimated to be one month and fifteen days thereafter.

16. It was further agreed that, if the RP continues to provide services beyond the estimated period of one month and fifteen days until the issuance of the Liquidation Order, the CoC would compensate the RP with a monthly fee of Rs. 75,000 plus GST and out-of-pocket expenses of Rs. 8,000 plus GST until the Liquidation Order is passed. Additionally, it was decided to retain the current security service provider to continue offering services at the same capacity for an additional period of three months starting from August 2020.
17. It is submitted that, based on the series of events outlined above and upon the recommendation of the CoC, praying this Tribunal to:
 - a. pass an appropriate order of Liquidation under Section 33(1)(a) of IBC 2016, thereby requiring the CD to be liquidated preferably under Regulation 32(e) of IBBI (Liquidation Process) Regulations 2016.
 - b. pursuant to Liquidation Order, in case if the CD is not sold as a going concern as required under Regulation 32(e) of IBBI

- (Liquidation Process) Regulations 2016, direct the Liquidator to follow remaining options available under Regulation 32.
- c. pass an order directing the Suspended Director of the CD to hand over physical possession of the CD to the Liquidator and cooperation with him.
 - d. pass an order to cancel the Agreement for Job work executed on the 1st Day of December 2017 between the ATA Agro Commodities Limited and the CD.
18. A Memo dated 07.12.2023 was filed by the RP, wherein submitted that, **CoC has proposed the name of Dommeti Surya Ramakrishna Saibaba³ to act as Liquidator** and the proposed Liquidator has also given his written consent to act as Liquidator vide Form AA⁴ under Regulation 31A of the IBBI (Liquidation Process) Regulations 2016 dated 02.12.2023.
19. A Memo dated 24.05.2023 was filed by State Bank of India, the Financial Creditor, wherein submitted that, inspite of granting substantial time period, no payments were made by the promoter of CD. The OTS had failed and no compromise talks are pending for consideration, hence praying this Tribunal to proceed with the Liquidation Application.

Decision:

20. We have heard the Learned RP and perused the records.
21. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable proposal for revival of the Company. Hence, this Adjudicating Authority deems it proper to allow this Application.

³ Pg 2-3 of the Memo filed by RP on 07.12.2023.

⁴ Pg 4-5 of the Memo filed by RP on 07.12.2023.

Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the IBC 2016, we proceed to pass the Order as follows:

ORDER

- a. Liquidation of **M/S. SRI LAKSHMI KANTHA SPINNERS LIMITED**, shall be conducted in the manner as laid down in Chapter III of Part II of the IBC, 2016.
- b. **Mr. Dommeti Surya Ramakrishna Saibaba⁵** is appointed as **Liquidator** as resolved by CoC.
- c. The Liquidator shall issue public announcement stating that Corporate Debtor is in Liquidation.
- d. The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate here from.
- e. Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.
- f. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

⁵ Having Registration No. IBBI/IPA-003/IP-N00165/2018-2019/12106, Flat No. A-105, Mahindra Ashvita, Hafeejpet Road, Near Hi-Tech City MMTS Railway Station, KPHB Colony, Hyderabad, Telangana, 500085, email : dsrk39@yahoo.com

- g. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h. Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- j. This Order 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.
- k. Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Telangana, the Registered Office of the Corporate Debtor; and the Liquidator.

With the above directions, this Application is allowed and stands disposed of.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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