

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 11.03.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 136/BB/2017	For hearing IA 567/19 IA 22/2020 IA 138/2020 - CIRP	Sec 9 of I&B Code 2016	SF Dyes	Pramod Associates	Indus Fila Ltd.	M/s Aarna Law Advocate Udayraj Patwardhan (RP)

ADVOCATE FOR PETITIONER/s:

AAKASH SHERWAL for Applicant in I.A. 567/19 & I.A. 138/20
& Respondents in I.A. 22/2020

ADVOCATE FOR RESPONDENT/s:

P. CHINNAPPA

SARANJA DEKANATHAN

FOR THE RESOLUTION APPLICANT

ORDER

Heard Mr. Aakash Sherwal, Learned Counsel for the Applicant in I.A. No. 567 of 2019 and I.A. No. 138 of 2020 and Mr. P. Chinnappa along with Ms. Sahana Devanthan Learned Counsel for the RP.

I.A. No. 567 of 2019, I.A No. 22 of 2020 and I.A. No. 138 of 2020 in CP (IB) No. 136/BB/2017 is disposed of by separate order.



MEMBER (T)



MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH

I.A. No.567 of 2019 in
C.P. (IB) No.136/BB/2017
U/s 60 (5), 33 (3), 74 (3) 236 (2) of I & B Code, 2016
r/w Section 424 of the Companies Act, 2013

&
I.A. No.138 of 2020 in
C.P. (IB) No.136/BB/2017
U/s 60 (5) of I & B Code, 2016
r/w rule 11 NCLTRules, 2016

&
I.A. No. 22 of 2020 in
C. P (IB) No. 136/BB/2017
Under Rules 11 & 32 of the NCLT Rules 2016

For I.A. No.567 of 2019& I.A. No. 138 of 2020:

Between

Mr. UdayrajPatwardhan,
SumedhaMangament Solutions Private Limited,
C-703, Marathon Innova, Off. G.K. Marg,
Lower Parel (West)
Mumbai – 400 013 - Applicant

And

SPG Macrocosm Limited,
Through SPV – Vision Textile,
Unit No. 1207, B-wing One BKC Building,
Plot No. C 66, Bandra East,
Mumbai – 400051 - Respondent/Resolution Applicant

For I.A. No. 22 of 2020

Between

SPG Macrocosm Limited Through SPV - vision Textile,
Unit No. 1207, B-Wing One BKC Building,
Plot No. C- 66, Bandra East,
Mumbai – 400 051 - Resolution Applicant

And

1. Mr. UdayrajPatwardhan,
SumedhaMangament Solutions Private Limited,
C-703, Marathon Innova, Off. G.K. Marg,
Lower Parel (West)
Mumbai – 400 013

2. Monitoring Agency of Indus Fila Limited,
C/o. 285, 37th KM Stone, Tumkur Road,
T. Begur, Nelamangala,
Bengaluru – 562 123

- Respondents

Date of Order: 11th March, 2020

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

Parties/Counsels Present:

In I.A. No.567 of 2019&
I.A No. 138 of 2020:
For the Applicant

: Mr. AakashSherwal

In I.A. No. 22 of 2020
For the Resolution Applicant

: Mr. P.Chinnappa with
Ms. SahanaDevanathan

COMMON ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. I.A. No.567 of 2019 in C.P. (IB) No.136/BB/2017 is filed by Mr. UdayrajPatwardhan, Member of the Monitoring Agency (hereinafter referred to as 'Applicant) under Section 60 (5), 33(3), 74 (3), 236 (2) of I & B Code, 2016 r/w Section 424 of the Companies Act, 2013 by interalia seeking to pass an order to liquidate the Corporate Debtor in the manner as laid down in the Section 33 of the code; to appoint Mr. UdayrajPatwardhan, the RP appointed for CIRP under chapter II of the Code as Liquidator for the purpose of liquidation etc.,

2. I.A. No.138 of 2020 in C.P. (IB) No.136/BB/2017 is filed by Mr. UdayrajPatwardhan, (hereinafter referred to as 'Applicant') under Section 60 (5) of I & B Code, 2016 r/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to approve the modification of terms of the sanctioned Resolution Plan in terms of the proposal of the Resolution Applicant dated 18.02.2020; permit the erstwhile COC to execute the consent terms attached as Annexure E etc.,
3. I.A. No.22 of 2020 in C.P. (IB) No.136/BB/2017 is filed by SPG Macrocosm Limited through SPV – Vision Textile (hereinafter referred to as 'Resolution Applicant') under Rules 11 & 32 of the NCLT Rules 2016 by inter alia seeking to direct the Respondents to strictly abide by the Hon'ble Tribunal order dated 10.05.2019 and the Resolution plan; to direct the Respondents to handover unfettered access, control and management of the said plant to the Applicant; to direct the Respondents to handover all requested and necessary information and records of the company to the Applicant.
4. Since, the issues raised in all three I.A.'s arise out same cause of action and out of the order passed by this Adjudicating Authority dated 10.05.2019 in CP, all three I.A's are disposed of by this common order.
5. Heard Mr. AakashSherwal Learned Counsel for the Applicant in I.A No. 567 of 2019 and I.A. No. 138 of 2020 and Mr. P Chinnappa Learned Counsel for the Resolution Applicant. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder.
6. The Adjudicating Authority has disposed the above C.P.(IB) No.136/BB/2017 vide order dated 10.05.2019 by approving the Resolution Plan submitted by the Resolution Applicant (SPG



Macrocosm Limited) as approved by the CoC by e-voting held on 15.01.2019 and on 15.04.2019 by inter alia declaring that the resolution plan will be binding on the Corporate Debtor, and its employees, members, creditors, guarantors, and other stakeholders involved in the resolution plan, and the Resolution Applicant is granted liberty to file any Miscellaneous Application seeking for clarification, if any, in the implementation of the terms and conditions mentioned in the Resolution Plan.

7. In terms of the various difficulties arise in the implementation of the Resolution plan, the above three I.As have been filed seeking various directions as detailed supra. After hearing the respective Parties in I.A. No. 567 of 2019 and I.A No. 22 of 2020, the Adjudicating Authority has passed an order dated 16.01.2020, which inter alia reads as under:

“By perusal of the pleadings, it is not the case of the parties that the Resolution Plan submitted by M/s. SPG Macrocosm Limited through SPV – Vision Textile which was approved by the Adjudicating Authority by an order dated 10.05.2019 is failed to implement. However some difference/disputes arise between the parties in implementation of the Resolution plan in question, are to be sorted out. Therefore, it would be just and proper to direct both the parties to explore the possibility of sorting out the difference/disputes arose between the parties and thereafter, both the parties can seek suitably directions from the Adjudicating Authority. Therefore, we are inclined to grant some more time for the above purpose for the parties.”

8. In the light of the observation of the Adjudicating Authority, the Member of Monitoring Agency filed an application I.A No. 138 of 2020 seeking prayer as mentioned supra, by resolving the dispute between the Parties by proposing certain terms of agreements vide Proposal dated 18.02.2020 made by the Resolution Applicant.

Accordingly, the Parties have also enclosed a draft Consent Terms to the instant IA for approval by the Tribunal.

9. The facts and circumstances as detailed supra, shows that all the consent parties trying to implement the Resolution plan in question, which was approved by the Adjudicating Authority vide order dated 10.05.2019. In the light of the difficulties being faced by the Resolution Applicant, whether the consent parties can be permitted to enter into further agreement in order to implement the terms and conditions of the Resolution plan in question. Section 7 of the Resolution Plan dated 07.01.2019 which was approved by the COC on 15.01.2019 and on 15.04.2019 deals with the management of the Company, under Regulation 38 (2) of the IBBI (IRP for Corporate persons) Regulation, 2016 which reads as under:

- a. Appointment of a Monitoring Agency (Regulation 38 (2) (c) of the CIRP Regulations)

On approval of Resolution Plan by NCLT, Resolution Applicant proposes to appoint Monitoring agency comprising of 3 members as below:

- 1) Insolvency Professional, Shri Udayraj Patwardhan
 - 2) One Representative of Secured Financial Creditors
 - 3) One Representative of Resolution Applicant
- The monitoring agency shall monitor the day to day operations of the Company and provide regular updates to the Resolution Applicant and financial creditors till at the approvals necessary for implementation of the plan are in place and a professionally managed Board is appointed by the Resolution Applicant.
 - The Monitoring Agency would also supervise the implementation of the Resolution plan and would continue to do so even after formation of a Board until the entire claims are settled fully in a period of 9 months.



- However, Resolution Applicant may consider to modify the terms/appointment of the monitoring agency as and when required.
- The fees payable to Sri UdayrajPatwardhan as member of Monitoring agency would be mutually discussed and negotiated and the same shall be borne by the resolution Applicant.

b) Constitution of new Board of Directors and Key Managerial Personnel

- It is proposed that the company shall be Board managed company upon approval of the proposed Plan. A Board would be formed within 30 days of the date of approval of Resolution Plan by the Adjudicating Authority and other approvals, if any Resolution plan for Indus Fila Limited. By SPG Macrocosm Limited, through its SPV-Vision Textile required. The new Board shall be accountable for the day to day operations of the Company and shall be bound as per applicable law to protect and preserve the value of the company.

Highlights of the composition of the Board are as below:

Sl. No.	Name	DIN/PAN	Designation
1.	Hari Prasad Agarwal	02476724	Director
2.	Himmat Singh Shekhawat	02625197	Director
3.	H.D Uttam	06484519	Director

- The Constitution of the Board shall at all times comply with the provisions of the Companies Act, 2013 and the SEBI Regulations and LODR applicable to listed companies, subject to any relaxation being available to the Company whose Resolution plan is approved as per the provisions of IBC, 2016.
- The appointment of Key Managerial persons shall be made as and when required to meet the requirements of the operations and regulatory requirements. The Board shall ensure that the company make adequate disclosures under Regulations 30 read with Schedule III of LODR and the appointees, being KMPs of the



Company shall made disclosures under Regulation 7 of the SEBI Insider Trading Regulation.

10. Therefore, it is the responsibility of the Monitoring Agency to see the implementation of the Resolution plan and to seek further direction(s) if any, from the Adjudicating Authority. Therefore, in terms of the Resolution plan, as approved by the Adjudicating Authority, the Monitoring Agency/Resolution Applicant can seek suitable direction(s). As pointed out supra, the respective and concerned Parties have proposed to enter into a separate consent terms in the light of the proposal made by the Resolution Applicant. Since the object of the code is to see the revival of the operations of the Corporate Debtor, the Adjudicating Authority has to facilitate the concerned Parties, by passing appropriate order(s) to see revival of the Company rather than to put the Corporate Debtor under the process of Liquidation, especially, when the Resolution Applicant has paid substantial amount as detailed supra. Therefore, it would be just and proper to permit the Parties to the issue to go ahead with their proposal of settlement in consonance with broad terms and conditions of Resolution plan as finally approved by Adjudicating Authority. However, the proposed consent terms can be entered into by all the Members of the Monitoring Agency, the erstwhile COC Members along with Resolution Applicant.
11. In the result, I.A. No. 567 of 2019, I.A. No. 138 of 2020 and I.A. No. 22 of 2020 in C.P (IB) No. 136/BB/2017 are hereby disposed of with following directions.
- i. All Members of the Monitoring Agency, the Erstwhile Members of COC, and the Resolution Applicant are permitted to enter into the proposed settlement Agreement (consent terms) in order to implement the terms and conditions of the Resolution plan , as

finally approved by the Adjudicating Authority vide order dated 10.05.2019 passed in C.P (IB) No. 136/BB/2017.

- ii. All the parties are directed, to carry out their respective responsibilities bonfidelly, in consonance with the Resolution Plan, as approved, subject the present agreement proposed to be entered into for successful implementation of Resolution Plan.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**