IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: MR. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

MR. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 311/JPR/2020
in
CP No. 258/9/JPR/2019

UNDER SECTION 33 and 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF

Mahavir Agarwal **...Operational Creditor**

VERSUS

M/s Khetan Apparel Pvt. Ltd. **...Corporate Debtor**

AND IN THE MATTER OF

IA No. 311/JPR/2020

Sourabh Malpani,
Resolution Professional of M/s Khetan Apparel Pvt. Ltd.
Office at: Guru Kripa, Plot No. 93, Neelkanth Colony,
Queens Road, Jaipur-302001 (Rajasthan)

...Applicant

For the Applicant: Prateek Kedawat, Adv.

Order Pronounced On: 02.03.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

Sd/-

1. This Application bearing IA No. 311/JPR/2020 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Khetan Apparel Private Limited ('Corporate Debtor') under Section 33 and 34 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 for initiation of liquidation proceedings against M/s Khetan Apparel Private Limited.

2. The Adjudicating Authority vide order dated 12.02.2020 had admitted the application filed by Mr. Mahavir Aggarwal under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof appointed Mr. Sourabh Malpani as Interim Resolution Professional ('IRP').

3. In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('CoC'). The 2nd meeting of the CoC was held on 11.03.2020, wherein the CoC resolved to appoint the IRP, i.e. Mr. Sourabh Malpani as the RP of the Corporate Debtor. It is also seen that the RP had appointed registered valuers to determine fair and liquidation values in accordance with Regulation 35 of the CIRP Regulations.

4. It is submitted that in compliance with Section 15 of the Code, the RP had initially effected publication of Form G on 04.07.2020 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor; however no resolution plan was received. Since, Form G had already been published and no Resolution Applicant had shown interest

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in submission of resolution plan, the CoC in the 5th meeting held on 09.09.2020 resolved that it is in best interest of all the stakeholders that the last date of receipt of EOI should not be extended. It was also stated that since the negotiations with the erstwhile directors of the Corporate Debtor have failed to produce any constructive and amicable solution, the CoC members with 95.98% voting share, voted for liquidation of the Corporate Debtor. Copy of the minutes of 5th meeting is annexed as Annexure 4 of application.

5. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows: -

> *"33. Initiation of liquidation. –*
> *(1) Where the Adjudicating Authority, -*
> *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;*
> *or*
> *(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*
> *it shall -*
> *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
> *(ii) issue a public announcement stating that the corporate debtor is in liquidation;*

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and
(iii) require such order to be sent to the authority with which the corporate debtor is registered.
(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)"

6. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."*

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

7. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Code was admitted on 12.02.2020 and the present application is filed by the RP on 08.10.2020. Accordingly, the date for completion of CIRP was 10.08.2020. It is noted that the CoC resolved to liquidate the Corporate Debtor in the 5th meeting of CoC dated 09.09.2020.

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8. In view of emerging situation of COVID-19 pandemic, the Hon'ble National Company Law Appellate Tribunal in *Suo Moto-Company Appeal (AT) (Insolvency) No. 01 of 2020* vide order dated 30.03.2020, observed as under: -

> *"Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various persons, who were unable to physically file the same on account of complete lockdown declared by Government with effect from 25th March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in Suo Motu Writ Petition (Civil) No(s).03/2020, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in "Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018" decided on 8th May, 2018 do hereby order as follows: -*
>
> *(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated*

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and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal."

9. Thereafter, the Insolvency and Bankruptcy Board of India, inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29.03.2020 and the same is as under: -

> "***40C. Special provision relating to time-line***
> *Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process"*

10. Similarly, the Insolvency and Bankruptcy Board of India, vide notification dated 20.04.2020, inserted Regulation 47 A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the said regulation reads as under: -

> "***Exclusion of period of lockdown***
> *47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process."*

11. As per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded for the purpose of calculating the timelines in CIR Process. Hence, after considering exclusion of lockdown period till 30.06.2020, the present application is filed within the prescribed

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period. In view thereof the Application under consideration is taken up under Section 33(2) of the Code.

12. **Appointment of Liquidator and fee to be paid-** Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent, act as the Liquidator for the purpose of liquidation. The relevant provisions of Sections 34(1) of the Code are as follows: -

> *"(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)."*

13. The present RP, Mr. Sourabh Malpani, is eligible to be appointed as Liquidator. The CoC had resolved to appoint the RP as the Liquidator. We do not find any reason to replace the existing RP. Mr. Sourabh Malpani, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P01265/2018-97/12047 has filed his written consent dated 24.09.2020 in the format / Form AA along with registration certificate as Annexure 3 vide Diary no. 1084/2020. The credentials of the proposed Liquidator

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have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. Therefore, Mr. Sourabh Malpani is appointed as Liquidator.

14. It is seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

15. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** - The CoC in its 6th meeting has denied bearing additional cost towards IRP fees and liquidation cost beyond the actual realisation / proceeds from the sale of inventory / assets or recovered on account of the Corporate Debtor. However, no resolution is passed in this regard. The Liquidator is, therefore, directed to take necessary action in accordance with IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

16. **Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016) –** The CoC in its 6th meeting has discussed to sell the Corporate Debtor as a going concern, as first option or sell the business(s) of the Corporate Debtor as a going concern, as second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if an order of liquidation is passed by the Adjudicating Authority. However, no resolution is passed in this regard. The Liquidator is, therefore, directed to

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take necessary action in accordance with IBBI (Liquidation Process) Regulations, 2016.

17. **Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016) -** The CoC in its 6th meeting has denied bearing additional cost towards IRP fees and liquidation cost beyond the actual realisation / proceeds from the sale of inventory / assets or recovered on account of the Corporate Debtor. However, no resolution is passed in this regard. The Liquidator is, therefore, directed to take necessary action in accordance with IBBI (Liquidation Process) Regulations, 2016.

18. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the Corporate Debtor, M/s Khetan Apparel Private Limited, is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

    (i) 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 by or 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;

    (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as

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may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) 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

(iv) 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

(v) 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 provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.

(vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the CIRP (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 stakeholders to

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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.

(vii) That in accordance with Regulation 13 of the CIRP (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15.

20. **Pending Applications, if any, and its / their effect** - It is seen that the RP had filed IA Nos. 128/JPR/2020, 237/JPR/2020 and 289/JPR/2020 to report the 1st, 2nd and 3rd status report, respectively. Relevant items of the said status reports and aspects related thereto have been considered in these proceedings. The same are not required for any further reference. Thus, IA Nos. 128/JPR/2020, 237/JPR/2020 and 289/JPR/2020 are also disposed of along with this order in IA No. 311/JPR/2020.

19. In view of the foregoing, IA No. 311/JPR/2020 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Jaipur forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-

Mr. RAGHU NAYYAR,
TECHNICAL MEMBER

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Mr. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER