

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH-II, CHENNAI**

**IA(IBC)/548(CHE)/2022 in MA/1238/2019 in
CP/886/IB/2018**

*(filed under Section 33(3) r/w Section 60(5) of the Insolvency &
Bankruptcy Code, 2016)*

In the matter of **United India Shoe Corporation Pvt. Ltd.**

Radhakrishnan Dharmarajan

Monitoring Committee Agent,
United India Shoe Corporation Pvt. Ltd.,
D3, Block, 1, Triumph Apartments,
114 Jawaharlal Nehru Salai, Arumbakkam,
Chennai – 600 106.

... Applicant

-VS-

Mohib Shoes Private Limited,

18, Sami Street,
Periamet,
Chennai – 600 003.

... Respondent

Order pronounced on **21st October 2022**

CORAM:

**JUSTICE (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : Mr.T.Ravichandran, Advocate

For Respondent : Mr.B.Sarath Babu, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/548(CHE)/2022 is an Application filed by the Monitoring Committee Agent of **United India Shoe Corporation Pvt. Ltd** (hereinafter referred to as the 'Corporate Debtor') under Section 33(3) r/w 60(5) of the Insolvency and Bankruptcy Code, 2016, praying to order liquidation of the Corporate Debtor.

2. It is averred in the application that CIRP in respect of the Corporate Debtor was initiated on 31.10.2018 and one Mr.S.S.Ravichandran was appointed as Interim Resolution Professional (IRP). In the 1st meeting of the CoC held on 30.11.2018 resolved to appoint the Applicant as Resolution Professional (RP). Accordingly, the Applicant herein was appointed as RP.

3. It was further averred that the Respondent herein has submitted a resolution plan to the RP. In the 7th meeting of the Committee of Creditors (CoC) the resolution plan was approved by the CoC. Thereafter, the applicant filed MA/1238/2019 before this Adjudicating Authority seeking approval of the said resolution plan. Accordingly this Adjudicating Authority vide order dated 18.12.2019 approved the resolution plan submitted by the Respondent.

4. The Ld. Counsel for the Applicant submitted that the resolution plan value is Rs.12 Crore. As per the plan the Respondent has to make entire payment within 45 days from the date of approval of the plan by this Adjudicating Authority. But, the Respondent had paid only Rs.2.50 crore in three tranches, and no payments were made thereafter.

5. It was further submitted that the Respondent had not implemented the approved resolution plan. Moreover, in the

meeting of Monitoring Committee held on 25.10.2021, the non-implementation of the resolution plan by the Respondent was discussed. After few negotiations with the Respondent the secured Financial Creditor State Bank of India had authorized the Applicant vide e-mail dated 06.05.2022 to file this application for liquidation of the Corporate Debtor.

6. Ld. Counsel B.Sarath Babu appeared on behalf of the Respondent sought time for making remaining payment and implementation of the resolution plan.

7. Having heard the plea of both the Counsels and on perusal of the records it is seen that the resolution plan of the Respondent (Successful Resolution Applicant) was approved by this Adjudicating Authority on 18.12.2019.

8. Clause 5.C. of the resolution plan at page 34 of the present application reads as follows:-

"Payment to Secured Creditors: an overall amount of Rs.7.45 Crores will be paid to Secured Creditors State Bank of India within 45 days from the date of approval of the plan by NCLT."

9. It is seen from the minutes of the meeting of the Monitoring Committee held on 25.10.2021, Mr.Mohamed Mohib and Mr.Althaf were present and represented on behalf of the Resolution Applicant

/ Respondent. At page 4 of the above-said minutes it was recorded as follows:-

"Resolution Status and the update

SBI Representative, asked the RA on the status of the Resolution amount to be paid them, for which the RA Representative informed that the SBI, being FC should withdraw the Liquidation petition filed by them at the NCLT and moreover the RA will require additional Four months' time from now to complete the Resolution implementation and funds infusion. SBI representative informed that the RA should have implemented the obligations by 08.03.2020 and that any change in the timelines of approved plan has to be confirmed by Adjudicating Authority. Hence, FC is not in a position to withdraw the application and further added that FC's requirements are submitted as prayer in the application filed with AA."

10. It is also seen that in the e-mail placed at page 62 of this application the State Bank of India has clearly authorised the Applicant herein to file application for liquidation of the Corporate Debtor.

11. From the above findings it is clear that the Resolution Applicant completely failed to adhere to the terms of the Resolution Plan and has not paid the amount as per the terms set out in the Resolution Plan and there is no adequate explanation from the Respondent for this inordinate delay in the implementation of the plan.

12. At this juncture it is relevant to refer Hon'ble NCLAT decision in ***Yavar Dhala Vs. JM Financial Asset Reconstruction***

Company Ltd., reported in (2019 SCC OnLine NCLAT 666)

wherein it was held as follows:-

"3. In the situation where a Resolution Applicant succeeds as Corporate Debtor but if fails to comply its assurance in terms of the resolution plan, what step is to be taken has been already been laid down in Sub-section (3) of Section 33 of the I&B Code, which reads as follows:—

"33. (3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

4. In view of the specific provision made under the I&B Code, we are of the view that the Adjudicating Authority had no option but to pass order of liquidation and could not have resorted to revival of the Corporate Debtor by taking fresh resolution plans."

13. It is also pertinent to quote what Hon'ble NCLAT has said in in the matter of **Kridhan Infrastructure Pvt. Ltd. (Now Known as Krish Steel And Trading Private Limited) & Anr. VS Versus Venkatesan Sankaranarayan & Anr.** reported in **(2020 SCC OnLine NCLAT 639)** Para 87 of the said order is reproduced below:-

"this tribunal comes to an inevitable, irresistible and inescapable conclusion that an opportunity to revive the 'Corporate Debtor' as per terms of 'Resolution Plan' is not to be provided to the Appellant(s)/ 'Resolution Applicant' to prevent an aberration of justice and also to better preserve the 'economic value of assets' because of the reason that the instant case is not an exceptional or extraordinary one to invoke the ingredients of Rule 11 of

'NCLAT' Rules, besides the provisions of 'I&B' Code cannot be diluted in any manner whatsoever."

14. In the appeal against the above order Hon'ble Supreme Court in Civil Appeal No 3299 of 2020 **(2021 SCC OnLine SC 208)** at Para 11 held as follows:-

"The appellant has been unable to raise the funds. The fact of the matter, as it emerges from Mr. Vishwanathan's submissions, is that the appellant will be unable to raise funds from the Term Lenders who are insisting that the status of the Company should change from a company under liquidation to an active status. The order of liquidation has not been set aside. Ultimately, what the request of the appellant reduces itself to, is that it would raise funds on a mortgage of the assets of the Company and unless the Company is brought out of liquidation, it would not be in a position to raise the funds. This is unacceptable. At this stage, the order of liquidation has only been stayed, but a final view was, thus, to be taken by this Court. Sufficient opportunities were granted to the appellant earlier during the pendency of the proceedings both before the NCLT and NCLAT. The orders of the NCLT and NCLAT make it abundantly clear that despite the grant of sufficient time, the appellant has not been able to comply with the terms of the Resolution Plan. Since 9 October 2020, despite the passage of almost five months, the appellant has not been able to deposit an amount of Rs 50 crores. Time is a crucial facet of the scheme under the IBC. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However, a resolution applicant must be fair in its dealings as well. The appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the Civil Appeal any further. The consequence envisaged under the order of this Court shall accordingly ensue in terms of the forfeiture of the amount of Rs 20 crores. As a consequence of this order, the management shall revert to the liquidator for taking steps in accordance with law. The Civil Appeal is accordingly dismissed."

15. The facts of the present case is similar to the above cites, in both the cases, the Successful Resolution Applicant have failed to bring in the proposed sum as envisaged in the Resolution Plan. In in both the cases, paltry sums were paid to the lenders.

16. We are guided by Hon'ble Apex Court, and the precedents, we refrain to use our inherent powers to accept the Applicant's plea of extending the time for the payment of the sum agreed to be paid in the resolution plan, which is already over stretched and is beyond a reasonable period, which we do not want to overlook.

17. In so far as the contravention of the Resolution Plan is concerned, we observed that the Resolution Plan in respect of the Corporate Debtor was approved by this Adjudicating Authority vide order dated 18.12.2019 passed in MA/1238/2019. As per the approved Resolution Plan, the successful Resolution Applicant is required to pay a sum of Rs.7.45 Crore to the Financial Creditor within a period of 45 days from the date of approval of this Tribunal i.e., from 18.12.2019. It is a fact that even after expiry of 2.5 years only Rs.2 crore was paid. Still the SRA is not in a position to infuse the remaining amount and praying further time for making arrangements. This non-committed attitude of the SRA is clear violation of the Resolution Plan and also attracts penal provisions under Section 74 of IBC, 2016.



18. In view of the above discussions, we reasonably conclude that the Successful Resolution Applicant (SRA)/Respondent has failed to comply with the commitments agreed to in the resolution plan. In such circumstance this Adjudicating Authority is left with no other option but to order for liquidation of the Corporate Debtor.

19. As a consequence of the violation of order dated 18.12.2019 passed in MA/1238/2019, the amount whatever paid by the SRA shall stand forfeited as per Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the management of the Corporate Debtor shall be handed over to the Liquidator appointed by this Tribunal.

20. Accordingly, we appoint **Mr.Kathiresan Nachimuthu** having **Registration No. [IBBI/IPA-001/IP-P-01733/2019-2020/12795]**, (e-mail id: **kathir.fca.outlook.com**) as the Liquidator to carry out the liquidation process of the Corporate Debtor 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 him.
- b) 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.

- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.

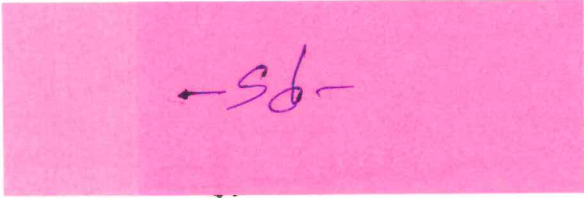
- h) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- i) 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, viz., company-in-liquidation.

21. Additionally, the Successful Resolution Applicant and its officers responsible if any be proceeded against for contravention of the approved resolution plan in terms of section 74(3) read with section 236 of the Insolvency & Bankruptcy Code, 2016. To facilitate this, the *Registry* of this Tribunal is directed to forward a copy of this order to the Insolvency & Bankruptcy Board of India (IBBI) and the Secretary, Ministry of Corporate Affairs, who are the agencies authorized in terms of section 236(2) of the Insolvency & Bankruptcy Code, 2016 to initiate appropriate complaint before the

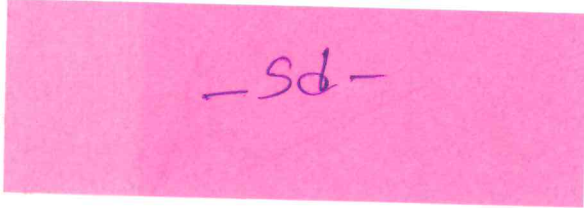


Special Court as envisaged under section 236(1) of the Insolvency & Bankruptcy Code, 2016.

22. Accordingly, IA(IBC)/548(CHE)/2021 stands **disposed of**.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT