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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

Free of Cost Copy

132
09/03/2021

IA 537 of 2020 in CP(IB) 30 of 2018
[TP 3 of 2020]

[MA 1188 of 2020 in CP(IB)/MB/1880 of 2018]

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.03.2021

Name of the Company: George Samuel For Swiss Ribbons Pvt
Ltd

Section 33 & 34 IBC,2016.

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

- 1.
- 2.

ORDER
(through video conferencing)

The Order is pronounced in the open court vide separate sheet.

Chockalingam

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 1st day of March, 2021

Manorama

MANORAMA KUMARI
MEMBER JUDICIAL



BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

I.A. No. 537 of 2020 &
I.A. No. 567 of 2020 &
I.A. No. 700 of 2020 &
I.A. No. 788 of 2020 &
in
TP 03 of 2020
[CP(IB) No. 30 of 2018]

I.A. No. 537 of 2020

Mr. George Samuel
(For Swiss Ribbons Private Limited) ...Applicant

In the matter of:

Small Industries Development
Bank of India ... Original Petitioner

Versus

Swiss Ribbons Private Limited ...Respondent/Corporate Debtor

I.A. No. 567 of 2020

In the matter of:

Dineshchandra Bhagwandas
Jariwala & Ors. ... Applicants/ Resolution Applicant

Versus

Mr. George Samuel & Ors. ...Respondents

I.A. No. 700 of 2020

In the matter of:

Dhavalkumar Somabhai Prajapati ... Applicant

Versus

Mr. George Samuel,
Resolution Professional
For Swiss Ribbons Private Limited & Ors. ...Respondents

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I.A. No. 537 of 2020 &
I.A. No. 567 of 2020 &
I.A. No. 700 of 2020 &
I.A. No. 788 of 2020 &
in
TP 03 of 2020
[CP(IB) No. 30 of 2018]

I.A. No. 788 of 2020

In the matter of:

M/s. Golden Synthetics

... Applicant

Versus

George Samuel & Ors.

... Respondents

Order delivered on 1st March, 2021

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Mr. Amir Arsiwala along with Ms. Geeta Lundwani, Advocates for Resolution Professional. Mr. Raju Kothari, Advocate for CoC and Mr. Vishwas Shah, Advocate for Suspended Management.

Mr. Vishwas Shah, Advocate for Suspended Management. Mr. Sanjay Majmudar, CA and Mr. Raju Kothari, Advocate for CoC and Mr. Amir Arsiwala along with Ms. Geeta Lundwani, Advocates for Resolution Professional.

Mr. Jaimin R Dave, Advocate for the Applicant. Mr. Raju Kothari, Advocate for CoC and Mr. Amir Arsiwala along with Ms. Geeta Lundwani, Advocates for Resolution Professional.

Mr. Arjun Sheth, Advocate for the Applicant. Mr. Raju Kothari, Advocate for CoC and Mr. Amir Arsiwala along with Ms. Geeta Lundwani, Advocates for Resolution Professional.



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COMMON ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The Applicant, Resolution Professional (hereinafter referred as "RP") of the Corporate Debtor filed the instant IA No. 537 of 2020 in the aforesaid TP 03 of 2020 [Company Petition (IB) No. 30 of 2018] for Liquidation of the Corporate Debtor under Section 33 & 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code").
2. The facts of the case are stated herein:
 - 2.1 The instant Petition TP 03 of 2020 [CP(IB) 30 of 2018] was filed before this Bench on 05.01.2018 and was eventually transferred to Mumbai Bench vide order dated 17.05.2018 of Hon'ble President NCLT being numbered as CP 1880 (IB)/MB/2018. The Company Petition was filed by Financial Creditor, namely Small Industries Development Bank of India, against the Corporate Debtor viz., Swiss Ribbons Private Limited under Section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), which was admitted by Mumbai Bench vide its Order dated 16.07.2019 and appointed Mr. George Samuel as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.
 - 2.2 It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 14.08.2019 decided for continuation of the IRP as RP.
 - 2.3 It is stated that Resolution Plans have been received by two Prospective Resolution Applicants, one from promoters of the Corporate Debtor being an MSME and another from Omkara Assets Reconstruction P. Ltd. (hereinafter referred as "Omkara ARC") which was discussed time and again in the subsequent



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CoC meetings. However, subsequently, one out of the two Resolution Applicants withdrew their plan.

- 2.4 It is stated that in the Sixteenth CoC meeting held on 26.06.2020, the Resolution Plan submitted by the promoters of the Corporate Debtor (MSME) was put to vote and it was dissented by 100% voting share and accordingly, approved the Liquidation of the Corporate Debtor as per Section 33 of the IB Code.
- 2.5 In the Seventeenth CoC meeting held on 30.06.2020, CoC recommended the name of RP to be continued as the Liquidator of the Corporate Debtor with 100% voting majority. Hence, this application for Liquidation of the Corporate Debtor through RP under section 33 & 34 of the IB Code.
3. During the pendency of the instant application filed by the RP for Liquidation, there are as many as three IAs been filed viz. I.A. No. 567 of 2020, I.A. No. 700 of 2020 & I.A. No. 788 of 2020. For the sake of convenience, all the three IAs are dealt together herein below.
4. IA No. 567 of 2020, is filed by the Applicant (Resolution Applicant) under Section 60(5) of the IB Code challenging the decision/ resolution of Respondent No.2 (CoC) whereby Resolution Plan of the Applicant is rejected and further praying to quash and set aside the resolution of liquidation of the Corporate Debtor, apart from other prayers.
- 4.1 It is submitted by the Applicant/ Promoter of the Corporate Debtor that Corporate Debtor Company is a going concern and there are 297 employees/ workers and during the CIRP, Respondent No. 1 have appointed the Applicant as his agent to



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look after the business of the Corporate Debtor. The same has been recorded by Respondent No. 1 in the First CoC meeting held on 14.08.2019. It is further submitted that on 23.09.2019, Respondent No. 1 published Form-G inviting Expression of Interest for revival of the Corporate Debtor in Financial Express (All India Edition). As per said Form-G, the last date for submission was fixed as 23.11.2019. The minimum eligibility for submission of Resolution Plan was fixed which is stated in Para 6 at page no. 9 of the application.

4.2 In pursuant to the said Expression of Interest, Applicant being erstwhile promoters of the Corporate Debtor submitted Expression of Interest along with the requisite EMD of Rs. 161 Lakhs to Respondent No. 1 in order to become Prospective Resolution Applicant. One Omkara Assets Reconstruction P. Ltd. (hereinafter referred as "Omkara ARC") had also filed its Resolution Plan. Since the last date of submission of Resolution Plan in Form-G was 23.11.2019, however, due to certain difficulty Applicants could not submit their Plan by 23.11.2019. Hence, Applicant requested to extend the time and another Resolution Applicant also requested for the same. The said request was accepted by Respondent No.1 and new timeline of submission of Resolution Plan was set as 18.12.2019. But due to some defect, CoC did not consider the Plans. Thereafter, several opportunities were granted to the Resolution Applicants to revise their plan but then even CoC was not satisfied by their proposal.

4.3 Meanwhile, Omkara ARC withdrew their Plan and ultimately, Final Revised Resolution Plan received from the Applicant was put for e-voting and the CoC passed the resolution rejecting the Resolution Plan of the Applicant and approving the Liquidation of the Corporate Debtor, wherein CoC appointed RP as the Liquidator.



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- 4.4 The Respondent in his reply submitted that CoC has made their best possible efforts to revive the Corporate Debtor and ample of opportunities were given to the Applicant. However, Resolution Plan did not meet the satisfaction of the CoC and was also below the liquidation value as stated by the CoC in one of the minutes of CoC meetings. Thus, in view of that, Resolution Plan so submitted by the promoter is rejected by CoC.
5. IA No. 700 of 2020, is filed by the Applicant (representing more than 200 employees/workmen of the Corporate Debtor) under Section 60(5) of the IB Code with a prayer to direct Respondent No. 2 (CoC) to reconsider the resolution plan submitted by Mr. Dineshchandra Bhagwandas Jariwala & Others and accept the same, if found viable and workable and further to quash and set aside the resolution of liquidation of the Corporate Debtor, apart from other prayers.
6. IA No. 788 of 2020, is filed by the Applicant (Operational Creditor of the Corporate Debtor) under Section 60(5) of the IB Code with a prayer to pass appropriate order that resolution plan submitted by the suspended management be treated as "settlement proposal" and further direct the CoC to consider the same in accordance with the judgement of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd & Anr. vs. Union of India & Ors., apart from other prayers.
7. Heard both sides and also seen the records and documents annexed therein, also heard the Learned Lawyers for the IAs. It is found that CoC has resolved for liquidation of the Corporate Debtor vide its Seventeenth meeting dated 30.06.2020 with 100% voting in favour of the Liquidation.
8. It is a matter of record that in the Seventeenth Meeting of the CoC held on 30.06.2020, CoC approved the liquidation of the Corporate



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Debtor with 100% majority voting and the said resolution was passed, even after considering the revised Resolution Plan of the promoters, which as per CoC is not upto the expected mark.

9. While going through the Liquidation Application filed by the RP, it is observed in the minutes of the 16th CoC meeting held on 26.06.2020 (reflected at page no. 773-774 of the application), that the revised proposal of the Resolution Plan was incorporated for consideration of the CoC and the same was placed before the CoC for e-voting and from the voting finalisation date, it is revealed that there is 100% dissent of the CoC in approval of the Resolution Plan (reflected at page no. 776, Annexure-30). This shows that even the revised Plan so submitted by the promoters is not approved by the CoC. In view of that CoC in its Seventeenth meeting held on 30.06.2020 proposed for Liquidation and various agenda were taken for discussion in respect of the Liquidation of Corporate Debtor (reflected from Annexure-31 page no. 777 onwards).
10. It is to be mentioned herein that there were subsequent CoC meetings for reconsideration of the revised Resolution Plan so submitted by the promoter (being an MSME) dated 10.12.2020 and further revised on 21.12.2020. However, the CoC in its Twenty First meeting have come to the same conclusion as held in the Seventeenth CoC meeting.
11. It is important to note that under the Insolvency and Bankruptcy Code, 2016, the role of the Committee of Creditors is very important. One of the important tasks of the CoC is to approve the resolution applicant with 66% voting share, if the resolution plan meets the requirements stipulated as per Section 30(2) of the IB Code. There is no provision in the Code to suggest that Adjudicating Authority will have a power to modify or change the resolution plan if the plan is rejected by the CoC with majority of vote, thus the business decisions to decide the fate of the Corporate

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Debtor lie on the shoulder of the CoC because the creditors are the one who is going to bear the loss of the Insolvency. Hon'ble NCLAT in the matter of **M/s Bhaskar Agro Agencies v/s M/s Super Agri Seeds Pvt. Ltd.** recognized the technical expertise of the Financial Creditors and observed that; *so far as the liability or feasibility of 'Resolution Plan' is concerned, the Adjudicating Authority or the Appellate tribunal cannot sit in the appeal over the decisions of the CoC."*

12. Moreover, it is pertinent to note that *"the wisdom of the Parliament is that it is for the COC to take a business decision to reject or accept a Resolution Plan. In case if the COC accepts a Resolution Plan, then it is subject to the authority and jurisdiction of the Adjudicating Authority. As already said, no provision is made in the IB Code or the Rules or in the Regulations that would enable or enjoin upon the Adjudicating Authority to sit over the Resolution of the COC in rejecting a particular Resolution Plan.*

Therefore, this Adjudicating Authority is of the considered view that it has no authority or jurisdiction to interfere with the Resolution of the COC in rejecting the Resolution Plan."

In the case of **K. Sashidhar v. Indian Overseas Bank &Ors**, the Hon'ble Supreme Court in its judgment dated 5th February 2019 stated, *"As aforesaid, upon receipt of a "rejected plan" the adjudicating authority (NCLT) is not expected to do anything more, but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyze or evaluate the commercial decision of the COC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors."*

The Hon'ble Supreme Court further held that *"the legislature, consciously, has not provided any ground to challenge the*

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"commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority".

In the most recent judgment dated 15th November 2019 of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors** delivered by the Hon'ble Supreme Court, it was strongly opined by the Hon'ble Apex Court that the AA can exercise only a limited judicial review in respect of any COC decision. NCLT/NCLAT does not have jurisdiction under the provisions of the Code to interfere in the merits of a business decision taken by the majority of COC.

The Hon'ble Supreme Court held that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC and that the CoC is the final authority in this regard. The Hon'ble Supreme Court restricted the role of NCLT to only adjudicate whether the CoC has complied with the objects of the Code i.e. the corporate debtor needs to keep going as a going concern during CIRP, it needs to maximize the value of the assets of the corporate debtor, and interests of all stakeholders have to be taken care of.

The Court referred to its judgment in K Sashidhar's matter wherein it was provided that there is no provision under the Code which empowers the Adjudicating Authority to oversee the justness of the reason or the commercial decision taken by the financial creditors in approving or rejecting the proposed resolution plan. The apex court upheld the autonomy of the COC regarding the commercial matters and decisions that cannot be questioned by the AA."

13. Hence, in view of the above, IA 567 of 2020, IA 700 of 2020 & IA 788 of 2020 is rejected.



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14. Under the facts and circumstances as narrated above, we pass an order for initiation of liquidation of the Corporate Debtor with the following orders:

- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation and as far as possible, shall try to dispose of the Corporate Debtor as a going concern.
- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- f) The 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.
- g) 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 with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be



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required by him in managing the affairs of the Corporate Debtor.

- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance

15. Hence, the IA 537 of 2020 in CP(IB) 30 of 2018 so filed by the RP under Section 33 & 34 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., Swiss Ribbons Private Limited. The RP i.e. Mr. George Samuel shall act as the Liquidator for the purpose of Liquidation of the Corporate Debtor.

16. Thus, in view of the above, the instant IAs stands disposed of.

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Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Manorama Kumari
Adjudicating Authority
Member (Judicial)

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