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IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/IB/243(CHE)/2023 IN IB/317/2020

(filed under Section 33 1 (a) & (b), 33(2) & 34(1) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of ***M/s. Prostar Textile Mill Private Limited***

CA. S. Prabhu, Resolution Professional of
M/s. Prostar Textile Mill Private Limited,
M/s. SPP & Co., Chartered Accountants,
No. 27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore – 641 045.

... Applicant

Order pronounced on ***15th March 2023***

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr. A.G.Sathyanarayana, Advocate

ORDER

***Per*: SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by the RP seeking the following reliefs:-

> *a) That this Hon'ble Tribunal may be pleased to pass an order for Liquidation of the Corporate Debtor namely M/s. Prostar Textile Mill Private Limited;*
>
> *b) That this Hon'ble Tribunal may be pleased to pass an order by appointing CA. S. Prabhu, RP (IBBI/IPA-001/IP-P01275/2018-19/11948) as Liquidator for administering the Liquidation Process of the Corporate Debtor; and*

c) To pass such other orders or further orders which may deem to be fit and proper in the interest of justice.

2. The Applicant submits that:

a. The CIRP in the matter commenced vide order dated 11.03.2022 on an application filed under Section 9 of the Code and one Mr. Elumalai Elango was appointed as Interim Resolution Professional (IRP).

b. The IRP has caused public announcement on 15.03.2022 by publishing Form-A in New Indian Express and Dinamani.

c. Claims were received pursuant to the publication of Form-A and CoC was constituted comprising of sole Financial Creditor i.e., Punjab National Bank.

d. The Operational Creditor and the Corporate Debtor arrived at a settlement and Application under Section 12A of the I & B Code, 2016 was filed. However, this Tribunal has directed to issue notice to the sole Financial Creditor Bank on an application filed under Section 12A.

e. The first meeting of the CoC was held on 20.05.2022 and one of the agenda put forth was regarding settlement of dues of the Financial Creditor and taking of the 12A

application which was further deferred upto the 4th CoC meeting.

f. This Tribunal vide order dated 12.07.2022 dismissed the application filed for withdrawal of the CIRP in 12A as it did not garner any vote from the CoC.

g. The 7th CoC meeting held on 21.09.2022, the CoC resolved to appoint the Applicant herein as the RP with 100% majority. Vide order dated 01.11.2022 in IA/1089/2022 this Tribunal allowed the replacement of RP.

h. The CoC in the 8th meeting held on 18.11.2022 decided to reissue Form-G (originally issued on 29.08.2022 by IRP) and also to extend the CIRP period by further period of 90 days under Section 12 of the Code. This Tribunal vide order dated 02.01.2023 in IA/1491/2022 extended the CIRP period upto 19.03.2023.

i. Form-G reissued on 04.12.2022, it is averred in the application under para 12 that there was no response from any of the prospective Resolution Applicant to take over the Corporate Debtor for its revival.

j. The CoC in the 9th meeting held on 05.01.2023 discussed the current state of affairs of the Corporate Debtor and took note of the fact that the Corporate Debtor is not carrying on any business for more than three years and not fetching any income.

k. Further there is no response to the Form-G. The Applicant informed the CoC he has evinced interest from some local people about purchase of individual assets of the Corporate Debtor.

l. Taking into consideration the above factors, the following resolution was passed unanimously by the CoC (Page No.159).

Resolution 2:

*"**RESOLVED THAT** the Corporate Debtor be liquidated, subject to the approval of Hon'ble National Company Law Tribunal, Chennai Bench under Sec 33 of IBC 2016, as there are no resolution plans received for revival of the CD"*

*"**RESOLVED FURTHER** that the CoC hereby authorize the RP to file application before Adjudicating Authority for liquidation of the Corporate Debtor"*

CoC Member	***Voting Right in (%***	***Voting***
Punjab National Bank	*100%*	*Favour*

*Resolution declared as **PASSED** with **100%** majority.*

In view of the unanimous resolution of the CoC, the RP has filed the present application.

3. Heard the submissions of the Learned Counsel for the Applicant.

4. It is seen that though the CIRP period is due for expiry on 19.03.2023, the CoC in their commercial wisdom has unanimously passed a resolution to liquidate the Corporate Debtor.

5. It is seen that Form – H is attached at page No. 166 to 173 of the application typeset.

6. It is relevant to reproduce Section-33 of the Insolvency and bankruptcy as follows:

> "***33. Initiation of liquidation. –***
>
> *(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 creditors 1 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
>
> *[**Explanation**. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]*

7. Taking into consideration the above, we are inclined to order for liquidation of the Corporate Debtor. The existing RP has expressed his willingness to be appointed as the Liquidator and Form-AA attached at page No. 163 of the Application. Further, AFA is valid till **17.11.2023**.

8. In view of the facts and circumstances of the case, we are inclined to order for liquidation of the Corporate Debtor. The Corporate Debtor is ordered for liquidation, ***Mr. S.Prabhu, Reg. IBBI/IPA-001/IP-P01275/2018-2019/11948 (E-mail : carpprabhu@gmail.com)*** the Applicant herein is hereby appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process 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 her.

   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) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) 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.

f) 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.

g) 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.

h) 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.

i) 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.

j) 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.

9. With the above said directions, **IA/IB/243(CHE)/2023** stands **allowed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT