

COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 32

IA (DIS.)/64/2024 in C.P. (IB)/374(MB)2023

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 09.12.2024

NAME OF THE PARTIES: KAUSHAL SILK MILLS PRIVATE
LIMITED

Section 54(1) & 10 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA (DIS.)/64/2024 in C.P. (IB)/374(MB)2023

- 1) Mr. Yahya Batatawala, Ld. Counsel for the Applicant is present.
- 2) This is an Interlocutory Application filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 by the Applicant, **Mr. Bhavesh Mansukhbhai Rathod** who is the Interim Resolution Professional of the Corporate Applicant, **Kaushal Silk Mills Private Limited**, seeking dissolution of the Company, **Kaushal Silk Mills Private Limited**.
- 3) Record reveals that this Bench, *vide* its order dated 22.11.2023, on a Petition filed by the Corporate Applicant under Section 10 of the Insolvency and Bankruptcy Code, 2016, initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Applicant viz **Kaushal Silk Mills Private Limited**, wherein Interim Resolution Professional was appointed in



accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

- 4) It is submitted that after receipt of Copy of the Admission against the Corporate Applicant herein on 29.11.2023, the Applicant made Public Announcement in Form A on 01/12/2023 in **Financial Express (English)** and **Mumbai Lakshadeep (Marathi)** Newspaper having wide circulation in Mumbai.
- 5) It is stated that as per the Public Announcement, the last date to receive claims from the Creditor was 13.12.2023. It is further stated that the Applicant did not receive any claims from any of the Creditors and hence, he could not constitute Committee of Creditors ("CoC") under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.
- 6) The Applicant submits that the suspended Director provided with few records, documents, information of the Corporate Debtor. The said record consisted of the updated list of Creditors of the Corporate Debtor as on 29.11.2023. The Applicant further submits that as he had not received any claims from the Creditors of the Corporate Debtor in response to Public announcement further supplemented by the Letter dated 21.12.2023 to the Creditors of the Corporate Debtor thereby intimating them about the initiation of CIRP of the Corporate Debtor.



- 7) This Bench notices that as per Regulation 12(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the maximum time to submit the claim form before the IRP/RP is 90 days, which was expired on 27.02.2024. It is stated that still the Applicant didn't receive any claims from any of the Creditors of the Corporate Debtor.
- 8) It is the case of the Applicant that as there is no Committee of Creditors, hence, he is not a position to take ahead the Corporate Insolvency Resolution Process of the Corporate Debtor such as publication of **Expression of Interest, conduct Valuation and/ or Transaction Audit**. Applicant submits that he can't even place the resolution before the Committee of Creditors for either taking the Corporate Debtor in Liquidation and/or Dissolution.
- 9) The Applicant further submits that there are no assets in the Corporate Debtor and hence, there is no point in taking the Corporate Debtor into Liquidation for the reason that there are no assets to be liquidated and as to who will bear the Liquidator's fees and Expenses. The said submission are noted.
- 10) The Applicant submits that after receiving the order, the Applicant had requested Union Bank of India for No Objection Certificate (NOC) against the Open Charge in MCA Records dated 23/03/2024. It is the case of the Applicant that no claim has been filed by the Union of India, accordingly, there is no outstanding against these charges and these charges



has to be satisfied in the records of ROC by filing appropriate form. The Applicant submits that the Corporate Debtor had bank account with - The Cosmos Co-Operative Bank Limited bank, Zaveri Bazar branch bearing a/c no. 0211001011431. The said account has been closed by the Applicant. This submission of the Counsel for the Applicant found substantiated after referring to the Letter dt. 06.08.2024, issued by Manager, Zaveri Bazar Branch, The Cosmos Co-Op. Bank Ltd., wherein, it is stated that *"This letter is issued in specific request of the customer and bank has no liability on its part"*.

- 11) The Applicant submits that 180 days of Corporate Insolvency Resolution Process of the Corporate Debtor has expired on 27.05.2024 and the Counsel for the Applicant makes a statement across the Bar that till date no claim has been received by the Applicant from any of the Creditor of the Corporate Debtor.
- 12) Since the Corporate Debtor does not have any assets, it is only pragmatic that proceedings for initiation of dissolution of the Corporate Debtor shall be initiated in terms of Section 54 of the Code read with the Regulation 14 of IBBI (Liquidation Process) Regulations, 2016
- 13) At this juncture, it is appropriate to read Section 54 of the Insolvency & Bankruptcy Code, 2016. The said Section is quoted below for the Convenience and ready reference:

"Section 54: Dissolution of corporate debtor.



(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under subsection (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered”.

- 14) At this juncture it is pertinent to note that the Hon’ble National Company Law Appellate Tribunal in the case of **Shyson Thomas V. Mr. Madhugiri Venkatarayappa Sudarshan and Others (Company Appeal (AT) (CH) (INS.) No. 925 of 2020)** wherein, it has been observed that

“Suffice it for this ‘Tribunal’, to make a pertinent mention that in the absence of any ‘Asset(s)’ / the ‘Resolution Plan(s)’, the Resolution Professional, had no other go, but to pray for an ‘Order of Dissolution’, to be passed by the ‘Adjudicating Authority’ ”.

- 15) Taking into consideration the current financial position of the Company and considering the fact that there is absolutely no means/sources available with the Corporate Applicant to discharge its liabilities, hence, the



present Interlocutory Application has been filed seeking dissolution of the Corporate Applicant.

- 16) Having considered the submissions and upon perusal of averments made in the Application, this Bench is of the considered view the the present Interlocutory Application is in consonance with Section 54 of the Insolvency and Bankruptcy Code, 2016. Accordingly, we direct that the Company shall be dissolved from the date of this order.
- 17) Consequently, the Interim Resolution Professional/Resolution Professional **Mr. Bhavesh Mansukhbhai Rathod** is discharged from his duties and responsibilities as the Interim Resolution Professional/Resolution Professional of the Corporate Applicant, **viz. Kaushal Silk Mills Private Limited.**
- 18) The Applicant is further directed to serve a copy of this order upon the jurisdictional Registrar of Companies, with which the company is registered, within Fourteen days of receipt of this order. The Registrar shall take necessary action upon receipt of a copy of this order.
- 19) **The Insolvency Resolution Professional shall preserve physical or electronic copy of the Reports, Registers, and Books of Account for at least eight years after the dissolution of the Corporate Debtor, either with himself or with an information utility.**
- 20) With the aforesaid observations and directions, the Interlocutory Application bearing **IA (Dissolution) No. 64 of 2024**, is disposed of as



Allowed. Resultantly, the Company Petition bearing **CP (IB) No. 374 of 2023**, is disposed of.

- 21) There will, however, be no order as to costs.
- 22) Ordered Accordingly.

Sd/-

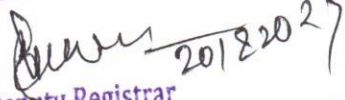
PRABHAT KUMAR
MEMBER (TECHNICAL)

Vedant Kedare

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)



Certified True Copy
Copy Issued "free of cost"
On 20/12/2024

Deputy Registrar
National Company Law Tribunal Mumbai Bench