NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH, BENGALURU, HELD ON 10.06.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), **Shri Rajeswara Rao Vittanala**
2. Hon'ble Member (T), **Shri Ashutosh Chandra**

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 122/BB/2020	For admission	Sec 10 of I&B code 2015	M/s Bluewater Foods & Exports Pvt Ltd	Uday Shankar, Advocate		

ADVOCATE FOR PETITIONER/s: Mr. Uday Shankar

ADVOCATE FOR RESPONDENT/s:

ORDER

Heard Mr. Uday Shankar, learned Counsel for the Petitioner, through Video Conference.

CP (IB) No. 122/BB/2020 is admitted by separate order appointing Mr. Pankaj Srivastava is IRP. Post the case for the report of the IRP on **30.06.2020.**

MEMBER (T) MEMBER(J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH

C.P(IB) No.122/BB/2020
U/s 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

In the matter of:

Bluewater Foods and Exports Private Limited,
No. 281/282, Industrial Area,
Baikampady,
Mangalore - 575011 ...Petitioner/ Corporate Applicant

Date of Order: 10th June, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Uday Shankar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.122/BB/2020 is filed by M/s. Bluewater Foods and Exports Private limited('Petitioner/Corporate Applicant') under Section 10 of the IBC, 2016 r/w Rule 7 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself (M/s.Bluewater Foods and Exports Private Limited), under the Insolvency and Bankruptcy Code.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Bluewater Foods and Exports Private Limited (herein after referred to as Petitioner/Corporate Applicant/Company) was incorporated 21.03.1997, having CIN: U51223KA1997PTC021995 and the registered office situated at No.281/282, Industrial Area, Baikampady, Mangalore. Its

Nominal Share Capital is Rs.10,00,00,000/-(Rupees Ten Crores Only) and Paid-up Share Capital of Rs.10,00,00,000/- (Rupees Ten Crores Only). The Company is engaged in the business of collectors, exporters, importers, dealers and processors in all kinds of fish, prawns, shrimps, frog legs, shellfish, sea food and any other crustaceous animals and aquatic products etc.,.

(2) The Corporate Applicant/Petitioner incurred an outstanding debt of Rs. 121, 98, 64, 332/- (Rupees One Hundred and Twenty One Crore Ninety Eight Lakh Sixty Four Thousand Three Hundred and Thirty Two only) and defaulted in repayment of the said debt. The debt of the Petitioner are as follows:

No.	Creditor	No of Creditors	Outstanding debt
1.	Secured Financial Creditors	5	Rs. 86,05,05,547/-
2.	Unsecured Financial Creditor	1	Rs. 25, 61, 728/-
3.	Operational Creditors valued at	230	Rs. 35, 67, 97, 057/-
	Total Outstanding		Rs. 121, 98, 64, 332/-

(3) Due to default of the Corporate Debtor and its inability of repay its Creditors, despite notices from the Financial Creditors, the Board of Directors at its meeting held on 13.03.2020 resolved to file this petition to initiate CIRP. The Corporate Applicant called for the Extra-ordinary General Meeting on 16.03.2020, whereby the Shareholders of the Corporate Applicant have approved to initiate CIRP in respect of the Corporate Applicant.

(4) Further, Mr. M.R Sreenivas Bhat, Managing Director, resident of No. IX/50, Memana House, Kannamaly, Chellanam, Ernakulam, Kerala – 682 008 was authorised by the Board of Authorised Signatory to do all the necessary acts to initiate CIRP in respect of the Corporate Applicant.

3. Heard Mr. Uday Shankar, learned Counsel for the Petitioner **through Video Conference**. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the rules made thereunder.

4. Mr. Uday Shankar, learned Counsel for the Petitioner, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that the list of Secured Creditors with CA Certificate filed as Annexure 10 at page No. 119 to 123 which contains number of Secured Financial Creditors valued at Rs. 86,05,05,547/- and One Unsecured Financial Creditor valued at Rs. 25,61,728/- and 230 nos. Of Operational Creditors valued at Rs. 35, 67, 97, 057/- as on 05.03.2020. He has further submitted that the instant Application/Petition is filed in accordance with Law, a qualified Resolution Professional namely Shri Pankaj Srivastava, with Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474, is suggested, as IRP, who has also filed written Communication in Form-2 dated 09.03.2020, by *inter-alia* declaring that he is a qualified Resolution Professional; he is currently serving as IRP/RP /Liquidator in 4 proceedings; there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. He therefore, urged the Adjudicating Authority, to initiate CIRP as prayed for.

5. As stated supra, the Company is having financial Secured/un-secured Creditors apart from Operational Creditor, proving prima facie, it is insolvent so as to necessitate to initiate CIRP in terms of provisions of Code. In terms of Section 10 of the Code, a Corporate

Applicant can file an application if Corporate Debtor has committed default, for initiating Corporate Insolvency Resolution Process with the Adjudication Authority, in a prescribed form by enclosing the following:

a. *The information relating to its books of account and such other documents for such period as may be specified:*
b. *The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
c. *The special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.*

As per Section 10(4), the Adjudication Authority can admit an Application if the Application is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

6. In the instant case, admittedly, the Corporate Applicant has prima facie become insolvent, as detailed supra. And the instant Company Petition is filed in accordance with law and also suggested a qualified Resolution Professional Shri Pankaj Srivastava, with Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474, is suggested, as IRP, who has also filed written Communication in Form-2 dated 09.03.2020, by *inter-alia* declaring that he is a qualified Resolution Professional; there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. The Shareholders of Applicant Company, in their Extraordinary General Meeting, held on 16.03.2020 passed a Special Resolution by approving to file an Application, U/s 10 of Code by authorising Mr. M.R Sreenivasa Bhat, Managing Director of the Company to take

necessary action in the that regard. Accordingly, the instant Application/Petition is filed by seeking to initiate CIRP respect of the Company.

7. In view of the above facts and circumstances of the case, and the settled position of law on the issue, and by exercising powers conferred on this Adjudicating Authority, U/s 10(4)(a) of the Code, We do hereby admit **C.P(IB)No.122/BB/2020** by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Blue Water Foods and Exports Private Limited, Petitioner/Corporate Applicant herein, with the following consequential directions:

   1) **Shri. Pankaj Srivastava,** withRegistration **No. IBBI/IPA-001/IP-P00245/2017-18/10474**, Resolution Professional, Office at No.5, 5th Cross, Navya Nagar, Jakkur, Bengaluru - 560 064, hereby appointed as Interim Resolution Professional, in respect of the Petitioner/Corporate Applicant namely M/s.Blue Water Foods and Exports Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

   2) The following moratorium is declared prohibiting all of the following, namely:

      a) the institution of suits or continuation of pending suits or proceedings against the Petitioner/Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

      b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;

f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;

h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.

i) However, this moratorium would not apply to cases if any, pending against the Applicant Company before the Hon'ble High court(s) and Hon'ble Supreme Court of India.

3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.

4) The Board of Directors and all the staff of Petitioner/Corporate Applicant are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
5) Post the case for report of IRP on**30.06.2020.**
6) The Registry of NCLT is directed to communicate a copy of this order to Shri Pankaj Srivastava, IRP, immediately.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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