SL No. 113

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 09.11.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE

IA (IBC)/593/2021 in CP (IB) No. 207/7/HDB/2020
U/s 7 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

BRS Enterprises & Trading Ltd ...**Applicant**

Vs.

SMV Commodities and Trading India Pvt Ltd ...**Respondent**

CORAM:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL

ORDER

Orders passed in IA No.593/2021 vide separate orders.

MEMBER (T) **MEMBER (J)**

Pavani

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

IA (IBC)/593/2021 in CP (IB) No. 207/7/HDB/2020

Under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016.

Filed by,

Mr. Krishna Komaravolu
Resolution Professional of M/s. SMV Commodities and Trading India Private Limited
IBBI/IPA-002/IP-N00562/2017-2018/11699
7-1-214, Flat No. 409,Vamsikrishna Apartments,
Dharam Karam Road, Ameerpet,
Hyderabad – 500016.

... Applicant/Resolution Professional

In the matter of

BRS Enterprises & Trading Limited

...Financial Creditor

VERSUS

M/s. SMV Commodities and Trading India Private Limited

...Corporate Debtor

Date of order: 09.11.2021

Coram:

Dr. N V Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:
For Applicant: Shri. Mayur Mundra, Advocate

Heard on: 26.10.2021

PER: BENCH

1. The instant application is filed by the Resolution Professional of M/s. SMV Commodities and Trading India Private Limited (hereinafter referred to as "Corporate Debtor") under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") for initiation of liquidation of the Corporate Debtor due to non-receipt of resolution plan.

2. The Insolvency petition was filed by the Financial Creditor i.e., BRS Enterprises & Trading Limited under Section 7 of the Code vide CP (IB) No. 207/7/HDB/2020 and this Tribunal initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor vide order dated 28.04.2021 and appointed Shri Krishna Komaravolu as the Interim Resolution Professional (IRP) for the Corporate Debtor.

3. Pursuant to the order, the IRP published Form-A in two newspapers on 05.05.2021 inviting creditors to submit their claims. Prior to the first meeting of the Committee of Creditors (CoC), the applicant received the claims from the Financial Creditor as well as one of the Operational Creditor. The applicant verified the claims and constituted Committee of Creditors on 08.06.2021.

4. In the 2nd CoC meeting, the applicant with the approval of the members appointed Valuers for valuation of Securities and Financial Assets and they approved the eligibility criteria for being a Prospective Resolution Applicants (PRAs) and publication of Form G in newspapers inviting Expression of Interest (EoIs).

5. The applicant published Form G in both English and Vernacular language newspapers and the last date for submitting the EoI by PRAs was 17.08.2021. In the 3rd meeting the applicant informed the CoC members that there is no response to the Form G.

6. The CoC members decided to go ahead with the liquidation of the Corporate Debtor and they passed resolutions in respect of Sections 33(2) and 34(1) of the code and Regulations 39(B), 39(C) & 39(D) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

7. The CoC members directed the applicant to file an application under Section 33 of the code before this Tribunal to liquidate the Corporate Debtor. Mr. Rajkumar Sarda having Registration No. IBBI/IPA-001/IP-P-01777/2019-20/12740 has filed his consent to act as the Liquidator of the Corporate Debtor.

8. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that,

> ***"The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse 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".***

9. We have heard the Applicant in the matter and from the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (2) of the Code. Therefore, we have no option than to pass an order of liquidation of the Company in the manner laid down in Chapter-III of the Code.

<u>**ORDER**</u>

10. The Application is accordingly allowed with the following directions:-

A. The Corporate Person i.e., SMV Commodities and Trading India Private Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

B. Mr. Rajkumar Sarda having IP registration no. IBBI/IPA-001/IP-P-01777/2019-2020/12740, is appointed as Liquidator.

C. He shall issue public announcement stating that the Corporate Debtor is in liquidation.

D. The Moratorium declared under Section 14 of the Code shall cease to operate here from.

E. Subject to Section 52 of the code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

F. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

G. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) regulations, 2016.

H. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

I. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

J. This order shall 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.

K. Copy of the Order shall be furnished to IBBI, Regional Director, Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator, Hyderabad, Registered Office of the Corporate Debtor and the Liquidator.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Dr. N V RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Vismaya (LRA)