Srl No. 155

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI– MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.08.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) No. 169/2021 in CP (IB) No. 745/7/HDB/2018
NAME OF THE COMPANY	Kanakadhara Ventures Pvt Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Kanakadhara Ventures Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA 169/2021 in CP(IB) No.745/7/HDB/2018 is listed for orders. Orders pronounced vide separate orders.

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MEMBER(T)

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MEMBER(J)

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NATIONAL COMPANY LAW TRIBUNAL, BENCH-1, HYDERABAD

IA (IBC)/169/2021

In CP (IB) No.745/7/HDB/2018

Application under Section 33(1) (b) of the Insolvency and Bankruptcy Code, 2016

In the matter of M/s Kanakadhara Ventures Private Limited

Filed by

Mr. B Naga Bhushan
Resolution Professional of M/s Kanakadhara Ventures Private Limited
IBBI/IPA-01/IP-P00032/2016-17/10085
1-1-380/38, Ashok Nagar Extension
Hyderabad - 500020

...Applicant/
Resolution Professional

Date of order: 13.08.2021

Coram

Hon'ble Shri Madan Bhalchandra Gosavi, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties/ Counsels present:

For the Applicant : Shri G Kalyan Chakravarthy, Advocate and B Naga Bhushan, Resolution Professional.

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Heard on: 23/06/2021 and 04/08/2021.

PER: BENCH

1. This is an Application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor, M/s Kanakadhara Ventures Private Limited.

2. The facts in brief are that the IDBI Bank limited, the Financial Creditor had filed an application under Section 7 of the Code bearing CP (IB) No.745/7/HDB/2018 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. The said application was admitted by this Tribunal on 22/11/2019 and appointed Shri B Naga Bhushan, the applicant herein as Interim Resolution Professional.

3. The applicant received and collated the claims and after verification of the claims, he constituted the Committee of Creditors (hereinafter referred as CoC) on 16/12/2019 in compliance of provisions of Section 18 of the Code. In the second meeting of CoC which held on 07/01/2020, they exercised their voting rights and resolved to appoint the applicant as the Resolution Professional.

4. The applicant published the Form G in two newspapers on 07/02/2020 and invited Expression of Interest (EOI) from the Prospective Resolution Applicant (PRAs) for submission of Resolution Plan and the same was approved by the CoC in 3rd meeting.

5. The last date for receipt of EOI was on 22/02/2020 but no EOI were received till the date and CoC decided to issue revised Form G which was published on 02/03/2020 and the last date was extended till

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12/03/2020. On 29/02/2020 Meizo Healthcare Private Limited (MHPL) in consortium with Mr. Dhirendra Kumar submitted EOI and on 4th CoC meeting, the members of the CoC approved the Evaluation Matrix and salient features of the request for Resolution Plan and accordingly, the last date for submission of Resolution Plan was extended till 21/04/2020.

6. In the 6th meeting of CoC the members approved the extension of timeline for the submission of Resolution Plan till 31/08/2020 at the request of the PRA.

7. The Resolution Applicant, MHPL submitted the Resolution Plan on 17/09/2020 and the CoC members were of the view that the conditions of PRA on the release of personal guarantees and collaterals are unreasonable and hence decided to go for fresh issue of EOI.

8. The applicant published revised Form G on 23/11/2020 in newspapers (both English and vernacular languages) and M/s Safebharat Enterprises Private Limited submitted EOI on 08/12/2020 and subsequently the said Applicant in consortium with Mr. M Vishwanath submitted Resolution Plan along with Bid Bond Guarantee.

9. In 10th, 11th and 12th CoC meetings the members and the PRAs discussed about the improvement of the Resolution Plan amount and also for the commercial considerations. The Resolution Applicants insisted for release of collateral properties of the third parties and also the personal guarantees of the director/promoters for improving their resolution plan amounts. The CoC members made it clear that as per the CIRP regulations the PRA is allowed to bid only for the Corporate Debtor and the Banking regulations do not allow the Financial Creditors to relinquish their right on the Personal guarantees.

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10. The applicant has apprised the members of CoC about the high valued transactions and CoC informed that a majority of transactions are not done in normal course of business activity of Corporate Debtor and hence decided to go for Forensic Audit and same was entrusted to M/s Raju & Prasad, Chartered Accountants. In the 12th CoC meeting, The Forensic Auditors submitted the report and made it clear that such transactions come under the purview of Section 66 of the Code.

11. The applicant filed an application under Section 66(1) before this Tribunal with regard to the transactions reported in the Forensic Report vide IA (IBC)/141/2021.

12. The details of extension and exclusion granted by this Tribunal are as follows:

Sl No.	Application filed by RP for extension of CIRP period/ exclusion of lockdown period	Date of Order	Order Passed
1.	IA No. 630/2020 for extension of CIRP period by 90 days beyond 180 days and exclusion of 98 days.	04/09/2020	Allowed extension of 90 days and exclusion of 98 days.
2.	IA No. 1086/2020 for extension of 60days beyond 270 days of CIRP period.	07/12/2020	Extended 60 days from 23/11/2020 till 22/01/2021.
3.	IA No. 87/2021 for exclusion of 30 days from the CIRP period.	27/01/2021	Excluded 30 days from 01/07/2020 till 31/07/2020.
4.	IA No. 44/2021 for exclusion of 30 days from the CIRP period.	22/02/2021	Excluded 30 days from 01/05/2020 till 31/08/2020.

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13. The resolutions submitted by the PRAs were kept before the CoC for voting and none of the members voted in favour of the resolutions and it amounts to the rejection of resolution plan.

14. For the consideration and voting in the 15th meeting of CoC the applicant placed resolutions regarding liquidation, approval of liquidator, liquidator fees and the estimated liquidation costs. The Resolution Professional submitted the written consent to act as Liquidator of the Corporate Debtor and the copy of the written consent is annexed as ANNEXURE – A19.

15. The Joint lenders forum informed the applicant by way of mail on 10.06.2021 that they have decided to appoint Mr. Rajesh Chillale, as liquidator of the Corporate Debtor. Hence, the applicant filed a memo dated 15.06.2021 to withdraw his consent to act as a Liquidator of the Corporate Debtor. The consent of Mr. Rajesh Chillale for acting as the said liquidator is annexed with the memo dated 15.06.2021 as ANNEXURE – C.

16. We have heard the Applicant in the matter. 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".

17. 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

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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 (1) (a) of the Code. Therefore, we have no option than to pass an order for liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

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

a) The Corporate Person i.e., M/s. Kanakadhara Ventures Private Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

b) Mr. Rajesh Chillale having Registration No. IBBI/IPA-001/IP-P00699/2017-2018/11226 is appointed as Liquidator of the Corporate Debtor.

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.

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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 & 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.

Sd/-
VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-
MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)

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