NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANATHA PADMNABHA SWAMY– MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA – MEMBER TECHNICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.12.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 777/2019 in CP (IB) NO. 280/9/HDB/2018
NAME OF THE COMPANY	Sristek Clinical Research Solutions Ltd
NAME OF THE PETITIONER(S)	Bilcare Ltd
NAME OF THE RESPONDENT(S)	Sristek Clinical Research Solutions Ltd
UNDER SECTION	9 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 No.777/2019

Order pronounced in open court. IA allowed vide separate order.

MEMBER TECHNICAL

MEMBER JUDICIAL

Rk

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.777/2019
In
CP(IB)No.280/9/HDB/2018

In the matter of: M/s. Sristek Clinical Research Solutions Ltd.

Mr.Subba Rao Gonuguntla,
R/o.Flat -G1, Plot No.22/3,
Sri Datta Sai Nilayam, Motinagar Extension,
Erragadda, Hyderabad. ...Resolution Professional/
Applicant

And

M/s. Sristek Clinical Research Solutions Ltd.
DLF Cyber City, Block – 3, 8th Floor,
Gachibowli Village, Serilingampally Village
Mandal, Hyderabad, Telangana – 500048.
(Rep. by Mr.Subba Rao Gonuguntla, Resolution Professional)

... Corporate Debtor/
Respondent

Order pronounced on: 06.12.2019

Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/ Counsels Present:-

For the Applicant:

Dr.S.V.Rama Krishna, Advocate for RP

Mr.Subba Rao Gonuguntla, RP

For the Suspended Director:

Mr.D.Gopala Krishna, Advocate

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. The present Application bearing IA No.777/2019 in CP(IB)No.280/9/HDB/2018 is filed by Resolution Professional seeking an order for liquidation of Corporate Debtor under section 33(2) of I & B Code, 2016.

2. It is stated that the present Corporate Debtor was admitted for commencement of CIRP vide Order dated 14.02.2019.
3. It is stated that, this Adjudicating Authority appointed Mr.Subba Rao Gonuguntla, an Insolvency Professional registered with IBBI with registration number IBBI/IPA-001/IP-P01277/18-19/11959, as IRP vide order dated 14.02.2019.
4. It is submitted that, in the 1st COC meeting held on 09.03.2019, Mr.Subba Rao Gonuguntla was appointed as Resolution Professional who is the existing RP.
5. It is stated that, during the CIRP period totally four COC meetings were held on (1) 15.04.2019, (2) 23.07.2019, (3) 02.08.2019 and (4) 11.08.2019.
6. RP during the CoC meetings, stated the following to CoC:
    a. CD has no asset in the balance sheet and no physical assets, no administration office confirmed by CD also.
    b. CD is a MSME unit.
    c. CD has no business or manpower from past 3 years in the company.
7. Based on the above facts RP further stated that the CoC can waive the FORM G and valuation as per the judicial pronouncements of Hon'ble NCLAT in following cases:
    a. Saravan Global Holding Ltd & anr Vs Bafana Pharmaceuticals Ltd, NCLT Chennai in MA/71/2019 in CP/682/IBCB/2017. (Waiver FORM G)
    b. Evershine Advisory Services Pvt Ltd (FC) vs Optic Advisory Pvt Ltd, Mr. Ajay Kumar (RP), MA No1452/2019, NCLT Mumbai bench (Waiver of valuation)
8. Considering the above facts, CoC has resolved as under:

"Resolved to waive the valuation and issue of FORM G for the time being. Further suggested to the CD through RP to file a resolution plan by the debtor himself, the unit can continue as a going concern. If the resolution plan is reasonable to the creditor withdrawal application U/s 12A can be considered by CoC with the approval of honourable NCLT."

9. It is stated that in May 2019 CoC gave an opportunity to the Ex-management to place compromise proposal/Resolution Plan, and received six different compromise proposals/Resolution Plans till 11th August 2019.
10. That Mr. Sampath, Suspended Director of the Corporate Debtor requested some more time to give his commitment of down payment to the proposal. As Suspended Director has failed to keep his promise, hence CoC resolved for liquidation of the Corporate Debtor.
11. Counsel for the Respondent filed counter wherein:
    a) It is stated that he is a first generation entrepreneur and as such intends to establish a company in the field of all kinds of clinical research.
    b) It is stated that the outstanding liability claimed by the Operational Creditor is exorbitant and simply adding the interest, rents etc., even after expiry of the product of the Corporate Debtor. If the Corporate Debtor Company goes for liquidation process there are no assets in the name of the Corporate Debtor.
    c) It is stated that the Respondent is a first generation entrepreneur in the field of clinical research, having real work experience in the said field. The Corporate Debtor is registered with SSI and comes within the purview of the provisions of MSME Act.

d) It is also noticed that CoC directed the Resolution Professional to proceed with liquidation process without following due process of law including issuing of Form-G i.e., Expression of Interest.

e) It is stated that the decision of CoC directing the Resolution Professional to proceed with the liquidation process without issuing Form-G i.e., Expression of Interest is illegal, arbitrary and it was depriving the right of the Erstwhile Directors of the Corporate Debtor to submit a Resolution Plan which includes opportunity under Sec.240A of the I&B Code, 2016. The erstwhile Directors of the Corporate Debtor Company are entitled to submit a Resolution Plan and they are not within the purview of Sec.29A of I&B Code.

f) It is stated that, in view of the above, the present Petition filed by the Resolution Professional without issuing Form-G i.e., Expression of Interest etc., is illegal and therefore is liable to be dismissed.

12. Heard both sides and perused the records.

13. In view of the facts and circumstances recorded by RP in IA No.777 of 2019 filed in CP(IB) No. 280/9/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30.

14. Further Section 33(2) as amended by the IBC Amendment Act, 2019, stipulates as under:

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 2 [approved by not less than sixty-six percent. 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.]

15. Thus, in the instant case, the contention of the Suspended Director cannot be taken into consideration in view of the aforesaid amended provisions of Section 33(2) of IB Code, 2019. Thus, in view of the facts and circumstances recorded by RP in IA No.777 of 2019 filed in CP(IB) No. 280/9/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 and the CoC resolved to liquidate the Corporate Debtor with required majority. Therefore, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

(i) This Adjudicating Authority hereby order for Liquidation of M/s. Sristek Clinical Research Solutions Ltd, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

(ii) This Adjudicating Authority hereby appoint Mr.Chillale Rajesh bearing registration number IBBI/IPA-001/IP-P00699/2017-2018/11226 to act as Liquidator in the present case. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;

(iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Adjudicaitng Authority.

(v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vi) This Order shall be 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.

(vii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr.Chillale Rajesh. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.

(x) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

(xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr.Chillale Rajesh for information and compliance.

(xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

(xiii) In terms of the above, IA No. 777 of 2019 filed in CP(IB) No. 280/9/HDB/2018 by the RP under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Sristek Clinical Research Solutions Ltd, stands **disposed off**.

06.12.19

Dr.BINOD KUMAR SINHA
MEMBER (TECHNICAL)

K.ANANTHA PADMANABAHA SWAMY
MEMBER (JUDICIAL)

SKRathi/Alekhya