IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.169/BB/2020
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

Smt. Lakshmi Durga Chalasani
No.416, Hari Nivas,
M.J. Nagar, 4th Cross,
Dam Road, Hospet,
Bangalore – 583 201. - Petitioner/Operational Creditor

Versus

M/s.Cheftalk Food and Hospitality Services Private Limited
No.168/2, Gunjur,
Varthur Main Road,
Varthur Hobli, Whitefield,
Bangalore- 560 066. - Respondent/Corporate Debtor

Order Pronounced on: 2nd September, 2020

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

Parties/Counsels Present:

For the Petitioner : Shri K. Mahalingam

For the Respondent : None

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.169/BB/2020 is filed by Smt. Lakshmi Durga Chalasani ('Petitioner/Operational Creditor') U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Cheftalk Food and Hospitality Services Pvt. Ltd., on the ground that it

has committed default for an amount of Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakh Only).

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) Smt. Lakshmi Durga Chalasani (hereinafter referred to as Petitioner/Operational Creditor), is the wife of late Shri Hari Kumar C.G. residing at No.416, Hari Nivas, M.J. Nagar, 4th Cross, Dam Road, Hospet, Bellari-583201.

(2) M/s. Cheftalk Food and Hospitality Services Private Limited (herein after referred to as Respondent/Corporate Debtor) having GSTIN No.29AAFCC7584D1ZE was incorporated on 01.09.2016. Its Authorised Share Capital is Rs.1,00,000/-(Rupees One Lakh Only) divided into 10,000 numbers of equity shares of Rs.10/- each.

(3) It is stated in the Petition that the Corporate Debtor inducted the late husband Shri Hari Kumar C.G. of the Petitioner/Operational Creditor as an Investor in the Corporate Debtor's Company. During 2016 the husband of Operational Creditor purchased Hi-tech machineries and plants which were transferred to carry out food supplies to M/s. Robert Bosch Company and for Indira Canteen, Bangalore and he invested a sum of Rs.3,50,00,000/- during the period 2016 and 2018. The Corporate Debtor also agreed to give 50% of profit out of the business. The Operational Creditor's husband late Shri Hari Kumar C.G. did not receive any profits during the year 2016-17 to 2018-19 and the Corporate Debtor has failed to submit books of accounts, statement of profits and loss for the FY 2016 to 2019. The Corporate Debtor is in arrears amounting to Rs.3,50,00,000/- calculated up to 21.05.2019. Her husband died on 17.10.2019 and she was told that he has invested Rs.3.5 Crores for the Company. But her husband's sudden demise she could not trace out the documents relating to the investment made in the Company but she could not get entire documents for the investment in the Company made by her husband.

But as of now she could proceed the bank transactions made by her husband to the Company is Rs.34,00,150/- and also she produce the bills for canteen investments for Rs.4,98,200/-, totally Rs.38,98,350/. When the Operational Creditor got issued legal notice dated 21.05.2019 calling upon the Corporate Debtor to effect payment of the arrears of rent become due. The Corporate Debtor in spite of service of notice has not paid the arrears become due by them.

3. In response to the Legal Notice dated 21.05.2019, the Corporate Debtor filed a Reply dated 19.06.2019, by inter alia contending as follows:

(1) It is stated that the Corporate Debtor are in the business of Running Catering and Hospitality Service at Bangalore since 2016. During the course of expanding their business they appointed Mr. Hari Kumar as Manager of the Bangalore Branch through their Company's Board Resolution dated 04.04.2016 and Mr. Hari Kumar was authorized to sign all documents related to Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 on behalf of the Company. Apart from the above, Mr. Hari Kumar was not the investor or the partner and he had not invested any money much less stated in Petitioner's notice. Further, it is absolute false statement that the Petitioner's deceased husband had entered into an agreement in the month of March, 2016 with the Corporate Debtor.

(2) It is also stated that Mr. Hari Kumar has not purchased High Tech Kitchen Machinery and Plants on his own funds, but the same was purchased by him as representative of the Corporate Debtor's Company with the Corporate Debtor's Company's Funds. Mr. Hari Kumar had no direct connection with Robert Bosch Company and Indira Canteen as he was working with the Corporate Debtor's Company as Manager.

(3) It is stated that Mr. Hari Kumar never invested huge sum of money in the Corporate Debtor's Company and he was never given any of the

position much less as Investor or Partner or Board of Directors or Employer. Mr. Hari Kumar was just a Manager of Bangalore Branch and he was never assured about the sharing of the profit at the rate of 50% for any of the years with any interest as the Petitioner claims through the Petitioner's notice.

(4) It is further stated that Mr. Hari Kumar was authorized to sign and operate the Bank Account of the Corporate Debtor's Company and during the tenure of his service in the Corporate Debtor's Company he misused his official position and behind the back of the Corporate Debtor, he transferred huge sum of money amounting to Rs.1,52,80,000/-(Rupees One Crore Fifty Two Lakhs Eighty Thousand Only) to his Bank Account with an intention to cheat the Corporate Debtor's Company by acting fraudulently. After coming to know the said illegal act of Mr. Hari Kumar, the Corporate Debtor's Company had removed Mr. Hari Kumar from the position of 'Authorized Signatory' through its Board Resolution dated 15.09.2018. Further, the Corporate Debtor stated that Mr. Hari Kumar is due to the tune of Rs.1,16,80,000/- (Rupees One Crore Sixteen Lakh Eighty Thousand Only) to the Corporate Debtor's Company and in that respect they will initiate separate legal proceeding to recover the said amount from his legal heirs.

4. Notices were ordered to be issued to the MD of the Respondent Company. The case was posted for hearing on 06.07.2020, 13.08.2020 and 26.08.2020. Notices to the Respondent remained unserved at the address mentioned in the Petition. No one appeared for either the Petitioner or the Respondent on any of the above dates. It is more than evident that the Petitioner is not keen to prosecute the matter. It has to be further assumed that the Petitioner has nothing in her possession to counter the objections filed by the Corporate Debtor vide reply dated 19.06.2019 to her legal notice dated 21.05.2019, copies of which have been filed. The Petition deserves to be dismissed on grounds of non-prosecution itself.

5. Even on a perusal of the material brought on record it is clear that this is a fit case for dismissal. The Corporate debtor denies the debt. The copy of the Memorandum of Agreement filed by the Petitioner shows that it has no date on which it was stated to have been agreed to. It also does not have the signature of the parties to the agreement. The witness column is blank. The same therefore cannot be relied upon by the Petitioner. No right to payment or debt can arise in the absence of a valid agreement. The notice issued to the Respondent by the Petitioner also states that the Agreement was entered into in the month of March 2016, and provides no specific details or evidence of the agreement having been signed or amounts spent on purchase and supply of kitchen plant and machinery etc. for the Respondent.

6. In its reply to the Notice dated 19.06 2019, the Respondent stated that they appointed Mr. Hari Kumar as Manager and he was authorized to sign all documents related to Karnataka Tax on Professions etc. on behalf of the Company. He was not the investor or the partner and he had not invested any money. They did not enter into any agreement with him in the month of March, 2016. The High Tech Kitchen Machinery and Plants were purchased by him as representative of the Corporate Debtor's Company with the Corporate Debtor's Company's Funds. He had no direct connection with Robert Bosch Company and Indira Canteen. He was never given any position as Investor or Partner or Board of Directors or Employer. He was never assured about the sharing of the profit at the rate of 50%. He was authorized to sign and operate the Bank Account of the Corporate Debtor's Company and during his tenure he had misused his official position because of which he was removed from his position. In fact a sum of Rs.1,16,80,000/- is due from him.

7. Hence in the absence of any valid agreement, any evidence regarding the expenditure stated to have been incurred out of his own funds, or sums due to him as an investor or as share in profits as claimed in the Petition, and the Respondent's denial of all the averments made by the Petitioner, with

no counter by the Petitioner in spite of sufficient opportunity, we have no option but to dismiss the petition.

8. Accordingly, C.P. (IB) No.169/BB/2020 is hereby dismissed. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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