SL No. 126

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 07.10.2021 AT 13:00 HRS

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/399/2021 in CP (IB) No. 603/9/HDB/2019
NAME OF THE COMPANY	Pro Young International Pvt Ltd
NAME OF THE PETITIONER(S)	Pragati Bio Care Pvt Ltd
NAME OF THE RESPONDENT(S)	Pro Young International Pvt 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

Liquidation order is passed in **CP IB NO.603/9/HDB/2019,** vide separate orders.

Member (Technical)

Member (Judicial)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-1 HYDERABAD

IA No. 399 of 2021
IN
CP (IB) No. 603/9/HDB/2019

Application under Section 33 (1) of IBC, 2016, R/w Rule 11 of NCLT Rules, 2016

In the matter of
M/s PRO YOUNG INTERNATIONAL PRIVATE LIMITED

Filed by

Mr. Niranjan Miriyala
Resolution Professional
For M/s Pro Young International Private Limited ... Applicant

AND

1. Pragati Bio Care Private Limited
2. Vivid Plastics Private Limited
3. Amitojas Wellness Private Limited
4. Vayhan Instant Foods Private Limited
5. Mystical Biotech Private Limited
6. Professional Warehousing Private Limited ...Operational Creditors & Member of CoC
7. Committee of Creditor (CoC) of M/s Pro Young International Private Limited- Corporate Debtor

Date of order: 07.10.2021

Coram:

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

Appearance:

For Applicant: Shri G. Murali Krishna Raju, Advocate

PER: BENCH

1. This is an Application filed by Resolution Professional under Section 33 (1) of the Insolvency & Bankruptcy Code, 2016 (herein after referred as "Code") seeking orders for liquidation of the Corporate Debtor / M/s Pro Young International Private Limited and also for the appointment of the Liquidator thereof.

2. This Bench vide its order dated 27.02.2020 admitted the petition for initiation of Corporate Insolvency Resolution Process filed by Pragati Bio Care Private Limited/ Operational Creditor under Section 9 of IBC, 2016 and appointed Shri B. Vijaya Kumar as Interim Resolution Professional. Subsequently, Shri Niranjan Miriyala, the Applicant herein is appointed as Resolution Professional in the 9th COC and took charge on 08.09.2020. The Applicant submits that the IRP despite conducting 09 CoC meetings failed to get co-operation of members of CoC comprising of Operational Creditors. No member of CoC voted for any of the resolutions concerning the cost of CIRP, budgetary support and contribution to CIRP cost.

3. The Applicant submits that the CoC failed to initiate action either to seek extension of the CIRP process under Section 12 of IBC or withdraw the petition under Section 12A of the IBC. It is also brought on record that four members of CoC other than Respondent No.1 submitted letters requesting to withdraw from the CoC stating various reasons including non-co-operation of Respondent No.1.

4. The Learned Counsel appearing for the Resolution Professional made submission before the Bench on 16.07.2021 that CIRP process has crossed over 500 days and this Adjudicating Authority directed the Resolution Professional to prefer an application for liquidation.

5. One of the reliefs sought by the Applicant is directions to CoC for contributing Resolution Professional fees, IRP fees and CIRP costs amounting to Rs. 34,29,695/-.

6. Further the Resolution Professional, the Applicant herein has expressed his unwillingness to act as Liquidator and requested the Bench to appoint a Liquidator.

6. We heard the Learned Counsel for Resolution Professional who submitted that Committee of Creditors comprising of Operational Creditors and stakeholders are not co-operating with him. Further the Bench observed that CIRP is continuing beyond the period of 330 days which is impermissible under the

law and this Adjudicating Authority is left with no option but to pass order of liquidation of the Corporate Debtor Company and directed the Resolution Professional to move an application for liquidation within two weeks without waiting for the permission from the CoC. Accordingly, the Resolution Professional filed the instant application seeking order of liquidation as no resolution plan is received. He further expressed his inability to act as a Liquidator. Hence, this Tribunal appoints Mr. P.V. Narayana Rao, Insolvency Professional to act as Liquidator from the panel of list received from IBBI.

7. 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".

8. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the Applicant failed to receive any resolution plan. 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 of liquidation of the Company in the manner laid down in Chapter-III of the Code.

9. Taking into consideration the provisions of law as well as the documents on record, this Adjudicating Authority is of the view that the efforts to obtain resolution of the Corporate Debtor has failed and as per the directions of this Tribunal, decided to liquidate the Corporate Debtor.

ORDER

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

(a) We hereby order that the Corporate Debtor i.e M/s Pro Young International Private Limited stands liquidated in the manner laid down in Chapter-III of the Code.

(b) Mr. P.V. Narayana Rao (Regn No. IBBI/IPA-001/IP-P01706/ 2019-2020/12633, e-mail id. rao_ca60@rediffmail.com is appointed as Liquidator. He shall file his consent in Form AA within two days of receipt of this order.

(c) He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

(d) The Moratorium declared under Section 14 of the code shall cease to have its effect.

(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 & 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 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.

(k) The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.

(l) Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

(m) As far as relief sought at Para (E) (iv) with regard to Resolution Professional fees, IRP fees and CIRP costs amounting to Rs. 34,29,695/- is concerned, the Applicant herein/ Resolution Professional may file proper application under Regulation 33 & 34 of IBBI (Insolvency Resolution Process for Corporate Persons), 2016.

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

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