

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 16.09.2020

**THROUGH VIDEO CONFERENCING**

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 159/BB/2020	For IRP report- <b>CIRP</b> IA 317/2020	Sec 10 of I&B code 2016	Blue Whale Machinery Technologies Pvt Ltd	Venkatesh Kumar		Mr. Srinivas Thatikonda, IRP Hemant Rao for IA 317/2020

ADVOCATE FOR PETITIONER/s:

HEMANTH RAO - Adv. for RP/  
IA No. 317/2020

ADVOCATE FOR RESPONDENT/s:

**ORDER**

Heard Shri Hemanth Rao, learned Counsel for the RP through Video Conference.

I.A. No.317 of 2020 in CP (IB) No.159/BB/2020 is disposed of by separate order. Post the case on 16.10.2020.

Member (T)

Krishna

**Verified**

**Court Officer**

Member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.317 of 2020 in  
C.P.(IB)No.159/BB/2020  
U/s. 33(2) of the IBC, 2016  
R/w Rule 11 of the NCLT Rules, 2016

**Mr. Srinivas Thatikonda,**

*Interim Resolution Professional of*

*M/s. Blue Whale Machinery Technologies Pvt. Ltd.*

No.006, Nanda Ashirwad Apartment No.1,

Canara Bank Colony, 2<sup>nd</sup> Main,

Chandra Layout,

Bangalore – 560 072.

- Applicant/Interim Resolution Professional

**Date of Order: 16<sup>th</sup> September, 2020**

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

**Parties/Counsels Present:**

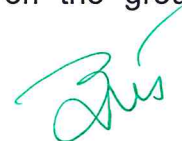
For the Applicant/IRP : Mr. Hemanth R. Rao

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. I.A.No.317 of 2020 in C.P.(IB)No.159/BB/2020 is filed by Mr. Srinivas Thatikonda, Interim Resolution Professional of M/s. Blue Whale Machinery Technologies Private Limited ('the Applicant/Resolution Professional') under Section 33(2) of the IBC, 2016, read with Rule 11 of the NCLT Rules, 2016, by inter alia seeking to order liquidation of the Corporate Debtor i.e., M/s. Blue Whale Machinery Technologies Private Limited in terms of the Code etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) The main Company Petition bearing C.P.(IB)No.159/BB/2020 filed by Mr. Deepak Dhirajlal Mehta, Director of M/s. Blue Whale Machinery Technologies Pvt. Ltd. U/s 10 of the IBC, 2016, R/w Rule 7 of the I&B(AAA) Rules, 2016, was admitted by the Adjudicating Authority, vide order dated 10<sup>th</sup> July, 2020, by initiating CIRP in respect of M/s. Blue Whale Machinery Technologies Pvt. Ltd. on the ground that it has



committed defaults for a total amount of Rs. 18,01,59,144/- (Rs. Eighteen Crore One Lakh Fifty Nine Thousand One Hundred Forty Four only) appointing Mr. Srinivas Thatikonda, bearing Registration No.IBBI/IPA-002/IP-N00631/2018-19/11886 as IRP, imposing moratorium etc.

- (2) It is stated that this Tribunal held that the 'debt' & 'default' was proved and that the liabilities of the Corporate Debtor far exceeded its Assets. Thus this Tribunal was pleased to admit the Company Petition and initiate CIRP in respect of the Corporate Debtor vide its Order dated 10.07.2020 and also appointed the Applicant as the IRP to conduct the CIRP.
- (3) Subsequent to his appointment the RP has verified all the claims received by him and constituted a Committee of Creditors. The CoC consists of Karur Vysya Bank Limited, UCO Bank, Arohan Financial Services Limited, Aditya Birla Finance Limited, Shriram City Union Finance Limited and Axis Bank. The Karur Vysya Bank Limited has the highest voting share at 71.38% in the CoC.
- (4) The first CoC meeting was conducted on 13.08.2020 in the presence of all the Financial Creditors via Video Conference. Apart from discussions relating to the financial status of the Corporate Debtor and other ancillary issues, one of the CoC members i.e. Karur Vysya Bank proposed liquidation of the Corporate Debtor as the liabilities of the Corporate Debtor was more than its assets.
- (5) Subsequent to deliberations, the CoC in its commercial wisdom, has unanimously passed a resolution for liquidation of the Corporate Debtor and chose to appoint, Mr. Madhugiri Venkatarayappa Sudarshan, Reg. No. IBBI/IPA-002/IP-N00561/2017-2018/11707 as the liquidator of the Corporate Debtor.
- (6) The liabilities of the Corporate Debtor are more than its assets. As pointed out by one of the CoC members, it is not commercially viable to go for any resolution plan because the Corporate Debtor is dealing in trading activities and has huge losses on its balance sheet. Hence, it is just and necessary to liquidate the Corporate Debtor.

(7) In the 02<sup>nd</sup> meeting of the Committee of Creditors held on 13.08.2020 has passed the following Resolutions:

***“RESOLVED THAT** pursuant section 33 and other applicable provisions of the IBC Code, 2016 and the Rules and Regulations made there under, the Committee of Creditors be and is hereby approve the liquidation of the Corporate Debtor M/s. Blue Whale Machinery Technologies Private Limited with immediate effect”.*

***RESOLVED FURTHER THAT** the Committee of Creditors be and is hereby approve the appointment of Mr. Madhugiri Venkatarayappa Sudarshan, Insolvency professional having IBBI Registration No.IBBI/IPA-002/IP-N00561/2017-2018/11707 as Liquidator of the Corporate Debtor M/s. Blue Whale Machinery Technologies Private Limited.*

3. Heard Mr. Hemanth R. Rao, learned Counsel for the Resolution Professional. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.
4. The Applicant has filed a copy of the Minutes of the 2<sup>nd</sup> Meeting of the Committee of Creditors held on 13/08/2020. In the CoC the Karur Vysya Bank Limited through its representative informed that it is proposing to liquidate the Corporate Debtor considering that it has been dealing with the Corporate Debtor for long time, and as per the representative of Karur Vysya Bank Ltd. Mr. D. Nelson Arokiaraj going for CIRP of the Corporate Debtor is not commercially viable. Hence it is very unlikely to get a resolution plan for the revival of the business. Therefore, Karur Vysya Bank Limited proposed the liquidation of the Corporate Debtor. Accordingly, the CoC passed the resolution for liquidation, as mentioned supra.
5. As stated in the I.A the claims received are verified and admitted as on date based on the available records of the Corporate Debtor and shall be subject to change upon receiving further evidence/and after completion of audit of the accounts of the Corporate Debtor. Few operational claims from employees,

professional and one claim from VAT authorities were received. One more claim was received from Income Tax (TDS) authorities for an amount of Rs. 20,59,970/- received subsequent to filing of report with the Adjudicating Authority. It is also informed that one customer is ready to buy a machine and paid an advance of Rs. 9,03,545/-. Also, the Corporate Debtor has to pay money for the imported machines. The CoC was also apprised that in addition due to ongoing pandemic and recent lock downs, the demurrage/detention charges have to be paid on daily basis to Customs Authorities. Hence the Karur Vysya bank was requested to assist with any funding if required to get the release of the machines from the Customs authorities. Under these circumstances, as mentioned in the Petition, we are of the considered view that this is a fit case for liquidation.

6. The CoC has also passed a Resolution and proposed Mr. Madhugiri Venkatarayappa Sudarshan as a Liquidator, for liquidating the Corporate Debtor. He has filed his written consent to act as Liquidator of the Corporate Debtor i.e., M/s. Blue Whale Machinery Technologies Private Limited vide affidavit dated 11.08.2020, u/s34 of the IBC, 2016, by inter alia declaring that there are no disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he is eligible to be appointed as resolution professional of the Corporate Debtor under regulation 3 and other applicable provisions of the Code and Regulations etc. Hence, he is provisionally eligible to be appointed as Liquidator.
7. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising its powers conferred under Section 33(1), 33(2) & 34(1) of the IBC, 2016, disposes of I.A.No.317/2020 in C.P.(IB)No.159/BB/2020 with following directions:
  - a) It is hereby ordered that M/s. Blue Whale Machinery Technologies Private Limited, Corporate Debtor be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI(Liquidation process) Regulations, 2016.
  - b) Mr. Madhugiri Venkatarayappa Sudarshan is hereby appointed as a Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of



the IBBI. He is directed to follow the due process of law as per above Chapter and related Regulations, and to issue public announcement immediately by stating that the Corporate Debtor is in Liquidation.

- c) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to the Liquidator.
- d) The Liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder by the IBBI from time to time and is also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- e) The Liquidator is further directed to make best efforts to revive the Corporate Debtor during Liquidation process, as a going concern.
- f) Post the case for report of Liquidator on **16.10.2020**.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

Amar

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**