S.No.101

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **01-04-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA No.264/2020
CP(IB) No.229/9/HDB/2019
U/s 9 of IBC, 2016

IN THE MATTER OF:

Serwel Electronics Pvt Ltd **...Operatinoal Creditor**

Vs

Varnika Industries Pvt Ltd **...Corporate Debtor**

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA No.264 of 2020 :

Order is pronounced vide separate sheet. In the result the petition is allowed. Liquidation process is ordered subject to the terms and conditions mentioned in the order.

MEMBER (T) **MEMBER (J)**

Karim

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

IA No. 264 of 2020
In
CP(IB) No. 229/9/HDB/2019

In the matter of
M/s VARNIKA INDUSTRIES PRIVATE LIMITED

Filed by

Arun Kumar Malani
Resolution Professional for
M/s Varnika Industries Private Limited
6-1-68/3/33, Dream Valley, Shivrampally
Pillar No. 306, RR Dist
Hyderabad - 500052

...Applicant
Resolution Professional

Date of order: 01.04.2022

Coram

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:q

For Applicant: Resolution Professional in person

PER: BENCH

O R D E R

1. The Resolution Professional (for short RP) appointed by this Tribunal, for the Corporate Debtor/ M/s VARNIKA INDUSTRIES PRIVATE LIMITED, has filed this application under Section 33(1)(a) of Insolvency & Bankruptcy Code, 2016 praying this Tribunal to pass order of liquidation of the Corporate Debtor.

2. To put concisely, the Company Petition filed by Servel Electronics Pvt. Ltd u/s 9 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 04.07.2019 and ordered commencement of initiation of CIRP against it. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional. Since no claim was received by the Applicant pursuant to public announcement on 17.07.2019, the Applicant was constrained to constitute the CoC with sole operational creditor i.e. Servel Electronics Pvt. Ltd.

3. In the 2nd CoC meeting held on 15.10.2019, it was observed that there was no asset in the Company and it was only a trading concern. As such the CoC advised the Resolution Professional to take action to recover the amount due to it and pay the creditors. However, the claim filed with M/s Tushara Energy Ventures by the Applicant herein was not admitted on the ground that there were no dues payable to the Corporate Debtor/ M/s Varnika Industries Private Limited. The CoC further resolved to directly

order Liquidation of the Company without inviting resolution Plans.

6. We have heard the Ld. Resolution Professional Shri Arun kumar Malani and perused the records.

7. According to the Applicant, the CoC in its 2nd CoC meeting dated 15.10.2019 with 100% voting resolved to directly seek order of liquidation after CIRP period, without inviting Resolution Plans and also fixed the fee of Liquidator at Rs. 50,000/- per month. However, the Application is filed on 02.03.2020.

8. The record reveals that this IA which is filed on 02.03.2020, seeking an order of liquidation was listed for the first time on 16.03.2020. However, since the Resolution Professional was absent on that day, the matter has been adjourned to 31.03.2020. Due to covid induced lock down, the matter was not listed on that day but subsequently listed on 22.12.2020. However, the Resolution Professional failed to be present for the subsequent hearings i.e. 25.01.2021, 02.02.2021, 06.04.2021, 23.07.2021, 02.09.2021. On 17.11.2021, the Resolution Professional appeared via videoconference, but due to technical glitches, the Adjudicating Authority was not able to hear the Resolution Professional, hence directed the parties and the Resolution Professional to be present physically in the court on 03.12.2021. However, once again the matter was adjourned to 05.01.2022.

9. On 05.01.2022, the Ld. Resolution Professional was absent and hence the matter was adjourned to 02.02.2022, 17.02.2022, 09.03.2022 and finally to 09.03.2022.

8. 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".

9. Therefore, taking into consideration the provisions of law as well as the documents on record, this Adjudicating Authority is of the view that since the efforts to obtain resolution of the Corporate Debtor have failed and the only option left, under the circumstances being liquidation process, we allow this petition, directing the liquidation of the Corporate Debtor.

10. It is further brought to the notice of the Bench that the Applicant / Resolution Professional is not willing to act as Liquidator as his Authorization for Assignment has expired and requested the Bench to appoint another Insolvency Professional in his place.

ORDER

(a) The Corporate Debtor, M/s Varnika Industries Private Limited, is put under liquidation process in the manner laid down in Chapter-III of the Code with effect from the date of order.

(b) Shri Rajesh Donkeshwar (IBBI Regn No. IBBI/IPA-001/IP-P01245/2018-2019/11960), email id. reachcadr@gmail.com is appointed as Liquidator. He shall *file* his consent in Form AA within two days of receipt of the copy of this order.

(c) The erstwhile RP is directed to handover the records to the Liquidator appointed by this Tribunal forthwith.

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

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

(f) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Person. 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.

(g) 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.

(h) 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.

(i) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

(j) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

(k) 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.

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

(m) The Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

1/4/2022

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(DR N.V. RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)

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