

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 08.07.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) No. 196/2021 in CP (IB) No. 377/7/HDB/2018
NAME OF THE COMPANY	Varam Bioenergy Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Varam Bioenergy Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

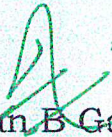
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced vide separate sheets. IA (IBC) 196/2021 is allowed.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Madan B Gosavi)
Member (Judicial)

IA (IBC)/196/2021
In CP (IB) No. 377/7/HDB/2018
Date of Order: 08/07/2021

**NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,
HYDERABAD**

IA (IBC)/196/2021
In CP (IB) No.377/7/HDB/2018

Application under Section 33(1) of the Insolvency and
Bankruptcy Code, 2016

In the matter of Varam Bioenergy Private Limited

Filed by

Mr. Vikas Prakash Gupta
Resolution Professional of Varam Bioenergy Pvt Ltd
G-19, Shreewardhan Complex,
Mezzanine Floor, Besides Landmark Building,
Ramdaspath, Wardha Road,
Nagpur, Maharashtra – 440010.

...Applicant/
Resolution Professional

Date of order: 08/07/2021

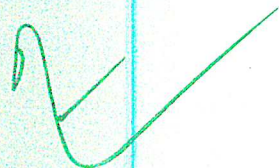
Coram

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

Parties/ Counsels present:

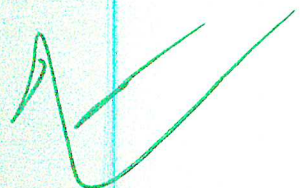
For the Applicant : Shri Manoj Kumar Mishra, Advocate along with Ms.
Parth Agarwal, Advocate.

Heard on: 01/07/2021.

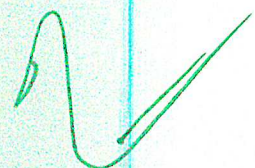


PER: BENCH

1. The instant Application is filed by the Resolution Professional of the Corporate Debtor, Varam Bioenergy Pvt Ltd under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") for the liquidation of the Corporate Debtor due to non- receipt of resolution plan.
2. The Insolvency Petition was filed by State Bank of India (SBI) under Section 7 of the Code against the Corporate Debtor vide CP (IB) No. 377/7/HDB/2018 and the same was admitted by this Tribunal vide order dated 18/07/2019. Shri Uday Raj Patwardhan was appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor. Thereafter, Shri Vikas Prakash Gupta, the applicant was replaced as the Resolution Professional (RP) as per application of the Committee of Creditors (CoC) vide order dated 22/03/2021 passed by this Tribunal in IA No. 1172/2020.
3. The erstwhile RP had published Form G for inviting expression of interest (EoIs) for submission of Resolution Plan on September 19, 2019 in newspaper namely Financial Express and Nava Telangana in Hyderabad edition and Indian Express and Loksatta in Nagpur edition. As per Form G the last date for EoIs was October 7, 2019.
4. The erstwhile RP received request from two prospective Resolution Applicants and from one of the Prospective Resolution Applicants (M/s S.C.Agarwal) the erstwhile RP had sought additional information and documents with regards to the EoIs submitted by the said prospective Resolution Applicant. The erstwhile RP did not receive any information from the prospective Resolution Applicant even after granting sufficient time.



5. In the 4th meeting of CoC, the CoC has not proposed any extension of period for Corporate Insolvency Resolution Process (CIRP) and the period of 180 days of CIRP expired on 14th January, 2020.
6. In view of the fact that no Resolution Plan from any of the Resolution Applicant the erstwhile RP had filed an application for liquidation of the Corporate Debtor but in the view of the replacement of IRP with the applicant the said application becomes infructuous.
7. In the 7th CoC meeting held on 3rd April, 2021, the CoC has directed the applicant to file an application for the liquidation of the Corporate Debtor. In the said meeting CoC has decided to bear all the actual cost incurred by the Liquidator for liquidating the Corporate Debtor and to the Liquidation cost as per their share on regular basis on submission of bills. The Applicant has given his consent to act as the Liquidator of the Corporate Debtor.
8. We have heard the Applicant in the matter. 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. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not



receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. 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 for liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

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

- a) The Corporate Person i.e., Varam Bioenergy Pvt Ltd shall be liquidated in the manner laid down in Chapter-III of the Code.
- b) The Applicant Mr. Vikas Prakash Gupta, presently RP of Varam Bioenergy Pvt Ltd is appointed as Liquidator.
- c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- d) The Moratorium declared under Section 14 of the code shall cease to operate here from.
- 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.



IA (IBC)/196/2021
In CP (IB) No. 377/7/HDB/2018
Date of Order: 08/07/2021

- 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.



VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)



MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)