NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

IA (IBC)/402 & 494/2021

In CP (IB) No. 469/9/HDB/2019

Under Section 60 (5) & 33 (1) of the Insolvency and Bankruptcy Code, 2016.

Filed by,

M/s. Gayatri Sea Foods & Feeds Pvt Ltd,
2-1250, 4th Floor, S.V.R Towers JP Road,
Bhimavaram, West Godavari Dist,
Andhra Pradesh-534 2020
Represented by its Resolution Professional
Mr. Kasi Srinivas

... Applicant/Resolution Professional

AND

M/s. Uni President Vietnam Co. Ltd,
161820, Phase DT 743 Road,
Song Than II Industrial Zone,
Di AN Town, Binh Duong, Vietnam.

... Operational Creditor

Date of order: 22.09.2021

Coram:

Shri Madan Bhalchandra Gosavi, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical

Appearance:

For Applicant: A Chandra Shaker, Advocate

Heard on: 05.08.2021 & 16.09.2021

PER: BENCH

1. The instant Application is filed by the Resolution Professional of the Corporate Debtor, M/s. Gayatri Sea Foods & Feeds Pvt Ltd (hereinafter referred to as Corporate Debtor) under Section 33 (1) (a) of the 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 M/s. Uni President Vietnam Co. Ltd under Section 9 of the Code against the Corporate Debtor vide CP (IB) No. 469/9/HDB/2019 and the same was admitted by this Tribunal vide order dated 13.01.2021. Shri Kasi Srinivas was appointed as an Interim resolution Professional (IRP) for the Corporate Debtor.

3. The Applicant has made Public Announcement in FORM – A which was published in Financial Express and Praja Sakthi newspapers on 16.01.2021. The applicant received claim from only one Financial Creditor i.e., State Bank of India, Commercial Branch. In 1st CoC meeting members directed the applicant to appoint tow Registered Valuers for ascertaining the liquidation value and fair value.

4. The applicant published Form – G for resolution plans and invited Expression of Interest (EOIs) from prospective Resolution Applicants (PRAs) for submission of Resolution Plan of the Corporate Debtor and last date for receipt of EOI was fixed on 13.04.2021. The time for submission was extended till 23.04.2021.The applicant received EOI from the sole prospective resolution applicant i.e., M/s. Kalpatharuvu Techno Feeds Private Limited.

5. In 3rd CoC meeting, the applicant got approval of RFRP and Evaluation Matrix from CoC and confirmed the appointment of Transaction auditor.

6. The parameters of RFRP it was fixed that EMD of twenty lakhs to be deposited at the time of submission of Resolution Plan and to provide Performance Bank Guarantee of 10% of the resolution debt amount. But the said Resolution Applicant failed to meet the eligibility criteria under the Turnover and the Net worth criteria.

7. The CoC members directed the applicant to file an application before this Tribunal under Section 33 of the Code to liquidate the Corporate Debtor and decided to appoint the applicant himself as the Liquidator. The applicant has submitted his written consent to act as a Liquidator under Section 34 (1) of the Code and IBBI (Liquidation Process) Regulations, 2016.

8. This Tribunal directed the applicant and the CoC to comply the provisions of Regulations 39 (B), 39 (C) and 39 (D) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide order dated 05.08.2021. Accordingly, on 13.08.2021 6th CoC meeting was held and passed resolutions pursuant to the said Regulations and the applicant filed an application vide IA

(IBC)/494/2021 for taking on record of the resolutions passed by the CoC members pursuant to the said Regulations. IA (IBC)/494/2021 is taken on record and disposed of.

9. In 6th CoC meeting the members resolved the resolution for Liquidation of the Corporate Debtor, the appointment of the Liquidator, meeting the liquidation costs and the fees of the Liquidator.

10. 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".

11. 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 of liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

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

A. The Corporate Person i.e., M/s. Gayatri Sea Foods & Feeds Pvt Ltd shall be liquidated in the manner laid down in Chapter-III of the Code.

B. The Applicant Mr. Kasi Srinivas, presently Resolution Professional of M/s. Gayatri Sea Foods & Feeds 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.

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 and 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)

Vismaya(LRA)

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench
30/09/21

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP(IB)No.469/9/HDB/2019.
निर्णय का तारीख
DATE OF JUDGEMENT 22/9/2021
प्रति तैयार किया गया तारीख
COPY MADE READY ON 30/9/2021