

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 15.06.2020

**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. 64/BB/2019	For orders IA 148/2020 IA 174/2020 – CIRP	Sec 10 of I&B code 2016	M/s Vintage Foods & Industries Ltd	Susheel Shankar for IA 148/2020	M/s KSIIDC Limited and other	Shri Balady Shekar Shetty, RP for IA 174/2020 ,

ADVOCATE FOR PETITIONER/s:

MR. SUSHEEL SHANKAR - Advocate

MR. BALADY SHEKAR SHETTY - R.P

ADVOCATE FOR RESPONDENT/s:

ORDER

1.) I.A NO. 148 and 174 of 2020 in C.P (IB) No. 64/BB/2019 is disposed of by separate order.

2.) Post the case for report of liquidator on 30-07-2020

Zuh

Member (T)

h.w

Member (J)

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

IA No. 174 of 2020 in  
C.P. (IB)No.64/BB/2019  
U/s. 33 (2) R/w Rule 11  
of the NCLT Rules , 2016

**Shri Balady Shekar Shetty,**  
*Resolution Professional*  
*of M/s. Vintage Foods & Industries Limited*  
No.98, 7A Cross, Manyata  
Residency, Nagavara,  
Bengaluru – 560 045

- Applicant/RP

**Between:**

M/s. Vintage Foods & Industries Limited - Petitioner/  
Corporate Debtor

**AND**

M/s. Karnataka State Industrial and  
Infrastructure Development Corporation Ltd - Respondent

**Date of Order: 15<sup>th</sup> June 2020**

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

**Parties/Counsels Present (through Video Conference):**

For the Applicant/RP : Mr. Balady Shekar Shetty, RP

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A No. 174 of 2020 in C.P. (IB)No.64/BB/2019 is filed by Shri Balady Shekar Shetty ('Applicant'/RP) under Section 33 (2) r/w Rules 11 of the NCLT Rules of the I & B Code, 2016 (IBC, 2016) by inter-alia seeking

order to initiate liquidation proceedings in respect of the Corporate Debtor, in terms of 33 of the Code and the Regulations made there under; to appoint Mr. Pankaj Srivastava, Insolvency Professional, as Liquidator of the Corporate Debtor.

2. Brief facts of the case as mentioned in the Applications, which are relevant to the issue in question, are as follows:

- (1) Initially, M/s. Vintage Foods and Industries Limited (Petitioner) has filed C.P. (IB)No.64/BB/2019, U/s. 10 of IBC, 2016, R/w Rule 7 of I&B (AAA) Rules, 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Vintage Foods and Industries Limited (itself). Accordingly, the case was admitted by an order dated 23.07.2019 by initiating CIRP in respect of the Corporate Debtor, appointing Shri Pankaj Khetan as IRP, imposing moratorium etc.
- (2) In pursuant to the initiation of CIRP the IRP under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, has made public announcement on 27.07.2019, by intimating the commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
- (3) Accordingly, the IRP has conducted the first meeting of the COC, in which the COC voted unanimously against the IRP becoming RP. Further, approval was given for reducing the notice period for COC meeting to 3 days.

The following Agenda items were voted against by the Member of COC:

- a. Item No.10: To ratify the expenses incurred by the IRP
- b. Item No.11: To approve the remuneration of the IRP from the date of the appointment till the date of meeting



- c. Item No.12: To appoint the IRP as the Resulting Professional and to fix the remuneration.
- d. Item No. 13: To consider and approve the appointment of DMY Legal Advocates & Solicitors for drafting and filing of various applications and Compliance Reports before the Hon'ble NCLT, Bengaluru at a remuneration of Rs.50,000/- per month.

(4) Subsequently, Six COC meetings were held on various dates to take stock of the developments in the CIRP in question, and the last and latest 6<sup>th</sup> COC Meeting was held on 18.03.2020, wherein the COC , after taking into consideration of the *fact that no viable expression of interest was received and presently the company is not carrying on any business or manufacturing activities*".has interalia approved the following subjects unanimously by the COC:

- a. Approval for the initiation of the liquidation of the Corporate Debtor,
- b. approval for the expenditure incurred by RP
- c. Approval for the appointment of Mr. Pankaj Srivastava as Liquidator who is qualified Resolution Professional with *IBBI Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474, has given his consent to carry out the liquidation process of the Company". and also approved that the liquidation cost of Rs.3,25,000/-*
- d. Approval for opening of escrow account and contribution from Edelweiss
- e. Authorisation to RP for submitting the IA before the Hon'ble NCLT

The e-voting commenced on 23.03.2020 at 12.00 noon and all the resolution were approved unanimously.



- (5) Further, the RP informed the Members of the COC the outcome of the e-voting by his mail dated 24.03.2020. Since the maximum period permitting for the completion of the CIRP u/s 12 of the IBC would expire on 20<sup>th</sup> April 2020 and there is no chance of revival of the Corporate Debtor which is closed since 2003 and the COC have recommended for the liquidation of the Corporate Debtor, therefore the RP filed the present application.
3. Heard Shri Balady Shekar Shetty, learned Resolution Professional **through Video Conference**. We have carefully perused the pleadings of party and also extant provisions of the Code and Rules made thereunder.
4. As stated supra, the Resolution Professional placed before the Committee of Creditors about non receipt of any Expression of Interest in pursuance to invitation for Expression of Interest and the Corporate Debtor was not carrying on any business or manufacturing activities and the Company is not having any assets except one land and old building located in Thirupathur ,TN. Therefore, there is no other alternative for the Committee of Creditors (COC) except to recommend initiate liquidation proceedings as per the provisions of the Code. We are convinced with the reasons given by the Committee of Creditors (COC) for filing this instant Application seeking for initiation of liquidation Proceedings and to appoint liquidator, as prayed for.
5. The Proposed Liquidator, Shri Pankaj Srivastava, Insolvency Professional, has also filed his written consent dated 19.03.2020, by inter-alia declaring that he has registered with the Board as an insolvency professional; he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he is currently serving as Voluntary Liquidator of M/s. Thirdwatch Data Pvt. Ltd. & M/s. Samruddhi Realty Ltd; he is eligible



to be appointed as liquidator of the Corporate Debtor, under regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and other applicable provisions of the Code and regulations etc. Therefore, we are of the view that he is provisionally eligible to be appointed as Liquidator.

6. In terms of Section 33 of the Code, the Adjudicating Authority has to pass an order for liquidation of the Corporate Debtor, in case, no Resolution Plan is received during permitted period of CIRP, in the manner as laid down in the Code, to issue public announcement that Corporate Debtor is in liquidation process etc.,. Since there is no Expression of Interest received in respect of the Corporate Debtor and there are no business activities going on in the Company, having few assets, it is a fit case to order Liquidation proceedings in respect of Corporate Debtor and to appoint a Liquidator as sought for.
7. In the result I.A No. 174 of 2020 in C.P.(IB)No.64/ BB/2019 are hereby disposed of with the following directions:
  - (1) We hereby ordered that M/s. Vintage Foods and Industries Limited, Respondent/Corporate Debtor, to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code.
  - (2) We hereby appointed Mr. Pankaj Srivastava, Regn. No. IBBI/IPA-001/IP-P00245/2017-18/10474 as Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI.
  - (3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.
  - (4) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.



- (5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- (6) Post the case on 30<sup>th</sup> July, 2020 for submission report of the Liquidator.



**(ASHUTOSH CHANDRA)**  
**MEMBER, TECHNICAL**

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**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**



by *inter alia* seeking to direct the Resolution Professional of the Corporate Debtor to produce and deliver all the documents pertaining to the purported sale of the Kumbalgodu Property i.e. (Plot No. 21/B, Kumbalgodu Industrial Area, II Phase, Kengeri, Hobli, Bengaluru, South Taluk, Bengaluru) available with the Resolution Professional of the Corporate Debtor and to take necessary steps in respect of the suspicious activities commissioned by the Financial Creditor, which is detrimental to the interest of the applicant.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
  1. Initially C.P. (IB) No.64/BB/2019 was filed by M/s. Vintage Foods and Industries Limited under Section under Section 10 of the IBC, 2016 *inter-alia* seeking to initiate CIRP in respect of Corporate Applicant on the ground that it has committed default for the total amount of Rs.17.87 Crores. Accordingly the case was admitted by the Adjudicating Authority, vide Order dated 23<sup>rd</sup> July 2019 by appointing Mr. Pankaj Khetan as IRP, imposing moratorium, etc.
  2. M/s. Karnataka State Industrial Investment and Development Corporation Limited (KSIIDC) is a minor shareholder having 1.508% of the shareholding of the Corporate Debtor. M/s. Stressed Asset Stabilization Funds (SASF) is also a minor shareholder having 9.0911% of the shareholding of the Corporate Debtor.
  3. It is stated that the Corporate Debtor vide its meeting of the Board of Directors held on 14<sup>th</sup> May 2018 and its Extra Ordinary General meeting held on 06<sup>th</sup> June 2018 authorised the Applicant to file the Application under Section 10 of the Code for initiating the CIRP against the Corporate Debtor. The notice of the EOGM was circulated to KSIIDC and SASF being the shareholders of the Company thorough email and courier. Subsequent to the notice of EOGM, wherein the



shareholders resolved to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, SASF auctioned the movable assets of the Kumbalgodu Property on 30<sup>th</sup> October, 2018. SASF, who is also the shareholder of the Corporate Debtor, issued an auction notice dated April 24, 2019 for auctioning the immovable property situated at Plot No.21/B, Kumbalgodu Industrial Area, II Phase, Kengeri, Hobli, Bengaluru, South Taluk, Bengaluru. SASF intended to extent such action upon the Kumbalgodu Property upon being aware about the Resolution passed for initiating the Application under section 10 of the Code for initiating the CIRP against the Corporate Debtor. Accordingly, SASF auctioned the Land and Building of the Kumbalgodu Property on 31<sup>st</sup> May, 2019 and issued the sale certificate to the purchaser on 6<sup>th</sup> July, 2019.

4. The IRP has earlier filed IA No. 549/2019 in the case, by *inter- alia* seeking Tribunal to direct the suspicious activities commissioned by KSIIDC, SASF and Export-Import Bank of India (EXIM) to be investigated by the appropriate authorities. Another I.A No. 548/2019 was filed by seeking to cancel the auction of the land and building of the Kumbalgodu Property done by KSIIDC and SASF on 30<sup>th</sup> May, 2019. The IRP through its Counsel has also issued a letter dated 26.07.2019 to the sub-registrar requiring him not to register the sale of the Kumbalgodu Property pursuant to the auction and sale certificate issued to the purchaser for the Kumbalgodu Property.
5. In the meanwhile, the Committee of Creditors of the Corporate Debtor, in its 2<sup>nd</sup> Meeting held on 12.09.2019 have resolved not to continue the IRP and resolved to appoint MR. Balady Sekhar Shetty as the Resolution Professional of the Corporate Debtor. Accordingly, he was appointed as RP.



Since the earlier IRP filed said Interim Applications and he was replaced by another RP, both the IA were disposed of by separate orders even dated 24<sup>th</sup> October, 2019, by granting liberty to new RP namely, Shri Balady Sekhar Sheety, by granting liberty to move an appropriate application, if so desire.

6. It is alleged that the RP of the Corporate Debtor colluded with the very Financial Creditors against whom the allegations has been raised in I.A No. 548 & 549 of 2019. The RP of the Corporate Debtor placed the very issue raised in the I.A's before the meeting of the very COC, which comprises the very same Financial Creditors of the Corporate Debtor vide dated 02.12.2019. The RP of the Corporate Debtor neglected the very fact that the Financial Creditors comprising the COC of the Corporate Debtor has facilitated and executed certain suspicious transactions including undervalued transactions with an intention to kill the Corporate Debtor.
7. The COC in its 3<sup>rd</sup> meeting held on 2.12.2019, has unanimously to *withdraw the IRP letter to the sub registrar regarding registration of Kumbalgodu Property.; no further action was required to be taken in pursuance to orders passed in IA Nos. 548 & 549 of 2019; to release title deeds of Kumbalgodu property to SASF etc.*
8. It is stated that Applicant has got to know about the order of the High Court dated 24.09.2019, passed in WP No. 45847- 45851 of 2019 only on the day of the 3<sup>rd</sup> Meeting of the COC on 02.12.2019. The Applicant, thereby has come to know that the auction purchaser has mislead the Hon'ble High Court by concocting certain facts in the interest of the auction purchaser. The Auction purchaser in order to illegally obtain the title of the property under the CIRP,



purposefully did not make the Corporate Debtor a party to the WP No. 45847- 45851 of 2019. The Applicant also came to know that SASF has executed the sale deed in favour of the auction purchaser on 04.10.2019. SASF has commissioned the same deliberately in the shield of the order of the High Court dated 24.09.2019, which has been obtained by the auction purchaser by concocting the facts and misleading the Hon'ble High Court.

9. It is stated that the paramount duty of the Resolution Professional as envisaged in Section 25 of the Code is to preserve and protect the assets of the Corporate Debtor. Whereas, in the instant case the RP of the Corporate Debtor is in hands and gloves with the very Financial Creditors, who comprise the COC of the Corporate Debtor for assassinating the Corporate Debtor. It is alleged that RP has remised his duties envisaged in Section 25 of the Code by not only commissioning and facilitating to commission the foregoing actions of the Financial Creditors by giving an opportunity to them, to be a judge in their own cause, thereby, breaching the principles of natural justice.
3. Heard Shri Susheel Shankar, learned Counsel for the Applicant, and Shri Balady Shekar Shetty, learned Resolution Professional **through Video Conference**. We have carefully perused the pleadings of the Parties and extant provisions of the Code and the Rules made thereunder.
4. Shri. Susheel Shankar, learned Counsel for the Applicant, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that the Resolution Professional has miserably failed to discharge his duties in accordance with law. The Applicant came to know that SASF has executed the sale deed in favour of the auction purchaser on 04.10.2019. SASF has commissioned the same deliberately in the



Page 5 of 7

shield of the order of the High Court dated 24.09.2019, which has been obtained by the Auction purchaser by concocting the facts and misleading the Hon'ble High Court. Therefore he urged the Adjudicating Authority to allow the application as prayed for.

5. As stated supra, earlier I.A No. 549 of 2019 was filed by Mr. Pankaj Khetan, IRP, under Section 60(5)© of the I&B Code, 2016,R/w Rule 11 of the NCLT Rules,2016, *inter-alia* seeking to refer the suspicious activities done by Respondents to be investigated by appropriate Authorities, which was against the interest of the Corporate Debtor. However, the same was disposed of by granting liberty to the new Resolution Professional namely Shri Balady Shekar Shetty, to take necessary action in that regard. However, the COC has unanimously decided not to file further Application in that regard. Therefore, the order passed by the Adjudicating Authority has become final. However, the present Application is filed by Mr. Narendra Kumar Mohta, the suspended Director, Promoter and Shareholder of the Corporate Debtor to seek similar relief. As per the procedure prescribed under the Provisions of the Code, once the case was admitted by initiating CIRP, the entire process is to be conducted by IRP/RP with assistance of COC. Therefore, the Applicant has no locus standi to file the instant Application. It is also relevant to point out here that the earlier Application was filed by the earlier IRP but not by the Applicant herein, as detailed supra. The Applicant can approach the IRP/RP requesting him to take necessary action as he has done earlier. In the instant case, the RP and COC has already considered the allegations made by the Applicant in the sale transaction in question. Accordingly, the allegations made by the Applicant were considered by the RP and COC and thus decided to proceed CIRP in question. The Adjudicating Authority cannot interfere in each commercial decision(s) taken by them, unless the action is arbitrary and contrary to law. On perusal of the decisions taken by COC, we found that it is nothing wrong on the party of COC



in taking the impugned decisions. The sale deed in question was registered basing on the direction of Hon'ble High court, as detailed supra. It is for the Applicant to approach the Hon'ble High Court seeking suitable direction(s) if he is aggrieved by the order dated 24<sup>th</sup> September, 2019 passed in WP No. 45847- 45851 of 2019. He cannot find fault with the order of Hon'ble High Court in the instant Application. Moratorium, in the normal circumstances, cannot have retrospective effect as contended by the Applicant. It is not in dispute that the impugned action was duly approved by the COC unanimously, in its 3rd meeting held on 2.12.2019, and the commercial wisdom of COC in taking decisions in CIRP is hardly fell for consideration under judicial review.

6. For the aforesaid reasons and circumstances, we are of the considered opinion that the instant Application is not all maintainable, and it lacks merits and thus it is liable to be dismissed.
7. In the result, I.A No. 148 of 2020 in C.P (IB) No.64/BB/2019 is hereby dismissed with no order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

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**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**