

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

I.A. No.548 of 2019 in
C.P. (IB)No.64/BB/2019
U/s. 60(5) (c) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of

Shri Pankaj Khaitan
Interim Resolution Professional of
M/s. Vintage Foods and Industries Ltd.

R/o. House No.15, Sector 14,
Gurgaon,
Haryana – 122 001 - Applicant/IRP

VERSUS

**M/s. Karnataka State Industrial Investment
and Development Corporation Limited (KSIIDC)**

Rep. by Shri Eswara
Khanija Bhawan, 4th Floor,
East Wing, No.49,
Race Course Road,
Bengaluru – 560 001

M/s. Stressed Asset Stabilization Fund (SASF)

Rep. by Ms. Anjali Nadkarni,
Dy. General Manager (SASF)
3rd Floor, IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai – 400 005 - Respondents

Date of Order: 24th October, 2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)



Parties/Counsels Present:

For the Applicant/IRP : Shri Pankaj Khaitan
For the Respondent No.1/KSIIDC : Shri CA G Sathyanarayana
For the Respondent No.2/SASF : Shri T.P.Muthanna

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.548 in C.P.(IB)No.64/BB/2019 is filed by Shri Pankaj Khaitan, Interim Resolution Professional of M/s. Vintage Foods and Industries Ltd., (Applicant/Interim Resolution Professional) U/s. 60(5) (c) of the IBC, 2016 R/w Rule 11 of NCLT Rules, 2016, by inter alia seeking to cancel the auction for land and Building situated at Kumbalgotu Industrial Area done by the Respondent No.1 and Respondent No.2 on 30.05.2019.
2. Heard Shri Pankaj Khaitan, learned Applicant/Interim Resolution Professional and Shri CA G Sathyanarayana, learned PCA for the Respondent No.1/KSIIDC and Shri T.P.Muthanna, learned Counsel for the Respondent No.2/SASF. I have carefully perused the pleadings of the parties and extant provisions of the Code.
3. Since Shri Pankaj Khaitan was not confirmed as Resolution Professional and replaced by Shri Balady Shekar Shetty as Resolution Professional and the same was approved by the Tribunal vide Common Order dated 24.10.2019, passed in I.A. Nos. 546 and 558 of 2019. The outgoing IRP (Applicant herein) cannot prosecute the same, it is for the Resolution Professional to take appropriate action in this regard.
4. Hence, I.A.No.548/2019 in C.P.(IB)No.64/BB/2019 is hereby



disposed of by granting liberty to the Resolution Professional namely Shri Balady Shekar Shetty, appointed in respect of the Corporate Debtor to take appropriate action and also granting liberty to move an appropriate Application, if so desire. No order as to costs.



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Shruthi

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

I.A. No.549 of 2019 in
C.P. (IB)No.64/BB/2019
U/s. 60(5) (c) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of

Shri Pankaj Khaitan
Interim Resolution Professional of
M/s. Vintage Foods and Industries Ltd.

H R/o. House No.15, Sector 14,
Gurgaon,
Haryana – 122 001 - Applicant/IRP

VERSUS

**M/s. Karnataka State Industrial Investment
and Development Corporation Limited (KSIIDC)**

Rep. by Shri Eswara
Khanija Bhawan, 4th Floor,
East Wing, No.49,
Race Course Road,
Bengaluru – 560 001

M/s. Standard Asset Stabilization Fund (SASF)

Rep. by Ms. Anjali Nadkarni,
Dy. General Manager (SASF)
3rd Floor, IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai – 400 005

The Export – Import Bank of India

Ramanshree Arcade, 4th Floor,
18, M.G.Road, Bengaluru – 560 001

Also at:

26th Cross, Ideal Home,
Co-Op. Society Layout,
Mysore Road,
Rajarajeshwari Nagar – 560 098 - Respondents

Date of Order: 24th October, 2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

For the Applicant/IRP : Shri Pankaj Khaitan
For the Respondent No.1/KSIIDC : Shri CA G Sathyanarayana
For the Respondent No.2/SASF : Shri T.P.Muthanna

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.549 in C.P.(IB)No.64/BB/2019 is filed by Shri Pankaj Khaitan, Interim Resolution Professional of M/s. Vintage Foods and Industries Ltd., (Applicant/Interim Resolution Professional) U/s. 60(5) (c) of the IBC, 2016 R/w Rule 11 of NCLT Rules, 2016, by inter alia seeking to refer the suspicious activities done by Respondents to be investigated by appropriate authorities, which the Corporate Debtor to its closure and killed the enterprise value of Corporate Debtor.
2. Heard Shri Pankaj Khaitan, Applicant/Interim Resolution Professional and Shri CA G Sathyanarayana, learned PCA for the Respondent No.1/KSIIDC and Shri T.P.Muthanna, learned Counsel for the Respondent No.2/SASF. I have carefully perused the pleadings of the parties and extant provisions of the Code and the rules made thereunder.



3. Since Shri Pankaj Khaitan was not confirmed as Resolution Professional and replaced by Shri Balady Shekar Shetty as Resolution Professional and the same was approved by the Tribunal vide Common Order dated 24.10.2019, passed in I.A. Nos. 546 and 558 of 2019. The outgoing IRP (Applicant herein) cannot prosecute the same, it is for the Resolution Professional to take appropriate action in this regard.
4. Hence, I.A.No.549/2019 in C.P.(IB)No.64/BB/2019 is hereby disposed of by granting liberty to the Resolution Professional namely Shri Balady Shekar Shetty, appointed in respect of the Corporate Debtor to take appropriate action and also granting liberty to move an appropriate Application, if so desire. No order as to costs.


RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Shruthi

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

I.A.Nos.546 & 558 of 2019 in
C.P. (IB)No.64/BB/2019
U/s. 60(5) R/w Sections 22 and 27
of the IBC, 2016

In the matter of:

Committee of Creditors of M/s. Vintage Foods & Industries Limited
Rep by:

**1. On behalf of M/s. Karnataka State Industrial
Investment and Development Corporation (KSIIDC)**

Rep. by Shri Eswara
Khanija Bhawan, 4th Floor,
East Wing, No.49,
Race Course Road,
Bengaluru – 560 001

2. M/s. Stressed Asset Stabilization Fund (SASF)

Rep. by Ms. Anjali Nadkarni,
Dy. General Manager (SASF)
3rd Floor, IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai – 400 005.

**3. M/s. Edelweiss Asset Reconstruction
Company Limited**

Rep. by Shri Saloni Toshniwal
Edelweiss House, Off. CST Road,
Kalina,
Mumbai – 400 098

- Applicants

Date of Order: 24th October, 2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)



Parties/Counsels Present:

For the Applicant No.1/KSIIDC : Shri CA G Sathyanarayana
For the Applicant No.2/SASF : Shri CA G Sathyanarayana
along with Shri T.P.Muthanna
For the Applicant No.3/ EARCL : Shri Vignesh Shetty
Interim Resolution Professional : Shri Pankaj Khaitan

COMMON ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. I.A.No.546 & 558 of 2019 in C.P.(IB)No.64/BB/2019 are filed by Committee of Creditors consisting of M/s. Karnataka State Industrial Investment and Development Corporation (KSIIDC); M/s. Standard Asset Stabilisation Fund (SASF); M/s. Edelweiss Asset Reconstruction Company Limited (EARCL) ('Applicants') U/s. 60(5) R/w Sections 22 and 27 of the IBC, 2016, by inter alia seeking to appoint Shri Balady Shekar Shetty as Resolution Professional by replacing Interim Resolution Professional Shri Pankaj Khaitan as recommended by the Committee of Creditors (CoC) in the interest of justice and equity.
2. Brief facts of the case, as mentioned in the instant Applications, are as follows:
 - (1) Initially, M/s. Vintage Foods & 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. Karnataka State Industrial Investment and Development Corporation (KSIIDC) & 2 Ors. (Respondent/ Corporate Debtor) on the ground that it has committed, a

default amount of Rs.17.87 Crores. Accordingly, the case was admitted by an order dated 23.07.2019 by initiating CIRP in respect of the Corporate Debtor appointed Shri Pankaj Khaitan as IRP, imposing moratorium etc.

- (2) The IRP, published notification inviting claims from the Concerned parties in newspaper on 27.07.2019 on or before 07.08.2019. One of the Applicants submitted their proof of claim on 06.08.2019 for a claim amount of Rs.86,39,24,142.10 outstanding as on 23.07.2019 along with all the attachments. On 16th August 2019, the IRP sent an email by admitting the claim amount to be only Rs.4,49,31,563/- with a 28.51% voting share in the committee of Creditors. Subsequently, the Applicant sent a letter to the IRP for recalculation of the Claim amount which was not replied by the IRP. The first meeting of Committee of Creditors was held on 23.08.2019. At the first meeting, the IRP proposed himself to appoint his as Resolution Professional. As per Section 22 (2) and 22(3) (a) of the Code, the Committee of Creditors in its first meeting shall decide to appoint the IRP as RP or to replace the IRP by another Professional. However, all the members of the Committee of Creditors voted against his continuation. .
- (3) The Committee of Creditors requested the IRP to hold another meeting of CoC on 04.09.2019. However, it was finally held on 12.09.2019. During the meeting, also members of CoC proposed the name of Shri Balady Shekar Shetty to be appointed as the Resolution Professional with 100% voting and Form AA was also submitted to the IRP, Shri Pankaj Khaitan. This proposal of appointing Shri Balady Shekar Shetty as Resolution Professional was intimated to



him who, in turn, given his written consent to act as Resolution Professional by his letter dated 9th September, 2019.

- (4) The reasons to appoint Shri Balady Shekar Shetty as Resolution Professional is justified as per the Guidelines that the Insolvency Professional is located in the vicinity of registered office of the Corporate Debtor i.e. Bengaluru, Karnataka. Also the CoC opined that the IP should not have too many ongoing assignments and should give proper attention and timely availability of his services to CoC. He also should know the local language (Kannada) to read the documents which may be in Kannada and to interact with the local people connected with the Corporate Debtor and CoC.
3. Heard Shri Pankaj Khaitan, learned IRP and Shri CA G Sathyanarayana, learned PCA for the Applicant No.1/KSIIDC along with Shri T.P.Muthanna, learned Counsel for the Applicant No.2/SASF, Shri Vignesh Shetty, and learned Counsel for the Applicant No.3/EARCL. I have carefully perused the pleadings of the parties and also extant provisions of Code and the Rules made there under.
4. Shri CA G Sathyanarayana, learned PCA for one of the Committee of Creditors, has further submitted that the minutes of second meeting of the Committee of Creditors (CoCs) consisting of EARCL (28.51%), KSIIDC (33.43%) SASF (38.06%), they have unanimously decided not to approve the existing Interim Resolution Professional (IRP) for appointment as Resolution Professional and decided to replace Shri Balady Shekar Shetty, Registration No.IBBI/IPA-002/IP-N00213/2017-18/10665 as



Resolution Professional. Therefore, he urged the Tribunal to appoint new RP as prayed for.

5. Shri Pankaj Khaitan, learned Interim Resolution Professional, has inter alia submitted that the instant application was not filed in accordance with law and there is no authorisation given to the Applicants to file the instant Applications etc.
6. It is not in dispute that Shri Pankaj Khaitan, the IRP has conducted First CoC meeting on 23.08.2019 to consider and ratify the expenses incurred by him, to continue him or to replace him with new Resolution Professional, to appoint DMY Legal, Advocates and Solicitors for drafting and filing of various Applications and compliance reports before this Adjudicating Authority at a remuneration of Rs.50,000/- per month; to consider and approve the reduction in notice period for convening of CoC meeting etc., and the resolution was passed unanimously with 100% of voting rights. Accordingly, the Second meeting of the Committee of Creditors was held on 12.09.2019, wherein it is inter alia resolved unanimously to appoint Shri Balady Shekar Shetty (IP Reg. No. IBBI/IPA-002/IP-N00213/2017-2018/10665) as Resolution Professional.
7. As stated supra, the resolution to appoint Shri Balady Shekar Shetty dated 09.09.2019, as Resolution Professional by replacing the existing IRP, was passed unanimously by COC, and he has duly given his consent by inter alia declaring that he is qualified Resolution Professional 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 do not suffer from any disability to act as Resolution



Professional; 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; he shall make the disclosures in accordance with the Code of conduct for Insolvency Professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 etc.

8. Therefore, I am convinced with the reasons cited by the Applicant for replacing existing IRP with that of new Resolution Professional. I am also of the prima facie view that the proposed Resolution Professional is duly qualified IP and not suffering any disqualification as per written consent given to act as Resolution Professional for the Corporate Debtor. And the Resolution to appoint him is also approved with requisite majority as per the Code and the instant Applications are filed in accordance with law. Hence, the instant Applications deserve to be allowed as prayed for.
9. In view of the above facts and circumstances of the case, I.A.No.546 & 558 of 2019 in C.P.(IB)No.64/BB/2019 are hereby disposed of with the following directions:
 - (1) Shri Balady Shekar Shetty, holding IBBI Registration No. IBBI/IPA-002/IP-N00213/2017-2018/10665 is hereby appointed as Resolution Professional to continue the CIRP already initiated respect of Corporate Debtor. He is directed to take charge and take immediate steps to complete the CIRP process in question, within stipulated period as per provisions of the Code.
 - (2) The fee of existing IRP is fixed at Rs. 1.50 Lakhs, per month excluding taxes and expenses. Accordingly, the



Committee of Creditors (CoC) is hereby directed to settle his fee and pay him for the period he works as IRP, within a period of one month from the date of receipt of Copy of this order.

- (3) The IRP is directed to hand over all records of the case immediately to Shri Balady Shekar Shetty.



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Shruthi