(2022) 09 NCLT CK 0078

In the National Company Law Tribunal

Case No : IA(C/Act)/91/KOB/2022 IN CP/34/KOB/2020

Mr. Tahil Lalchand Chulani — APPELLANT

Vs

M/s Venad Food Processing and Exports Private Ltd & Others — RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Companies Act, 2013 — Section 241, 242, 244, 246, 272, 273, 273(d), 275, 277
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2022) 09 NCLT CK 0078

Hon'ble Judges : Dr. Deepti Mukesh, Member (J);Ajai Das Mehrotra, Member (T)

Bench : Division Bench

Advocate : Akhil Suresh

Final Decision : Disposed Of

Judgement

1. This application is filed by Mr. Najeeb T.P, Provisional Liquidator of M/s Venad Food Processing and Exports Private Ltd (hereinafter referred to as "the Company") under Section 273(d) and 275 of the Companies Act, 2013 (hereinafter referred to as "the Act") read with Rule 11 of NCLT Rules, 2016 for following prayers: -

I. Issue a winding up order as recommended by the Provisional Liquidator in the final report dated 23.05.2022

II. Appointment of Provisional Liquidator as the Company Liquidator

2. The brief facts of the case are as under: -

a) The applicant was appointed as the Provisional Liquidator of the company by this Tribunal vide order dated 16.03.2022 in the main Company Petition filed under section 241, 242 244, 246 and 272 of the Act by Mr. Tahil Lalchand Chulani, a shareholder holding 20% shares in the Company.

b) Report was filed by the Independent Auditor appointed herein assessing that there was increase in liability without any increase in asset size in the company and that the company was working to the detriment of the interest of its stakeholders and may soon go into insolvency. Hence this Tribunal found it fit that the Company be wound up in the interest of all the stakeholders. Provisional Liquidator was appointed under section 273 and other extant provisions of the Act.

c) The Provisional liquidator in his report has stated that the company was incorporated on 21.12.2011 with main object to acquire, manufacture, process and sell all items fit for human consumption in India and outside. From inception of the company, only business done by the company was sourcing goods to SRL Nigeria, which is a company owned by present petitioner shareholder, apart from some miniscule local sales.

d) It was after SRL Nigeria stopped placing orders with the company, that there was financial crunch due to lack of working capital. There was also gross mismanagement in the company, also differences arose between all directors and the petitioner, who was the sole investor and sole customer of the Company. As per the report of the Provisional Liquidator, the Company had executional deficiencies and entire transactions were related party transactions, due to which functional independence and day to day operations were in conflict of interest. It is further submitted that the directors of the company were not complying with the RBI and FEMA rules and regulations with regard to inward remittances and other statutory requirements. Presently company is closed with no operation and negative net worth. The Provisional liquidator has also stated that after interaction with directors and promoters, it is revealed that there will be no scheme or possibility for revival of the Company. The substratum of the Company has got completely eroded.

3. Heard submissions, perused the documents on record. It is noticed that no objections have been received from any party. The facts as stated by the Provisional liquidator are not controverted by anyone. It is also noted that no other proceedings for winding up or liquidation are pending.

4. Hence, in consideration of all the facts and circumstances of the case, we are of the opinion that it is a fit case to wind-up the company under the provisions of the Companies Act, 2013. As per the above observations, we allow the present application and order as follows:

i. Mr. Najeeb T.P who is acting, as Provisional Liquidator, is hereby appointed as Company Liquidator having IP No. IBBI/IPA-002/IP-N01014/2020-2021/13316, to conduct the process of winding-up of the company.

ii. The Company Liquidator is directed to file an application within three weeks from the date of his appointment for the constitution of the winding-up committee in accordance with the provisions of Section 277 of the Companies Act, 2013.

iii. The Company Liquidator is directed to strictly comply with all the relevant provisions of the Companies Act, 2013 with regard to the winding up.

iv. From the date of this order and appointment of the Company Liquidator, no suit or other legal proceedings shall be commenced or if pending on the date of the winding-up order, shall be proceeded with, by or against the Company, except with the leave of this Tribunal.

v. This order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Company.

vi. We direct the existing management of the Company to extend full cooperation to the Company Liquidator to carry out his duties under the relevant provisions of the Act.

vii. The Company Liquidator is permitted to initiate appropriate action in accordance with the provisions of the Act to take control of the management of the Company and to take custody or control of all the properties, effects, and actionable claims to which the company is or appears to be entitled to, and take such steps and measures, as may be necessary, to protect and preserve the properties of the company and to avoid misuse of its properties.

5. The application is allowed in terms of the above order and stands disposed of.

6. The Registry is directed to communicate this order to the Registrar of Companies, Kerala, all the parties concerned, and to the Company Liquidator within 7 days. The Registrar of Companies is directed to reflect the correct status of the Company-M/s Venad Food Processing and Exports Private Ltd, on the MCA website in its Master data.