

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-2414 (ND)/2019
IA/ 1423/2020

IN THE MATTER OF:

ARGUS GLOBAL LOGISTICS PVT.LTD.

ARGUS CHAMBERS,

150, KAPASHERA VILLAGE,

NEW DELHI- 110037

.....OPERATIONAL CREDITOR

VERSUS

STOCKFLOW EXPRESS PVT.LTD.

KH. NO. 406, GROUND FLOOR, A-BLOCK, GALI NO. 8,

MAHIPALPUR EXTENSION,

DELHI- 110037..... CORPORATE DEBTOR

SECTION: U/S 33(2) of IBC, 2016

Order delivered on: 05.11.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor: Mr. Kumar Sumit on behalf of IRP and Mr. Alok Kaushik, IRP.

For the Respondent/Corporate Debtor: Mr. Nitesh Jain for R-1 to 4, Mr. Dipender Singh for R-5, Mr. Anirban Bhattacharya for R-8 and Mr. Dhiraj Kumar for R-9.



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") by the Interim Resolution Professional, seeking liquidation of the Corporate Debtor.

2. The facts mentioned in the application in brief are as follows:
 - i. The Corporate Debtor, Stockflow Express Pvt Ltd has been put under Corporate Insolvency Resolution Process vide order dated 26-11-2019 by the Hon'ble Bench V, NCLT Delhi.
 - ii. The Interim Resolution Professional (IRP) made a public announcement on 29-11-2019 calling for claims from creditors. The creditors filed their claims and after verification, the IRP constituted the COC and filed the relevant report with the Hon'ble NCLT.
 - iii. The COC has been constituted under Section 16(1) of the IBBI (CIRP) Regulations 2016 and comprises four members who are Operational Creditors.
 - iv. The COC in the first COC meeting held on 26-12-2019 did not confirm the IRP as the RP. The IRP informed the COC that under Regulation 17(3), the IRP would perform the functions of the Resolution Professional (RP) till a RP is



appointed under Section 22 of the Code. The COC had not proposed any RP till the second COC meeting.

- v. The IRP has been performing the duties as prescribed under the Code and the IBBI Regulations 2016.
- vi. The Second COC meeting was conducted on 07-02-2020 where the IRP presented among other agendas, agenda for approval of Form for inviting EOIs under Regulation 36(A) along-with the qualification criteria and terms of EOI. The IRP had shared explanatory notes in the notice to the second meeting. During the second COC meeting, he again explained the significance of this EOI invite in the CIRP.
- vii. The COC members with 100% voting share decided not to publish the Form G and recommended for liquidation. The IRP asked the COC to re-consider their decision and let him try once for getting Resolution Applicants in the process by publishing the invite for EOI in Form G.
- viii. The COC insisted that they belong to the same business community as the corporate debtor and well understand the situation of the corporate debtor. The COC was of the view that no Resolution Applicant would be interested in the corporate debtor. They were of the view that to save on time and CIRP costs, the corporate debtor should be liquidated.
- ix. On the insistence of the COC, the IRP recorded the voting results recommending liquidation under Section 33(2) and asked the COC for a discussion on liquidations costs under



Regulation 39 B. The IRP also asked the COC to propose the name of a liquidator as the IRP himself had not submitted his consent for the same. The COC asked the IRP to include a prayer for appointment of liquidator in his report to the Hon'ble NCLT. The COC recorded that the liquidation expenses would be discussed with the appointed liquidator.

- x. The IRP has been conducting the duties as prescribed in the Code and IBBI CIRP Regulations 2016.
 - xi. The IRP prays the Hon'ble Bench to order for Liquidation of the Corporate Debtor M/S Stock flow Express Pvt Ltd and appoint a Liquidator in the process.
3. We have heard the Ld. Counsel for the petitioner/IRP and perused the averments made in the application.
 4. Ld. Counsel for the IRP submitted that when the matter was placed before the CoC in the 2nd meeting of the CoC, which is conducted on 07.02.2020 for approval of Form G for inviting EOI under Regulation 36A then the CoC members with 100% voting share decided not to publish the Form G and recommended for liquidation. He further submitted that although the IRP asked the CoC to reconsider the decision and let him try once for getting Resolution applicants but CoC resolved to liquidate the Corporate Debtor. He further submitted that he has not given any consent to be appointed as a liquidator, therefore, the CoC also directed the IRP to include a prayer for appointment of liquidator in his report.



5. In the light of the submissions raised on behalf of CoC, when we have gone through the averments made in the application as well as the Resolution of 2nd CoC meeting dated 07.02.2020, which is at page 63 of the application then we noticed that all the members with a 100% of the voting rights were physically present, accordingly, the coram was completed and we further noticed that at page 70, the Resolution of the CoC is available, ***“The CoC Resolved with 100% voting share to recommend for liquidation of the Corporate Debtor and apply to the Hon’ble NCLT under Section 33(2) of the IBC, 2016. In the application to the Hon’ble NCLT, prayer to be included for appointment of a liquidator. The Liquidation expenses to be discussed with the appointed liquidator”***. The CoC has resolved to liquidate the Corporate Debtor under Section 33(2) of the IBC.

6. Hence, at this juncture, we would like to refer the Section 33(2) of the IBC and the same is quoted below:-

“(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

Explanation- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution



under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

7. Mere plain reading of the said provisions shows that resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
8. Here in the case in hand, the Resolution was passed by 100% voting, so, under such circumstances we hereby approve the Resolution passed by the CoC and the Corporate Debtor is hereby liquidated.
9. ***The liquidation of this company under Section 33(2) of IB Code, 2016 and the Regulations thereof, this Bench hereby orders as follows:***
Accordingly, it is therefore, ORDERED
 - A. ***That the Corporate Debtor be liquidated in the manner as laid down in the code by issuing a public announcement stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send a copy of this order to the ROC under which the Corporate Debtor is registered.***
 - B. ***Name of Liquidator is not proposed and the present Resolution Professional has not given his consent for his appointment therefore, by exercising power U/S 34(4) IBC Mr. Sanjay Gupta, I.P Registration no.10354 is appointed as Liquidator.***



- C. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- D. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- E. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- F. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- G. All the powers of the Board of Director, Key managerial persons, the partners of the corporate Debtor hereafter ceased to exist and it is vested with Liquidator.**
- H That the personal of corporate debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the corporate debtor.**
- I. That liquidator will charge fees as specified by the IBBI and same shall be paid to the Liquidator from the proceeds of the liquidation estates U/S 53 of the code.**



J. No suit or other legal proceedings shall be instituted by or against the corporate debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the corporate debtor with prior approval of the Adjudicating Authority.

10. With this order the present application i.e. IA/1423/2020 stands disposed of and Registry is directed to communicate this order with all the respective parties.

-Sdr

K. K. VOHRA
Member (T)

-Sdr-

ABNI RANJAN KUMAR SINHA
Member (J)