

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, BENCH-II**

**I.A. 2084/ND/2021**

**IN**

**Company Petition No. (IB)-1373(ND)/2019**

**IN THE MATTER OF:**

**M/s Advance Cargo Movers (India) Private Limited**

**...Operational Creditor**

**Versus**

**M/s. SBS Transpole Logistics Private Limited**

**...Corporate Debtor**

**AND IN THE MATTER OF:**

**Mr. Vivek Shukla**

**E-301, Central Park-1, Golf Course Road,  
Sector-42 Gurugram- 122002, Haryana**

**...Applicant**

**Versus**

**1) Mr. Mohan Lal Jain, Liquidator  
SBS Transpole Logistics Pte. Ltd.  
F-2/28, Sector-15, Rohini,  
Delhi-110089**

**...Respondent No.1**

**2) M/s. Global Enterprise Logistics Pvt. Ltd.  
10 Anson Road, #14-06  
International Plaza  
Singapore- 079903**

**...Respondent No.2**

**Order Delivered on: 20.07.2021**

**SECTION: 60(5)(C) READ WITH SECTION 35 OF IBC 2016 READ WITH  
REGULATION 31 AND 31A OF THE INSOLVENCY AND  
BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS)  
REGULATIONS, 2016**

**CORAM :**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENTS:**

For the Applicant : Mr. Shohit Chaudhry and Mr. Pankaj  
Agarwal, Counsel for the Applicant  
For the Respondents : Mr. I.P.S. Oberoi, Counsel for the Liquidator  
Mr. Divyanshu Rai, Counsel for R-2

**ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

The present I.A. No. 2084 of 2021 is filed by Mr. Vivek Shukla, Ex-Director and Shareholder of the Corporate Debtor (hereinafter referred to as "**Applicant**") under Section 60(5)(C) read with Section 35 Of IBC 2016 read with Regulation 31 and 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 against the inclusion of Respondent No. 2 in the Stakeholders' Consultation Committee as the representative of the shareholders of the Corporate Debtor.

2. That the Applicant has made the following prayers in the Application:

- "a) Direct the Respondent No. 1 to reconstitute the Stakeholders Consultation Committee by removing Respondent No. 2 as the representative of the shareholders of the Corporate Debtor;*
- b) Restrain the Respondent No. 1 from issuing any Notice(s), Agenda(s) or invitation(s) to Respondent No. 2 of any forthcoming Stakeholders' Consultation Committee Meeting(s) until the present Application is decided;"*

3. To put succinctly, facts of the case are that the Operational Creditor, M/s Advance Cargo Movers (India) Pvt. Ltd. had filed a petition bearing no. IB-1373(ND)/2019 under Section 9 of IBC 2016 for initiation of CIR Process against the Corporate Debtor M/s. SBS Transpole Logistics Private Limited ("hereinafter referred to as **"Corporate Debtor"/CD**). That vide Order dated 04.09.2019, this Adjudicating Authority had initiated CIR Process against the CD and appointed Mr. Mohan Lal Jain as the Interim Resolution Professional. That subsequently vide Order dated 01.11.2019, he was confirmed as RP and vide Order dated 16.12.2020, the Liquidation proceedings were initiated against the CD and Mr. Mohan Lal Jain was appointed as the Liquidator ("hereinafter referred to as **"Respondent No.1"**) of the CD.

4. It is averred by the Applicant that he is the Ex-Director and a shareholder, holding 8.33% of the total paid up share capital of the Corporate Debtor. He is seeking reconstitution of the Stakeholders Consultation Committee (hereinafter termed as **'SCC'**), constituted by the Respondent No. 1/ Liquidator of Corporate Debtor.

5. That the main grievance of the Applicant is that M/s Global Enterprise Logistics Pte. Ltd (previously known as 'SBS Logistics Holdings Singapore Pte. Ltd.') (hereinafter referred to as **"Respondent No.2"**) has been erroneously included as representative of the "Shareholders" in the SCC of the Corporate Debtor by Respondent No. 1.

6. It is further averred by the Applicant that the following was the shareholding pattern of CD as on the Insolvency Commencement Date :

S. No.	Name of Shareholders	Number	%
1	Vivek Shukla	404716	8.33
2	Anant Kumar Choudhary	404705	8.33
3	Pravin Chand Rai	404706	8.33
4	Rajiv Kathuria	225000	4.63
5	SBS Logistics Holdings Singapore Pte. Ltd.	3417723	70.37
<b>Total Shares</b>		<b>4856850</b>	<b>100</b>

7. It is stated by the Applicant that vide email dated 10.02.2021, he had informed the Respondent No.1 regarding his nomination as the representative of Shareholders by attaching 03 nomination letters of Mr. Anant Kumar Chaudhary, Mr. Pravin Chand Rai and himself with the mail.

8. It is further stated by the Applicant that the Respondent No.1/Liquidator vide his e-mail dated 15.02.2021 informed the Applicant about the constitution of the SCC, stating that the Respondent No. 2 shall be the member of the SCC representing the class of Shareholders of the CD. The said e-mail dated 15.02.2021 is reproduced below :

**ANNEXURE - A4** 40

4/3/2021 Gmail - Constitution of Stakeholders' Consultation Committee in the matter of M/s SBS Transpole Logistics Private Limited (in Liquidation)

**Constitution of Stakeholders' Consultation Committee in the matter of M/s SBS Transpole Logistics Private Limited (in Liquidation)**  
2 messages

**Liquidator of SBS Transpole Logistics Pvt Ltd** <liquidator.sbstranspole@gmail.com>  
To: Vivek Shukla <vshukla@gmail.com>, Vivek Shukla <vivek.shukla@transpolegroup.net> Mon, Feb 15, 2021 at 1:25 PM

To:  
Mr. Vivek Shukla

Dear Sir,

This is in reference to the constitution of Stakeholders' Consultation Committee ("SCC") in terms of Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") in the matter of M/s SBS Transpole Logistics Private Limited (in Liquidation) ("Corporate Debtor").

In relation to the above, we wish to inform you that the undersigned, being the Liquidator has constituted the Stakeholders' Consultation Committee of M/s SBS Transpole Logistics Pvt. Ltd. in compliance with the Regulation 31A of the Liquidation Regulations which consist of the following stakeholders:

S. No.	Class of Stakeholders	Name of the Representative
1	Secured Financial Creditor, who have relinquished their security under Section 52 of the Code	CFM Asset Reconstruction Pvt. Ltd.
2	Unsecured Financial Creditor	Mr. Vivek Shukla
3	Employees & Workmen	Mr. Shyam Sunder Sharma
4	Government	-
5	Operational Creditors other than Workmen, employees and Government	Mr. Daniel George
6	Shareholders or partners, if any	SBS Logistics Holdings Singapore Pte. Ltd. (now known as Global Enterprise Logistics Pte. Ltd.) (GEL)

This is for your kind information please.

With Regards

**MOHAN LAL JAIN**  
LIQUIDATOR  
In the matter of SBS Transpole Logistics Private Limited in Liquidation.  
Reg. No. IBBI/PA-002/IP-N00006/2016-17/10006  
Res. Address: F-2/28, Sector- 15, Rohini, New Delhi 110089  
E-mail: liquidator.sbstranspole@gmail.com/ml\_jain@sumedhamanagement.com  
Office Address: C/o Sumedha Management Solutions Pvt. Ltd.  
B-1/12, 2<sup>nd</sup> Floor, Safdarjung Enclave, New Delhi - 110 029 Ph: +91 11 4165 4481/85

9. It is further contended by the Applicant that while including the Respondent No.2 in the SCC as representative of the shareholders, the Respondent No.1/Liquidator has entirely overlooked the fact that out of the 5 Shareholders of the Corporate Debtor, 3 shareholders (including the Applicant himself) have nominated the Applicant in terms of Regulation 31A(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as the representative of the Shareholders, which is a clear majority of 60%.

10. It is emphasised by the Applicant that while completely ignoring the said majority nomination by the shareholders of the Corporate Debtor, Respondent No. 1/Liquidator selected and included the Respondent No. 2 as the representative of the shareholders in the SCC of the CD. It is added by him that while defending the said action, the Respondent No. 1 has relied upon Regulation 31A(4).

11. It is contended by the Applicant that the Regulation 31A(4) cannot be applied in the case herein as the majority of the shareholders, in number, have successfully nominated the Applicant as the representative, whereas the Respondent No. 2 did not even participate in the said nomination process. That in such a scenario, it was not open to the Respondent No. 1/Liquidator to ignore the nomination by majority of the shareholders and instead select a non-participative shareholder. That the Respondent No. 1 has erroneously concluded that a majority decision is not a valid decision unless it is by a unanimous 100% majority of the class of shareholders.

12. That while placing reliance on Section 25A(3A) of IBC 2016, it is submitted by the applicant that the legislature was faced with a similar situation in case of allottees/financial creditors in a class and their voting during the CIR Process. The same was tackled by inclusion of Section 25A(3A) in the IBC, which enabled voting in the case of a class of creditors to be done with the decision of a 51% majority. That the same principle ought to be read into Regulation 31A(3) of the Liquidation Process Regulations, and the nomination by the majority, either in number or in value, who have voted should be considered as a valid nomination under Regulation 31A(3). That in the present case, it is evident that 03 out of 05 shareholders of the Corporate Debtor holding 24.99% of shares of the CD have participated in the nomination process.

13. That further, the Applicant has made the following averments :

*“10. That apart, the Respondent No.1 while including the Respondent No. 2 as the representative of the shareholders in the SCC has completely ignored the factum of gross conflict of interest of Respondent No. 2 with that of the Corporate Debtor on account of pending arbitration proceedings before the Singapore International Arbitration Centre (“SIAC”) in Arbitration No. ARB105/2019/ARK, which is detailed in the succeeding paragraphs hereunder.*

*11. That it is a matter of record that the conduct of Respondent No. 2 and its abrupt and unceremonious exit from the Corporate Debtor, in violation of the shareholders’*

agreement with the Corporate Debtor, that led to the insolvency and now liquidation of the Corporate Debtor. That in such a situation, it is evident that Respondent No. 2 is an entity hostile to the interest of the Corporate Debtor, and its interests would be contrary to the smooth and beneficial liquidation of the Corporate Debtor. This fact has been repeatedly informed to the Respondent No. 1, however, he has failed to appreciate the same.

12. That the Applicant vide email dated 18.02.2021, placed before the Respondent No. 1 his objections to the inclusion of the Respondent No. 2 as the representative of the shareholders, inter alia pointing out the various objections mentioned in detail herein. Email dated 18.02.2021 sent by the Applicant to the Liquidator is annexed herewith and marked as ANNEXURE A5.”

“22. Under these circumstances, it is highly prejudicial to the interest of the Corporate Debtor that Respondent No. 2, an adversary of the Corporate Debtor, be allowed to participate in the SCC, as a representative of the shareholders of the Corporate Debtor, merely on the basis that it holds the highest percentage of shares of the Corporate Debtor. It is a matter of record that in 2016 itself, the Respondent No. 2 had given up its rights and interest as a shareholder of the Corporate Debtor. It is also a matter of record that due to



*this, the Corporate Debtor suffered from NPA classification, followed by the sale of its assets under the SARFAESI Act, Corporate Insolvency Resolution Process and now Liquidation Process. That the Respondent No. 2 must not be allowed to suddenly appear now during the Liquidation Process as a representative of the shareholders."*

14. Since the reply of Respondent no.1/Liquidator only is available on record, the same is taken for consideration.

15. In response to the grievance raised by the Applicant, it is submitted by the Respondent No.1/Liquidator that :

*"7. As per records of the Corporate Debtor, there are 5 shareholders of the Corporate Debtor, as stated by the applicant also in para 6 of the present application. The answering respondent no. 1 had endeavoured to facilitate the class of shareholders to nominate their representative for inclusion in the consultation committee in terms of regulation 31A(3) of the liquidation regulations. As per the table in regulation 31A(2), only 1 (one) representative is to be included from the class of 'shareholders'. However, the 'shareholders' failed to nominate their representative and in terms of regulation 31A(4), the stakeholder with the highest amount in the class of shareholders was included in the consultation committee. It may be pertinent to state here that in respect of shareholders, all the details of shareholders along with the amount/s of shareholding is very much available in the records of the Corporate Debtor itself, unlike in the cases of other stakeholders like 'financial creditors', 'workmen and employees', 'governments', 'operational creditors' etc. whose stakes are determinable only on the basis of claims submitted by such classes of stakeholders and admitted by the Liquidator."*



16. It is further submitted by the Respondent No.1/Liquidator that nomination of the Applicant by the other 2 Shareholders namely, Mr. Anant Kumar Chaudhary and Mr. Pravin Chand Rai has been made in terms of Regulation 31A(3) of the Liquidation Regulations and that in this manner, 02 out of the 05 shareholders have nominated the applicant as their representative. That the shareholding of the said 02 shareholders combined with the shareholding of the applicant himself adds up to 24.99% of shareholding only. That the other 02 shareholders having 75% of shareholding have not nominated the applicant as their representative and the mere nomination by 60% of shareholders in number will not mean that all the shareholders in class have nominated the Applicant. That accordingly, the applicant herein could not be considered as the representative of the entire 'shareholder' class of stakeholders.

17. With regard to the objection taken by the Applicant regarding conflict of interest it is submitted by the Liquidator that in the process of constituting the SCC during liquidation process, the alleged 'conflict of interest' or even 'potential conflict of interest' of any stakeholder with the Corporate Debtor or inter-se with other stakeholders is not of any relevance for including such stakeholder in the SCC as the scope of the SCC is very limited, merely 'to advise the Liquidator on the matters relating to sale under Regulation 32', i.e. within the four walls of Regulation 31A(1) read with regulation 32. In any case, the ongoing arbitration proceedings in the present matter before the Singapore International Arbitration Centre ("SIAC") in Arbitration No. ARB105/2019/ARK, which were initiated prior to the commencement of CIRP of the CD, wherein the Corporate Debtor is

one of the claimants, is based on distinct 'cause(s) of action', which do not have any bearing on or connect with the present liquidation proceedings.

18. In response to the reliance being placed by the Applicant on Section 25A(3A) of IBC 2016, it is submitted by the Liquidator that Section 25A(3A) of the Code is not relevant to the present issue of nominating a representative of shareholders, which does not involve any voting. Furthermore, the reference to this section does not help the applicant as the stress in this section is on voting share of the financial creditors. In the instant case, the shareholders have failed to nominate their representative, even if such failure is due to 02 of the 05 shareholders not nominating their representative and accordingly, Regulation 31A(4) has come into play. The shareholding of the Respondent No.2 being the highest, it has been included in the SCC in terms of Regulation 31A(4).

19. That the Applicant has filed its Rejoinder and has reiterated the same grounds, which are not repeated for the sake of brevity.

20. We have heard Counsels of both the parties. After hearing submissions of both the Parties and perusing averments, reply and documents on the record, we are of the view that the main issue before this Bench is :

**“Whether the nomination of Respondent No. 2 as representative of Shareholders in class made by the Respondent No. 1/Liquidator is in order and is in terms of the provision of Regulation 31A (3) read with Regulation 31A (4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.”**

For adjudication of this issue, it is necessary to visit the contents of Regulation 31A(3) and 31A(4) of the IBBI (Liquidation Process) Regulations, 2016. The same are reproduced below :

**“31A. Stakeholders’ consultation committee.**

(1)....

(2)....

(3) *The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.*

(4) *If the stakeholders of any class fail to nominate their representatives, the required number of stakeholders with the highest claim amount in that class shall be included in the consultation committee.”*

21. That from the perusal of the records, it is evident that by sending the following email dated 06.02.2021, the Respondent No. 1/Liquidator has facilitated the Shareholders to nominate their representative. The copy of the email dated 06.02.2021 is reproduced below :

XXX

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**From:** Liquidator of SBS Transpole Logistics Pvt Ltd <[liquidator.sbstranspole@gmail.com](mailto:liquidator.sbstranspole@gmail.com)>  
**Date:** 6 February 2021 at 1:09:23 PM IST  
**To:** [gin2008ac@gmail.com](mailto:gin2008ac@gmail.com), vivek Shukla  
<[vshuklaindia@gmail.com](mailto:vshuklaindia@gmail.com)>, [pravin1972.raj@gmail.com](mailto:pravin1972.raj@gmail.com), Rajeev Kathuria  
<[rajeevkathuria72@gmail.com](mailto:rajeevkathuria72@gmail.com)>, [anant2y@gmail.com](mailto:anant2y@gmail.com)  
**Subject:** Nomination of representative of Shareholders in Stakeholders’ Consultation Committee in the matter of M/s SBS Transpole Logistics Pvt. Ltd. (in Liquidation)

**Kind Attention:** (i) M/s SBS Logistics Holdings Singapore Pte. Ltd. (now known as Global Enterprise Logistics Pte Limited) (“GEL”)

(ii) Mr. Vivek Shukla

(iii) Mr. Anant Kumar Choudhary

(iv) Mr. Pravin Chand Rai

(v) Mr. Rajiv Kathuria

Dear Sirs,

This is in reference to the constitution of Stakeholders’ Consultation Committee (“SCC”) in terms of Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”) in the matter of M/s SBS Transpole Logistics Pvt. Ltd. (in Liquidation) (“**Corporate Debtor**”).

In relation to the above, we wish to inform you that the composition of SCC shall be as per table prescribed in sub-regulation (2) of Regulation 31A of Liquidation Regulations. As per said regulation, the number of representatives who can be nominated by the Shareholders of Corporate Debtor in the consultation committee is maximum of 1(One).

As per the available records of the Corporate Debtor, the shareholding pattern of Corporate Debtor is as under:

<u>Sl. No.</u>	<u>Name of Shareholders</u>	<u>No. of Equity Shares held</u>	<u>% of Shareholding</u>
1.	M/s SBS Logistics Holdings Singapore Pte. Ltd. (now known as Global Enterprise Logistics Pte Limited) ("GEL")	34,17,723	70.37%
2.	Mr. Vivek Shukla	4,04,716	8.33%
3.	Mr. Anant Kumar Choudhary	4,04,705	8.33%
4.	Mr. Pravin Chand Rai	4,04,706	8.33%
5.	Mr. Rajiv Kathuria	2,25,000	4.63%
	<b>Total</b>	<b>48,56,850</b>	<b>100.00%</b>

As per sub-regulation (3) of Regulation 31A of Liquidation Regulations, the liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.

Therefore, in view of the above, the undersigned being the Liquidator in the matter invites the nomination of 1(One) representative of Shareholders of M/s SBS Transpole Logistics Pvt. Ltd. for inclusion in the consultation committee.

You are requested to send your nomination of 1(One) representative after mutual discussions at the earliest but not later 4(Four) days i.e. latest by 10th February, 2021 by 05:00 p.m.

However, in terms of sub-regulation (4) of Regulation 31A of Liquidation Regulations, in case, if the Stakeholders of any class fail to nominate their representatives, the required number of stakeholders with the highest claim amount in that class shall be included in the consultation committee.

This is for your information and necessary action please.

With Regards

**MOHAN LAL JAIN**  
LIQUIDATOR

In the matter of SBS Transpole Logistics Private Limited in Liquidation.  
Reg. No. IBBI/TPA-002/IP-N00006/2016-17/10006  
Res. Address: F-2/28, Sector- 15, Rohini, New Delhi 110089  
E-mail: [liquidator.sbstranspole@gmail.com/ml\\_jain@sumedhamanagement.com](mailto:liquidator.sbstranspole@gmail.com/ml_jain@sumedhamanagement.com)  
Office Address: C/o Sumedha Management Solutions Pvt. Ltd.  
B-1/12, 2<sup>nd</sup> Floor, Safdarjung Enclave, New Delhi - 110 029 Ph: +91 11 4165 4481/85

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22. It is observed from the records, that there are total 05 shareholders in the Corporate Debtor. The Applicant vide email dated 10.02.2021 to the Liquidator has sent the nomination letters 03 Shareholders namely, Anant Kumar Choudhary, Pravin Chand Rai and himself to the Respondent No. 1 to appoint him as the Representative of the Shareholders. The email dated 10.02.2021 of the Applicant is reproduced overleaf :

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34

**ANNEXURE - A2 (Colly.).**

**From:** vivek Shukla <[vshuklaindia@gmail.com](mailto:vshuklaindia@gmail.com)>  
**Date:** 10 February 2021 at 3:58:51 PM IST  
**To:** Liquidator Ltd <[liquidator.sbstranspole@gmail.com](mailto:liquidator.sbstranspole@gmail.com)>  
**Cc:** "pravin1972.ra" <[pravin1972.ra@gmail.com](mailto:pravin1972.ra@gmail.com)>, Anant Choudhary <[anant2y@gmail.com](mailto:anant2y@gmail.com)>  
**Subject:** Nomination of representative of Shareholders in Stakeholders' Consultation Committee in the matter of M/s SBS Transpole Logistics Pvt. Ltd. (in Liquidation)

Dear Sir,

Reference to the trailing e-mail regarding **Nomination of representative of Shareholders in Stakeholders' Consultation Committee in the matter of M/s SBS Transpole Logistics Pvt. Ltd. (in Liquidation)**, please find enclosed herewith the nomination letters duly executed by Mr. Anant Kumar Choudhary and Mr. Pravin Chand Rai nominating myself as their nominee in Stakeholders Committee.

Thanks and regards  
Vivek Shukla

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23. The aforesaid email of the Applicant reflects that the 03 out of the 05 Shareholders have nominated the Applicant as there representative. However, the Liquidator has blown hot and cold at the same time. On the one hand, he has averred in Para 7 of his reply that *"....However, the 'shareholders' failed to nominate their representative and in terms of regulation 31A(4), the stakeholder with the highest amount in the class of shareholders was included in the consultation committee...."*. On the other hand in Para 19 of his reply, he has averred that :

“19. In response to the contentions in para 9, it is wrong to contend that the answering respondent no. 1 as the Liquidator while including the Respondent No. 2 as the representative of the shareholders has completely ignored that out of a total of 5 shareholders of the Corporate Debtor, the applicant had secured the nomination of 3 (including the applicant) in terms of Regulation 31A(3) of the Liquidation Regulations. The respondent had duly noted that 2 out of the 5 shareholders had nominated the applicant as their representative who himself can also be considered to have nominated himself and had also noted that these 3 shareholders represent only 24.99% of the shareholding. Furthermore, the answering respondent no. 1 as the Liquidator had also noted that the other 2 shareholders having 75% shareholding had not nominated the applicant as their representative and accordingly, the applicant could not be considered as the representative of the entire ‘shareholders’ class of stakeholders. It is envisaged in terms of table forming part of Regulation 31A(2) that only 1 representative of all the shareholders is to be included in the SCC. The term ‘stakeholders of each class’ in Regulation 31A(3) does not mean ‘some of the stakeholders in the class’ or even ‘majority of stakeholders by number in the class’. In the considered view of the Answering Respondent No. 1, this term means ‘all the stakeholders in the class’. The Answering Respondent is of the further view that the process of nomination / inclusion in the SCC is not akin to the concept of ‘first past the post’ by numbers as in general election process. It is the further view of the Answering Respondent that the scheme of these Regulations envisages nomination by all the stakeholders of a particular class and that if some of the stakeholders of the class fail to nominate their representative, then the inference will be that the ‘stakeholders’ of the class have failed to nominate their representative. The next Regulation 31A (4) read in conjunction with the Regulation 31A(3) provides the solution for such a situation by stipulating that in such a scenario (of stakeholders failing to nominate their representative), the stakeholder with the highest claim amount in that class shall be included in the Consultation Committee.”

Whereas on the one hand, the Respondent No. 1/Liquidator has assumed that the '*shareholders*' *(have) failed to nominate their representative*, on the other hand he has duly noted that the Applicant has the nomination support of 03 out of total 05 shareholders. The plea taken by the Liquidator that no nomination was made as *the other 2 shareholders having 75% shareholding had not nominated the applicant as their representative* does not merit consideration since the Applicant has been the nominee of 03 out of total 05 shareholders (and which was duly communicated by the Applicant vide his email dated 10.02.2021 to the Liquidator) and the other 02 shareholders did not participate in the nomination process directly or indirectly. Further, the Regulation 31A(3) does not prescribe any criteria for nomination in terms of value of shareholding.

24. That from perusal of the Regulation 31A(3), which reads as "*The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee*", we observe that the said Regulation is silent on both "the criteria as well as process of nomination" of a Representative. However, the Regulation 31A(3) has bestowed a duty on the Liquidator to facilitate the stakeholders of each class to nominate their representatives for inclusion in the SCC.

25. That we further notice that the Liquidator, while facilitating nomination of the Shareholders in class through his mail dated 06.02.21, has not informed the shareholders that the representative shall be unanimously nominated by all the shareholders or the representative shall be decided on the basis of majority of shareholding in number or value.

Such criteria ought to have been declared upfront to the all concerned.



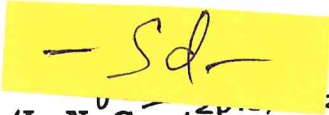
26. Therefore, the nomination of the Applicant as the Representative of Shareholders cannot be rejected by the Liquidator on the ground that the said nomination was not made unanimously by all the shareholders.

27. Since the Applicant has been nominated by the majority i.e., 3 out of 5 Shareholders as the Representative of the Shareholders-in-class, which was duly communicated by the Applicant to the Respondent No. 1, the question of applicability of the provision under Regulation 31A(4) did not arise. Therefore, **we hold that the nomination of the Respondent No. 2 as to represent Shareholders-in-class in the Stakeholders Consultation Committee of the Corporate Debtor made by the Respondent No. 1/Liquidator is not valid in terms of the provision of Regulation 31A (3) read with Regulation 31A (4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.**

28. **Accordingly, the nomination of Respondent No. 2 to the Stakeholders Consultation Committee of the Corporate Debtor, made by the Respondent No. 1/ Liquidator in terms of Regulation 31A(4) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is set aside and the Liquidator is directed to accept the nomination of the Applicant as the Representative of Shareholders-in-class for the purpose of constitution of the Stakeholders Consultation Committee (SCC) of the Corporate Debtor.**

29. The Application is **allowed** in the aforesaid terms.

30. The IBBI is also advised to notify clear guidelines regarding “criteria and process of nomination of Representatives of Stakeholders” under Regulation 31A(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to avoid any ambiguity in future. The Registrar/Court Officer will send a copy of this order to IBBI within a week for the needful.

  
(L. N. Gupta)  
Member (T)

  
(Abni Ranjan Kumar Sinha)  
Member (J)