

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)**

IA-2045/2022

In

IB -960(ND)/2020

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF IB -960(ND)/2020:**Mr. PUNJAB NATIONAL BANK****..... Financial Creditor****VERSUS****M/s. SSK TRADING PRIVATE LIMITED****..... Corporate Debtor****AND IN THE MATTER OF IA-2045/2022:****Mr. REETESH KUMAR AGARWAL**

Resolution Professional of the Corporate Debtor

..... Applicant**VERSUS****M/s. SSK TRADING PRIVATE LIMITED & 2 Ors.****..... Corporate Debtor****Order Pronounced On: 02.08.2024****CORAM:****SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)****SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)****APPEARANCES:**

For the Applicant : Mr. Apoorv Sarvaria, Ms. Yashika Sarvaria, Ms. Simran Chadha, Advs.

ORDER**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by Mr, Reetesh Kumar Agarwal, the Resolution Professional of the Corporate Debtor before this

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06/8/24



Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 2nd CoC meeting held on 19.03.2022 with 100% voting shares. The Applicant seeks the following relief:

- "i) Allow the present application and pass an order directing the Corporate Debtor to be liquidated in the manner as laid down in the Insolvency and Bankruptcy Code, 2016*
- ii) Issue a public announcement to that effect and the said order be sent to the ROC Delhi with the Corporate Debtor is registered*
- iii) Any other order(s) which this Hon'ble Tribunal may deem fit and proper in the present circumstances."*


2. **Brief Background of the Case**

An Application was filed by Punjab National Bank ("Financial Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. SSK Trading Private Limited ("Corporate Debtor") under Section 7 of the Code filed before this Adjudicating Authority. This Adjudicating Authority vide order dated 04.01.2022 ("Admission Order") admitted the application and declared a moratorium and appointed Mr. Reetesh Kumar Agarwal as an Interim Resolution Professional.

3. The IRP in compliance of Section 13 of the Code read with Regulation 6 of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A within the specified time i.e. on 07.01.2022, and called upon the creditors to submit their claims in two newspapers in Delhi i.e. Business Standard (English edition) and Business Standard (Hindi edition).
4. The first meeting of the Committee of the Creditors (CoC) was held on 03.02.2022 wherein the report certifying the constitution of the CoC was filed before this Adjudicating Authority vide IA

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(IBC)/545/2022 dated 27.01.2022, and the same was allowed to be taken on record vide order dated 16.02.2022.


5. The Second meeting of the Committee of the Creditors (CoC) was held on 19.03.2022 wherein all the COC members deliberated upon the issue of the possibility of the Resolution Plan but a perusal of the non-availability of employees and latest financial statements, no cash flow, closed business operations of the Corporate Debtor and other relevant factors, the committee considered it most unlikely to receive any Resolution Plan in the matter. Accordingly, a resolution to proceed with the filing of the Liquidation Application was put to voting, which is as under:

“RESOLVED THAT the approval of members of the Committee of Creditors be and is hereby given for the initiation of liquidation process in this Corporate Insolvency Resolution process (CIRP) u/s 33 of Insolvency and Bankruptcy Code 2016 (IBC 2016).

“RESOLVED FURTHER THAT Mr. Reetesh Kumar Agarwal, Resolution Professional of the Company appointed by the Committee of Creditors be and is hereby authorized to do all such acts, deeds, and things as may be considered necessary to give effect to the above resolution.”

6. The result of E-voting on the resolution put forth by the RP whereby the CoC approved the agenda of liquidation by 100% voting share.
7. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
8. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
9. The Hon’ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.



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10. The above-quoted judgement, makes it clear that the “Commercial wisdom of CoC” is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
11. Considering the fact that non-availability of employees and latest financial statements, nor cash flow, closed business operations of the Corporate Debtor and other relevant factors, the committee considered it most unlikely to receive any resolution plan in the matter. Hence, we are of the view that the Liquidation process ought to be initiated against the Corporate debtor.
12. In light of the above facts and circumstances, it is hereby ordered as follows:

- i. The **IA-2045/2022** filed by Mr. Reetesh Kumar Agarwal, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
- ii. The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
- iii. Therefore, this Adjudicating Authority appoints Mr. Suman Kumar Verma as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/





Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-003/00342/2021-2022/13657, the address of the Liquidator is Plot No. Wz-D-9, Kh. No. 83/14, Gali No. 5, Mahavir Enclave, Sulabh International, South West, Delhi-110045 and the e-mail id of the Liquidator is ipskverma@gmail.com and the contact no. of the Liquidator is +919716633301.

Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- iv. Mr. Reetesh Kumar Agarwal, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
- v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- viii. All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section





34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

- ix.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- xi.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- xii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiii.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xiv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.



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- xv.** The Registry is further directed to send a copy of this order to the IBBI for their record.
- xvi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

Prashant
06/8/24



Prashant
Kumar
06.08.2024
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003