

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-183/ND/2018

In the matter of :

AIR SHAGOON (NETWORK) (P) LTD  
THROUGH MR. RISHABH BIRLA (MANAGING DIRECTOR),  
C-37, HAUZ KHAS, NEW DELHI – 110016.

.PETITIONER

Vs.

ASSOCIATED TRADE LOGISTICS (P) LTD,  
THROUGH MR. KAMLESH ARON (MANAGING DIRECTOR),  
KHASRA NO.1976, MAIN MANDI ROAD,  
CHATTARPUR, DELHI – 110030.

..RESPONDENT

SECTION

Under Section 9 of IBC, 2016

Order delivered on 17.9.2019

Coram :

Sh. R. Varadharajan,  
Hon'ble Member (Judicial)  
Shri Kapal Kumar Vohra,  
Hon'ble member (Technical)

For the Petitioner /Op. Creditor :Ms. Nazia Parveen Advocate for Fin. Creditor  
For the Respondent/Corporate Debtor :Mr. Saurabh Tiwari, Advocate  
: Mr. Kamlesh Aron, Director (from suspended Board of Directors)  
For the Intervener : Ms. Sangya Negi, Advocate for RP along with Ms. Shalu  
Khanna, RP in person

ORDER DICTATED IN THE OPEN COURT

This is an Application moved by the Resolution Professional (RP) under Section 33 (2) read with Section 60 (5) of Insolvency & Bankruptcy Code, 2016 (IBC, 2016) seeking for liquidation of the Corporate Debtor as per the averments made and contained in the Application wherein it is stated that in

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the 7th Meeting of Committee of Creditors (COC) held on 28.2.2019, the COC had passed the following Resolution : (Page-3)

"Resolved that considering the matter listed before the Hon'ble NCLT dated 22<sup>nd</sup> February, 2019 and in accordance with the provisions of Section 33 (2) of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors decided to liquidate the company as per the provisions of Insolvency and Bankruptcy Code, 2016 and IBBI (Liquidation process) Regulation, 2016.  
Resolved further that Ms. Shalu Khanna, erstwhile Resolution Professional be and is hereby appointed as the Liquidator of the Company at such fees as prescribed under Insolvency and Bankruptcy Code, 2016 read with IBBI (Liquidation process) Regulation, 2016.  
Resolved further that Ms. Shalu Khanna be and is hereby authorized to do all such acts and deeds as may be required in relation to give effect to the above resolution".

A perusal of the above Resolution as passed in the 7<sup>th</sup> COC Meeting shows that COC had decided to liquidate the Corporate Debtor and it had also recommended the name of the RP to act as the Liquidator of the Corporate Debtor (CD). From the Application, it is evident that the Company was involved in the freight forwarding business and the details of their assets of the CD have been given by way of Tabulation and in the Application, it aggregates to Rs.880,38,407/- as against which, claim has been made by the RP is to the extent of Rs.78,564,998/- as on 28.2.2019.

In the application, it is brought to the notice of this Tribunal that the Corporate Debtor is not carrying out any activities for a period of more than two years when the application was pending before this Tribunal, based on the directions passed by this Tribunal vide Order dated 06.5.2019. It is evident that a Memo has been filed on 21.5.2019 giving out the particulars in relation to the CIR process as conducted by the Ld. RP/IRP appointed by this Tribunal as

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per Tabulation provided in the Memorandum. It is evident that the order of admission was passed on 31.7.2018 by this Tribunal and that CIR process had commenced from the said date. However, it is brought to the notice of this Tribunal that order of admission was received on 07.8.2019 and within the period of 3 days from the date of commencement to be announced, publication was made in the leading newspapers, namely, Financial Express (English) and Jansatta (in Vernacular) on 09.8.2019 calling for the claims and the claims were received. It is also evident that 1<sup>st</sup> COC Meeting was convened by Ld. IRP on 15.9.2018 as per the directions of this Tribunal. It is also evident from the said Tabulation that in the 1<sup>st</sup> Meeting of the COC, it was decided to replace the IRP with the present RP and passed a Resolution, Application was moved in CA No.02/C-III/ND/2018 by the COC and order was rendered approving the change on 23.1.2019 by this Tribunal.

From the record of proceedings, it is also evident that in the Company Application No.131/2019, this Tribunal had excluded the 41 days from the CIR process from 27.12.2018 to 05.2.2019 thereby extending the period of completion of CIR process of the Corporate Debtor. Further, by virtue of the said order dated 22.2.2019, it is evident that based on the circumstances stated in the Order, COC was directed to reconsider its decision in relation to seeking for extension of time for CIR process. The above order dated 23.7.2019, in the meanwhile, a Resolution has been passed by the COC recommending the liquidation of the Corporate Debtor, CA No.131/C-III/ND/2019 was allowed to be withdrawn by the RP based on the request of the RP seeking for extension of time. From the Tabulation, it is evident that meetings have been conducted on the following dates and the respective COC meetings were held or conducted by the IRP/RP :

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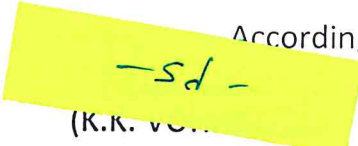
|                         |              |
|-------------------------|--------------|
| 1st Meeting             | : 15.09.2018 |
| 2 <sup>nd</sup> Meeting | : 25.09.2018 |
| 3 <sup>rd</sup> Meeting | : 29.10.2018 |
| 4 <sup>th</sup> Meeting | : 15.12.2018 |
| 5th Meeting             | : 20.12.2018 |
| 6 <sup>th</sup> Meeting | : 07.02.2019 |
| 7 <sup>th</sup> Meeting | : 28.02.2019 |

Ms. Shalu Khanna, registered with IBBI having Registration No.IBBI/IPA-P00917/2017-2018/11523 is hereby appointed as the Liquidator in view of his consent having been furnished to act as such to carry forward the liquidation of the CD henceforth. The Liquidator appointed shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him. Further,

- a. The Liquidator appointed herein shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workers of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge ;
- b. The Liquidator shall investigate the financial affairs of the CD, particularly in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences. The Liquidator shall continue to prosecute before this Tribunal.
- c. The registry is directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the CD, the Liquidator shall also duly intimate about the order of liquidation.
- e. The order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the IBC, 2016 shall commence;
- f. The liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of Part II of the Insolvency and Bankruptcy Code, 2016
- g. The liquidator is directed to investigate the financial affairs of the CD in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and prosecute or file its response for disposal of any pending Company Applications during the process of liquidation;
- h. The liquidator shall submit a Preliminary report to this Tribunal within seventy-five days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be furnished to the Members of COC by the Liquidator who shall make available all the financial resources for the Liquidation of the CD

Accordingly, this application is disposed off in the aforesaid terms.

  
(K.K. V...  
MEMBER (TECHNICAL)

  
MEMBER (JUDICIAL)