

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court – I)  
KOLKATA**

**IA(IBC)/1203(KB)2022  
in  
CP (IB)/1227(KB)2019**

*Under section 33 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of:*

Trux App Private Limited  
(CIN: U63033DL2015PTC327070)

... Operational Creditor

*Versus*

Safe Cargo Movers Private Limited  
(CIN: U74999WB2011PTC168764)

...Corporate Debtor

*And*

*In the matter of:*

Mr. Surendra Kumar Agarwal,  
RP of Safe Cargo Movers Private Limited

... Applicant

**Order reserved on: 10/01/2023**

**Order pronounced on: 20/02/2023**

***Coram:***

**Shri Rohit Kapoor**

**: Member (Judicial)**

**Shri Balraj Joshi**

**: Member (Technical)**

*Appearances (through video conferencing):*

For Applicant in IA/1203/2022

: Ms. Shreya Chaudhary, Adv.  
Mr. Surendra Kr. Agarwal, RP in person

For Respondent No.5 in  
IA/1125/2022

: Ms. Prerona Banerjee, Adv.

For Respondent No.4 in  
IA/1125/2022

: Ms. Bidisha Achari, PCS

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For Applicant : Ms. Mandira Tarat, Adv.  
Mr. Ritoban Sarkar, Adv.

For R-1 & R-2 in IA/979/2022 : Mr. Arani Guha, Adv.  
& R-1 to R-3 in IA/1125/2022 Ms. Madhuri Pandey

## **ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/1203(KB)2022 is an application filed by the Resolution Professional (“**RP**”) upon the instructions of the Committee of Creditors (“**CoC**”) seeking liquidation of the Corporate Debtor, *viz.*, **Safe Cargo Movers Private Limited (CIN: U74999WB2011PTC168764)**, on the ground that no Express of Interest (“**EoI**”) has been received till the last date of submission of EoI on 01/08/2022. This application is supported by an affidavit duly affirmed by the RP, which is placed at pages 17 to 19 of the application.
3. This Adjudicating Authority *vide* its order<sup>1</sup> dated 18/04/2022 on a Petition filed by Trux App Private Limited (*Operational Creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) directed initiation of the Corporate Insolvency Resolution Process (**‘CIRP’**) against the Corporate Debtor and appointed Mr. Surendra Kumar Agarwal, Applicant herein, as the Interim Resolution Professional (**‘IRP’**). At the first CoC meeting<sup>2</sup> held on 19/05/2022, IRP was confirmed as RP.
4. In terms of section 15 of the Code, public announcement in Form ‘A’ was published on 20/04/2022 inviting claims from the creditors by 02/05/2022. The Committee of Creditors (“**CoC**”) was duly constituted as follows:

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<sup>1</sup> Annexure “A” at pages 24 to 28 of the application

<sup>2</sup> Annexure “B” at pages 29 to 41 of the application

Sl.No.	Financial Creditor	Voting percentage	Accepted	Rejected	Abstained
1	State Bank of India	8.95%	8.95%	-	-
2	Reliance Home Finance Ltd.	91.05%	91.05%	-	-
		100%	100%		

On receipt of one more claim from DCB Bank Ltd., Financial Creditor, on 10/05/2022. Upon verification of their claim DCB Bank Ltd. was included in the CoC and the CoC was duly reconstituted as follows: -

Sl.No.	Financial Creditor	Voting percentage	Accepted	Rejected	Abstained
1	State Bank of India	7.95%	7.95%	-	-
2	Reliance Home Finance Ltd.	80.97%	80.97%	-	-
3	DCB Bank Ltd.	11.08%	11.08%	-	-
		100%	100%		

5. It is submitted by the Ld. Counsel appearing for the RP that public announcement<sup>3</sup> in Form G was published on 04/07/2022 in “**Business Standard**” (English) and “**Amar Bangla**” (Bengali) inviting claims from prospective resolution applicants. The last date of submission of EoI was on 01/08/2022. However, in response to the said public announcement no EoI was received.
6. The CoC at its 6<sup>th</sup> meeting<sup>4</sup> held on 23/09/2022 had resolved to proceed for liquidation of the Corporate Debtor by 92.05% voting share appointing the Applicant as the Liquidator. The resolutions passed by the CoC at the aforesaid 6<sup>th</sup> CoC meeting is reproduced hereinbelow: -

*“RESOLVED THAT the corporate debtor be hereby recommended for liquidation considering the non-availability of resolution applicant as per section 33(2) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016;”*

<sup>3</sup> Annexure “C” at pages 42 to 43A of the application

<sup>4</sup> Annexure “D” at pages 44 to 49 of the application

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*“RESOLVED FURTHER THAT the CoC hereby authorises Resolution Professional to prepare, file and do all the necessary deeds for obtaining the order for liquidation of the Corporate Debtor by approaching the Adjudicating Authority.”*

*“RESOLVED THAT Mr. Surendra Kumar Agarwal, Resolution Professional having registration number with IBBI/IPA-001/IP-P00825/2017-18/11401 be and is hereby proposed to be appointed as liquidator of the Corporate Debtor for the purpose of liquidation process.”*

7. A copy of the written consent<sup>5</sup> dated 08/10/2022 along with Authorisation for Assignment<sup>6</sup> in Form B given by the RP in prescribed Form was also annexed to the application. Altogether, the IRP/RP had held Six CoC meetings before going for liquidation.
8. In terms of the order dated 02/12/2022 passed by this Adjudicating Authority, the applicant has duly submitted estimated liquidation cost approved by the CoC by way of a supplementary affidavit, which was duly affirmed by the RP on 13/12/2022.
9. In the meantime, the CIRP period has expired on 14/10/2022.
10. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
11. A conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.
12. This Bench, therefore, hereby orders as follows: -
  - a. **IA(IBC)/1203(KB)2022** filed by **Mr. Surendra Kumar Agarwal, Resolution Professional of Safe Cargo Movers Private Limited,**

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<sup>5</sup> Annexure “F” at pages 51 to 52 of the application

<sup>6</sup> Annexure “G” at pages 53 of the application

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-section (1) thereof.

- b. **Mr. Surendra Kumar Agarwal [Reg. No. IBBI/IPA-001/IP-P00825/2017-2018/11401], E-mail ID: [surendraca@gmail.com](mailto:surendraca@gmail.com)**, is hereby appointed as liquidator as provided under section 34(4)(c) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers, i.e. **“Business Standard” (English), and “Amar Bangla” (Bengali)**, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. 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 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.

- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
  - i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
13. The application bearing **IA(IBC)/1203(KB)2022** shall stand disposed of in terms of the above directions.
  14. **CP(IB)/1227(KB)2019** to come up for filing of periodical report on **17/04/2023**.
  15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
  16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this, the 20<sup>th</sup> day of February, 2023

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