

**NATIONAL COMPANY LAW TRIBUNAL**  
**COURT ROOM NO. 1,**  
**MUMBAI BENCH**

**Item No. 25**

**IA 5498/2023 IA 2927/2022 IA 3259/2022 IA 3418/2022 in C.P.**  
**(IB)/406(MB)2022**

CORAM:

**SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)**  
**HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **04.12.2023**

NAME OF THE PARTIES: **TRANSOLUTIONS INDIA**  
**INCORPORATION VS PROTOCOL**  
**MARINE SERVICES PRIVATE LIMITED**

Section 60(5), 33 and 9 of the Insolvency and Bankruptcy Code, 2016

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**ORDER**

**IA 5498/2023**

- 1) Ms. Disha Shah, Ld. Counsel for the Applicant, Resolution Professional of the Corporate Debtor is present.
- 2) This is an Interlocutory Application filed by the Resolution Professional (Deemed) **Mr. Sanjay Mahajan** under Section 33(2) r/w 34(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against **Protocol Marine Services Private Limited** (Corporate Debtor).

- 3) The facts leading to the case in hand are as follows:
- a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal *vide* order dated **07.10.2022** upon admission of a Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) and Mr. Swapnil Mukund Agrawal, was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under the Code.
  - b. It is submitted that the Resolution for appointment of the Applicant herein to act as Resolution Professional of the Corporate Debtor was passed in the 2<sup>nd</sup> meeting of the Committee of Creditors held on 29.11.2022. Thereafter, an Interlocutory Application bearing IA No. 3957 of 2022 was filed seeking replacement of Mr. Swapnil Mukund Agarwal with the Applicant herein and the same was allowed on 04.01.2023. However, it is submitted that the Applicant has received a copy of the said order only on 09.01.2023.
  - c. It is further submitted that the erstwhile IRP received only Three (3) Expression of Interests (EOIs) in the specified format till 17.01.2023, and thereafter the IRP issued the provisional list of Prospective Resolution Applicants (PRAs) on 20.01.2023. However, it is further submitted that upon requests of PRAs, the Committee of Creditors

resolved to provide an extension of Fifteen (15) days thereby giving them an additional opportunity for submission of their EOIs for submission of Resolution Plan for the Corporate Debtor.

- d. Thereafter, the Applicant has filed an Interlocutory Application bearing IA No. 2385 of 2023, seeking extension of period of CIRP by Ninety (90) days thereby extending the period till 05.09.2023, for completion of the CIRP of the Corporate Debtor so that necessary steps can be taken to bring the CIRP to its logical conclusion. The said Application was allowed on 11.07.2023.
- e. However, in the 8<sup>th</sup> meeting of Committee of Creditors held on 25.07.2023, the Authorised Representative of one of the Members of the Committee of Creditors (i.e. Abhyudaya Bank) expressed his view that all the three plans as received are much below their expectations and therefore not acceptable. He further submitted that there is a good value to the assets of the Corporate Debtor and hence, the Committee of Creditors should consider to publish Form G once again to call for fresh EOIs for submissions of Resolution Plans. Since Two (2) days were given to PRAs for submitting their improvised offer, the Members of Committee of Creditors were requested to wait for their revised offer and further suggested that if the Committee of Creditors do not find the plan value to be satisfactory, they may take a decision

to publish Form G once again. However, even after giving time only one Resolution Applicant i.e. M/s Shanti G.D. Ispat and Power Private Limited submitted their Resolution Plan. Further, in the 9<sup>th</sup> meeting of Committee of Creditors held on 31.07.2023, the Applicant herein placed before the members of Committee of Creditors the agenda for discussion to approve the criteria for submission of EOIs for submissions of Resolution Plan and publishing of Form G again for inviting fresh EOIs and the Resolution was put to vote, which was approved with 92.19% vote in favour; accordingly, Form G was once again published on 05.08.2023.

- f. It is submitted that pursuant thereto Provisional list of PRAs was published on 25.08.2023 and the last date for submission of the Resolution Plans was 27.09.2023. Considering these timelines, the Applicant herein filed one more Application seeking extension of Sixty (60) days beyond Two Hundred and Seventy (270) days till 04.11.2023, for successful completion of the CIRP of the Corporate Debtor. The said Application was allowed on 11.10.2023, thereby extending the CIRP period till 04.11.2023.
- g. The Committee of Creditors meeting was held on 31.08.2023, the Applicant herein apprised the Membered about all three PRAs who have submitted the EOIs, out of which M/s Shanti G.D. Ispat and

Power Pvt Ltd and M/s Sayaan Ventures Private Limited, who had participated in the previous EOI process, have withdrawn from the process and asked for refund of the process participation deposit. Thereafter, in the 11<sup>th</sup> meeting of CoC held on 04.10.2023, the Applicant herein apprised the CoC members about the above said facts and also informed that M/s Narendra Forwarders Private Limited *vide* E-mail dt. 23.09.2023, expressed their wish to withdraw from the Resolution Plan process without giving any reason and requested for refund of the process participation deposit.

- h. Finally, as per the discussions in the previous meeting, the Applicant circulated the Resolution Plan to Members of CoC on 13.10.2023. Thereafter, in 13<sup>th</sup> CoC meeting held on 17.10.2023, an agenda for consideration of the Resolution Plan dt. 26.09.2023 received from M/s Indus Petrochem Limited was placed. Since, the value of the Resolution Plan was less than the earlier Plan received, the Members decided not to invite the PRAs as there was no improvisation in the value of the amount offered by the PRA and continued with the next agenda of the meeting.
- i. Hence, the Resolution was passed by the Committee of Creditors to Liquidate the Corporate Debtor and also passed Resolution for

appointment of the Liquidator and fee of the Liquidator. The said Resolutions are quoted below for the convenience:

**To consider and discuss the liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016**

*“RESOLVED THAT pursuant to Section 33 of the Insolvency and Bankruptcy Code, 2016 and in accordance with relevant Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and any other applicable provision of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the Members of the Committee of Creditors of Protocol Marine Services Private Limited be and is hereby accorded, for liquidation of the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016*

*RESOLVED FURTHER THAT the Committee of Creditors hereby authorises Mr. Sanjay Mahajan, Resolution Professional to file an Interlocutory Application under Section 33 of the Insolvency and Bankruptcy Code, 2016”.*

It is submitted that the above said Resolution was approved with 94.97% votes in favour.

**To discuss, consider and approve appointment of Liquidator and approval of fee of the Liquidator under Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

*“RESOLVED FURTHER THAT the consent of Members be and is hereby accorded to appoint Mr. Sanjay Mahajan as the Liquidator of the Company and be paid a fees as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (plus taxes and out of pocket expenses), which shall be subject to actuals, up to the completion of dissolution of the Corporate Debtor”*

- 4) However, the Committee of Creditors in their 14<sup>th</sup> CoC meeting held on 30.10.2023, have passed a Resolution thereby approving the appointment of Mr. Harish Kant Kaushik, having Insolvency Registration No. **IBBI/IPA-001/IP-P01469/2018-2019/12340**, to act as the Liquidator of the Corporate Debtor up to the completion of dissolution of the Corporate Debtor, as per the applicable Regulations of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 with 99.58% votes in favour.

- 5) The proposed Liquidator Mr. Harish Kant Kaushik has also given their written consent to act as the Liquidator of the Corporate Debtor. The said written consent is annexed and marked as Exhibit-M, to the present Interlocutory Application.
- 6) Having considered the submissions and upon perusal of averments made in the present Interlocutory Application, this Bench is satisfied and is of the considered view that the present Interlocutory Application is in consonance with Section 33(2) r/w Section 34(1) of the Code.
- 7) Further, taking note of the fact that PRAs who have shown interest to submit Resolution Plans have withdrawn their Plans; hence, this Authority has left with no option except to pass an order for Liquidation of the Corporate Debtor Company, **Protocol Marine Services Private Limited**, in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration. Hence ordered.

### **ORDER**

- a) The Application be and the same is allowed. The Corporate Debtor, **Protocol Marine Services Private Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Harish Kant Kaushik**, having Insolvency Registration No. **IBBI/IPA-001/IP-P01469/2018-2019/12340** is appointed as Liquidator of **Protocol Marine Services Private Limited**.

- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor;** and the Liquidator, **Mr. Harish Kant Kaushik**, having address at 106, Kanakia Atrium 2, Cross Road A, Chakala MIDC, Andheri East, Landmark behind Courtyard Marriott,

Mumbai – 400 093, having E-mail Address:  
[harishkant2007@gmail.com](mailto:harishkant2007@gmail.com).

- 8) With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 5498 of 2023**, stands disposed of as Allowed. There would however be no order as to costs. Ordered Accordingly.

**IA 2927/2022**

- 1) The present Interlocutory Application has been filed by the Operational Creditor seeking rectification in the order dt. 07.10.2022, to the extent of the replacement of the proposed Interim Resolution Professional.
- 2) However, the Bench has now passed the Liquidation Order; hence, the present Interlocutory Application becomes meaningless. Accordingly, the Interlocutory Application bearing IA No. 2927 of 2022, is disposed of as become infructuous.

**IA 3259/2022**

- 1) The present Interlocutory Application has been filed by erstwhile Interim Resolution Professional of the Corporate Debtor seeking direction against the Operational Creditor to pay an amount of Rs. 3,00,000/- stated in the order of the Admission of the Corporate Debtor.
- 2) However, the Bench has now passed the Liquidation Order; hence, the present Interlocutory Application becomes meaningless. Accordingly, the

Interlocutory Application bearing IA No. 3259 of 2022, is disposed of as become infructuous.

**IA 3418/2022**

- 1) The present Interlocutory Application has been filed by erstwhile Interim Resolution Professional of the Corporate Debtor for submission of the Preliminary Report under Regulation 13(1) of the IBBI Regulations, 2016.
- 2) The said Preliminary Report filed by the Applicant is taken on record. No order is called for.
- 3) The Interlocutory Application bearing IA No. 3418 of 2022, is disposed of as Allowed.

**Sd/-**

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**Sd/-**

**JUSTICE VIRENDRASINGH BISHT  
MEMBER (JUDICIAL)**

Vedant Kedare