

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, SPECIAL BENCH (COURT-II)

IA-1480/ND/2019
IN
Company Petition No. (IB)-1373(ND)2019

IN THE MATTER OF :

M/s. Advance Cargo Movers (India) Pvt. Ltd.

...Operational Creditor

Versus

M/s SBS Transpole Logistics Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF :

Mohan Lal Jain

Resolution Professional of the Corporate Debtor

M/s SBS Transpole Logistics Pvt. Ltd.

F-2/28, Sector-15

Rohini, Delhi-110089

...Resolution Professional/Applicant

Versus

1. Mr. Vivek Shukla

Suspended Director

M/s SBS Transpole Logistics Pvt. Ltd.

E-301, Central Park-1, Golf Course Road, Sector-42

Sikandarpur Ghosi (68) Gurgaon-122002 ...Respondent No. 1

2. Mr. Ashok Kumar

Suspended Director

M/s SBS Transpole Logistics Pvt. Ltd.

1590, Gali Arya Samaj Bazar Sita Ram

Delhi-110006

...Respondent No. 2



Under Section: 33(2) & 34(1) of the IBC, 2016.

CORAM:

SHRI B. S. V. PRAKASH KUMAR, HON'BLE ACTING PRESIDENT

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. I.P.S. Oberoi, Advocate

ORDER

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

This is an Application filed by Mr. Mohan Lal Jain, Resolution Professional of M/s SBS Transpole Logistics Private Limited (hereinafter referred as 'Applicant') under Sections 33(1)(a), 33(2) & 33(2) of the Insolvency & Bankruptcy Code, 2016 seeking the following main reliefs:

- "i. Allow the present application for liquidation of the Corporate Debtor and pass orders for its liquidation under section 33(1)(a) and 33(2) of Insolvency and Bankruptcy Code, 2016."*
- "iv. Appoint the applicant, Mohan Lal Jain, an Insolvency Professional, IBBI Registration No. IBBI/IPA-002/IP-N00006/2016-17/10006 as the Liquidator under Section 34(1)."*



2. To put succinctly, facts of the case are that the Operational Creditor, M/s Advance Cargo Movers India Private Limited had filed an Application bearing No. (IB)-1373(ND)/2019 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process of M/s SBS Transpole Logistics Private Limited. The said Application was admitted by this Tribunal vide its Order dated 04.09.2019 and Mr. Mohan Lal Jain was appointed as the Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in the Form-A, which was published in the newspapers namely, the Financial Express (English) and Jansatta (Hindi) and Nav Shakti (Marathi) on 06.09.2019. The public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted the Committee of Creditors (CoC) on 27.09.2019 comprising of a sole Financial Creditor namely, M/s CFM Asset Reconstruction Pvt. Ltd, having voting share of 100 %.

5. That the IRP Mr. Mohan Lal Jain was confirmed as Resolution Professional (RP) of the Corporate Debtor (CD) vide Order dated 01.11.2019 passed by this Tribunal.



6. In his averments, it is stated by the Applicant that there are no fixed assets in the books of the Corporate Debtor, since the assets were already sold by the Financial Creditor namely M/s. CFM Asset Reconstruction Pvt. Ltd. It is added that there is no operational activity for over 3 years and chances of realisation of any value from the net current assets of the Corporate Debtor are very meagre.

7. It is further submitted by the Applicant that M/s. CFM Asset Reconstruction Pvt. Ltd, the only member of the CoC having 100% voting share expressed that the Liquidation Process of the Corporate Debtor should be initiated right away, with an aim to minimise the time and cost of the Corporate Insolvency Resolution Process. It is added that the subsidiaries of the Corporate Debtor are also defunct and there is no fixed asset.

8. It is stated by the Applicant that in the 2nd Meeting of Committee of Creditors held on 18.10.2019, the following Resolution was placed for its consideration and vote. The details of the Resolution placed are reproduced overleaf :



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Accordingly, the resolution to that effect was put to vote by ballot paper for the members present at the meeting. The following resolution was voted in favour by the members present with 100% voting share:

"RESOLVED THAT pursuant to the *explanation* to the provision of Section 33(2), Section 35(1)(e) and Section 33(7) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of committee of creditors be and is hereby accorded to initiate liquidation proceedings of SBS Transpole Logistics Pvt. Ltd. ("Corporate Debtor") and authorise Mr. Mohan Lal Jain, Resolution Professional to file an application for the initiation of the liquidation with the Adjudicating Authority.

RESOLVED FURTHER THAT pursuant to the provisions of Section 34(1) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, the approval of the committee be and is hereby accorded to appoint Mr. Mohan Lal Jain, Resolution Professional, to act as the Liquidator for the purpose of the liquidation of SBS Transpole Logistics Pvt. Ltd. ("Corporate Debtor") at a fee as may be decided by the committee as per Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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9. It is submitted by the Applicant that the aforesaid Resolution was passed by 100% voting share. The same is recorded in the minutes of 2nd Meeting of CoC held on 18.10.2019.

10. That the RP has also filed his written consent dated 30.10.2019 to act as Liquidator as required under Section 34(1) of the IBC, 2016.



11. In the light of the letter no. IBBI/IP/EMP/2019/01/849/83 dated 16.01.2020 from IBBI to the Registrar, this Tribunal Vide its order dated 23.11.2020 had sought clarification from the IBBI whether there is any restriction on appointment of Sh. Mohan Lal Jain as Liquidator. The IBBI vide its reply affidavit dated 11.12.2020 has clarified that “...in view of the order of Hon’ble High Court and its compliance by Applicant Mr Jain and validity of AFA being till December 03,2021, at present there is no bar for Mr Jain for accepting assignments under the Code subject to otherwise eligible.” During the course of hearing held on 14.12.2020, the counsel appearing for IBBI too confirmed that there is no bar on Mr. Mohan Lal Jain for accepting assignments under the Code.

12. In the circumstances this Bench is inclined to accept the resolution of the COC and order Liquidation of the Corporate Debtor.

13. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. SBS Transpole Logistics Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

- a. Mr. Mohan Lal Jain, having IBBI Registration No. IBBI/IPA-002/IP-N00006/2016-17/10006, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;



- b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any;
- f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- g. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor and Liquidator Mr. Mohan Lal Jain at the earliest but not later than seven days from today;

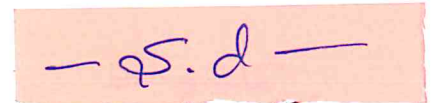


- h. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days; and
- i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

14. IA-1480/ND/2019 filed in IB-1373(ND)/2019 is **allowed** in the aforesaid terms.



(B.S.V. PRAKASH KUMAR)
ACTING PRESIDENT



(L. N. GUPTA)
MEMBER (TECHNICAL)