

NATIONAL COMPANY LAW TRIBUNAL NEW DELHI
PRINCIPAL BENCH

IA-1996/2021

IN

Company Petition No. (IB)-2011 (PB)2019

IN THE MATTER OF :

Vandana Motors

....Operational Creditor

Versus

M/s On Dot Courier and Cargo Ltd.Corporate Debtor

AND IN THE MATTER OF :

Mr. Shyam Arora

Resolution Professional of

On Dot Courier & Cargo Limited

96, Aravali Appartment, Alaknanda

New Delhi-110019 ...Applicant/Resolution Professional

Versus

1. Mr. Debbrata Patra

(Suspended Director of On Dot Courier & Cargo Ltd.)

A-7/136, Second Floor

Sector-17, Rohini

New Delhi-110042

...Respondent No.1

2. Mr. K.K. Sharma

(Suspended Director of On Dot Courier & Cargo Ltd.)

Plot No. 136-140/1

Phase -1, Chandigarh-160031

...Respondent No.2

3. Mr. Sachin

(Suspended Director of On Dot Courier & Cargo Ltd.)

37, Sarai Kaley Khan

New Delhi-110013

...Respondent No.3

Order Delivered on : 24.05.2021

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

CORAM:

SH. B.S.V PRAKASH KUMAR HON'BLE ACTG PRESIDENT

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Shyam Arora, RP

ORDER

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

The present IA has been filed by Mr. Shyam Arora, the Resolution Professional of M/s On Dot Courier and Cargo Limited. (**‘the Applicant’**) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking the following main reliefs:

- a) *“To order for the Liquidation of the Corporate Debtor as per Section 33(1) of the IBC, 2016 and in terms of the decision taken in the 4th COC Meeting of the Corporate Debtor held on 31.03.2021;.*
- b) *To appoint the Applicant i.e Mr. Shyam Arora, Insolvency Professional having Regn. No. IBBI/IPA-02/IP-N00546 /3017-2018/11703, as the Liquidator if the Hon’ble Tribunal so desires to Liquidate Corporate Debtor in terms of the IBC, 2016 and with IBBI (Liquidation Process) Regulations, 2016; and*

c) Pass any other/further order(s) as this Hon'ble NCLT deems fit in facts and circumstances of the matter.”

2. To put succinctly, the facts of the case are that the Operational Creditor, M/s Vandana Motors had filed an Application bearing No. (IB)-2011/(PB)/2019 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s On Dot Courier and Cargo Limited. The said Application was admitted by this Tribunal vide Order dated 26.02.2020 and Mr. Shyam Arora was appointed as the Interim Resolution Professional (IRP).

3. That the IRP Mr. Shyam Arora was confirmed as Resolution Professional (RP) of the Corporate Debtor vide Order dated 18.01.2021 passed by this Tribunal.

4. It is submitted by the Applicant that as per decision of the CoC, the Applicant invited the Expression of Interest (EOI) from the prospective resolution applicants by publishing FORM-G under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 twice on 01.01.2021 and 12.02.2021. It is added that the said publication of Form-G was made in the newspapers namely, Financial Express (English) and Jansatta (Hindi). The Copy of the Form G has been placed on record vide Additional Affidavit dated 19.05.2021.

5. It is further submitted that in spite of the publication of the Form G twice, the Applicant received no Expression of Interest.

6. It is averred by the Applicant that as the Corporate Debtor (CD) was in the business of retail Courier and Logistic Services, it was difficult for it to survive in the industry due to heavy competition from

the big players and also due to rapid changes in the technology which required heavy capital expenditure.

7. It is submitted by the Applicant that the 4th meeting of the CoC held on 31.03.2021 took note of the fact that no resolution Applicant has come forward pursuant to publication of the Form 'G' twice and passed the Resolution recommending Liquidation of the CD.

8. That after observing some discrepancies and deficiencies in the Application, certain clarifications including as to how the resolution passed by the CoC in its 4th meeting recommencing Liquidation of the Corporate Debtor was in terms of Section 33(2) of IBC 2016, were asked from the Applicant on 17.05.2021. The Applicant was further directed to bring on record the Liquidation value of the Corporate Debtor as well as the Publications made in Form A and Form G.

9. That in response to the clarifications sought, the Applicant has filed an Additional Affidavit dated 19.05.2021, wherein in para 5 it is disclosed by the Applicant.....*“That the Average fair value of assets (Movable and Immovable) as per the valuation conducted by two Registered valuers in terms of Regulation 27 of the IBBI (IRPCP) Regulations 2016 is Rs. 95.77 Lacs and Average Liquidation value is arrived at Rs 78.34 Lacs respectively”.*

10. It is submitted by the Applicant that in terms of Regulation 6(1) of the IBBI (IRPCP) Regulations 2016, Form-A for invitation of claims was published in the newspapers namely, Financial Express (English)

and Jansatta (Hindi) on 29.02.2020. The copy of the Form A has been placed on record vide Additional Affidavit dated 19.05.2021.

11. It is further submitted by the Applicant that the COC in its 4th meeting held on 31.03.2021 finding that no resolution Applicant has come forward, considered the following Resolution as Item No. 8 :

“

Item No.8

To consider and approve the recommendations to be sent to Hon'ble NCLT for liquidation in absence of any plan for Resolution.

”

12. It is further submitted by the Applicant that the aforesaid agenda of Liquidation was approved by 87.82% voting share of the CoC. The members of COC at serial no. 1 & 2 voted in favour of the agenda :

S.N	Name of the Creditors	Amount of claim admitted	% of Voting share
1.	Shakti Cargo & Logistics (Operational Creditor)	16,30,062.00	54.63
2.	Vandana Motors (Operational Creditor)	9,90,492.00	33.19
3.	ESIC ,Chandigarh (Operational Creditor)	3,63,451.00	12.18
			Not Voted
	Total	29,84,005.00	100.00

13. That the Applicant through its Additional Affidavit dated 19.05.2021 has also brought on record the statements of M/s Shakti Cargo & Logistics and M/s Vandana Motors, both members of the CoC who voted in favour of the Liquidation of the CD in the the 4th meeting of the COC held on 31.03.2021. It is stated by them that they participated in the 4TH Meeting of COC through VC and voted on the

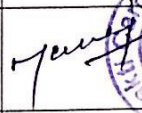
resolution recommending Liquidation of the CD and for appointing applicant/RP as the Liquidator. They have further declared that they have signed the relevant physical voting sheets.

14. That the relevant voting sheets (page 28 & 35) approving the Item no 8 recommending Liquidation of the CD and signed by the members of COC as annexed to the Application are reproduced below -

Voting sheet as per Regulation 24(4) of IBBI (CIRP) Regulations 2016 in the Fourth Meeting of the COC of M/s On Dot Courier and Cargo Ltd. held on Wednesday ,31st March, 2021 at 3.00 P.M. through video conferencing from 96,Aravali Apartment, Alaknanda, New Delhi-110019

Resolution No. 3 (Item No. 08 of the Agenda)

To Consider and Approve the recommendations to be sent to Hon'ble NCLT for Liquidation in absence of any plan for Resolution.


S.N.	Name of The Claimant and its Representative	Voting Share %	Approve %	Reject %	Signatures
1.	Shakti Cargo and Logistics (Operational Creditor) Mr.Manoj Bhat	54.63	Approved	—	
2.	Vandana Motors (Operational Creditor) Mr. Pradeep Kumar	33.19			
3.	RD, Employees State Insurance Corporation , Punjab	12.18			



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Resolution No. 3 (Item No. 08 of the Agenda)

To Consider and Approve the recommendations to be sent to Hon'ble NCLT for Liquidation in absence of any plan for Resolution.

S.N.	Name of The Claimant and its Representative	Voting Share %	Approve %	Reject %	Signatures
1.	Shakti Cargo and Logistics (Operational Creditor) Mr. Manoj Bhat	54.63			For VANDANA MOTORS
2.	Vandana Motors (Operational Creditor) Mr. Pradeep Kumar	33.19	APPROVED	→	 Partner
3.	RD, Employees State Insurance Corporation , Punjab	12.18			

15. That the Applicant/RP has also filed his 'written communication' to act as Liquidator of the Corporate Debtor in Form 2 as required under Section 34(1) of the IBC, 2016.

16. In the circumstances and there being no other alternative, this Bench is inclined to accept the relevant Resolution of the COC dated 31.03.2021 and order Liquidation of the Corporate Debtor.

17. In sequel to the above, **the present IA is allowed, ordering Liquidation of the Corporate Debtor - M/s. On Dot Courier and Cargo 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. Shyam Arora, having IBBI Registration No. IBBI registration Number (IBBI/IPA-002/IP-N00546/3017-18/11703), 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 this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Mr. Shyam Arora 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;
- i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board (IBBI) of India for their record.

18. IA-1996/2021 filed in IB-2011(PB)/2019 is allowed in the aforesaid terms.

Sd/-
(B.S.V PRAKASH KUMAR)
ACTING PRESIDENT

Sd/-
(L.N. GUPTA)
MEMBER(TECHNICAL)