

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

MA 519 in CP 249/I&BP/2017

Under section 33 r/w 60 (5) (c) of
the IBC, 2016

In the matter of
Swift Shipping and Freight Logistics Pvt. Ltd.

Uday Vinochandra ShahApplicant/IRP

Order delivered on 20.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Uday V. Shah, IRP in person & Mr. Ashish B., Jr.
on behalf of Mr. Mihir M. Tambe, Adv.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open Court on 10.11.2017

It is an Application filed under Section 33 r/w Section 60 (5)(c) of Insolvency and Bankruptcy Code, 2016 (Code) by the Interim Insolvency Professional seeking an order for liquidation of the Corporate Debtor by appointing the interim Insolvency Resolution Professional (IRP) to act as liquidator for the purpose of liquidation.

2. On the moratorium order passed by this Bench on 19.04.2017, since this Applicant has been appointed as Interim Resolution Professional, made the requisite public announcement on 29.04.2017, thereafter he appointed two registered valuers, then issued notices to the creditors namely Thandiram Textiles Pvt. Ltd. and another creditor namely Navbharat Archive Xpress Private Limited. When those two Operational Creditors did not respond to the notices for filing their claims before the IRP, this Insolvency Resolution Professional filed this Miscellaneous Application after expiry of Corporate Insolvency Resolution Plan (CIRP) period of 180 days.

3. On perusal of record, it appears that this Bench passed an order on 19.04.2017 admitting the Company Petition filed u/s 10 of Insolvency and Bankruptcy Code for the Corporate Debtor committed default in discharging liabilities. This Applicant, being appointed as Insolvency Resolution Professional, gave required public announcement on 29.04.2017 in two newspapers namely Hindustan Times and Maharashtra Times in accordance with Regulation 6 of the Code inviting creditors of the Corporate Debtor to submit their claims up to 11.5.2017. Consequent to the public announcement, this Applicant appointed two registered Valuers under Regulation 27 of CIRP Regulations, 2016 for determining the liquidation value of the asset of the Corporate Debtor company. When no one came forward with claims, on seeing the names of two creditors in the Books, the IRP issued separate notices to those creditors, but no responses to those notices as well. Then the Applicant himself made an application to HDFC Bank and Standard Chartered Bank for the Bank Statement as of date, responding to the same, to which, the Standard Chartered bank gave Financial Statement for the Financial year 2016-17, but whereas the HDFC bank has not responded to the notice till date.

4. To get valuation of the company, the Applicant provided requisite information to the registered two Valuers in order to enable them to prepare the valuation reports, with input given by the Applicant herein, these two registered valuers gave their valuation reports dated 26.05.2017 to the applicant.

5. The Applicant herein has also placed The summary of outstanding liabilities which is as mentioned below:

Summary of Outstanding Liabilities		
Particulars	Amt. (₹)	Amt. (₹)
From Related Parties :		4,07,65,140
From Non-Related Parties:		
Trade Payables:	8,04,883	
Receivables – (Asia Pacific + Premier Ltd.)	(91,42,080)	
Provision for Doubtful Debts	2,43,30,185	

Notional Liability for Foreign Exchange Difference	1,49,28,436	
Short Term Provisions	18,25,150	
Statutory Liabilities	(1,04,958)	
Salary & Bonus Payable	2,47,097	
Unexplained Liabilities	1,25,97,044	4,54,85,757
Grand Total		8,62,50,897

6. Likewise, the Applicant herein reflected Assets of the company which is as follows:

Cash & Cash Equivalents:

Particulars	As at 31 st March 2015	As at 31 st March 2014
Balance with Banks		
In Current Account	3,699,897	4,122,693
Cash on hand	13,335	13,335
Total	3,713,232	4,136,028

Short-Term Loans and Advances

Particulars	As at 31 st March 2015	As at 31 st March 2014
Security Deposits		
Unsecured, considered goods	--	--
	--	--
Balance with Government-Direct Tax	3,470,974	3,470,974
Balances with Government-Indirect Tax	55,629	106,000
Advances recoverable in cash or in kind or for the value to be received	--	--
Total	3,526,603	3,576,974

7. For the Applicant is duty bound to keep the Insolvency and Bankruptcy Board of India (IBBI) informed about the status of the Insolvency Resolution Plan, he sent letters to IBBI from time to time (Annexures J, K & L) updating the developments taken place in the company. Besides this, the Applicant conducted the Annual General Meeting of the Corporate Debtor on 29.09.2017 but no Resolution was passed.

8. Since no claim has come from any of those two creditors, the Applicant could not constitute Committee of Creditors (CoC) as required by Section 21 of the Code, thereby the Resolution Professional has also not been appointed as mentioned under Section 22 of the Code. In the present case, there being no CoC and the statutory period of 180 days of CIRP has been completed, this Applicant filed this Application as envisaged under Section 33 (1)(a) of IBC seeking the relief as mentioned above.

9. In the backdrop of these historical facts, since the Insolvency Resolution Plan period being expired and there being no CoC constituted, there was no occasion for receiving any Resolution Plan under sub-section 6 of Section 30, whereby, on the Application filed by the IRP, this Bench hereby ordered for liquidation of the company in the manner as laid down in the Chapter of Liquidation with a direction for issuing public announcement stating that the Corporate Debtor is in liquidation and to send copy of this Order to the RoC concerned and respective authorities.

10. Since no Committee of Creditors have been constituted and the same IRP has been continuing since beginning, the same professional is hereby appointed as Liquidator to initiate the liquidation process as mentioned under this Chapter.

11. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Code 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations 2016.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)