



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

IA/IBC/LIQ./35(KB)2024

C.P. (IB)/132(KB)2023

***An application under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016 and Rule 11 of National Company Law
Tribunal Rules, 2016.***

In the matter of:

(1) Srei Equipment Finance Limited.

... Financial Creditor

-Versus-

(2) Sky Infra Logistics Private Limited.

... Corporate Debtor

-And-

(3) Neeraj Kejriwal, Resolution Professional of Sky Infra Logistics Private Limited, having his office at P -178, CIT Scheme VI M Phoolbagan, 3rd Floor, Kolkata - 700054.

... Applicant/RP

Date of pronouncement of the Order: 27.11.2024

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance (via video conferencing/physically):

Mr. Biswanath Chatterjee, Adv.] For Intervenor
Ms. Swati Agarwal, Adv.]
Mr. Soham Krishna Chatterjee, Adv.]

Ms. Pallavi Ray, Adv.] For the Resolution Professional
Mr. Neeraj Kejriwal] RP-in-Person



ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Learned Counsel/Authorised Representative appearing on behalf of the parties were heard *in extenso*.
3. This application being **IA(IBC)(LIQ.)/35(KB)2024** has been preferred to seek the following relief(s), inter alia: -

(a) To initiate Liquidation Process of Sky Infra Logistics Private Limited;

(b) Direct the Financial Creditor, being SREI Equipment Finance Limited to contribute the excess of the Liquidation cost over the Liquid assets of the Corporate Debtor as estimated by him, in proportion to the financial debts owed to them by the Corporate Debtor in accordance with regulation 2A(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

(c) To appoint Mr. Dharmendra Kumar, an Insolvency Professional bearing Registration No. IBBI/IPA-003/IP-N000112/2017-18/11264 to act as the Liquidator of the Corporate Debtor herein;

(d) Any other or further order(s) as this Tribunal may deem fit and proper.

4. Factual matrix of the case is as under: -

(a) This application was filed by Financial Creditor (in short “FC”), i.e., **Srei Equipment Finance Limited** against the



Corporate Debtor (in short “CD”), i.e., **Sky Infra Logistics Private Limited**, under Section 7 of IBC, 2016 for initiating Corporate Insolvency Resolution Process (in short “CIRP”) along with moratorium under Section 14 of the Code against Sky Infra Logistics Private Limited, the Corporate Debtor (CD) was commenced on 01st May, 2024 passed by this Tribunal, wherein the Applicant was appointed as the Interim Resolution professional (in short “IRP”).

- (b) The applicant made **public announcement** as per Section 15 of the IBC, 2016 read with Regulation 6 of CIRP Regulations in "**FORM A**" published in two newspapers namely "**Financial Express**" in English and "**Ekdin**" in Bengali on 04.05.2024 and the same was uploaded on the website of the Insolvency and Bankruptcy Board of India (in short “IBBI”).
- (c) The applicant sent a detailed list of documents and information required to conduct the CIRP of the corporate debtor in a time bound manner to the suspended board of directors through email.
- (d) The applicant had personally visited the Registered office of the Corporate Debtor situated at Rajshree Apartments, 6 Hastings Park Road, P.S. Alipore, Kolkata 700027 on 04.05.2024, giving prior intimation to the suspended directors of the Corporate Debtor with a request to be present at the Registered Office during the time of visit of the Applicant. However, upon arrival, the Applicant could not locate the of the Corporate Debtor. The registered office of the Corporate Debtor situated at Rajshree Apartments, 6 Hastings Park Road, P.S. Alipore, Kolkata- 700027 is the only asset of the Corporate Debtor. The said asset is the



under the unauthorized occupation of one Major Kumar Jagtiani (Retd.). The Applicant filed an application before this Tribunal bearing I.A. (IBC) No. 1656 of 2024 for recovery of peaceful vacant possession of the asset of the Corporate Debtor and the same is pending adjudication.

- (e) The Financial Creditor was the only one to file their claim within the stipulated time period. Accordingly, the Committee of Creditors ("CoC") was constituted with the said Financial Creditor being the sole member. The First meeting of the CoC was held on 27th May, 2024 when the CoC confirmed the appointment of the applicant as Resolution Professional of the Corporate Debtor.
- (f) The Applicant could only collect data that was available with the Financial Creditor and records available at the official website of the Ministry of Corporate Affairs, viz., Financial Statements, Information regarding Director, Shareholders, etc. The last Financial Statement was obtained from the official website of the Ministry of Corporate Affairs for the Financial Year 2019-20. No details/records/books of accounts etc., could be obtained thereafter. One of the suspended directors being Krishan Kumar Sharma shrugged his responsibility by stating that no balance sheet has been prepared for the past three years due to non-availability of fund and infrastructure. Despite his best possible endeavours, the Applicant has not been able to get in touch with the other director, namely, Mr. Biswanath Shaw till date and he is deliberately evading his statutory duties with mala fide intent. The suspended directors have not extended any effective cooperation to the applicant. Due to such non-cooperation, the applicant has filed an application under Section 19(2) of the said Code, 2016 being



IA No. 1185/KB/2024. In the said application, the Respondents had neither appeared in the matter since nor did they file any reply affidavit.

(g) The applicant obtained copies of bank statements from the Bank of Baroda, where the corporate debtor maintains its account for the period from 01.04.14 to 31.03.20 and 01.04.20 to 13.05.24. With the available documents the applicant had conducted a preliminary investigation apropos the transactions entered into by the Respondents in the corporate debtor during the review period. After such investigation, the RP has formed an opinion that the suspended directors entered into fraudulent transactions before initiation of CIRP. The RP appointed auditors to conduct transaction audit of the transactions of the Corporate Debtor. Based on the findings of the transaction auditor, the Applicant made a determination that the Corporate Debtor had been subjected to fraudulent trading or wrongful trading covered under Section 66 of the said Code, which are to be avoided and reversed and/or set aside. In such circumstances, the Applicant had filed an application under Section 66 of the Code being I.A. (IBC) No. 1926/KB/2024 which is pending adjudication before this Tribunal.

(h) The applicant had conducted CoC meetings from time to time to discuss each and every possibility to revive the corporate debtor and further to update the progress in the CIRP of the Corporate Debtor to the CoC members. The applicant has conducted 5 meetings of the CoC in total, details whereof are in the following manner: -



CoC Meeting	Date of Meeting
1 st CoC	27-05-2024
2 nd CoC	27-06-2024
3 rd CoC	24-07-2024
4 th CoC	23-08-2024
5 th CoC	20-09-2024

- (i) The applicant submitted the first progress report by way of an application bearing I.A. (IBC) No. 1421 of 2024 to update on the ongoing CIRP process. The Applicant published **Form G** inviting Expression of Interest (for short "EoI") from Prospective Resolution Applicants (for short "PRA" on 30.06.2024 in the newspapers, namely "**Financial Express**" in English and "**Aajkal**" in Bengali, both Kolkata edition. The Applicant received emails from few interested applicants requesting him to provide various information regarding EoI. Eligibility Criteria for prospective resolution applicants, brief teaser and information about the Corporate Debtor and the last date for submission of Resolution Plan. Accordingly, the Applicant replied to all the queries put forward by the interested parties. But unfortunately, no EoI was received by the undersigned.
- (j) Since no EoI was received, the CoC discussed over the matter in its Third meeting and resolved to re issue **Form G**. Pursuant to the decision taken by the CoC, the Applicant re-issued **Form G** in the newspapers being "**Financial Express**" in English and "**Aajkal**" in Bengali, both Kolkata edition on 30th July, 2024. No EOI was received.
- (k) The two registered valuers, Mr. Sarbajit Dutta and Mr. Balkrishna Lal More were appointed to determine and ascertain the Fair Value and Liquidation Value of Securities and Financial Assets of the Corporate Debtor. The valuers have sent



their respective valuation reports to the Applicant. As per the said two valuation reports, the liquidation value of the corporate debtor, which is reproduced as under: -

Particulars	Fair Value (in INR)	Liquidation Value (in INR)
Valuation Report of Sarbajit Dutta	70,32,000/-	59,77,000/-
Valuation Report of Balkrishna Lal More	90,45,563/-	63,31,894/-

(l) The Applicant convened Fourth meeting of the CoC on 23rd August, 2024 in order to decide further course of action of CIRP. In the said meeting, the sole Financial Creditor being the petitioning creditor with 100% voting share was present. During the CoC meeting, the Applicant/RP sought guidance from the CoC on whether to issue a third invitation for Expressions of Interest (EOIs). Mr. Jitendra Kumar Mishra, a CoC member representing the Financial Creditor, indicated that after discussing the matter with senior management, it was advised to file an application for liquidation directly rather than issuing another Form G. This recommendation was based on the absence of any resolution applicants or EOIs despite two previous issuances of Form G. Since EOI was not received even after issuance of Form G on two occasions, the CoC being the only member present and voting, passed the resolution with 100% voting share to initiate Liquidation Process of the Corporate Debtor. **The CoC with 100% voting share to file appropriate application before this Tribunal for initiation of Liquidation Process.**

(m) The Applicant issued email dated 4th October, 2024 to the members of the CoC for deliberations on best estimate of



liquidation costs and other issues. The COC had replied to the email of the applicant *vide* its email dated 6th October, 2024, therein indicating the necessary clarifications to the queries raised by the applicant also indicating the professional fees of the liquidator.

5. Hence, the rival contentions were noted.

6. **Analysis and Findings: -**

- (a) We have considered the submission made by the Ld. Counsel and perused the record.
- (b) Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when the CoC with 66% approves the Liquidation of Corporate Debtor.
- (c) Hence, we do find merit in the prayers made in **IA(IBC)(LIQ.)/35(KB)2024**, and deem it fit to Order liquidation of the Corporate Debtor.

7. **This Bench, therefore, hereby Order(s) as follows: -**

- a. Prayers as sought for in **IA(IBC)(LIQ.)/35(KB)2024** filed by RP, is allowed and **Sky Infra Logistics Private Limited**, the Corporate Debtor is Ordered to be liquidated in terms of section 33(1) of the Code;
- b. **Mr. Abhit Kumar Singh** having registration no. **IBBI/IPA-001/IP-P-02380/2021-2022/13564**, email ID: abhit1981@hotmail.com, Mobile No. **9681999675**, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the



Insolvency Professional Agency (IPA) of which she is a professional member;

- 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 newspapers 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, within whose jurisdiction the Corporate Applicant is registered.
8. The application bearing **IA(IBC)(LIQ.)/35(KB)2024** shall stand **disposed of** in accordance with the above directions.
9. List the main **C.P. (IB)/132(KB)2023** for reporting progress on **04.03.2025**.
10. 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.
11. Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
12. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 27th of November, 2024.

Ar. [steno]