

Insolvency and Bankruptcy Board of India
7thFloor, Mayur Bhawan, Connaught Place, New Delhi-110001

Facilitation/002/2020

5thAugust, 2020

To

All Registered Insolvency Professionals

All Registered Insolvency Professional Agencies

All Recognised Insolvency Professional Entities (By mail to registered email addresses)

Other stakeholders (On website of IBBI).

Dear Madam / Sir,

Subject: In aid of Insolvency Professionals conducting Liquidation Process.

An Insolvency Professional (IP) plays a key role in various processes under the Insolvency and Bankruptcy Code, 2016 (Code). He acts as liquidator in liquidation and voluntary liquidation processes and the entire liquidation process revolves around him.

2. The Adjudicating Authority (AA), the National Company Law Appellate Tribunal (NCLAT), and High Courts, through their orders and judgements, have guided liquidators in the conduct of liquidation process. This communication presents a few significant directions and observations from these orders and judgements, which an IP may find useful. These are presented under the following six broad categories:

A. Taking Charge as Liquidator, etc.

B. Scope of Liquidation Estate, etc.

C. Sale of Assets, etc.

D. Attachments, etc.

E. Managing the Affairs, etc., and

F. Powers and Duties, etc.

A. Taking Charge as Liquidator, etc.

(a) S. Muthuraju Vs. Commissioner of Police and Another [MA/504/2019 in CP/288/IB/2018]

A group / mob of unknown persons hurled threats with weapons and did not allow the liquidator to enter the premise of the corporate debtor (CD) and carry out his functions. The AA directed the Superintendent of Police to give adequate police protection to the liquidator to enable him to perform his duties.

(b) Vijisan Exports Pvt. Ltd. Vs. Cimme Jewels Ltd. [C.P. (IB)-297/MB/2018]

The liquidator submitted that the CD neither handed over possession of the assets nor records during the material period and even after passing of liquidation order. It was presumed that the erstwhile directors of the CD had deliberately stolen records with an intention to enrich themselves and also to siphon off all the assets without even bringing to the knowledge of the liquidator and therefore, prima facie, the attitude of directors was *malafide*. The AA directed the liquidator to file a police complaint for appropriate action for the theft of confidential information / records. It directed the police station officer to register the complaint and take appropriate action against the former directors of the CD.

(c) Alchemist Asset Reconstruction Company Limited Vs. Precision Fasteners Ltd. [MA 1007/2018, MA 751/2019 in CP No. (IB)1339(MB)/2017]

The liquidator filed an application seeking possession of the flats under occupation of respondents. He submitted that refusal to handover the flats owned by the CD is likely to affect the creditors who are entitled to liquidation proceeds. The respondents claimed that they had possession of the flat based on a letter issued by the CD. The AA noted that the said letter cannot be treated as valid document whereby the alleged property has been transferred to the respondents. It ordered the respondents to vacate the flats and handover the same to the liquidator, failing which the liquidator would be entitled to get the possession in accordance with law with the help of police.

(d) Mrs. Dipti Mehta, Resolution Professional, Prag Distillery Private Limited Vs. Shivani Amit Dahanukar and Ors. [MA 267/2018 in CP (I&B) 1067/NCLT/MB/2017]

The RP had filed an application under sections 43, 49, 60(5) and 66 of the Code against five directors of the CD and its holding. The liquidator continued to pursue the said application. The AA held: *“...it is clear that the impugned assets were transferred to the holding company with an intent to protect the value of the assets. However, there is no consideration received by the Corporate Debtor against the said transfer, and the assets were not sold but only transferred to the holding company for its utilisation. Had the assets not being transferred, there was a risk of them getting wasted and spoiled. It is not disputed that the ownership of the assets is still with the Corporate Debtor and they are part of the liquidation estate of the Corporate Debtor. The respondents have submitted that the holding company agree to transfer the machinery back to the Corporate Debtor. Given the circumstances above, it is directed that the assets of the Corporate Debtor shall be returned and restored to the Corporate Debtor by the holding company within one month from the date of this order.”*

B.Scope of Liquidation Estate, etc.

(a) Precision Fasteners Ltd. Vs. Employees Provident Fund Organisation, Thane and Others [MA 576 & 752/2018 in C.P. (IB) 1339 (MB)/2017]

The liquidator sought a declaration that the attachment of movable and immovable properties of the CD (under liquidation) by the respondents under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was null and void, to enable him to dispose of these properties alongside other assets of the CD. The AA observed that the creditors have a property right over the assets of the CD, whereas workmen dues are interwoven with the right to life. The former right is subordinate to the latter right and they cannot be treated at par. In recognition of this, section 36(4)(a)(iii) of the Code provides that the dues in respect to Provident Fund/Pension Fund/Gratuity Fund are not part of the liquidation estate. These dues are assets of the workmen lying with the CD. However, the liquidation process should not be obliterated by the attachment of the assets of the CD. Accordingly, the AA vacated the attachment with a direction to the liquidator to sell the assets and pay off the provident fund dues in priority to all claims payable by the CD in liquidation.

(b) State Bank of India Vs. Moser Baer Karamchari Union &Anr. [CA(AT)(Ins)No. 396/2019]

The AA, by the impugned order, held that ‘Provident Fund Dues’, ‘Pension Fund Dues’ and ‘Gratuity Fund Dues’ cannot be part of section 53 of the Code. A financial creditor (FC) filed an appeal on the ground that workmen’s dues have the same meaning as assigned to it in section 326 of the Companies Act, 2013, which includes provident fund, pension, and gratuity fund. Therefore, for the purpose of distribution of assets of the CD under section 53 of the Code, dues of employees as mentioned in sub-clause (c) of sub-section (1) therein

includes provident fund dues. The NCLAT held: *“In terms of sub-section (4) (a) (iii) of Section 36, as all sums due to any workman or employees from the provident fund, the pension fund and the gratuity fund, do not form part of the liquidation estate/ liquidation assets of the ‘Corporate Debtor’, the question of distribution of the provident fund or the pension fund or the gratuity fund in order of priority and within such period as prescribed under Section 53(1), does not arise...”* It further observed that liquidation estate of the CD under section 36(1) read with section 36 (3) does not include all sum due to any workman and employee from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under section 53.

(c) In the matter of Clutch Auto Ltd. [CA-1432(PB)/2019 & CA-1433(PB)/2019 in (IB)-15(PB)/2017]

The liquidator filed an application seeking directions for relinquishment of security interest by the secured creditor under section 52 of the Code. The AA held that if the liquidator concludes that a creditor has security interest over the assets of the CD, he shall permit the creditor to utilise its right under section 52 of the Code. It concluded that directions to compel a creditor to relinquish its security interest is not supported by the Code.

(d) Edelweiss Asset Reconstruction Co. Ltd. Vs. Reid and Taylor India Limited [MA 1392/2019 in CP No.382/IB/MB/MAH/2018]

An FC of the CD claiming sole first charge over all the fixed assets and first pari-passu charge over the current assets of the CD sought permission of the AA to realise the security interest by selling the secured assets of the CD on “as is where is” basis as a going concern as per section 52 of the Code read with regulation 37 of the IBBI (Liquidation Process) Regulations, 2016. Another FC objected to this stating that section 52 of the Code does not empower a secured creditor to stand outside the liquidation process to enforce its security to the exclusion of other secured creditors having same ranking pari-passu charge over the same security interest, more particularly when the issue of priority of charges had not been adjudicated. The AA held: *“only the first charge holder/ the secured creditor with first pari-passu charge can stay outside the liquidation process and realize his security interest. The applicant being the first charge holder is entitled to realise security interest under section 52.”*

(e) Mr. Srikanth Dwarkanath, Liquidator of Surana Power Limited Vs. Bharat Heavy Electricals Limited [CA(AT)(Ins)No. 1510 of 2019]

The liquidator faced a deadlock, when secured creditors (ten out of eleven) having 73.76% share in security interest relinquished their security interests to the liquidation estate, but one secured creditor (BHEL) with 26.24% of share did not. Consequently, he could not attempt a slump sale of the CD, as all secured creditors didn't relinquish their security interests. He filed an application before the AA seeking permission to sell the assets of the CD under liquidation. The AA rejected the application stating that an arbitration award has granted lien over the assets of the CD to BHEL prior to the initiation of CIRP. The liquidator challenged the order of the AA. The NCLAT relied on section 13 of the SARFAESI Act, 2002 which requires confirmation by creditors having at least 60% of the value of total debt for taking any steps about the realisation of assets by secured creditors. It noted that since BHEL did not have requisite 60% value in security interest, it did not have the right to realise its security interest. It observed that since secured creditors with 73.76% in value have relinquished the security interest into the liquidation estate, it would be prejudicial to stall the process at the instance of a creditor who has share of only 26.24%. While allowing the appeal, the NCLAT further observed that BHEL did not hold a superior charge over the rest

of the secured creditors and the decision of 73.76% of majority creditors would bind the dissenting secured creditor.

C. Sale of Assets, etc.

(a) Mr. S. S. Chockalingam Vs. Mr. CA Mahalingam Suresh Kumar [MA/661/2018 in TCP/431/2017]

In an e-auction of the assets of the CD in liquidation, the applicant was H1 bidder and he was required to deposit 25% of the bid amount within 24 hours and the rest 75% within 15 days. H1 bidder deposited 25% after 3 days and sought time for payment of the rest of the amount. The liquidator granted extension of time twice. Thereafter, the liquidator cancelled the sale, proceeded to negotiate with H2 bidder and sold the asset to it following bidding process. The applicant filed an application under rule 11 of the NCLT Rules, 2016 to direct the liquidator to extend the last date of payments, as he had already paid 57% of the bid amount and the liquidator has no authority to forfeit the said amount.

The AA observed: “... *there does not appear any provisions in the I&B Code, 2016 to give extension of time as far as the bidding process is concerned. Moreover, the Liquidator has already negotiated with the 2nd highest bidder who has already made payment which is equivalent to the amount, which was offered by the applicant being the highest bidder. In other words, the 2nd bidder, being in a position to make the payment of the same amount, has become the successful bidder and made the payment well in time. Therefore, in the circumstances, the application has become infructuous and the same stands dismissed.*”

(b) Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Limited [CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017]

An application was filed by the liquidator under regulation 33(2)(d) of the IBBI (Liquidation Process) Regulations, 2016 for seeking prior permission to sell the assets of the CD by means of a private sale. The AA considered the issue whether all the requirements of clauses (a) to (d) of regulation 33(2) are required to be fulfilled to sell the assets by private sale. It held: “*To our mind the proper interpretation on clauses (a) & (b) would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise the purpose of regulation would be defeated if the time is required to be spent in filing an application and taken permission because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value if not sold immediately.*” However, the assets to be sold at a price higher than the reserve price of a failed auction have to be sold with the prior permission of the AA.

(c) Ms. Pooja Bahry, Liquidator and Anr. Vs. Gee Ispat Pvt. Ltd. [CA666/2019 in (IB)/250(ND)/2017]

The liquidator sold certain properties relinquished by the secured creditors. Before proceeding to distribute the proceeds, she filed an application with the AA seeking guidance whether she is required to deposit capital gains on sale of secured assets and include it in the liquidation cost to be defrayed first and distribute the balance amongst the claimants. The AA opined that upon realisation of the liquidation estate of the CD, it must be distributed in accordance with the waterfall mechanism under section 53. The dues towards Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly. It noted that a secured creditor is entitled to effect sale under the SARFAESI Act and appropriate the entire amount towards its dues, without any liability to first pay capital gain. If the capital gain is first to be provided for, and then be included as

liquidation cost, it would create an anomalous situation in the secured creditor getting a lesser remittance than what it could have realised had it not released the security into the common corpus. It is for this purpose that the provision of section 178 of the Income-tax Act, 1961 has been amended giving priority to the waterfall mechanism over government dues. The AA held: *“We therefore hold that the tax liability arising out of the sale shall be distributed in accordance with the provision of Sec 53 of the Code. The applicability of Section 178 or 194 IA of the IT Act will not have an overriding effect on the water fall mechanism provided under Section 53 of the Code, which is a complete code in itself, and the capital gain shall not be taken into consideration as the liquidation cost.”*

(d) Om Prakash Agarwal Vs. Chief Commissioner of Income Tax (TDS) & Anr. [Item No. 203 CP/294/2018]

The liquidator filed an application seeking direction against the successful bidder and the Income Tax Authority not to deduct TDS from the sale of assets made in favour of the bidder on the ground that tax dues cannot be collected by the Government in priority to the waterfall mechanism under section 53 and section 238 has an overriding effect upon other enactments. The AA observed that the overriding effect under section 238 is applicable to the issues between the creditor and the debtor but not to TDS deductions. When the Government comes before the liquidator as creditor, it is bound by sections 53 and 238 of the Code. In this case, the Government is not making any claim as an operational creditor. While directing the purchaser to pay the TDS amount, it held that deduction of TDS does not tantamount to payment of Government dues in priority to other creditors since it is not a tax demand for realisation of tax dues. It observed that the liquidator is not asked to pay TDS; it is the duty of the purchaser to credit TDS to the Income Tax Department.

D. Attachments, etc.

(a) Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad, and others [WP No. 8560/2018]

The petitioner purchased an immovable property in the liquidation proceeding of VNR Infrastructures Limited. The sub-registrar refused to register the property in the name of petitioner at the behest of the Income Tax Department which claimed a charge over the immovable property pursuant to attachment proceedings against which this writ petition was filed. The High Court noted that it entails construction and interpretation of the provisions of the Code in juxtaposition to the Income-tax Act, 1961. It observed: *“It is clear that the Income Tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Act of 1961.”*

As regards the purpose of attachment, it referred to the judgements in Ananta Mills Ltd. (High Court Gujarat) and Prem Lal Dhar (Privy Council), where it has been held that attachment only prohibits private alienation of the property, but the attaching creditor does not acquire any interest in the property. It noted that section 178 of the Income-tax Act, 1961 provides for a priority in appropriation of the amounts set aside by the liquidator for clearance of the tax dues. However, liquidation of a company could be under different enactments. In case of liquidation of a company under the Code, section 178 of the Income-tax Act, 1961 stands excluded by virtue of the amendment of section 178 (6) with effect from 1st November, 2016, in accordance with section 247 read with the Third Schedule to the Code. Therefore, in the event, an assessee company is in liquidation under the Code, the

Income Tax Department can no longer claim a priority in respect of clearance of tax dues of the said company.

The High Court held that the tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of section 53(1)(e) of the Code. It further held that the Income Tax Department cannot claim any priority merely because the order of the attachment dated 27th October, 2016 was long prior to the initiation of liquidation proceedings under the Code against VNR Infrastructures Limited. Further, section 36(3)(b) of the Code indicates in no uncertain terms that the liquidation estate assets may or may not be in possession of the CD, including but not limited to encumbered assets. Therefore, even if the order of attachment constitutes an encumbrance on the property, it still does not have the effect of taking it out of the purview of section 36(3)(b) of the Code. The said order of attachment, therefore, cannot be taken to be a bar for completion of the sale under a liquidation proceeding under the Code. The Income Tax Department necessarily must submit its claim to the liquidator for consideration as and when the distribution of the assets, in terms of section 53(1) of the Code, is taken up.

(b) Mr. Anil Goel, the Liquidator appointed in respect of VarrsanaIspat Limited Vs. Deputy Director, Directorate of Enforcement, Delhi and SBER Bank Vs. VarrsanaIspat Limited [IA (IB) No. /KB/2020 in CP (IB) No. 543/KB/2017]

The Liquidator filed an application under sections 60(5) and 32A of the Code seeking permission to sell the assets of the CD which were attached by the Enforcement Directorate (ED), in view of section 32A. He submitted that he was running the CD as a going concern, but unable to proceed with the sale of the CD or its business as a going concern due to the attachment, even though there is interest from several parties. The ED objected to the application on three grounds: (a) An application under section 32A can be made only after the liquidation process is over or resolution plan is approved; (b) An application under section 32A can be filed only by the successful resolution applicant and not the liquidator; and (c) the rights of the parties had already been crystallized through proceedings before the PMLA Appellate Authority and hence subsequent change in law (insertion of section 32A) would not take away such rights which had attained finality. The AA observed that under the object as well as under the said section it is specifically dealt with that it is applicable to prevent insolvency in case a company goes into CIRP or liquidation. It held that section 32A is also applicable to the assets of the CD undergoing liquidation and a liquidator can file an application like the one in hand. It further held that a liquidator can proceed with the sale of the assets even if it is under attachment by the ED, to continue the time bound process of liquidation under the Code and upon completion of the sale proceedings, the buyer can take appropriate steps to release the attachment.

(c) Anil Goel, Liquidator Vs. Dy. Director, Directorate of Enforcement in the matter of REI Agro Limited [CA (IB) No. 453/KB/2018 in CP (IB) No.73/KB/ 2017]

The liquidator filed an application under section 35(1)(n) of the Code seeking orders against the ED to release the attachment of assets of the CD. The AA observed: *“In any case, the Court established under PMLA Act being a criminal Court can only decide whether the properties attached during investigation from possession of the Corporate Debtor could be said to be the properties acquired by them using proceeds of the crime. It is for this Tribunal to decide as to how the properties and assets of the Corporate Debtor under liquidation can be appropriated. The Liquidator must get possession of those properties attached by the Enforcement Director, NewDelhi.”*

(d) In the matter of Clutch Auto Ltd. [CA-1432(PB)/2019 & CA-1433(PB)/2019 in (IB)-15(PB)/2017]

The liquidator filed an application against the Municipal Corporation, Faridabad (MCF) to de-seal CD's land and hand it over to him. The AA observed that the property was sealed by MCF during moratorium in violation of section 14. It directed MCF to de-seal the property and the liquidator to consider its claim relating to tax on the property sealed.

(e) Om Prakash Agarwal Vs. Tax Recovery Officer 4 & Anr. [Item No. 301, IA-992/2020 in CP/294/2018]

The liquidator filed an application to defreeze the accounts of the CD which was attached by Tax Recovery Officer. The Income Tax Department submitted that the income tax proceedings have overriding effect against other enactments and money attached by it is no more an asset of the CD. The liquidator submitted that the Income Tax Department has filed its claim against the CD and the same would be considered for distribution under section 53. The AA held that the monies of the CD lying in the bank accounts shall be construed to be an asset of the CD even if an attachment order is passed against the same. It noted that section 178 of the Income-tax Act, 1961 has been amended to allow the Code to have overriding effect. It directed the Bank to de-freeze the accounts and release the amounts of the CD within 30 days.

E. Managing the Affairs, etc.

(a) In the matter of Hind Motors India Limited [CA 138/2017 in CP (IB) No.06/CHD/2017]

The AA noted that the CD has no liquid assets and hence it is difficult to meet the expenses of liquidation. Accordingly, the AA directed that the expenses of the public announcement and for service of process, etc. incurred by the liquidator shall be borne by Union Bank of India at first instance, which shall form part of liquidation costs. It clarified that the liquidator shall be paid fee in accordance with the Regulations.

(b) Abhay N. Manudhane Vs. Gupta Coal India Pvt. Ltd. [CA(AT)(Insolvency)No.786/2019]

The liquidator filed an appeal against the impugned order of the AA rejecting an application filed by him under section 60(5) of the Code for institution of a suit or other legal proceedings on behalf of the CD under liquidation in the Courts / Tribunals. He intended to file an application under section 9 of the Code against different companies. While dismissing the appeal, the NCLAT held that in terms of section 11(d) of the Code, a CD under liquidation is not entitled to make application to initiate CIRP. It observed: *“However, in case where matter does not relate to any secured asset and recovery of any money by the ‘Corporate Debtor’, which is not under Liquidation, a suit or other legal proceedings may be instituted by the Liquidator on behalf of the ‘Corporate Debtor’, but not an application under Section 9 of the I&B Code.”*

Note: The Insolvency and Bankruptcy Code (Amendment) Act, 2020 has since clarified that section 11 does not prevent a CD from initiating CIRP against another CD.

(c) Reliance India Power Fund Reliance Capital Trustee Company Limited Vs. Mr. Raj Kumar Ralhan, Liquidator of Su Kam Power Systems Limited [CA(AT)(Ins) No. 318/2020]

The appellant had initiated arbitration proceedings against the CD, of which the respondent is the liquidator, before initiation of CIRP. The respondent did not attend the arbitration proceedings. The appellant submitted that in terms of section 35(1)(k), it is the duty of the

liquidator to defend any suit, prosecution or other legal proceedings to which the CD is a party. The Respondent submitted that the arbitration proceeding relates to inter-shareholders dispute of the CD and the CD has nothing to do with such inter se dispute. While agreeing with the submission of the appellant, the NCLAT held that the said duty includes any conscious decision that a liquidator may take whether, in the given set of facts, he needs to defend any proceedings. The appellant has no right to force the liquidator to take part in the arbitration proceedings, as such duty would include a conscious decision to not to take part in the proceedings.

(d) Jindal Steel and Power Limited Vs. Arun Kumar Jagatramka&Anr. [CA(AT)No.221/2018]

An unsecured creditor of the CD preferred an appeal under section 421 of the Companies Act, 2013 against the order of the AA for taking steps for financial scheme of compromise and arrangement between the promoter and the CD through the liquidator. The issue was whether the promoter is eligible to file application for compromise and arrangement, while he is ineligible under section 29A of the Code to submit a resolution plan. The NCLAT, relying on the judgment of the Supreme Court in *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*, held that promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for taking back the immovable and movable property or actionable claims of the CD.

Note: The Liquidation Process (Amendment) Regulations, 2020 now clarifies that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the CD, shall not be a party in any manner to a compromise or arrangement of the CD under section 230 of the Companies Act, 2013.

F. Powers and Duties, etc.

(a) Rajive Kaul Vs. Vinod Kumar Kothari &Ors. [CA(AT)(Ins) No. 44, 224 & 1518/2020]

The liquidator moved the AA to remove the nominee directors of the CD on the Board of its subsidiary, due to non-cooperation, active obstruction, breach of duty and breach of code of conduct. The AA held that the liquidator has the power to remove and also appoint nominee directors of the CD, which the company is bound to follow. On an appeal against the order of the AA, the NCLAT upheld the order of the AA and held that it is an axiomatic principle in law that a company in liquidation acts through the liquidator and the liquidator steps into the shoes of the board of directors of the company under liquidation for the purpose of discharging its statutory duties. It further held that the liquidator is armed with requisite powers to remove the nominee directors and is entitled to nominate the directors, and the company is enjoined to act upon the replacement proposal of the existing nominee directors. He is not required to inform the reasons for replacing nominee directors.

(b) Punjab National Bank Vs. Mr. Kiran Shah, Liquidator of ORG Informatics Ltd. [CA(AT)(Ins) No. 102/2020]

The lead bank in the CoC challenged the appointment of the liquidator after the AA passed the liquidation order. The NCLAT held that after the liquidation order, the CoC has no role to play and that they are simply claimants, whose matters are to be determined by the liquidator and hence cannot move an application for his removal.

(c) D & I Taxcon Services Private Limited Vs. Mr. Vinod Kumar Kothari[CA(AT)(Ins) No. 1347/2019]

The AA dismissed an application challenging the actions of the liquidator and imposed a cost of Rs.1,00,000 on the appellant for levelling vague and baseless allegations against the respondent with a direction that the cost of Rs.1,00,000 shall form part of liquidation

estate. On an appeal, the NCLAT observed that without having a locus under section 47(1) of the Code, the appellant has been interfering with the process of liquidation and thwarting the liquidation process which ultimately will have deleterious effect on the rights of those who are entitled to the benefit of the distribution of sale proceeds of liquidation proceedings. It dismissed the appeal but dispensed with the cost having regard to the fact that the appellant is a victim of incident of fire.

(d) Indian Oil Corporation Ltd. Vs. Mr. Ashish Arjun Kumar Rathi, Liquidator of SBQ Steels Pvt. Ltd. [CA(AT)(Ins) No. 1116/2019]

The AA upheld the decision of the liquidator to reject the claims of the appellant, while noting that though the liquidator has not clearly mentioned in many words as to why he rejected those two claims, he has mentioned that there is no binding agreement between the parties obligating the CD to pay interest and that reason is more than sufficient for rejecting the claim. While admitting an appeal, the NCLAT observed that ascribing reasons is the ‘heart and soul’ of a reasoned order/ judgement. Not assigning reasons and that too in a rejection order relating to a claim is not a ‘prudent and reasonable course of action’. It further observed that as per section 40 of the Code a liquidator being an ‘Authority’ decides the matter in a quasi-judicial manner and his decision is open to challenge under section 42 of the Code. In terms of the ingredients of section 40, reasons are to be spelt out for rejecting the claims, which in the present case was not followed by the liquidator. A liquidator is an officer of the AA and is expected to perform his duties fairly, justly, and honorably in dealing with the claims of persons.

3. This communication is issued for the sole purpose of education and awareness of IPs and other stakeholders of liquidation processes. The directions and observations cited herein above are only indicative. An IP must study the orders for comprehensive understanding of the issues entailed therein and also update himself from subsequent orders, if any, on those issues. He must also refer to the Code and the Rules/Regulations/Circulars and other relevant case laws or may seek professional advice if he intends to take any action or decision, in any matter dealt in this facilitation letter.

Sd/-
(Appala Subramanyam)
Chief General Manager
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