IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

I.A. No.68 of 2022 in
C.P. (IB) No.67/BB/2019
U/s 35(1)(n) & Sec.60(5)(c) of IBC, 2016
R/w Regulation 45(3) of the
IBBI (Liquidation Process) Regulations, 2016

IN THE MATTER OF IA No.68 of 2022:

G. Madhusudhan Rao
Liquidator of M/s. Chincholi Sugar and Bio Industries Limited ... Applicant

IN THE MATTER OF:

Punjab National Bank
Plot No.4, Dwaraka, Sector-10,
New Delhi – 110 075. ... Petitioner/Financial Creditor

VERSUS

M/s. Chincholi Sugar and Bio Industries Ltd.
Sri Laxminarasimha Nilaya,
H.No.15, 5th Main, 13th Cross,
MSR Nagar, Mathikere,
Bangalore – 560 054. ... Respondent/Corporate Debtor

Order delivered on: 23rd June, 2022

CORAM: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant / Liquidator : Shri G. Madhusudhan Rao

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. This Application has been filed by Shri G. Madhusudhan Rao, Liquidator of the Corporate Debtor, namely, M/s. Chincholi Sugar and Bio Industries Limited, *inter alia* seeking the following reliefs:

i) Closure of Liquidation Process of the Corporate Debtor;

ii) Reconstitution of the Board of Directors of the Corporate Debtor;

iii) Change of Status of Corporate Debtor in ROC Records;

iv) Extinguishment of existing Share Capital;

v) Allotment of new shares;

vi) Extinguishment of past liabilities and consequential actions;

vii) Immunity from past actions of the Corporate Debtor;

viii) Right over all the assets of the Corporate Debtor;

ix) Continuation or Removal of Licenses / Approvals, etc.;

2. Brief facts of the Application are given hereunder:

i.) This Adjudicating Authority, vide Order dated 19.12.2019 in IA No.651 of 2019 in CP (IB) No.67/BB/2019, initiated the Liquidation process against the said Corporate Debtor and appointed the Applicant herein as the Liquidator of the Corporate Debtor.

ii.) Pursuant to the Liquidation Process Regulations, the Liquidator issued a public announcement calling the stakeholders to submit their claims as on the Liquidation commencement date and the Claims so submitted were verified and their admission/rejection or otherwise has been communicated to the Stakeholders and the list of Stakeholders has been filed before this Tribunal as per Regulation 31 of the Liquidation Process Regulations.

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iii.) In compliance with Regulations 13 and 34 of the Liquidation Process Regulations, the Liquidator submitted Preliminary Report and Asset Memorandum to this Tribunal. Further, pursuant to Regulation 15 of the Liquidation Process Regulations, the Liquidator submitted Progress Reports at the end of every quarter as per the stipulated timelines.

iv.) It is stated that the Corporate Debtor established an integrated sugar mill with sugarcane crushing capacity of 5000 Tons Cane per Day (TCD) which is partly constructed (only Civil Foundations completed), Cogeneration Power Plant with a capacity of 30 MW which is also partly constructed and a distillery (Ethanol & ENA) with a capacity of 65 Kilo litres per day (KLPD) which is also partly constructed.

v.) Vide Regulation 31A of said Regulations, the Liquidator constituted the Stakeholders' consultation committee to advice on the matters relating to sale under Regulation 32 of Liquidation Process Regulations, 2016.

vi.) It is stated that Liquidator issued the sale notices in the newspapers for the sale of the Corporate Debtor as a whole as going concern basis for many times but no bids received except for last Sale Notice. The Liquidator issued sale notice on 01.08.2021 and extended sale notice on 01.09.2021 by way of newspaper advertisement for the sale of the Corporate Debtor as a going concern in Liquidation and received EMD from one Bidder i.e. M/s. Siddhasiri Souharadaa Sahakari Niyamit along with the documents required under the E-Auction Tender document as per due date and the Liquidator after verification allowed the bidder to participate in the bidding process scheduled on 21.09.2021 and on that date said bidder M/s. Siddhasiri Souhardaa Sahakari Niyamit emerged as the Successful Bidder and the bidding amount is Rs.37.46 Crores.

vii.) It is stated that the Successful Bidder paid the balance sale consideration amount as demanded in the Letter of Intent dated

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21.09.2021 through Demand Drafts bearing DD No.015826 dated 22.09.2021 for Rs.5,61,50,000/- and DD No.015827 dated 22.09.2021 for Rs.28,09,50,000/- and the Applicant issued Sale Certificate on 23.09.2021 and handed over all the documents to the Successful Bidder.

viii.) It is also stated that the Corporate Debtor is sold as a going concern in Liquidation and that the Liquidator is filing this Application for closure of the Liquidation Process of the Corporate Debtor under Regulation 45(3)(a) of IBBI (Liquidation Process) Regulations, 2016. A copy of the Final Report of the Liquidator is attached vide page nos.29-46 of the Application. Further, Form-H Compliance Certificate is attached vide page nos.47-55 of the Application.

ix.) It is further stated that the Liquidator can sell the assets of the Corporate Debtor during Liquidation in any of the modes stated in Regulation 32 of the said Regulations and the Liquidator sold the CD as a going concern in Liquidation. The bidders purchased the CD as a going concern with a view to run the business and in order to run the business mere purchase of the Corporate Debtor as a 'going concern' as per Liquidation Process Regulations will not suffice. In order to ensure smooth running of the business of the Corporate Debtor, it is imperative that certain additional reliefs / concessions / relaxations / and permissions are allowed which would be essential and necessary to run the business of the Corporate Debtor as a 'going concern'. Unless these are provided, the purpose of revival of the Corporate Debtor as a 'going concern' under the said Regulations will not be achieved from the view point of Successful bidder and that these permissions / relaxation / concessions / reliefs are crucial to kick start the business of the Corporate Debtor.

x.) It is stated that the sale as a going concern is more or less in the nature of resolution of the Corporate Debtor and the Liquidation Process

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Regulations do not provide for granting certain specific type of reliefs to the Purchasers of the CD and this Adjudicating Authority is empowered to grant the reliefs in order to achieve the object of sale as a going concern.

xi.) It is also submitted that Section 60(5)(c) of the Code states that this Tribunal has jurisdiction to entertain or dispose of – any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor or Corporate Person u/s 60(5)(c) of the Code. Therefore, this Tribunal is empowered to grant certain immunities or protection from past liabilities and civil and criminal actions from various creditors including various statutory and non-statutory authorities / parties, direction to ROC for change of the Board of Directors and reduction of the share capital and allotment of new share capital, change of the status of the CD from liquidation to active, other reliefs in the sale as a going concern in order to enable the successful bidder/purchaser to kick start the business of the CD at the time of closure of the Liquidation process of the Corporate Debtor. Hence, the application.

3. The details of Assets as per Asset Memorandum and Final Sale Report as stated in Para No.3 of the Form-H Compliance Certificate dated 16.02.2022 (Page No.51 of the Application) are given hereunder:

Sl. No.	**Assets**	**Mode of Sale**	**Estimated Liquidation Value (Rs.)**	**Realisation Amount (Rs.)**	**Date of Transfer to Liquidation Account**
(1)	(2)	(3)	(4)	(5)	(6)
1.	Company as a whole	E-Auction	43,96,58,581	37,46,00,000	The following are the dates of the realization of the Sale proceeds to the Liquidation Account: 1.27.09.2021 2.29.09.2021

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4. Vide order dated 08.04.2022, the Liquidator was directed to file updated Form-H detailing the class of stakeholders and payments made to them. Pursuant to the same, the Liquidator filed a Memo vide Diary No.1615 dated 18.04.2022, wherein, the details of amounts distributed to stakeholders as per Section 52 or 53 of the Code, as stated in Para No.4 of the Form-H Compliance Certificate dated 14.04.2022, are given hereunder:

(Amount in Rs. lakh)

Sl. No.	**Stakeholders under section 53(1)**	**Amount Claimed**	**Amount Admitted**	**Amount Distributed**	**Amount Distributed to the Amount Claimed (%)**	**Remarks**
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	(a): CIRP Costs			52.452		
2.	(a): Liquidation Costs			185.214		
3.	(b)(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date	0	0	0		No claims received and There are no workmen dues
4.	(b)(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52	61173.928	61147.440	3508.334	5.737%	
5.	(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date	0	0	0		No Claim received and There are no Employee dues and there are no liquidation proceeds left to distribute to this class
6.	(d) financial debts owed to unsecured creditors	549.4543	358.0513	0		There are no liquidation proceeds left to distribute to this class
7.	(e)(i) any amount due to the Central Government including the amount to be received on	6142.994	6142.994	0		There are no liquidation proceeds left to distribute to this class

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	account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date					
8.	(e)(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest	0	0	0		There are no liquidation proceeds left to distribute to this class
9.	(f) any remaining debts and dues	0	0	0		There are no liquidation proceeds left to distribute to this class
10.	(g) preference shareholders, if any	0	0	0		There are no claims received and there are no liquidation proceeds left to distribute to this class
11.	(h) equity shareholders or partners, as the case may be	0	0	0		No claims are received and there are no liquidation proceeds left to distribute to this class
	Total	**67866.376**	**67648.486**	**3746.000**	**5.737%**	

5. It is further stated by the Liquidator in Form-H that there are no deviations / non-compliances with the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made, or circulars issued there under, and that there no pending applications filed / pending in respect of avoidance of transactions. However, it is also stated that one case is pending with Special Court for Economic Offences, Bangalore mainly against the old Promoters of the Corporate Debtors for non-maintenance of the Register of the Members as per the Companies Act and against this, the Liquidator filed Quashing Petition with Hon'ble High Court of Karnataka and Hon'ble High Court of Karnataka has granted Interim stay in favour of the Liquidator.

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6. It is also stated that the Corporate Debtor has not commenced the operations at the factory and as per the Audited financials for FY 15, 16, 17 and FY 18 no salaries incurred by the Corporate Debtor. Further, the Liquidator has not received any claim form from any person claiming as worker / employee / EPF / ESI Department either in CIRP or in Liquidation process. The Liquidator constituted the Stakeholders' Consultation Committee comprising of members from each class of creditors from whom the claims are received. Accordingly, the Liquidator seeks to allow the instant Application to enable the Successful Bidder to reconstitute the Board of Directors, to allot the share capital, etc., and to start and run the business of the Corporate Debtors at the earliest as they have paid total consideration in September 2021 itself.

7. Heard Shri G. Madhusudhan Rao, Liquidator of the Corporate Debtor and perused the pleadings on record.

8. The present application is filed under section 35(1)(n) & Section (60)(5) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The liquidator has therefore submitted that the Corporate Debtor is sold as a going concern to the highest bidder M/s. Siddhasiri Souharadaa Sahakari Niyamit and also submitted that distribution was made as per section 53 of the code on 15.02.2022.

9. Form-H Compliance Certificate and Final Report has been filed by the Liquidator along with the Application.

10. In view of the above discussion and in view of the provisions of Regulation 45 (3) (a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, we direct, that since the Corporate Debtor Chincholi Sugar and Bio Industries Ltd. is sold as a going concern, the liquidation process of the Corporate Debtor Chincholi Sugar and Bio Industries Ltd. be closed without dissolution. With regard to the other reliefs claimed in the instant I.A, we can only declare that the Corporate Debtor shall make

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appropriate applications or representations to the concerned authorities and the same shall be considered in accordance with law. Further, Corporate Debtor can take all necessary steps for continuing the Corporate Debtor in accordance with the Companies Act, 2013 and the Rules made thereunder.

11. Accordingly, I.A. No. 68 of 2022 is allowed.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)