

IA NO. 190/KB/2025
IN
TP NO. 22/KB/2022

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (COURT-II)
KOLKATA

I.A. No. 190 OF 2025

In

T.P. No.22/KB/2022

(An application under Rule 11 of the Insolvency and Bankruptcy
Rules, 2016 read with National Company Law Tribunal Rules
2016)

In the matter of:

Tata Capital Financial Services Ltd

-Financial Creditor

Versus

Maheshwary Ispat Limited(in Liquidation)

-Respondent/Personal Guarantor

And

In the matter of:

CA Santanu Brahma (Liquidator of the Corporate Debtor)

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Registration no. IBBI/IPA-001/IP-P01482/2019-19/12251,
Having his office at AH, Salt Lake, Sector 11,
Kolkata-700091

-Applicant

Coram:

Mr. Labh Singh, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

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|------------------------|---|
| For the Liquidator | Mr. Shaunak Mitra Ld. Advocate Mr. Chandan Mohata Ld. Advocate Ms. Mohini Gupta Ld. Advocate |
| For Personal Guarantor | Mr. Siddhantha Chatterjee Ld. Advocate Mr. Abir Lal Ld. Advocate Ms. Ankita Aggarwal Ld. Advocate |

Order pronounced on: 13.11.2025

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O R D E R

Labh Singh Member(Judicial)

1.The present application has been filed under Rule 11 of National Company Law Tribunal Rules 2016 to pass the following orders:-

- (i) An order be passed allowing the completion of “Private Sale” of Manbhum Ispat Private Limited, of the unmarked area of land admeasuring 5.04 acres in the Panagarh factory of Corporate Debtor to Manbhum Ispat Private Ltd at the sale consideration of ₹5,20,00,000/-;
- (ii) An order be passed allowing the completion of ‘Private sale’ to Manbhum Ispat Private Ltd, of the environmental clearance license, which has been valued at ₹50,000 and be handed over, assigned and/or made over to Manbhum Ispat Private Ltd in whose favour the said license alone, retains any functional or bona fide utility;
- (iii) An order be passed directing Manbhum Ispat Private Ltd through the applicant liquidator, to submit aggregate sale consideration of ₹5,20,50,000/- within a period of 30 days from the date of order granting approval to conduct such Private sale;
- (iv) Pass an order or direction as this Tribunal deems fit and proper in the interest of justice and to safeguard the


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rights of the stakeholder under the IBBI(Liquidation Process) regulation 2016, and the Insolvency and Bankruptcy code 2016.

2. Briefly stated the facts of the case are that one Tata Capital Financial Services Limited instituted Company Petition no. 560 of 2011 before Hon'ble High Court of Calcutta under provision of Section 433, 434 and 439 of the Companies Act 1956, with the prayer that the company be wound up and/or sent to liquidation and for other incidental and consequences relief. Hon'ble High Court, vide order dated 21st June 2016 read with order dated 28 November 2016, directed the Company to be wound up and Official Liquidator was directed to forthwith take possession and control of all books, records, documents, and estate of the Company in liquidation.
3. It has further been stated that on 14th March 2024, the applicant obtained possession of Panagarh factory of the Corporate Debtor situated at Village Beldanga, Panagarh, Magram State Highway, opposite Amrit Chicken, Post Office, Chhota Ramachandrapura, PS Khansa District Paschim Burdwan, West Bengal, from the official liquidator of the Hon'ble High Court of Calcutta.



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4. It has further been stated that Indian Bank and State Bank of India, being the secured financial creditors, filed their proof of claims vide Form-D on 27th January 2024, and 9th February 2024, respectively under Regulation 18 of the IBBI (Liquidation Process) Regulation, 2016, expressing their intent not to relinquish their security interest on Panagarh factory. The claim forms did not specify the land area of the Panagarh factory on which security interest existed.
 5. It is pertinent to mention that the said Panagarh factory was held as a security by the aforesaid secured creditors as first Charge on pari pasu basis. Accordingly, after compliance of provision of IBC law, the Panagarh factory was handed over jointly to both the Secured Creditors on 30th April 2024.
 6. The applicant conducted valuation of the asset of the Corporate Debtor, including Panagarh factory in compliance of order dated 28th February 2024 passed by this Tribunal on IA No. 27/KB/2024 wherein the applicant had sought for extension of time to conduct valuation. The preliminary report, asset memorandum and supplementary affidavit were filed with this Tribunal vide I.A no. 48/KB/2024 containing the valuation report which were allowed to be taken on record by this Tribunal vide order dated 30th April 2024.


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7. The valuation of the said land admeasuring 5.04 acre in Panagarh factory is for unidentified and undemarcated land which is part of the total area of 35.60 acres of land of Panagarh factory. The total land admeasuring 35.60 acres has been valued by the registered valuer in the month of April 2024 as a consolidated piece of land. The valuation report expressed the value of Panagarh factory, wherein the measurement of the land was for the whole 35.6 acres. The said fact was shared with all the stakeholder including Secured Creditors who have not relinquished their security interest. Thus, the Secured Creditors remained outside the liquidation proceedings and initiated steps under the provision of SARFAESI Act 2002. To sell the Panagarh factory in accordance with law, the said assets were handed over to them on 30th April 2024.

8. It has further been stated that on 5th September 2024, and 6th September 2024, the Secured Creditors published e-auction sale notice dated 3rd September 2024, in newspapers for sale of Panagarh factory, stating therein that land area of Panagarh factory is 30.56 acres. The publication of the sale notice was brought to the notice of the applicant by email dated 6th September 2024. After observing the variation i.e. 35.6 acre total landed property of Panagarh factory of the


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Corporate Debtor and 30.56 acres area of land being the security interest offered for sale, the applicant informed the same to the Secured Creditors through email dated 19th October 2024 followed by another email dated 22nd October 2024 and requested them to take cognizance of such difference.

9. On 21st October 2024, the highest bidder Manbhum Ispat Private Ltd deposited the entire bid amount of ₹55,10,00,000 (Fifty Five Crores and Ten Lakh Only). The completion of sale was communicated to the applicant by the Indian bank on behalf of the secured creditors vide email dated 24th October 2024. It was also informed that possession of Panagarh factory has been given to Manbhum Ispat Private Ltd. The applicant immediately forwarded an email to the Secured Creditors requesting for the copy of sale certificates and also enquired about the possession of the subject land of 5.04 acres which was not sold by the Secured Creditors.
10. It has further been stated that by email dated 25th October 2024, the Secured Creditors provided two sale certificates both dated 21st October 2024 to the applicant containing full detail of the land and sale price. The applicant discussed with stakeholders regarding sale and possession of the


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entire land in 8th SCC meeting held on 25th October 2024. Despite exclusion of 5.04 acre of Panagarh factory land in sale certificates, the secured lender handed over the possession of the entire Panagarh factory admeasuring 35.6 acre to Manbhum Ispat Private Ltd without demarcation. The applicant filed an application being IA No. 200 of 2024 in TP No. 22 of 2022 before this Tribunal seeking direction upon Manbhum Ispat Private Ltd to handover the land admeasuring around 5.04 acres in the Panagarh Factory without proper bifurcation or demarcation that were explicitly excluded from e-auction sale conducted by the Secured Creditors. This Tribunal, vide order dated 17th December 2024, disposed of the application directing respondent no. 1 to demarcate the land areas of 5.04 acres and handover the possession of the same to the liquidator within a period of two months.

11. That upon an appeal filed by Manbhum Ispat Private Ltd before Hon'ble NCLAT being C.A No. 161 of 2025 against order dated 17th December 2024, Hon'ble NCLAT, vide order dated 28th January 2025, set aside NCLT order dated 17th December 2024 and directed for revival of IA No. 200 of 2024 for fresh hearing on the ground that NCLT order was passed without hearing Manbhum Ispat Private Ltd. Thereafter, this Tribunal


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directed the parties to complete the proceedings and listed the matter for hearing on 10th March 2025. During the interregnum, Manbhum Ispat Private Ltd approached the applicant via email dated 14th May 2025 for settlement of the dispute. Accordingly, the applicant by email dated 14th May 2025 informed to hold a meeting of SCC to discuss the matter. Thereafter, the minutes of 11th and 12th SCC meeting held on 22nd May 2025 and 20th June 2025 were provided with details to the Director of Manbhum Ispat Private Ltd to purchase unmarked area of 5.04 acres of land situated within total bounded land of 35.6 acres identified as Panagarh factory for an amount of ₹5,00,00,000(Rupees Five Crores Only) to be paid within a period of 30 days. A fresh valuation was sought to be conducted by re-appointing the existing registered valuer for the Land & Building for ascertaining the realisable value of the unmarked 5.04 acres of land. The proposal was sent by Manbhum Ispat Private Ltd vide email dated 12th June 2025 by the applicant which was also circulated to the stakeholders.

12. It is further stated that for reasons recorded in minutes of 12th SCC meeting and with consent of the SCC members, the applicant reappointed registered valuers on 30th July 2025 to determine the realisable value of the land in question


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situated within total landed area of 35.6 acres. Upon receipt of valuation report of the subject land of 5.04 acres from the registered valuers, the applicant circulated the same to stakeholders in SCC meeting via email dated 28th July 2025. The valuation report was circulated to the members of SCC via email dated 26th July 2025. The same was discussed in 13th SCC meeting held on 28th July 2025, and subsequently, the negotiations were held with Manbhum Ispat Private Ltd in respect of their proposed offer. Accordingly, Manbhum Ispat Private Ltd revised its offer to ₹5,20,00,000 for the assets i.e 5.04 acres of land and environmental clearance license dated 30th June 2009.

13. Manbhum Ispat Private Ltd, by email dated 30th July 2025, submitted its final and no-regret offer of ₹5,20,50,000 for the asset (a) Rs. 520 lakh for 5.04 acres of land and (b) Rs. 50,000/- for Environmental Clearance Licence dated 30.9.2029. The applicant circulated the said proposal amongst stakeholder of SCC by email dated 31st July 2025. The SSC members, in meeting held on 7th July 2025, consented and approved with 96.3% vote in favour of the sale of unidentified and undemarcated land measuring around 5.04 acres situated within the total land area of 35.6 acres identified as Panagarh factory at the sale consideration of

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Rs. five crores twenty lakhs only and the sale transfer of environmental clearance certificate dated 30th September 2009 issued to Corporate Debtor for its Panagarh factory for sale consideration of Rs. 50,000 to Manbhum Ispat Private Ltd on Private sale basis subject to approval of this Tribunal. The result of e-voting was circulated to the SSC members via email dated 14th August 2025.

14. The applicant informed Manbhum Ispat Private Ltd by email dated 17th August 2025 about the proposal being affirmatively considered by the applicant in consultation with SCC members, pursuant to the discussion held in 14th SSC meeting held on 7th August 2025 and requested to submit the declaration, affidavit, confirming the term of the sale. Manbhum Ispat Private Ltd, by email dated 20th August 2025, submitted the declaration, affidavit, and confirming terms of sale.

15. It has further been stated that provision of Section 35F of the Insolvency and Bankruptcy Code 2016, read with Regulation 33(2) of the IBBI (Liquidation Process) Regulation 2016 and Rule 11 of the National Company Tribunal Rules 2016 permits the Liquidator to conduct private sale during liquidation process when all the conditions are met out. The land in question is part of an unidentified and


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un-demarcated total land area of 35.60 acre identified as Panagarh factory. The said 35.6 acres of land was valued by the Registered Valuer in the month of April 2025 as a consolidated piece of land. The private sale of un-demarcated 5.04 acres or more land at Panagarh factories is essential since the same is unbounded and difficult to measure since the remaining 30.6 acre of land is secured with Secured Creditor as security interest. The demarcation is not possible for the same; and therefore, auction for such an un-demarcated portion of land would lead to legal dispute and technical concern and possibility of reduced number of bid is there.

16. It is further stated that Manbhum Ispat Private Ltd is likely to give the best possible value of the property, considering the usage and utility of the land as a major portion of which it had already acquired through the auction sale from the secure creditors. The value reflected in the registered valuers report indicates the higher and more meaningful value likely to be realised if the said unit is sold to Manbhum Ispat Private Ltd. The sale to Manbhum Ispat Private Ltd as private sale is not arbitrary but arises from the process of public auction being conducted by the Secured Creditors. Therefore, abundant precaution is being taken in

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conducting the private sale of the unmarked land measuring 5.04 acres to Manbhum Ispat Private Ltd.

17. It has further been stated that under Regulation 31 of the IBBI (Liquidation Process) Regulation 2016, the liquidator is responsible for protecting and preserving the estate of the liquidation estate. The transfer of the possession of the premises leaving aside 5.04 acres will lead to unintended consequences, including possible, unlawful transfer of property rights, illegal possession and fall in the remaining assets value by adversely impacting the liquidation estate and right of a holder. Therefore, the present application deserves to be allowed for the reasons stated here in above.

18. Heard Learned Counsel appearing for the parties. We have gone through the entire record of the present case. We have duly considered law applicable on the facts and circumstances of the present application.

19. It is undisputed fact that though the land in question is part of Panagarh factory which comprises of total land area of 35.6 acres out of which major portion of land 30.56 has already been sold to Manbhum Ispat Private Limited by the secured creditors in e-auction but the liquidator has not

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tried for sale of the undemarcated land area of 5.04 acres by way of public auction.

20. We note that the liquidation sale is required to be carried out in terms of Regulation 33 read with Schedule I of the Regulations. The relevant Regulation No. 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 is as extracted below:

“33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-


(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any

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collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”


21. From the above statutory provisions, it is clear that private sale can be resorted to only in the condition when either the asset is perishable or asset is likely to deteriorate or asset is sold at a higher price than the reserve price of a failed auction or the prior permission of the Adjudicating Authority has been obtained for such sale.

22. It is pertinent to note that the Regulations are mandatory in nature. Regulation 33 (1) mandates that the Liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I. A private sale is meant to be an exception, allowed only in specific circumstances enumerated in Regulation 33 (2).

23. Hon'ble Apex Court in case of R K Industries vs HR Commercials (2024) SCC 166 on the power of liquidator to sell the property of the Corporate Debtor under Regulation 33 of IBBI (Liquidation Process) Regulation 2016 held as follow:


“56. When it comes to the mode of sale of the assets of the corporate debtor, whether immovable or movable and other actionable claims, Regulation 33 of the Liquidation Regulations comes into play and states that

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ordinarily, the liquidator will sell the said assets through auction, as specified in Schedule I (1). Sub-section (2) of Section 33 IBC gives an option to the liquidator to sell the assets of the corporate debtor through a private sale, in the manner set out in Schedule I(2). Regulation 33 of the Liquidation Regulations is couched in a language which shows that ample latitude has been given to the liquidator, who may “ordinarily” sell the assets through auction thereby meaning that in peculiar facts and circumstances, the liquidator may directly go in for a private sale. To avoid the pitfalls of disposing of the assets by conducting a private sale for the pittance, Regulation 33 has prescribed some stringent conditions that the liquidator is under an obligation to comply. The said preconditions are that: (i) the asset is perishable; (ii) the asset is likely to deteriorate in value significantly if not sold immediately; (iii) the asset is sold at a higher price than the reserved price of the failed auction; and (iv) the Adjudicating Authority (NCLT) must grant *prior permission* for such a sale. The proviso appended to Regulation 33(2) of the Liquidation Regulations places yet another embargo to the effect

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that when the liquidator intends to sell the assets of the corporate debtor by way of a private sale to a related party of the corporate debtor, his related party or any professional appointed by him, it is mandatory to obtain prior permission of the adjudicating authority (NCLT). Even the mode of sale has been regulated under the Liquidation Regulations for both, a public auction and a private sale. All the above dos and don'ts have been inserted to protect the assets of the corporate debtor and safeguard the interest of the stakeholders.”

24. In the case in hand, neither the asset is perishable, nor it is likely to deteriorate in value significantly if not sold immediately nor the asset has been tried to be sold in public auction at any time. It is immaterial that major portion of the land has been purchased by Manbhum Ispat Private Limited, the intended purchaser, through public auction sale conducted by the Secured Creditors. Even otherwise, nothing prevents the intending purchaser Manbhum Ispat Private Limited to purchase the land in question in public auction at the same or higher price which is being offered in private sale.

25. It was bounden duty of the Liquidator to get the land demarcated after taking help of the revenue authorities and if it was not possible for early demarcation of the land then

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he should have tried for sale of undemarcated land through public auction with intimation to public at large that land being sold is undemarcated. It cannot be ruled out that apart from Manbhum Ispat Private Limited, many other intending purchasers may come forward to purchase the land in question despite the fact that the land is undemarcated and part of a major portion of land forming part of 35.6 acres.

26. Thus, in the present case, the Liquidator deviated from the normal auction route without any legitimate justification.

27. We are of the view that before proceeding for Private Sale, the Liquidator shall follow the normal rules and try to sell the land through E-auction that will also help in identifying the market value. If it is not possible to sell the land in E-auction, then he can apply to this Tribunal for permission to go ahead with the private sale.

28. Therefore, in view of the above and law applicable thereon, the present application stands dismissed being devoid of merits.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

Order signed on this 13th day of November 2025