

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

**IA No.492 of 2025
IN
CP (IB)/1262/MB/C-II/2017**

Under Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 r/w section 60(5) of Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016.

Avil Menezes

Liquidator of Parekh Aluminex Limited

Reg. No. IBBI/IPA-001/IP/P-00017/2016-2017/10041
Having address at, 106, 1st Floor, Kanakia Atrium-2
Cross Road A, Behind Courtyard Marriott, Chakala
Andheri East, Mumbai- 400093.

... Applicant

In the matter of

Kotak Mahindra Bank

...Financial Creditor

Vs

Parekh Aluminex Limited

... Corporate Debtor

Order Delivered on :18.03.2025

CORAM:

**SHRI ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

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Appearances:

For the Applicant : Adv. Aniruth Purusothaman

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Application has been filed by the Applicant, the Liquidator seeking permission to sell 5.54% Equity Stake held by the Corporate Debtor in Trishakti Power Private Limited under a Private Sale as per Regulation 33(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) and in the manner specified in Schedule I of the Liquidation Process Regulations, to Amrex Marketing Private Limited (Purchaser) for Rs.35 Lakh.

Facts of the case

2. The Corporate Debtor was admitted to the Corporate Insolvency Resolution Process (CIRP) *vide* order dated 23.11.2017. However, as no Resolution Plan was approved by the Committee of Creditors (CoC), the Adjudicating Authority ordered liquidation pursuant to an Order dated 07.10.2020, wherein the Applicant was appointed as the Liquidator of the Corporate Debtor.

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3. After liquidation of available assets and distribution of sale proceeds under Section 53 of the Insolvency and Bankruptcy Code, 2016 (IBC), the Applicant filed an Application No. 547 of 2022 under Section 54 of IBC for dissolution of Corporate Debtor. During the pendency of the said application, the Applicant received an e-mail dated 02.10.2022 from the Serious Fraud Investigation Office (SFIO) intimating the Applicant that, based on their investigations, it has come to their notice that the Corporate Debtor holds 5.54% equity share in Trishakti Power Private Limited (said Asset) and that the same may be considered by the Liquidator.

4. On account of the above, the Applicant filed IA No. 3815 of 2023 seeking withdrawal of the dissolution application (IA No. 547 of 2022) and an extension of a period of 180 days for completing the liquidation process of the Corporate Debtor, which was allowed by this Tribunal *vide* order dated 21.03.2024.

5. The Applicant conducted 1st public auction of said Asset at a reserve price of Rs. 93,81,489/-, 2nd public auction at a reserve price of Rs. 79,74,266/-, and 3rd public auction at a reserve price of Rs. 71,76,839/-, but all these public auctions failed as no EMD was received. Thereafter, the applicant, in consultation with the Stakeholders' Consultation Committee (SCC), decided to categorise the said Asset as Not Readily Realisable Assets (NRRA) under Regulation 37A of the Liquidation Process Regulations. The said Asset was put to public auction, treating it as NRRA on 20.07.2024 but no bids were received.

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6. Another attempt to sell the assets as NRRA was made by issuing a public announcement on 05.09.2024, specifying 26.09.2024 as the last date for submission of bids. In response, an offer amounting to Rs.27,35,000/- was received from Bhubnesh Commercial Private Limited on 25.09.2024 and deposited an initial amount of Rs.50,000/- on 11.10.2024. The said offer was revised through Amrex Marketing Private Limited, an associate company of Bhubnesh Commercial Private Limited to Rs. 35,00,000/- and deposited EMD of Rs. 3,00,000/- and clarified that the balance sale consideration would be paid within 10 days of the NCLT approval of the proposed sale. The said offer was discussed in the SCC meeting held on 10.10.2024 and was put for voting from 17.10.2024 to 27.11.2024. However, 63.70% voted in favour and 30.78% voted against and 5.92% abstained from voting. In this background, the applicant filed the present application seeking approval of Adjudicating Authority for the private sale in favour of Amrex Marketing Private Limited.

Submissions of Applicant

7. It is submitted that the Applicant has made every endeavor to sell the assets of the Corporate Debtor, but the same has not been sold till date. This demonstrates a lack of market interest in the conventional auction method, necessitating an alternative mechanism such as a private sale to achieve asset realisation.

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8. The members of SCC have categorised the said Asset as a NRRA under Regulation 37A of the Liquidation Process Regulations, acknowledging the limited marketability and complexities involved in selling the said Asset through standard methods. The offer received by the Applicant reflects market driven pricing for the distressed asset, aligning with the principles of value maximization.

9. It is submitted that the proposed private sale adheres to Regulation 31A (10), which permits private sales under specific circumstances, such as the failure of public auctions and the asset's classification as an NRRA.

10. A private sale provides a feasible solution to expedite the liquidation process, avoiding further delays and reducing costs associated with prolonged asset retention.

11. The Applicant, therefore, prayed for allowing private sale.

Analysis and Findings

12. We have heard the submissions of the Ld. Counsel appearing for the Applicant and perused the documents on record.

13. Before dealing with the prayers, we may notice Regulations 33(2) of the Liquidation Process Regulations:

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“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 only after prior consultation with the consultation committee under regulation 31A, 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; or

(c) 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 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.”

Schedule 1 of the Liquidation Process Regulations, further provides as under;

“2. PRIVATE SALE (1) Where an asset is to be sold through private sale, a liquidator shall conduct the sale in the manner specified herein. The liquidator shall prepare a

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strategy to approach interested buyers for assets to be sold by private sale. (3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.

[(3A) The private sale shall be confirmed to the buyer after consultation with the consultation committee under regulation 33.

(4) The sale shall stand completed in accordance with the terms of sale.

(5) Thereafter, the assets shall be delivered to the purchaser, on receipt of full consideration for the assets, in the manner specified in the terms of sale.”

14. It is on record that the Applicant conducted three public auctions for the said Asset at a reserve price of Rs. 93,81,489/-, Rs. 79,74,266/-, and Rs. 71,76,839/-. However, all these auctions were unsuccessful as no EMD was received. Following this, the Applicant, in consultation with the SCC, categorised the said Asset as NRRA under Regulation 37A of the Liquidation Process Regulations. As an NRRA, two public announcements were made. In the second public announcement, made on 05.09.2024, an offer of Rs.27,35,000/- was received from Bhubnesh Commercial Private Limited. This offer was subsequently revised by its associate company Amrex Marketing Private Limited to Rs. 35,00,000/-. Amrex Marketing Private Limited has deposited EMD of Rs. 3,00,000/- and has clarified that the remaining sale

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consideration would be paid within 10 days following NCLT's approval of the proposed sale.

15. Though the said offer was discussed in the SCC meeting held on 10.10.2024, only 63.70% voted in favour and 30.78% voted against and 5.92% abstained from voting. In this background, the Applicant has filed the present Application seeking approval of this Adjudicating Authority for the private sale in favour of Amrex Marketing Private Limited.

16. In the present case, it is observed that the reserve price fixed for the most recent failed auction was Rs. 71,76,839/-. The present offer price is significantly below the reserve price. Additionally, the proposal to sell through a private sale for Rs. 35,00,000/- did not receive requisite majority votes and hence the Resolution stood rejected in accordance with Regulation 31A (9) of the Liquidation Process Regulations.

17. It is pertinent to note that the Liquidation Process Regulations provide for certain checks and balances on the private sale in Schedule 1 thereto, which includes, *inter alia*, the preparation of a strategy to approach interested buyers for assets to be sold by private sale, liaising with potential buyers or their agents, completion of sale in accordance with the terms of sale, etc. The private sale has to be conducted in a manner so as to maximise the realisations from the sale of assets. The Hon'ble NCLAT in *State Bank of India Vs. Bhuvée Stenovate Private*

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Limited and Ors. [Comp. App. (AT) (Ins) No. 1013/2022] observed that the Liquidator, for conducting private sale is not to identify one buyer and sell the assets; rather, strategy has to be made to approach the interested buyer for assets which is with the object to attract more and more interested buyers to maximise the realisation from the sale of assets. Keeping in mind the above decision and considering the interest shown by the Applicant in IA.No.261/2024, we feel it appropriate to give an opportunity to the Applicant in IA No.261/2024 and other interested parties, if any, to participate in the sale process.

18. There is no evidence on record to show that the Applicant has prepared a strategy to approach interested buyers for assets to be sold on private sale in order to maximize the realisations from the sale of assets. Additionally, it appears that the liquidation value of the said Asset has not been ascertained to justify sale at a price of Rs.35,00,000/-.

19. For the foregoing reasons, we disallow private sale of said Asset for an offer of Rs. 35,00,000/- with the following direction to the Liquidator under Section 35 of the Code:

a. The Liquidator shall issue a fresh notice of sale in two widely circulated newspapers and invite bids above the bid submitted by Amrex Marketing Private Ltd by adopting Swiss Challenge method, treating the bid offered by Amrex Marketing Private Ltd as the anchor bid.

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b. The interested bidders will have to submit 10% of the bid amount as EMD along with the bid.

c. In the event of receipt of a higher bid than the anchor bid, Amrex Markeing Private Limited shall have the option to match that bid.

20. Accordingly, **IA.No.492/2025 stands dismissed.**

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)