

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

**IA No. 1383/2022, 471/2021
550/2021 & 620/2021
in
CP (IB) No. 340/Chd/Pb/2018
(Admitted Matter)**

Under Sections 10 & 60(5), IBC, 2016

In the matter of:-

Punjab Basmati Rice Limited ...Petitioner/ Financial Creditor

In the matter of IA No. 471/2021:

Kulwinder Singh Makhni

R/o 15-A, Riase Avenue,
Tehsil & District Amritsar

.....Applicant/ Suspended Director

Versus

Mr, Sanjay Kumar Aggarwal, Liquidator

C/o 14, New Punjab Mata Nagar,
Main Street, Pakholwal Road, Ludhiana

.....Respondent/ Liquidator

And

In the matter of IA No. 550/2021:

Kulwinder Singh Makhni

R/o 15-A, Riase Avenue,
Tehsil & District Amritsar

.....Applicant/ Suspended Director

Versus

Mr, Sanjay Kumar Aggarwal, Liquidator

C/o 14, New Punjab Mata Nagar,
Main Street, Pakholwal Road, Ludhiana

.....Respondent/ Liquidator

And

In the matter of IA No.620/2021:

Mr, Sanjay Kumar Aggarwal, Liquidator

C/o 14, New Punjab Mata Nagar,
Main Street, Pakholwal Road, Ludhiana.

....Applicant

Versus

Kulwinder Singh Makhni

R/o 15-A, Riase Avenue,
Tehsil & District Amritsar

.....Respondent

And

In the matter of IA No. 1383/2022:

Kulwinder Singh Makhni

R/o 15-A, Riase Avenue,
Tehsil & District Amritsar

.....Applicant/ Suspended Director

Versus

Mr, Sanjay Kumar Aggarwal, Liquidator

C/o 14, New Punjab Mata Nagar,
Main Street, Pakholwal Road, Ludhiana

.....Respondent/ Liquidator

Order delivered on: 02.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant in IA Nos. 471/2021, : Ms. Jyoti Sareen, Advocate
550/2021 & 1383/2022 & for respondent : Ms. Parmeet Kaur, Advocate
In IA No. 620/2021

For the respondent-Liquidator in IA Nos. : Mr. Anand Chibbar, Senior Advocate
471/2021, 550/2021 & 1383/2022 and for : Mr. Vaibhav Sahni, Advocate
The applicant in IA No. 620/2021 : Mr. Nipun Gautam, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA Nos.471/2021 & 1383/2022

As the facts and prayers of IA Nos., 471/2021 and 1383/2022 are overlapping and inter-connected, these IA's are taken up together for discussion and adjudication.

2. IA Nos. 471/2021 is filed by Kulwinder Singh Makhni (Suspended Boards of Director) against Mr Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016. IA No.1383/2022 is also filed by Kulwinder Singh Makhni (Suspended Boards of Director) against Mr Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Limited under Section 60(5) for filing the objections to the valuation report dated 24.11.2021 and 23.11.2021.

3. Many of the prayers in IA No.471/2021 have become irrelevant due to certain orders passed and subsequently, the same were not pressed during the proceedings. In short, presently the only prayer for adjudication made by the applicant are (i) to set aside the e-auction sale notice dated 13.08.2021 and the E-Auction Process Information/Tender document issued by the Liquidator fixing the sale of the assets of the Corporate Debtor on 02.09.2021 allegedly at a highly undervalued reserved price without even removing the illegal encroachments from the land of the Corporate Debtor (ii) to direct the liquidator to fix the reserve price of the Corporate Debtor in accordance with the provisions of IBBI (Liquidation Process) Regulations, 2016. In the orders dated 09.11.2022 and 08.07.2021, the prayers for the conduct of a fresh valuation of land and building and sharing a copy of the valuation reports were allowed, and other miscellaneous prayers have not been

pressed by the applicant. It is further prayed in IA No.1383/2022 that the objections to the valuation report dated 24.11.2021 and 23.11.2021 may be allowed and the liquidator may be directed to further conduct the fresh valuation of land and building from two independent valuers.

4. The brief facts of the case as mentioned in the application are that the CIRP was initiated against the Corporate Debtor on 18.02.2019 and the liquidation order under Section 33(2) of the Insolvency and Bankruptcy Code was passed on 18.12.2019. The Interim Resolution Professional handed over the assets and records of the Corporate Debtor to the respondent who is presently the liquidator of the Corporate Debtor. It is stated that the Resolution Professional was only appointed as Liquidator and the land in front of the factory of the Corporate Debtor was bound by the pillar and barbed wire at the time of handling the charge to the respondent. The properties of the Corporate Debtor including factory land and building along with plant and machinery and vacant land measuring 40K-10M adjoining the factory of the Corporate Debtor, have been in the custody of the respondent/liquidator since June 2019. It is submitted that the respondent-Liquidator issued an E-auction sale notice dated 21.04.2020 without even sharing the valuation reports submitted by the two appointed valuers by the respondent-Liquidator with the SCC members which is in utter violation of Regulation 31-A(1) & Regulation 31-A(5) of IBBI (Liquidation Process) Regulations. It is further averred that the said land of the corporate debtor has been encroached by unknown persons from past more than one year due to which no bids were received by the Liquidator in various E-auctions fixed by the liquidator and the reserve price of the composite sale of the assets/properties of the CD has been reduced to Rs.23.95 crore, and the respondent-Liquidator has also sought to sell the assets of the CD by way of lots.

5. It is submitted that as per the sale notice, the value of the plant and machinery has been assessed at only Rs.12.20 crore, which is highly undervalued. It is also pointed out that no process memorandum has been served by the respondent-Liquidator to the members of SCC neither the members of SCC were consulted prior to reducing the reserve price nor the issues raised by the applicant being a member of the Stakeholders Consultation Committee have been redressed by the liquidator.

6. The Respondent has filed a reply by Dairy No. 01048/1 Dated 02.12.2021 stating that the applicant has no locus standi to challenge the reserve price fixed for the sale of assets of the corporate debtor. The applicant cannot question the fixation of the reserve price subsequently. It is also stated that the purpose of valuation reports is not res-integra and has been settled by the Hon'ble Supreme Court. It is also averred that valuation is a question of fact which cannot be challenged. The liquidation process has been conducted in accordance with provisions of the code and underlying regulations.

7. In the order Dated 09.11.2021 passed by this Tribunal, it was directed to defer the e-auction fixed on 10.11.2021, and it was also directed to conduct the fresh valuation of complete land and building.

8. In pursuance of the order dated 09.11.2021, the liquidator has conducted the valuation of land and building by two IBBI Registered Valuers. The copies of the valuation report dated 23.11.2021 and 24.11.2021 are furnished in the sealed cover and submitted to this Tribunal.

9. The applicant has also sought liberty to file objections to the valuations which are submitted by the Applicant in IA 1383/2022, and the same are discussed below.

10. The main issues raised in IA No.471/2022 and the present application highlighting various irregularities committed by the Liquidators during the liquidation process are that

- i) The mode and manner of the sale adopted by the liquidator are violative of Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as 'Regulations').
- ii) The non-disclosure of the valuation report is violative of Regulation 31A(1) and 31A(5) of the Regulations
- iii) The reserve price of the Corporate Debtor and assets are highly inadequate.
- iv) The reserve price of the Corporate Debtor and assets has been fixed in violation of 31A(1) and 31A(5) of the Regulations.

11. The respondent-liquidator has filed its written submission by Diary No. 2505/4 dated 21.12.2022 stating that the applicant in the capacity of suspended director has filed multiple applications seeking similar reliefs. The liquidator has appointed IBBI registered valuers in terms of the order dated 09.11.2021 passed by the Adjudicating Authority. It is stated that initially, the Valuations conducted by the Registered valuers erroneously included the land belonging to the promoters as well. The earlier valuations were erroneously conducted for 15.97 Acres of Land which included land owned by the promoters. The valuations conducted by the IBBI Registered Valuers pursuant to the order dated 09.11.2021 has an average liquidation value of Rs. 12,24,08,128/-. It is further submitted that the Ex-directors have no locus to challenge the valuation conducted by the IBBI Registered valuers.

12. It is averred that there is no better test for the valuation of assets other than the auction itself. The liquidator has conducted 11 auctions at a reserve price as per

Schedule I of the liquidation process which was approved by the SCC Members from time to time. The objection regarding the inadequacy of the reserve price is misconceived as even at a reserve price, no earnest money was ever deposited to the liquidator to participate in the auctions. It is prayed by the respondents to issue the directions for allowing the fresh e-auction sale notice for the timely completion of the liquidation process.

13. The liquidator-respondent has also relied upon the judgements of :

- i. Duncans Industries Limited v. State of U.P. & Ors* (AIR 2000 SC 355)
- ii. Satnam Agri Products Limited in I.A. 389/2020 in C.P. (IB) No. 124/CHD/PB/2018,*
- iii. Mandip Singh v. Mahesh Bansal* in Company Appeal (AT)(Ins) No. 1114 of 2020.

14. The objector/applicant has filed a rejoinder by diary No. 02505/2 dated 14.11.2022 stating that the applicant/objector being ex-director, shareholder and guarantor of CD, and being SCC member, has a locus stand to file the present objections to the valuation reports supplied by the respondent/liquidator as the valuation of land and building of CD arrived at by the appointed valuers, is highly inadequate and valuations have been conducted in violation of Companies (Registered Valuers and Valuation) Rules, 2017. It is submitted that the issue of locus standi has already been decided by this Hon'ble Tribunal when the liquidator was directed to supply the copies of valuation reports to the objector/ex-director, being a member of the Stakeholders Consultation Committee (SCC).

15. We have heard the learned counsel for the objector/applicant and have perused the records carefully.

16. It is also pertinent to state that an IA No. 370/2021 was disposed of by this Tribunal by Order dated 18.11.2022 with direction to the Applicant to raise all issues in the SCC meeting. We observe that the Liquidation Process is being delayed due to multifarious repetitive litigations. The Suspended Boards of Director has filed IA No. 471/2021 and 1383/2022 challenging the earlier valuation and raising objections to the fresh valuation as conducted by the liquidator through two independent valuers.

17. In this context, a reference is made to the following extract from the decision of Hon'ble National Company Law Appellate Tribunal, New Delhi in **Mandip Singh (Suspended Director, M/s. Satnam Agri Products Ltd) Vs. Mahesh Bansal, Liquidator of Satnam Agri Products Ltd. Company Appeal (AT)(Insolvency) No. 1114 of 2020 dated 14.07.2022.**

“10. xvi. All this suggests that the Applicant in the main Company Appeal i.e CA(AT) (Ins) No 1114 of 2020 is only interested in delaying and causing hindrance even in Liquidation proceedings of the CD by filing multiple IAs. The deliberation in SCC wherein the Applicant has also participated has elaborately covers related issues, and the Liquidator in some form and other has revealed its actions and has taken SCC into confidence at every stage.”

18. We also refer the following extract from the decision of the Hon'ble Supreme Court in the matter of '**Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors**' on 22.01.2020, which discusses the role of valuation in CIRP and liquidation proceeding.

“27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.”

19. A further reference is made to the decision of the Hon'ble Supreme Court in the matter of **State Bank of India v. Accord Life Spec Private Limited through director & Ors.** vide judgement dated 28.02.2020, wherein it was held as under:

“The impugned judgment dated 13.11.2019 has remitted the matter to the NCLT after a finding that under Section 30(2) of the Insolvency and Bankruptcy Code together with the principle of maximization of assets of the corporate debtor, a resolution plan which is lesser than liquidation value cannot be accepted. As a matter of law, this judgment has to be set aside in view of our recent judgment dated 22.01.2020 in Civil Appeal No. 4242 of 2019 entitled Maharashtra Seamless Limited vs. Padmanabhan Venkatesh &Ors. in which this Court has categorically held as under:

“26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Appellant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point 2 has been dealt with in the case of Essar Steel (supra). We have quoted about the relevant passages from this judgment.”

20. We note the fact that the applicant is a member of the SCC and the liquidator has taken the SCC into confidence at every stage. By our earlier order dated 09.11.2021 and 08.07.2022, we have allowed fresh valuation of land and building and also directed for sharing of the copy of the valuation report with the applicant/suspended director. Now, the applicant has a copy of the fresh valuation report of land and building and has filed various applications, including the present one, i.e. IA No.1383/2022 before this Bench. As held in various judicial decisions cited above, the whole purpose of a valuation is to help the SCC in taking the correct decision with regard to the reserve price. In the liquidation process which is creditor-driven, it is entirely up to the SCC to decide on the reserve price based on the information in its possession. It is also clarified that the suspended director has

no vested right in deciding the reserve price based on the fresh valuation reports, and his role is restricted to assist the SCC. In view of the above discussion, we direct the applicant to present its objections duly supported by adequate evidence before the SCC. It is also noted that sufficient time has been spent in deciding the numerous repetitive applications filed in this case, which is delaying the completion of the liquidation proceedings. For protecting the interest of the various stakeholders, the liquidator is directed to convene a meeting of the SCC within three weeks of this order, and the applicant is directed to present its objections with regard to valuation of land and building with all relevant evidence in its possession before the SCC for a final decision on the reserve price of the land and building. The liquidator is further directed to hold the e-auction for land and building within 15 days on the decision on the reserve price. In the result, these IAs are partly allowed with the aforementioned directions and disposed of accordingly.

IA No.550/21

21. The present application is filed by Kulwinder Singh Makhni (Suspended Boards of Director against Mr Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016

22. It is prayed by the applicant to stay the auction fixed for 10.11.2021 in pursuance of the e-auction sale notice dated 13.10.2021.

23. In view of the detailed order passed in IA No. 471/2021 and 1383/2022 directing the liquidator to conduct the meeting of SCC which will afford an opportunity to the applicant to present its objection before deciding on the reserve price and date of auction, the present application become infructuous and disposed of accordingly.

IA No.620/21

24. The present application is filed by Mr Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Limited against Kulwinder Singh Makhni (Suspended Boards of Director under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

25. It is prayed to allow the applicant to issue a fresh e-Auction Notice for assets/properties of the Corporate Debtor in terms of the Liquidation Process Regulations at the Reserve Price as per Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016 as already approved by the Stakeholders and to exclude the period of stay imposed by Order dated 09.11.2021 till the date of vacation of stay/disposal of I.A. 471/2021 and I.A. 550/021 filed by the respondent in the computation of the period of the liquidation process.

26. In view of the detailed order passed in IA No. 471/2021 and 1383/2022, the prayer with regard to the issuance of fresh e-notice is already allowed subject to the conduct of the SCC Meeting which will decide the reserve price and date of auction. However, due to the fact that e-auction has been deferred by Order dated 09.11.2021 passed in IA No. 550/2021, it is directed to exclude the period consumed in the adjudication of IA No. 471/2021 and IA 550/2021 for the Computation of period of Liquidation Process. The liquidator is further directed to complete the liquidation process within the stipulated time frame after excluding the period consumed in the adjudication of Applications. The present application is allowed with the aforesaid direction and disposed of accordingly.

-sd- 02.02.2023
(Subrata Kumar Dash)
Member (Technical)

-sd- 02.02.2023
(Harnam Singh Thakur)
Member (Judicial)

February 02,2023
SM/SA