

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH,  
KOLKATA**

**I.A.(IB) 776/KB/2021**

**In**

**C.P (IB) No.480/KB/2018**

**In the matter of**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

**In the matter of**

An application under Regulation 32 and 32A of the Insolvency and Bankruptcy Board of India( Liquidation Process) Regulations, 2016.

And

**In the matter of:**

**Allahabad Bank**, a banking company constituted under the Banking Companies ( Acquisition and Transfer of Undertaking) Act, 1970 and having its Head Office at 2, Netaji Subhas Road, Kolkata-700001 and International Branch at 119, Park Street, Police Station- Park Street, Kolkata- 700016.

.... Financial Creditor

Versus

**Ural India Limited**, a Company incorporated under the provisions of the Companies Act, 1956 and a Company within the meaning of Companies Act, 2013 and having its registered office at Motijuj House-1, Aukland Place, Kolkata- 700017..

.... Corporate Debtor

And

**In the matter of**

**M/s ABG Projects Private Limited**, a company incorporated under the provisions of the Companies Act, 1956 and a Company within the meaning of Companies Act, 2013 and having its registered office at 56A, Garcha Road, Kolkata-700019.

....Applicant

Versus

**1. Sanjit Kumar Nayak**, Liquidator as appointed by an order dated 15.01.2021 having his office at 30E, Haramohan Ghosh Lane, "Suryadeep" Flat -2B, Beligaghata, Kolkata-700085.

....Respondent/ Liquidator

**2. Committee of Creditor**, represented consisting of Allahabad Bank, a banking company constituted under the Banking Companies ( Acquisition and Transfer of undertaking) Act, 1970 and having its Head Office at 2, Netaji Subhas Road, Kolkata 700001 and International Branch at 119, Park Street, Police Station- Park Street, Kolkata- 700016.

....Proforma Respondent

Date of hearing : 11/11/2021

Order Pronounced on : 14/12/2021

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Ms. Joy Saha.Sr. Adv. } For the applicant in IA/774/KB/2021  
2. Mr.Subhankar Nag, Adv.  
3. Mr. Avisek Guha, Adv.

1. Ms. Rishav Banerjee, Adv. } Applicant in IA776/KB/2021  
2. Ms.Narmata Basu, Adv.

1. Mr. Shaunak Mitra, Adv. } For Respondent/Liquidator in IA/774/KB/2021  
2. Mr. Vikash Singh, Adv. } IA/776/KB/2021 & Applicant in IA/414/KB/2021  
3. Mr.Sanjit Kumar Nayak, Liquidator

1. Mr. Om Narayan Rai, Adv. ] For Indian Bank in IA/774/KB/2021  
1. Mr. Uttiyo Mallick, Adv. } For Financial Creditor  
2. Mr. Vedika Sureka, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. **M/s ABG Projects Private Limited** has filed I.A. No. 776/KB/2021 **under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016** seeking directions against the Liquidator appointed in the matter of **Ural India Limited**, Corporate Debtor ( in Liquidation) that Respondents be directed to act in terms of Regulation 32 and 32A of the IBBI ( Liquidation Process Regulation), 2016 and to consider the bid of the applicant to acquire the Corporate Debtor as a whole along with its business, identity, asset, plant and machinery and place all the documents produced by the applicant and place for consideration before the Stakeholders Committee.
3. The applicant has submitted in his application that vide orders passed on 15.01.2021 in IA No. 1813/KB/2020 by the RP, the Corporate Debtor was ordered to be liquidated and the Liquidator was appointed.
4. It is further submitted that the Liquidator published E-Auction Process Information Document on 19/01/2021 thereby inviting bids for E-Auction of Ural India Limited and as per the E-Auction Information Document the Liquidator was selling the company in Liquidation as a going concern. It is stated that considering the goodwill of the Company in liquidation, the applicant became interested in participating in the E-Auction Process and submitted its bid for acquiring the Corporate Debtor as a going concern “ As is where is, As is what is and Whatever

there is basis” with all its assets, machinery, goodwill and business. The bid was submitted by the applicant on 14<sup>th</sup> July, 2021 along with all requisite documents and a sum of Rs.11,89,886/- towards payment of earnest money which was specified to be 10% of the Reserved price vide e-mail dated July 16, 2021. The Liquidator informed about the payment of earnest money. It is further submitted by the applicant that on 16<sup>th</sup> July, 2016, the respondent arranged site visit where respondent was present and pursuant to certain representations made by the respondents, the applicant could not ascertain as to whether the bid involved “sale of Corporate Debtor as a whole, in its totality, except 2 numbers of Buses lying inside the premises in scrapped condition as stated in the E-Auction Process Document or did the bid involve only scrapped machineries and equipment lying at the factory, there was no clarity. In this regard, the applicant issued e-mail dated 17, 2021 seeking clarification regarding the same from the Respondent. The applicant also expressed its dis-interest to go ahead with the bidding if the Corporate Debtor is not transferred “as a whole” along with its identity, assets and goodwill, as the applicant had always intended to run the Corporate Debtor in future.

5. It is further submitted that the Respondent vide email dated July 19, 2021 rejected the plea of the applicant that the e-auction and / sale is merely in respect of the assets lying at the Haldia factory premises and does not include the business and goodwill of the Corporate Debtor as there is no business or goodwill of the company available for sale. On receipt of the rejection, the Applicant once again by an email dated July 20, 2021 requested the respondent to consider its plea and expressed its wish to revive the unit and provide employment in the factory. It is submitted that having no regard for the requests of the Applicant, the respondent returned the earnest money paid by the Applicant.

6. It is further submitted that the applicant came across an email/ Sale Notice of the Corporate Debtor located in Mumbai in liquidation wherein the Corporate Debtor was being sold as “ a going concern on as is where is basis” with all its assets including Land & building, Plant & Machinery based on Sakkadi Bihar. The Applicant sought legal advice and was made aware that even during the liquidation a Corporate Debtor can be sold as a going concern and thereby requested the respondent by an email dated July 29, 2021 to allow the E-Auction to be held for the same and not merely hold a slump sale. It is further submitted that no response was given by the Respondent and on August 07.2021, the respondent once again issued a fresh E-Auction process Information Document whereby fixing the date of Auction to be September 11, 2021. It is submitted that by way of fresh issuance of E-Auction Process Information Document, it is crystal clear that there had been no prospective qualified bidders apart from the applicant in the first round of bidding. Further, it is also clear that the Respondent herein is making no attempt to maximize the value of assets of the Corporate Debtor contrary to the legislative intent and mandates of the Code of 2016 and Rules and Regulations made thereunder. It is also not clear whether the respondent has made consultation with the stakeholders consultation committee (SCC) or not in respect of the request made by the applicant.
7. The Applicant further submits that in terms of Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the Liquidator shall first attempt to sell the Corporate Debtor or its business concern as a going concern or where such sale shall maximize the value of the Corporate Debtor. Regulation 32A most specifically directs that the Liquidator shall endeavour to first sell as a going concern. It is submitted that the respondent liquidator in complete disregard and in violation of the Regulation has brushed aside the fact that the Applicant is ready to acquire the Corporate Debtor as a going concern and also intends to revive it there by generating the employment.
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8. It is submitted that the intent of the applicant to purchase the corporate debtor in liquidation as a going concern is due to the goodwill of the Corporate Debtor because the Corporate Debtor was a manufacture of defence vehicles and equipments in joint collaboration with a Russian counterpart under “make in India” movement. Even though no land is available, the goodwill, track record and technical knowhow is important for acquisition of the Corporate Debtor concern.
9. It is submitted that the orders prayed for may kindly be passed.
10. In reply to the application, the Liquidator submitted that Corporate Debtor has no land as well as no lease deed was executed and therefore it is not a going concern because the unit of the Corporate Debtor is not operating since 2014. It is further submitted that SDO, Haldia requested the Liquidator to remove the asset of the Corporate Debtor from the occupied land at Haldia vide memo no. 250/Ural/H dated February 10, 2020 ( Annexure-A).
11. It is further submitted that Public Announcement was made by the Liquidator on January 19, 2021 in Financial Express in English and Aajkal in Bengali inviting claim from the Stakeholders and the last date of submission of claim was February 14, 2021. After the claims were received, the Liquidator had constituted Stakeholders Consultation Committee (SCC). It is further stated that the Liquidator had issued E-Auction Notice and E-Auction Process Document on June 17, 2021, and the date fixed for e-auction was July 21, 2021.
12. It is submitted that July 13, 2021, representations of ABG Projects Pvt. Ltd., the applicant herein, visited the office of the Liquidator for discussion in connection with e-auction notice published on June 17, 2021. The Liquidator had explained the details of the assets available for sale. It is stated that on July 14, 2021, the Liquidator received an e-

mail from the applicant, the applicant informed that in continuance of the discussion, the applicant had with the Liquidator on July 13, 2021, M/S ABG Projects Pvt. Ltd., the applicant herein, was interested party to bid in the E-auction against the sale notice published on June 17, 2021. Copy of an email dated July 14, 2021 is annexed as Annexure B.

13. It is submitted that on July 19, 2021, the Liquidator informed and clarified through an email, as the applicant had sought an appointment with the Liquidator on July 19, 2021 at 4.30 pm for a meeting. Thereafter, the Liquidator agreed to meet the applicant. During the said meeting, the Liquidator clarified that the Corporate Debtor is not at all a going concern as the factory was not in operation since 2014 and during Amphan cyclone, the position of the plant & machinery and the stock of raw material and finished stocks have become scrap as per opinion of the Valuers. It is submitted that even the applicant had the same opinion after the site visit. Moreover, the Corporate Debtor does not have any land and SDO had already asked the Corporate Debtor to remove the property from the unauthorized occupation by the Corporate Debtor. Copy of an email dated July 19, 2021 is annexed as Annexure-C. It is submitted that on July 29, 2021, the applicant sent a letter with the request that the Liquidator had already clarified through the e-mail dated July 19, 2021. However, the applicant who had shown interest at the beginning, however, withdrew the EOI at the last moment.
14. It is submitted by the liquidator that the delay in processing the fresh tender for the sale of the assets of the Corporate Debtor would lead to value degradation as the Corporate Debtor was under liquidation, the Liquidator called a meeting of the Stakeholders Consultation Committee (SCC) on July 19, 2021, where the SCC decided for re-tendering and sale through the same e-auction partner, in the event of failure of e-auction in 1<sup>st</sup> attempt. It is submitted on August 7, 2021, the Liquidator re-published e-auction documents with the stipulation that the e-auction

would be conducted on September 11, 2021. The Liquidator received several bid applications before the last date of submission of bid application. It is submitted that on August 31, 2021, the Liquidator scheduled another meeting of the Stakeholders Consultation Committee on September 2, 2021. In the said meeting, the Liquidator placed before SCC the issue raised by the applicant, and sought their opinion on the issue of sale of the Corporate Debtor as a going concern. The members present stated that as the assets are lying in the factory premises in scrapped condition and also the Corporate Debtor is not at all a going concern. Therefore, the assets of the Corporate Debtor may be sold as early as possible.

15. It is submitted that the Liquidator also informed the members of the Stakeholders Consultation Committee that an application has been filed by M/s ABG Projects Pvt. Ltd before NCLT, Kolkata Bench against the decision of the Liquidator. The Liquidator in its reply affidavit has further submitted that all the allegations in the application should be treated as denial and disputed because the applicant does not disclose any genuine facts. It is submitted that the applicant has filed the application after the last date of submission of the bid with some ulterior motive to jeopardize the E-auction process, as it did in 1<sup>st</sup> E-auction process by withdrawing its participation at the last moment and forced to conduct E-auction twice. It is submitted that as per the directions of the Tribunal, the applicant was permitted to participate in the E-auction process on 11<sup>th</sup> September, 2021 and the applicant became the H1 Bidder by quoting Rs.1,65,00,000/- and therefore, the Liquidator has prayed that the application filed by the applicant might be dismissed as not maintainable either under law or facts. Liquidator has enclosed letter dated 10<sup>th</sup> February 2020 issued by the SDO, Haldia whereby it was informed that physical possession of the plot of land on which the factory of Ural India Limited was set up had been recovered on 6<sup>th</sup> July 2019 and was handed over to Haldia Development Authority. It was

further mentioned in the said letter that the buildings, structures, industrial sheds, machinery tools etc. belonging to the Corporate Debtor are in symbolic possession of this office. It is further mentioned in the said letter that Ural India Limited was called upon to remove the properties Ural India Limited lying on the plot of land belonging to Haldia Development Authority possession whereof had been taken over on 5<sup>th</sup> July 2019. It is further mentioned in the said letter addressed to the Company Secretary that the leasehold rights of the Corporate Debtor in respect of the land in question had been terminated by the lessor on 16<sup>th</sup> February 2015, following which the order of eviction was passed on 18<sup>th</sup> April 2018 by the competent authority under the provisions of the West Bengal Public Land ( Eviction of un authorized Occupants Act, 1962) in execution of the said order the possession of the land in question was handed over to Haldia Development Authority.

16. The only question that calls for a decision by this Adjudicating Authority is whether the Corporate Debtor which has no land, no goodwill and no other property and only has (1) plant and machinery (ii) inventory products and buildings except two number of buses bearing no. WB 04 F 4987 and the WB 79F 6478 can be directed to be sold as a going concern or not?
17. Ld. Counsel for the Liquidator in his argument specifically submitted that the applicant is sole bidder and interested to acquire the Corporate Debtor as a whole but since the Corporate Debtor has no land, because the only leasehold land on which the unit of the Corporate Debtor was operating has been taken possession of by the SDO, Haldia and given to the possession of the plot handed over to Haldia Development Authority. He further submitted that the SDO, Haldia had further called upon the liquidator of the Corporate Debtor to remove the properties of the Corporate Debtor lying on the plot of land belonging to the Haldia Development Authority. Ld. Counsel for the Liquidator submitted that

the applicant is the H1 bidder by quoting **Rs.1,65,00,000/-**

18. In this regard we may refer to Regulation 32 and 32 A of the IBBI (Liquidation Process) Regulation, 2016 which is reproduced as under:-

**“ 32. Sale of Assets, etc.-** *The liquidator may sell-*

- (a)** *An asset on a standalone basis;*
- (b)** *The assets in a slump sale;*
- (c)** *A set of assets in parcels;*
- (d)** *The assets in parcels;*
- (e)** *The corporate debtor as a going concern; or*
- (f)** *The business(s) of the corporate debtor as a going concern;*

*Provided that where an asset is subject to security interest, it shall not be sold under any of the clause (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”*

**32A. Sale as a going concern-** *(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that the sale under clause (e) or (f) of regulation 32 shall maximize the value of the corporate debtor, he shall endeavor to first sell under the said clauses.*

*(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*

*(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39 C of the Insolvency and Bankruptcy Board of India ( Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*

*(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clause (a) to (d) of regulation (32)”.*

19. In this matter the liquidation order was passed on 15<sup>th</sup> January, 2021. Under Regulation 32, the Liquidator may sell the property in any of the model provides therein which includes the Corporate Debtor as a going concern. Section 32 permits the Liquidator to sell the property as a going concern.
20. Regulation 32A (4) envisages that if the Liquidator is unable to sell the corporate debtor or its business under Clause (e) or (f) of Regulation 32 within 90 days from the liquidation commencement date, he shall proceed to sell the assets of the Corporate Debtor under Clause (a) to (d) of Regulation 32. There is no mention in the reply affidavit filed by the Liquidator that he tried to sell the Corporate Debtor as a going concern, within 90 days of the passing of the liquidation order rather the E-auction Process Document specifically said that auction would be at “ as is where is, as is what is basis and whatever there is basis” Clause 10 at page 28.
21. Even though the E-Auction Document at page 11 specifically mentioned assets to be auctioned and reserved prices, which are as under:-

SL. No	Details of Assets of Corporate Debtor	Location	Reserve Price(Amount in Rs.)	EMD Amount (10% of Reserve Price) (Amount in Rs.)
1.	Sale of the Corporate Debtor as a whole in its totality; except two Nos. of Bus (lying inside the premises in scrapped condition) registration no. (i) WB 19F 6478. There is no land owned by Corporate Debtor	Registered Office at 1, Aucland Place, Kolkata-700017 and factory premises at Mouza-Dighasipur, P.O-Bhabhanipur, Haldia, District-Purba Medinipur, West Bengal	Rs. 1,18,98,856/-	Rs.11,89,886/-

22. On being specifically questioned by the Bench as to why the sale cannot be made as a going concern, Ld. Counsel for the Liquidator replied that since the company in liquidation is not doing any business since 2014, has no goodwill and has no land or immovable property and it has only some scrap, it cannot be sold as a going concern.
23. In contrast to the arguments of the Liquidator, the applicant submitted that the refusal of the liquidator to sell the Corporate Debtor as a going concern, as a whole with all its legal entity and goodwill whatever it is worth, is arbitrary and illogical on the part of the Liquidator. It is submitted that the legislature has enacted this law with the objects, which include “ in a time bound manner for maximization of the value of assets”. It is submitted that when the company in liquidation is desired to be sold and admittedly according to the liquidator, it has no land, no goodwill and has no business since 2014, if the applicant who sees a ray of hope and has shown keen interest in reviving the Corporate Debtor and carrying on its business, generating employment to a considerable number of people, there cannot and should not be any hindrance in selling it as a going concern, provided the applicant gives the highest bid and the Corporate Debtor, as a whole, fetches the maximum value. The Regulations that according to the Liquidator would come in the way, are only directory and not mandatory. The Corporate Debtor has been ordered to be liquidated only because all hopes of reviving had vanished and the only property that the company had is stated to be some scrap or debris lying on the plot of land, which has been already directed to be removed by the SDO, Haldia. According to applicant, the Corporate Debtor at one time was a supplier in collaboration with the Russian Government and was in operation till late 2018 and had immense goodwill in the industry, even though there may be no goodwill as per the assessment of the liquidator, yet the applicant has his own subjective assessment or vision as regards its goodwill in the light of his
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own knowledge and experience in the business. The applicant has submitted that the land can be purchased and acquired and the Corporate Debtor could easily revive the company without any difficulty. It is not in dispute that the applicant was the sole bidder in the first round of E-auction and the highest bidder in the second round of E-auction. The Applicant has prayed that this Adjudicating Authority should promote the main objective of the IBC, 2016 which is not only to maximize the value of the assets of the Corporate Debtor but also to revive a Corporate Debtor by making it as a going concern as well as to promote entrepreneurship. The applicant has submitted that they are not only desirous of reviving the Corporate Debtor by investing and/or infusing capital in the corporate debtor and employing various workers which will promote entrepreneurship as well.

24. Ld. Counsel appearing for the applicant has relied upon judgement passed by the Hon'ble Supreme Court of India in the case of ***K.N.Rajkumar vs. Nagarajan & Ors*** in ***Civil Appeal No. 1792 of 2021***, in which the Hon'ble Court has opined in para 16 that “ ***it could thus be seen that one of the principal objects of the IBC is providing for revival of the Corporate Debtor and to make it a going concern, every attempt has to be first made to revive the concern and make it a going concern. Liquidation being the last resort.***”
25. Ld. Counsel for the applicant has further relied upon the judgement passed by the ***Hon'ble NCLAT in Mohan Gems and Jewels Pvt. Ltd. Vs Vijay Verma in Company Appeal No. 849/2020***, in which the court has opined in para 6 that “ ***The Code is an economically beneficial Legislation which aims to put the 'Corporate Debtor' back on its feet maximizing the value of assets of the 'Corporate Debtor' and promotes entrepreneurship.***”
26. Even though in the terms and conditions of the E-auction, it is inter alia
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very clear that “ E- Auction is being held on “ **As is where is, as is what ever there is and without recourse basis is**”, and will be conducted “ Online”. The auction will be conducted through the approved service provider M/s E-Procurement Technologies Limited, at the web portal <https://ncltauction.auctiontiger.net.E-AuctionProcess>. Document containing E-Auction bid form, Declaration by bidders, General terms and conditions of online auction sales are available on Websites <https://ncltauction.auctiontiger.net>. Interested bidders can register, bid and receive confirmation of their bid online.

The requisition of additional information, if any, can be sent to [sknayak31@gmail.com](mailto:sknayak31@gmail.com). disclosing the identity of the Applicant.”

27. The applicant submitted that it has already gone through all these clauses and cannot claim anything else from the Liquidator. If simply by selling it “as a going concern/ as a whole can fetch the highest price, it should not be rejected by the Liquidator. It will only give an opportunity to promote the prospective entrepreneurs to pick up the opportunities and to restart its business.
28. In our considered view, this application of the applicant seeking directions to the Liquidator to sell it as a ‘going concern’ or ‘as a whole’ alongwith business entity, assets, plant and machinery can be reconsidered by the CoC.
29. We, therefore, direct the Liquidator to place the bid of the applicant before the stakeholders committee for re-consideration as regards sale of the Corporate Debtor as a going concern’ and /or “ as a whole”, along with its business, entity, assets, plant and machinery, because the applicant being H-1 has offered the maximum price for whatever is left in the Corporate Debtor ‘as a whole’.
30. With the aforesaid directions, IA(IB) No. 776/KB/2021 is disposed of.
31. Certified copy of the order may be issued to all the concerned parties, if

applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on, this 14<sup>th</sup> day of December 2021

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