

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/857(CHE)/2021 in CP/1053/IB/2018

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **Krishna Industrial Corporation Limited***

Andhra Pradesh State Financial Corporation

Plot OS No. 2, 2nd Cross, 3rd Road,
Industrial Park, Vijayawada – 520007,
Andhra Pradesh

... Applicant

- Vs -

S. Rajendran, Liquidator,

of Krishna Industrial Corporation Limited

71/1 Mc. Nicholas Road,
Hari Krupa Building,
2nd Floor, Chetpet,
Chennai – 600031,

... Respondent

Along with

IA(IBC)/988(CHE)/2021 in CP/1053/IB/2018

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **Krishna Industrial Corporation Limited***

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- Vs -

Andhra Pradesh State Financial Corporation

Plot OS No. 2, 2nd Cross, 3rd Road,
Industrial Park, Vijayawada – 520007,
Andhra Pradesh

... Respondent

Along with

IA(IBC)/845(CHE)/2021 in CP/1053/IB/2018

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **Krishna Industrial Corporation Limited***

Maximus ARC Limited

#59A-18/1-5A, 3rd Floor, Sri Plaza
Teacher's Colony, Patamata,
Vijayawada, Andhra Pradesh – 520008

... Applicant

- Vs -

Andhra Pradesh State Financial Corporation

Plot OS No. 2, 2nd Cross, 3rd Road,
Industrial Park, Vijayawada – 520007,
Andhra Pradesh

S. Rajendran, Liquidator,

of Krishna Industrial Corporation Limited
71/1 Mc. Nicholas Road,
Hari Krupa Building,
2nd Floor, Chetpet,
Chennai – 600031

... Respondent

*Order Pronounced on **21st October 2022***

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

IA/857/2021

For Applicant : Sasank Iyer, Advocate

For Respondent : Yajura Devi, Advocate

IA/988/2021

For Applicant : Yajura Devi, Advocate

For Respondent : Sasank Iyer, Advocate

IA/845/2021

For Applicant : Surya Tej Nalla, Advocate

For Respondent : Sasank Iyer, Advocate for R1

Yajura Devi, Advocate for R2

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration are three Application viz. IA(IBC)/857(CHE)/2021 and IA(IBC)/988(CHE)/2021 and IA(IBC)/845(CHE)/2021 are filed by the Applicants under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 of the National Company Law Tribunal Rules, 2016

2. IA(IBC)/857(CHE)/2021 is filed by the Applicant viz. Andhra Pradesh State Finance Corporation seeking relief as follows;

- a. Clarify as to whether to whether the Applicant has to pay only its share of the liquidation costs in a sum of Rs. 31,07,500/- i.e 12.43% of Rs. 31,07,500/- which is Rs. 3,90,000/- or whether the Applicant has to pay the entire sum of Rs. 31,07,500/- as estimated by the Respondent.
- b. Grant an extension for a further period of six (6) months from 04.09.2021 for the Applicant to complete the sale of the security interest.

- c. Pass any such further orders as this Hon'ble Tribunal may deem fit in the circumstances of this case.

3. IA(IBC)/857(CHE)/2021 is filed by the Applicant viz. S. Rajendran, Liquidator of the Corporate Debtor seeking relief as follows;

- a. Direct the Respondent to hand over to the Liquidator, the possession of the aforesaid Asset, admeasuring about AC 44.65 Cents of Industrial Land at Nidadavole Village & Mandal, West Godavari District, Andhra Pradesh, belonging to the Corporate Debtor so as to enable the Liquidator to proceed with an Auction of the aforesaid Asset.
- b. Co-operate with the Liquidator with respect to the Liquidation Process of the Corporate Debtor, Krishna Industrial Corporation Limited.
- c. Pass such other order this Hon'ble Tribunal may deem fit and proper and thus render justice.

4. IA(IBC)/845(CHE)/2021 is filed by the Applicant viz. Maximum ARC Limited seeking relief as follows;

It is therefore prayed that this Hon'ble Tribunal be pleased to DIRECT the 1st Respondent to recover the dues out of the sale proceeds from the sale of the Corporate Debtor's property at Nidadavole Village, West Godavari District, Andhra Pradesh, to such extent as determined by this Hon'ble Tribunal and in terms of Section 52 and 53 of the Code; and thus render justice.

5. A thumbnail sketch of sequence of facts which are necessary for the disposal of the above two (2) applications are as follows:

- 5.1. The Corporate Debtor viz. Krishna Industrial Corporation Limited ("KICL") was order to be liquidated by this Tribunal vide its order dated 27.07.2020 passed in IA/418/2020. Pursuant to that Liquidator issued public announcement seeking claims to be submitted by the Stakeholders as per the provisions of the IBC.
- 5.2. The Applicant viz. Andhra Pradesh State Financial Corporation submitted its claims before the Liquidator in Form-D on 25.08.2020 for sum of Rs. 4,52,15,993/- (Four Crore Fifty-Two Lakhs Fifteen Thousand Nine Hundred and Ninety-Three)
- 5.3. The Applicant claim to have sanctioned three (3) term loans of Rs. 235 Lakhs on dated 30.03.2012, Rs. 200 Lakhs on 17.01.2014 and Rs. 280 Lakhs on 30.03.2013 for the Corporate Debtor towards working capital requirements. The Corporate Debtor has repaid a sum of Rs. 259.50 Lakhs during the Financial Year 2018-19 which has been adjusted by the Applicant. Further, the Applicant had created 8 charges with the Registrar of Companies, as first charge with security over the asset of the Corporate Debtor, which is immovable property, admeasuring about AC 44.65 Cents of Industrial Land at Nidadavole Village and Mandal, West Godavari District, Andhra Pradesh.
- 5.4. The Applicant has not opted to relinquish the security interest in the said property and it was also alleged that the Applicant did not intimate the price at which it intended to realise the security assets in terms of

Regulation 37(1) of the IBBI (Liquidation process) Regulation 2016 hence, it was submitted on 11.09.2020 the Liquidator called upon the Applicant to disclose the price at which the Applicant intended to realise the aforesaid secured assets and the Applicant on 15.09.2020 intimated to the Liquidator that as per Regulation 21A(1) of the said Regulations their proposed price is Rs. 25 crores.

5.5. As per Regulation 21A(2) the Liquidator in his letter dated 08.10.2020 requested the Applicant to make payment of Rs.31,07,500/- being the share of contribution towards Liquidation costs and workmen dues before 90th day from the date of commencement of Liquidation i.e. on or before 24.10.2020. The Liquidator has also notified that if the Applicant fails to make the said payment on or before 24.10.2020, the assets would form part of the Liquidation estates by virtue of Regulation 21A(3). In reply to the same, the Applicant vide its letter dated 21.10.2020 stated that that they will be paying Liquidation cost except the workmen dues which will be paid only upon the realisation of the assets.

5.6. Since the Respondent has failed to remit the Liquidation costs, as per Regulation 21A(3), the said asset became part of the Liquidation estate of the Corporate Debtor with effect from 24.10.2020.

5.7. The 1st Stakeholders Consultation Committee (SCC) meeting was held on 17.11.2020, wherein the

Applicant was also invited but has refused to participate and hence the Liquidator decided to proceed with the auction and issue auction notice on 30.12.2020 and the e-auction was scheduled to be held on 03.02.2021.

5.8. It was submitted that the Applicant very well knowing the act that the said assets belong to the Liquidation estate of the Corporate Debtor went ahead and issued an E-auction notice on 01.01.2021 stating therein that the tender was to be opened for a period of 90 days from 03.02.2021.

6. Aggrieved by the same, both the Liquidator and the Applicant herein filed IA's seeking appropriate relief

6.1. IA/39/2021 was filed by the Liquidator seeking relief as follows:

- a. Declare that the Auction Notice dated 01.01.2021 issued by the Respondent, Andhra Pradesh State Financial Corporation Limited (APSFC) as null and void and injunct the Respondent from proceeding with the Auction Scheduled as per their Auction Notice dated 01.01.2021, in view of the fact that the Asset admeasuring about AC 44.65 Cents of Industrial Land at Nidadavole Village & Mandal, West Godavari District, Andhra Pradesh, is part of the Liquidation estate with effect from 24.10.2020 which was the 90th Day from Liquidation commencement date as per Reg. 21A(2)(a) of the IBBI (Liquidation Process) Regulations, 2016 and pass suitable orders directing the Respondent to withdraw the Auction Notice dated 01.01.2021 issued by the Respondent.

- b. Direct the Respondent to cooperate with the Liquidator in the on-going Liquidation Process of the Corporate Debtor.
- c. Pass such other orders as this Hon'ble Tribunal may deem fit and proper.

6.2. IA/1205/2020 was filed by the Applicant viz. Andhra Pradesh State Financial Corporate seeking relief as follows:

- a. Declare that the Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 is ultra vires since the same is in contravention of Section 34,36,52,53 and 240 of the Insolvency and Bankruptcy Code, 2016 and consequently strike it down as ultra vires to the Insolvency and Bankruptcy Code, 2016.
- b. Stay the operation of letter dated 08.10.2020 from the Respondent and the email dated 28.10.2020 from the Respondent is untenable and unlawful.
- c. Injunct the Respondent from going ahead and enforcing the Applicant's security interest and realise the proceeds from sale of the security interest.
- d. Injunct the Respondent from conducting the 1st SCC on 17.11.2020.
- e. Pass any further order as this Hon'ble Tribunal may deem fit in the circumstances of this case

7. It can be seen from the above prayer that the Applicant viz. the Andhra Pradesh State Financial Corporation has challenged the vires of Regulation 21(A) of IBBI Liquidation process. The above two Applications were heard extensively by this Tribunal and

common order was passed on 04.06.2021. The Operative portion of the said order re-produced hereunder.

51. To sum up, based on the above elaborate discussions which we thought necessary, this Tribunal chooses to issue the following directions, namely:-

- (i) Taking into consideration the saying that no person is to be prejudiced by the actions of the court (in this case the Tribunal) in view of application pending all along before this Tribunal in IA/1205/2020 as filed by the applicant/secured creditor of which the Liquidator was fully aware as demonstrated by the minutes of the 1st SCC meeting held on 17.11.2020, the action of the Liquidator in making the security interest as part of the Liquidation Estate is unjustified and further totally unjustified by virtue of his actions taken to sell those security interest as evident from the action taken by way of paper publication dated 30.12.2020 which under the circumstances is required to be set aside and accordingly set aside and any action taken in furtherance of the above sale notice dated 30.12.2020 on the part of Liquidator is also set aside.
- (ii) We find the attitude of the applicant/secured creditor totally unjustified in refusing to contribute to the estimated liquidation cost as sought for by the Liquidator, when the amount claimed by it is only in a sum of Rs. 4,78,03,242/- as due from the Corporate Debtor as compared to the value of the Security Interest it holds which even according to it is estimated to fetch Rs. 25 crores and further without going into the merits of each of the components of the said liquidation cost raised vide correspondence dated 08.10.2020 and hence we direct the applicant/secured creditor to contribute its share of the liquidation cost in sum of Rs. 31,07,500/- within a period of 30 days from the date of the receipt of this order failing which the consequences as envisaged under Regulation 21A of IBBA (Liquidation Process) Regulations, 2016 shall follow. However, proportionate share of Liquidation cost paid pursuant to the directions of this Tribunal under the present order by the Applicant/Secured Creditor shall not be appropriated by the Liquidator immediately and will be required to be kept only in a special escrow

account and to await the realization of the security interest held by the Secured Creditor/Applicant in IA/1205/2020.

- (iii) In view of elapse of much time, taking into consideration the date of the order of liquidation and the applicant/secured creditor had approached this Tribunal, we deem it fit that a further period of 3 months be granted to the Applicant/secured creditor to complete the sale of security interest for which an option had been exercised by it for a sum not less than Rs.25 crores as intimated at the time of exercising the option by it to realize the security on its own. The above direction is given in terms of Section 52(6) of IBC, 2016 in IA/1205/2020 filed in terms of Section 52(5) of IBC, 2016.
- (iv) Upon realization of the security interest, the applicant/secured creditor shall act in terms of Section 52 read with other appropriate provisions, if any and the Regulation framed thereunder. Accordingly, the IA/1205/2020 stands **ordered**.

The Application in IA/39/2021 hence filed by the Liquidator stands **dismissed**.

No order as to costs.

8. A perusal of the aforesaid Order would show that a time period of three (3) months was granted to the Applicant to complete the sale of the security interest and the said three (3) months' time period came to an end on **05.09.2021**. In the meantime, the Applicant has issued an auction notice on 18.06.2021 under Section 29 of the State Financial Corporation Act 1951 and it is seen that no bidder has participated in the above said auction and hence said auction failed.

9. Thus, after the expiry of three (3) months period granted by this Tribunal on 05.09.2021, the Liquidator vide its email dated on 06.09.2021 sought possession of the property to be handed over to the Liquidator. However, it was submitted that the Applicant has failed to hand over the possession of the said property to the Liquidator and the Applicant has filed the present IA(IBC)/857(CHE)/2021 before this Tribunal on 24.08.2021 seeking extension of three (3) months period.

10. After filing of the above IA by the Applicant, the Liquidator has filed IA(IBC)/988(CHE)/2021 before this Tribunal on 21.09.2022 seeking to hand over the possession to the Liquidator.

11. We have heard the submissions made by the Ld. Counsel for both the parties. In the present case it is seen that the sufficient opportunities were granted to the Counsel for the Applicant to appear and put forth his argument in the present case and it is also seen that the time and again indulgence was also granted by this Tribunal to the Ld. Counsel for the Respondent on 27.05.2022, 24.06.2022, 05.07.2022, 29.07.2022, 06.09.2022 and 15.09.2022. In spite of the same, the Applicant Counsel has failed to present his case. However, we have heard the argument of the junior counsel for the Applicant.



12. In the present case is not in dispute that time period of three (3) months was granted to the Applicant to sell the assets of the Corporate Debtor. The Applicant in para 9 of its Applicant has stated the reason failure of the E-auction dated 18.06.2021 and the same is extracted hereunder;

9. With regard to finding No.(iii) this Hon'ble Tribunal vide the Common Order dated 04.06.2021 was pleased to grant a period of three (3) months for the Applicant to complete the sale of security interest. The Applicant herein had called for an auction to be held on 19.07.2021 vide Auction Notice dated 18.06.2021. A copy of the said Auction Notices dated 18.06.2021 is annexed herewith as **Annexure-V**. However, the Applicant herein could not identify a buyer for the said security interest pursuant to the auction held on 19.07.2021. Although time has been granted until 04.09.2021 i.e period of 3 months from the Common Order dated 04.06.2021, the Applicant herein is sceptical about identifying buyers for the security interest as the prospective buyers are vary of arranging the necessary funds for the purchase of the said security interest owing to the on-going pandemic situation which has in general lead to a cash crunch across most industries. The Applicant estimates that it would require a further period six(6) months for the sale of security interest to concluded. Therefore, in light of this predicament, the Applicant is constrained to approach this Hon'ble Tribunal seeking an extension of time to conclude the sale of the security interest.

13. It is to be noted here that the e-auction conducted by the Applicant has failed on 19.07.2021 and thereafter a time period of two (2) months was available to the Applicant i.e. till 04.09.2021 to complete the e-auction and if the Applicant was pro-active they could have issued another e-auction. However, the Applicant preferred to be indolent and blamed the pandemic situation as one of the reasons for not going ahead with the e-auction.

14. It is also seen that the Stakeholders of the Corporate Debtor viz. Maximus ARC Ltd. is having a second charge on the aforesaid asset and the admitted claim of the said secured Financial Creditor is a sum of Rs.31.07 crores and the admitted claim of the Applicant in the present case only to the extent of Rs.4.47 crores, whereas the security interest which is expected to be realised from the sale of the above said property is to the tune of the Rs. 25 crores. Thus, the remaining proceeds of the sale is required to be distributed as per Section 53 of the IBC, 2016.

15. Further, it is also seen that the aforesaid property of the Corporate Debtor is the only substantial asset available in the liquidation estate of the Corporate Debtor and the timely realisation of the aforesaid asset is also essential since any amount of delay will have a serious impact on the value of the assets. As per the object of IBC, 2016 the realisation of the assets of the Corporate Debtor has to be achieved in a time bound manner and holding property under the possession of the Applicant indefinitely will erode its value. Further, more than two years have lapsed since order of Liquidation was passed by this Tribunal and thereby granting any further extension to the Applicant would definitely scuttle the Liquidation process of the Corporate Debtor.

16. At this juncture, we are also persuaded by the decision of the Hon'ble NCLAT in the matter of **Dhanalaxmi Bank vs Techno Fab Manufacturings Ltd.** in Company Appeal (AT) (Ins) No. 777/2021 in which it was held as follows:

Heard Ld. Counsel for the Appellant. He submits that the Appellant being a secured creditor in the liquidation process of the Corporate Debtor has intimated to the Liquidator to realize its asset over which it has exclusive first charge under Section 52(1) (b) of the IBC and in physical possession of the asset. The Liquidator has asked the Appellant to vacate its physical possession and to return back asset to the liquidation estate. However, the Appellant intends to put further efforts to realize its security and accordingly, need a further time period of six (6) months. But Ld. Adjudicating Authority has dismissed the Application. Therefore, this Appeal is filed.

2. Ld. Counsel appearing on behalf of the Liquidator vehemently opposes the prayer and submits that the order of liquidation was passed on 05.09.2018 and the physical possession on the secured asset was handed over to the Appellant by the liquidator on 03.09.2019. The first auction of the secured asset was made on 03.09.2019 and second on 06.01.2021, this clearly shows that no steps were taken by the Appellant for auction for about 15 months. Thereafter, about 8 months have been lapsed but, no steps have been taken by the Appellant to realize its security interest.

3. It is further submits that Sub Regulation (2) of Regulation 21-A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that a secured creditor has to realize its security interest in time bound manner and has to relinquish the security interest to the liquidator within 90 days from the liquidation commencement date and the secured creditor shall pay the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date. Sub Regulation (3) of Regulation 21 provides that where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

4. In the present case, the order of liquidation was passed on 05.09.2018, three years has been lapsed and the liquidation proceeding could not be completed and after granting ample opportunity the Appellant has failed to realize its security interest. Therefore, Ld. Adjudicating Authority has rightly directed the Appellant to handover the asset in possession back to the liquidator within seven (7) days.

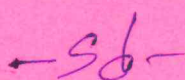
5. We have gone through the impugned order and relevant provisions. We find no legal flaw in the impugned order. Thus, the Appeal is dismissed summarily.

17. Thus, in view of the reason stated above and also in view of the decisions rendered by the Hon'ble NCLAT in the matter referred (*supra*) we hereby direct the Applicant viz. Andhra Pradesh State Finance Corporation Limited to hand over the possession of the assets of the Corporate Debtor which is an immovable property admeasuring about AC 44.65 Cents of Industrial Land at Nidadavole Village and Mandal, West Godavari District, Andhra Pradesh, to the Liquidator within a period of 7 days from the date of receipt of this order. The above said asset will form part of the liquidation estate of the Corporate Debtor and the Liquidator is directed to takes pro-active steps to sell the aforesaid property in terms of the provision of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016 and distribute the proceeds to the stakeholders in the order of priority as envisaged under Section 52 and 53 of the IBC 2016.

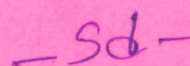


18. Further, it is also made clear that the Applicant will liable to pay sum of Rs. 31,07,500/- as liquidation cost to the Liquidator in terms of the order passed by this Tribunal dated 04.06.2021.

19. With the above said directions, these three Applications viz. IA(IBC)/857(CHE)/2021; IA(IBC)/988(CHE)/2021 and IA(IBC)/845(CHE)/2021 stands **disposed of**.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond