



Sl. No. 1

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.11.2024 AT 01:00 P.M.

TC/CP. Nos.	IBC Stage	Present stage of the case	Section/Rule	Name of Parties
TCP(IB)/28/7/ AMR/2019	Under Liquidation	Under Liquidation	7 of IBC	Axis Bank Ltd Vs Sembmarine Kakinada Ltd
	IA(IBC)/335/2024	For Orders	U/s 60(5) of the IBC Code, 2016 R/w Reg. 44A, 45(3)(a) of the IBBI Regulations, 2016 R/w Rule 11 of the NCLT Rules 2016	Mr. Vedagiri Venkata Krishnamurthy, Liquidator of Sembmarine Kakinada Ltd
	IA(IBC)/253/2023	For clarifications	42 of IBC, 2016	The Customs Departments Vs. Sri V. Venkata Krishnamurthy, Liquidator of Sembmarine Kakinada Ltd
	IA(IBC)/261/2023	For clarifications	60(5) of IBC, 2016	Mr. Vedagiri Venkata Kriushnamaurthy, Liquidator of Sembmarine Kakinada Limited Vs. The Deputy Commissioner of Customs

ORDER

IA(IBC)/335/2024:

Present: Mr. Pradeep Joy, Ld. PCS

Orders pronounced. IA(IBC)/335/2024 is allowed and recorded vide separate sheets.

IA(IBC)/253/2023:

Present: Ms. Santhi Chandra, Ld. Counsel for the applicant.

Mr. Vedendra Joshi, Ld. Counsel for the Respondent.

For hearing, list the matter on 13.11.2024

IA(IBC)/261/2023:

Present: Ms. Santhi Chandra, Ld. Counsel for the applicant.

Mr. Vedendra Joshi, Ld. Counsel for the Respondent.

For hearing list the matter on 13.11.2024.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

**IA (IBC)/335/2024
in
TCP (IB)/28/7/AMR/2019**

[Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 44A, 45(3)(a) of the Insolvency Board of India (Liquidation Process) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016]

In the matter of
M/s. SEMBMARINE KAKINADA LIMITED

Mr. Vedagiri Venkata Krishnamurthy,
Liquidator of M/s Sembmarine Kakinada Limited
IBBI Registration No: IBBI/IPA-001/IP-P00905/2017-18/11505
Office at First floor,
OSV Complex, Kakinada Deep Water Port,
Beach Road, Kakinada,
Andhra Pradesh – 533 007
Email: vyk.sklliquidator@gmail.com

... Applicant

Date of Order: 06.11.2024

Coram:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

SHRI SANJAY PURI, MEMBER (TECHNICAL)

Parties/Counsels present:

For the Applicant : Ms. Titiksha Jain, PCS

ORDER
(Per: Bench)

1. This Application filed by Liquidator ('Applicant') of M/s Sembmarine Kakinada Limited ('CD') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 44A, 45(3)(a) of the Insolvency Board of India (Liquidation Process) Regulations, 2016 r/w Rule

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11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:

- a. To pass an Order for the closure of the Liquidation Process of the CD, which was sold as a going concern to Anirudh Agro Farms Limited, in terms of Regulation 45(3)(a) of the Insolvency Board of India (Liquidation Process) Regulations, 2016;*
- b. To discharge the Applicant, being Liquidator of the Corporate Debtor, from all his duties and functions as specified under the Code and the Liquidation Process Regulations and other applicable regulations and rules therein;*
- c. To take on record the Final Report (Exhibit N);*
- d. To take on record the Compliance Certificate in Form H (Exhibit O);*
- e. Approve the formation of corpus fund to be maintained in a no lien account with Axis Bank and any balance in the said account to be distributed in terms of Section 53 of the Code.*
- f. Approve the earmarking of INR 1,47,13,495/- in a no lien fixed deposit account with Axis Bank for disbursement of payment to Bank of India, Hong Kong Branch upon receipt of requisite approvals;*
- g. To pass an order directing Axis Bank Limited to purse the Avoidance Applications on behalf of the Stakeholders' Consultation Committee and the entire proceeds thereof to be distributed in in terms of Section 53 of the Code;*
- h. To declare any remittance towards the distribution waterfall as provided under section 53 of the IB Code to eligible creditors and*

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permit remittance of INR 1,47,13,495/- payable to Bank of India, Hong Kong Branch.

2. **Brief Facts leading to the present Application:**

2.1. *Vide* Order dated 23.09.2019, the Company Petition TCP(IB)28/7/AMR/2019 by Axis Bank Limited was admitted by this Tribunal and the Corporate Insolvency Resolution Process of M/s. Sembmarine Kakinada Limited ('CD') was initiated and Mr. Om Prakash Agarwal was appointed as the Interim Resolution Professional ('IRP') who was later confirmed as RP by the Committee of Creditors in its 1st meeting held on 22.10.2019.

2.2. Upon the failure of resolving CD in CIRP due to the termination of land lease by Kakinada Seaports Limited, pursuant to the unanimous (100%) voting by the CoC, the RP has filed an application I.A No. 90 of 2021 seeking the Liquidation of the CD which was allowed this Tribunal *vide* Order dated 01.11.2021 and the Applicant herein was appointed as the Liquidator of CD.

2.3. An advertisement dated 04.11.2021 was published in newspapers inviting claims from the stakeholders of CD and on basis of the claims received the Stakeholders' Consultation Committee ('SCC') was constituted with the verified claims of the creditors. Further submitted that in view of amendment to the Liquidation Process Regulations with effect from 16th September, 2022, the SCC has been reconstituted as on 15th October, 2022 as follows:

Class of Stakeholders	Representatives
Secured Financial Creditors	Axis Bank Limited
Unsecured Financial Creditors	United Port Services Private Limited

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Workmen	NA
Employees	Mr. Karri Lakshman Rakesh
Government Departments	Jt. Commissioner of Customs – Customs House Kakinada
Other Operational Creditors	Mr. Mosa Premanandam – Asha Marine
Shareholders	M/s. Sembawang Shipyard Pvt. Ltd.
Other Creditors	M/s. Riggers

- 2.4. 19 SCC meetings were conducted between 07.01.2022 and 05.07.2024 and on 13.01.2022, a preliminary report and asset memorandum were filed.
- 2.5. The asset memorandum of the CD was submitted and fresh valuation was conducted to determine the realizable value of the assets or businesses as per Regulation 35(2) and 32 (a) to (f) of the Liquidation Process Regulations.
- 2.6. Except Standard Chartered Bank, all the remaining Secured Creditors relinquished their respective security interest(s) in the liquidation estate. As per the claim submitted by the Standard Chartered Bank, it had issued one bank guarantee in favour of the Corporate Debtor amounting to INR 85,25,000/- which was backed by 100% margin of the fixed deposit account of the CD which was later appropriated pursuant to invocation of bank guarantee in accordance with Section 52.
- 2.7. It is submitted that 11 quarterly reports were filed under Regulation 15 of the Liquidation Regulations.
- 2.8. M/s. Ultra Dimension Pvt. Ltd was the only Prospective Bidder who submitted the EOI for 1st E-Auction by the Applicant for selling the CD

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as a going concern but did not participate in the E-Auction. Further submitted that as there were no bidders for the 2nd and 3rd E-Auctions, which lead to the failure of attempt to sell the CD as a going concern.

2.9. The attempt to sell assets of CD has continued with keeping the sale of CD as a going concern option open and that a total of 14 auction notices were issued between 12.02.2022 and 12.10.2023. An amount of ~INR 12,831.63 Lakhs excluding taxes was received as sale proceeds which were distributed net of liquidation cost in accordance with Section 53 of the Code. (*Refer Pg. 9-12 of the Application*).

2.10. In the 9th meeting of SCC, it was decided to discontinue the option of sale as going concern as the major assets of the CD were already sold and that an invitation for EOI was published on 21.07.2023 for auction on actionable claims such as avoidance transactions and Insurance Claims as Not readily Realizable Assets (NRRA) in line with Reg 37A of the Liquidation Regulations.

2.11. An offer was received from M/s. Anirudh Agro Famrs Limited ('M/s. AAFL / Auction Purchaser') pursuant to the EOI Dt. 21.07.2023 for an amount of INR 1 Crore on an upfront basis towards the acquisition of Insurance Claims in the Liquidation Process and that the Auction Purchaser has requested that the CD be sold on as going concern to continue the pending legal proceedings. Further submitted that the offer was finally revised to ~INR 9.5 Crores on 20.10.2023 which was approved with an 86.68% voting share in the 13th SCC meeting.

2.12. The AAFL informed about the failure of sale of two assets which were sold on an e-auction due to the non-payment by the successful bidder

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and that the Auction Purchaser on offered an amount of INR 27,74,000/- for the said assets and paid an EMD of INR 2,77,400/-

2.13. Upon appraising the SCC regarding conducting of challenge mechanism using the AAFL offer as anchor bid to maximise the value for CD's Stakeholders, on 04.01.2024 Invitation of EOI was published for the challenge mechanism which was to be conducted on 29.01.2024. Further submitted that the anchor bid was declared successful as there were no EOI received. Accordingly, a LOI was issued to AAFL on 25.01.2024 for the sale of CD as a going concern by private sale mode for which the Hon'ble Tribunal has granted permission for the same *vide* order dated 25.04.2024 in IA No. 56/2024.

2.14. The AAFL was called upon to make payment of the remaining sale consideration. On 07.06.2023, full balance sale consideration was paid along with 12% simple interest in accordance with the process memorandum as following:

Sl. No.	Particulars	Amount
1.	Earnest money deposit paid	97,77,400/-
2.	Balance Payment made	8,79,96,600/-
3.	Interest at 12% towards delayed payment	3,76,095/-
	Total	9,81,50,095/-

2.15. The recoveries from NRRA are proposed to be distributed by AAFL with creditors in the following manner:

- (a) Insurance Claim FA NO. 275/2023 before the Hon'ble State Consumer Dispute Redressal Commission, Vijayawada - 25% of recoveries (net of taxes) realized from the insurance claim to be remitted by AAFL to the designated SCC member within 10

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working days. The amount of insurance claims is approximately 32.61 crores.

- (b) Customs refund appeal no. C/30211/2024 before CESTAT, Hyderabad, along with application pending before this Tribunal under IA 261/2023 and recoveries from Directorate General of Foreign Trade: 45% of recoveries (net of taxes) to be remitted by AAFL to the designated SCC member. The amount of recovery is approximately INR 6.40 crores and INR 0.86 crores before DGFT.
- (c) The balance in the GST credit ledger and income tax refund along with interest, if any, to be unconditionally and irrevocably 2ould be refunded by AAFL pertaining to FY 2022-23 and FY 2023-24 to the benefit of creditors.

2.16. Accordingly, a sale certificate was issued to AAFL on 11.06.2024 (*Exhibit M, Pg.1341*) and the control and management of the CD was transferred to the AAFL with effect from 11.06.2024, with the physical handover process being done on 14.06.2024 at the CD's office in Kakinada.

2.17. The distribution of the sale proceeds are as follows:

Stakeholders to whom payments were made	Amount paid
Axis Bank Limited	86,80,06,617/-
Bank of India	21,19,79,235/-
Indian Overseas Bank	15,03,69,752/-
Union Bank of India	19,88,14,717/-
State Commercial Tax Dept, Govt. of Andhra Pradesh	8,29,679/-
Total	1,43,00,00,000/-

The amount of INR 1,47,13,495/- payable to the Bank of India, Hong Kong branch through the External Commercial Borrowing (ECB) Transaction through the Authorised Dealer (AD) bank was withheld by the said AD banker (Axis Bank Limited) due to some pre-CIRP non-

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compliance. Despite efforts to ensure compliance and the same being not to satisfaction of the AD Banker, legal opinion on this matter was requested basing on which the Applicant has requested the AD Banker to make payment towards the distribution waterfall without any procedural objections by the AD Banker. Further prayed this Tribunal to direct the AD banker to make the remittance of the said amount towards the Distribution Waterfall as provided under Section 53 of the IB Code i.e. remittance of said amount payable to Bank of India, Hong Kong Branch.

Further submitted that the Applicant has kept the said amount in form of an interest bearing fixed deposit account with Axis Bank bearing account number 924040087195410, with instructions to distribute the same to BOI along with net interest and net of taxes and the same has been captured in the corpus agreement. Further submitted that the deadline of 90 days for the distribution of amounts to Bank of India has expired on 09.09.2024.

2.18. The list of pending Litigations of CD are as under:

Sl. No.	Case No.	Status
NCLT AMARAVATHI		
1	IA. No. 6/2022 & IA 45/2022	To be pursued by Axis Bank as representative of SCC
2	IA. No. 51/2022	
3	IA. No. 50/2022	
4	IA. No. 21/2020	
5	IA. No. 281/2022	To be pursued by AAFL
6	IA. No. 261/2023	
7	IA. No. 253/2023	
8	IA. No. 286/2023	
NCLAT		
9	CA(AT)(INS) 362/2022	To be pursued by AAFL
10	CA(AT)(INS) 249/2022	To be pursued by AAFL

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SCDRC	
1 FA 275/2023	To be pursued by AAFL
SPL JUDGE FOR TRIAL OF COMMERCIAL DISPUTES	
1 COS/9/2023	To be pursued by AAFL

- 2.19. The books of account of the Corporate Debtor have been completed and brought up-to-date and have been audited up-to financial year 2023, receipts & payments audited till March 31st, 2024.
- 2.20. Most of the Secured creditors have provided letters/No objection certificates duly intimating amount the satisfaction of charge in view of receipt of proceeds from sale of the Corporate Debtor. It is submitted that the NOC from Union Bank is awaited as on date of filing of this Application and that the Bank of India would provide the NOC upon receipt of the pending disbursement of INR 1,47,13,495/-.
- 2.21. A bank account in the name of the CD followed by the words 'in liquidation' has been opened in Axis Bank for the receipt of all moneys due to the CD. The Final Report making an account of the Liquidation, showing how liquidation has been conducted and how the CD's assets have been liquidated is filed in this Application as **Exhibit "N"**. The summary of Liquidation costs incurred are as follows:

Particulars	Amount (INR Lakhs)
Salary cost	254.81
Cost of running operations i.e. project related cost	238.60
Subcontractor maintenance cost	220.82
Cost incurred towards delivery of FFD (Major asset of the CD)	208.59
Admin and other related charges including security charges	201.62
Legal counsel fees including ongoing litigations	185.71

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Payment of various Statutory dues	183.71
Fees of Liquidator support Services	177.68
Insurance charges	147.18
Electricity Charges	68.92
Cost Incurred towards publishing, advertisement, Opening VDR, carrying out E-Voting and e-auction	53.90
Cost of appointing professionals during the process	38.32
Repair and maintenance	27.84
Bank charges	23.61
Cost incurred for carrying out valuation	13.52
Total	2,044.28

Note: in addition to the above, unpaid CIRP cost to the tune of ~ INR 67.75 lakhs was paid during the Liquidation.

The fee is net of refund pursuant to the IBBI circular dated 28th September, 2023 and penalty paid pursuant to the IBBI Order.

^ All figures are inclusive of applicable taxes and net of TDS.

2.22. It is submitted that an corpus of an estimated amount of INR 55 Lakhs (Subject to disbursement of the Liquidation costs) is required to be created for meeting the necessary expenses like cost for storage of requisite records, cost for legal and other advisor fees and cost, cost for closure of Liquidation process of CD (upon approval of this bench and filing with RoC), provision for miscellaneous expenses/contingencies and other Liquidation Cost etc. which shall be maintained in a no lien account with Axis Bank. Further submitted that any amount deposited into the said account including but not limited to receipts from Standard Chartered Bank against their share in Liquidation cost in accordance with Regulation 21A forms part of the said corpus.

2.23. Further submitted that except for IA No. 6 of 2022, IA No. 51 of 2022 and IA no. 21 of 2020, there are no other assets of the Corporate Debtor

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left to be sold. A Compliance Certificate under Regulation 45 of the Liquidation Process Regulations in Form H is attached to this Application (*Exhibit – ‘O’*) and prayed for discharge from his duties and functions. Hence, this Application.

3. We heard Ld. PCS for the Applicant and perused the application. Necessary documents have been filed by the Applicant along with the application. The Final report in Form-H is filed as Exhibit – O. This Application is filed under Regulation 45(3)(a) of the Insolvency Board of India (Liquidation Process) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 praying the Adjudicating Authority to order for closure of the liquidation process of the Corporate Debtor Company as liquidation process is complete. The said provision reads as under:

“Regulation 45(3)(a): Final report prior to dissolution.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in form-H to the Adjudicating Authority for –

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; ...”

4. The Final Report is marked as *Exhibit – N* and the Compliance Certificate in Form H is marked as *Exhibit – O* are taken on record.
5. Upon perusal of the record and the material placed before us, it is seen from Form – H that an amount of ~INR 13,809.37 Lakhs is realised through sale of Liquidation Estate and the amounts distributed to stakeholders as per Section 52 or 53 of the Code is INR 1,64,23,42,881/- (*which includes an amount of INR 1,47,13,495/- which is yet to be paid to Bank of India Hong Kong Branch*). The details of distribution is shown in Form – H, which is filed at page no. 1369 of the Application. It is evident from the final report

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that the Corporate Debtor was sold as going concern to M/s. Anirudh Agro Farms Limited and the sale certificate (*'Exhibit – M'*) has been issued on 11.06.2024. Hence it is a fit case for closure of Liquidation Process.

6. In regards to the amount of INR 1,47,13,495/- which is payable to Bank of India Hong Kong Branch who is one of the secured financial creditors, it is observed that the same is withheld by the Authorized Dealer bank (**'AD Bank'**) i.e. Axis Bank Limited due to some pre CIRP non-compliances. It is also observed that the Liquidator has made necessary effort to assist in fulfilling the compliance and has set aside the said amount in form of an interest-bearing fixed deposit with the AD Bank which would be renewed from time to time (until payment to BOI) is to be distributed to BOI along with interest and net taxes, if any, and that the same has been captured in the corpus agreement.
7. Considering this situation, we hereby approve the earmarking of the of INR 1,47,13,495 in a no lien fixed deposit account for the disbursement of payment to Bank of India Hong Kong Branch by Axis Bank Limited upon receipt of requisite approvals. Accordingly, upon the successful transfer of amount, the Bank of India is directed to immediately issue NOC upon the receipt of the said amount.
8. Since the deadline of 90 days for the distribution of amounts to Bank of India has expired on 09.09.2024, we hereby permit the distribution of the said amount along with the interest accrued upon the compliance of the necessary approvals and the Axis Bank being the representative of SCC and the AD Bank, is hereby directed to make remittance towards distribution waterfall

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under Section 53 of the Code of INR 1,47,13,495/- payable to Bank of India, Hong Kong Branch.

9. We approve the formation of corpus fund which would be kept in the no lien account with Axis Bank for the purposes as mentioned by the Applicant listed in Para 2.23 of this order and that the balance, if any, shall be distributed in terms of Section 53 of the Code.
10. We direct the Axis Bank Limited to pursue the pending Avoidance Applications being IA No. 6 of 2022, IA No. 51 of 2022, and IA No. 21 of 2020 on behalf of the SCC and entire proceeds thereof, if any, shall be distributed in accordance to the Section 53 of the Code.
11. As proposed in the corpus agreement, M/s Anirudh Agro Farms Limited is directed to remit the recoveries, if any, towards the distribution waterfall provided under Section 53 of the Code as per the agreed terms and conditions, as per law.
12. We permit that any remittance towards the distribution waterfall as provided under Section 53 of the Code to be done towards eligible creditors. The Axis Bank is directed to file the Memo of compliance reporting the execution of all the above directions.
13. As a sequel to the above, we hereby order closure of the Liquidation proceedings against the Corporate Debtor viz. **M/s. SEMBMARINE KAKINADA LIMITED** from the date of this Order, in terms of Regulation 45 (3)(a) of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, the Liquidator stands relieved.

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14. The Liquidator is directed to send the copy of this Order within 7 days from the date of pronouncement to the Registrar of Companies, Vijayawada and the concerned authorities and hand over all the books and files of the Corporate Debtor i.e. M/s SEMBMARINE KAKINADA LIMITED to the Successful Bidder i.e. M/s Anirudh Agro Farms Limited.
15. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad and concerned authorities for updating the master data.
16. A copy of this order be also forwarded to the Insolvency & Bankruptcy Board of India, New Delhi.
17. Accordingly, the IA(IBC)/335/2024 in TCP(IB)/28/7/AMR/2019 is allowed and stands disposed of.

SANJAY PURI
Member (Technical)

RAJEEV BHARDWAJ
Member (Judicial)

Minisha Jiludimudi