



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-1677/2022

In

(IB) – 495(ND)/2017

IN THE MATTER OF:

M/s. IMPEX SERVICES INDIA PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. SSMP INDUSTRIES LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Application under Regulation 38 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Mr. Yogesh Sethi

Liquidator of M/s. SSMP Industries Limited

..... Applicant

VERSUS

Punjab National Bank

..... Respondent

Order Pronounced On: 27.07.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator : Mr. Yogesh Jagia, Adv.

For the Applicant : Mr. Narendra Kumar Adv. in IA No 5634/2021

For the Respondent : Mr. Narendra Kumar Adv. in CA-292/2019, Mr.
Rohit Bohra, Adv. for Respondent in IA-1395/21,

IA-1677/2022 In (IB) – 495(ND)/2017

Date of Order: 27.07.2023



IA-1591/2021, IA-3287/2022.

For the Punjab : Mr. Aamir Shaikh and Mr. Arun Kumar Shukla,
National Bank Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application was filed before this Adjudicating Authority under Regulation 38 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, seeking permission for the distribution of unsold Assets of the Corporate Debtor under Liquidation, for seeking the following reliefs:

- a) *“Pass an order under Regulation 38 of Liquidation Regulations, 2016 permitting the applicant/liquidator, to distribute all the unsold assets as detailed in para 3 hereinabove to Punjab National Bank, being the secured creditor having 99.10% of voting rights in the erstwhile CoC.*
- b) *Pass such other and further order as this Hon’ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.”*

2. **Submissions of the Applicant:**

- i. It is submitted by the Applicant that this Tribunal vide order dated 17/03/2022 gave liberty to the Applicant to file an application for the distribution of the unsold assets to the secured creditor i.e. Punjab National Bank, Respondent herein which is having 99.10% of voting rights in the erstwhile CoC under Regulation 38 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- ii. It is submitted by the Applicant that this Tribunal vide order dated 31/07/2019 passed under Section 33 of Insolvency and Bankruptcy Code, 2016, appointed the Applicant as Liquidator to liquidate the Corporate Debtor.



- iii.** After the appointment of the Applicant as Liquidator, the Liquidator took charge of the affairs of the Corporate Debtor in Liquidation and as on the date of Liquidation, as handed over by Resolution Professional and certified by the auditor in their report dated 07/03/2020 of the state of affairs as at 31/07/2019, the Corporate Debtor was having various assets and liabilities as stated in said report.
- iv.** It is submitted by the Applicant that as on date, the Corporate Debtor under Liquidation is having the following unsold assets:
- Actionable claims/debtors under the realization
 - Intellectual property rights
 - Land at Chittoor, Andhra Pradesh, Detail of the property is as under:
SURVEY NO. 242/1,242/2.242/3,
GUNDLAKATPAMANCHI, BANGARUPALEM MANDAL,
CHITTOOR DISTRICT ANDHRA PRADESH
Situated on Bangalore - Chennai Highway (NH_4) bear
Draupadi Devi Temple admeasuring 9.56 Acres.
- v.** It is submitted by the Applicant that the process was taken up to liquidate the Corporate Debtor as a going concern but the same remained unsuccessful and subsequently, as discussed in the Stake Holder Committee Meeting held on 30/07/2021, asset wise liquidation was carried out wherein the BMW car was successfully sold by the applicant through e-auction for Rs. 15.85 lakhs as against Rs. 5 lakhs which was offered by the promoter of the Corporate Debtor.
- vi.** It is submitted by the Applicant that in the process of liquidation, the Applicant received total claims of Rs. 19,88,35,277/- out of which Applicant admitted claims of Rs. 19,03,78,734/- and claims of Rs. 84,56,543/- are pending before various Adjudicating Authority for admission/adjudication. Certain proceedings initiated by the Income Tax Department, the Customs Department, the Provident Fund Department and other



government authorities are pending as on date and as the Liquidator will decide those claims after the final disposal/outcome of these proceedings.

- vii.** It is submitted by the Applicant that taking countenance of the fact that liquidation is time bound process but recovery proceedings pending before the Ld. Civil Courts is time-consuming and the inability of the applicant to proceed with the e-auction of the land situated at Chitoor due to the pending arbitration proceedings as explained hereinabove, the Applicant is seeking the indulgence of this Tribunal by filing the instant application under Regulation 38 of Liquidation Regulations, to permit the Applicant to distribute all the unsold assets as detailed in para 3 hereinabove to Punjab National Bank, being the secured creditor which being Banking Industry has been handling numerous legal cases through legal practitioners.

3. Submissions of the Respondent:

- i.** It is submitted before this Tribunal that the Applicant has merely enlisted the unsold assets of the Corporate Debtor without giving the corresponding details as required by Regulation 38(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is further submitted that the Applicant omits to provide the values of the unsold assets and fails to detail the efforts and manoeuvres taken by the Applicant to alienate/sell the said assets.
- ii.** It is submitted that the arbitration proceedings had been initiated by Smt. Brij Kishori Devi, the mother of the erstwhile director of the Corporate Debtor in liquidation i.e. Sh. Manoj Kumar, after the moratorium came into effect under section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016, which specifically interdicts the institution or continuation of proceedings against the Corporate Debtor. Despite the fact that the applicant filed the IA-1591/2021 for quashing the aforesaid arbitration proceedings



in March 2021, the same was neither pressed nor argued by the applicant before this Tribunal and remains pending for adjudication.

- iii.** It is submitted that the arbitration proceedings are with respect to the land bearing survey no. 242/1, 242/2 & 242/3, Gundlakattamanchi, Bangarupalem Mandal, Chittoor District, Andhra Pradesh situated on Bangalore-Chennai Highway admeasuring 9.56 acres, which is a part of the liquidation estate, and therefore it was incumbent upon the applicant to argue the IA-1591/2021 since the aforesaid arbitration proceedings are non-est in law and have a significant impact on the liquidation of the Corporate Debtor. It is also submitted that the aforesaid arbitration proceedings neither maximize the value of the asset of the Corporate Debtor in liquidation nor benefit the Corporate Debtor and consequently, the Applicant was entrusted with the duty to press the quashing of the arbitration proceedings for effective liquidation of the Corporate Debtor. In view of the same, the Applicant has been unable to effect the sale of the aforesaid asset in accordance with the provisions of Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016, to the prejudice of the erstwhile Committee of Creditors in which the Respondent had 99.10% of the voting share.
- iv.** It is submitted that the Chittoor Property was already mortgaged with the Respondent Bank and the same could have been sold under the provisions of the SARFAESI Act, 2002 but the Respondent Bank having faith in the procedure laid down in Insolvency and Bankruptcy Code, 2016 relinquished its right over the property towards the liquidation estate.
- v.** It is submitted that the applicant has omitted to satisfy Regulation 38(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 since the Applicant has neither disclosed the efforts and endeavours taken to realize the unsold assets (as enlisted in para no.4 of the application) nor the



special circumstances that necessitated the distribution of unsold assets to the secured creditors. It is also submitted that the application is liable to be dismissed since the applicant has failed to adduce the valuations of the aforesaid unsold assets.

- vi.** It is submitted that despite seeking numerous extensions for the completion of the liquidation process, the passivity on the part of the applicant prejudiced the respondent in terms of cost and time. The present application is a ruse to avoid the Applicant's duty as a liquidator.

4. Analysis and Findings:

- i.** We have heard the Ld. Counsel appearing for both parties from time to time and also perused the documents on record.
- ii.** It is observed that the way in which the liquidation process was handled by the Liquidator clearly reflects that the only interest of the Liquidator is the payment of liquidator fees and has been deliberately delaying the liquidation process.
- iii.** We agree with the contentions raised by the Respondent that the Liquidator never convened the stakeholders' committee meetings, no view or advice of the stakeholders' committee has been taken in making decisions with regard to the liquidation process.
- iv.** After considering the facts and circumstances of the present case, we are of the considered view that the liquidator has failed to fulfil the duties as assigned to it under the code as the liquidator has merely enlisted the unsold assets of the Corporate Debtor without giving the corresponding details as required by Regulation 38(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and omits to provide the values of the unsold assets.
- v.** Hence, without going into the merits of the case, we find that the averments made in this application are totally vague and bereft of details.

Accordingly, the liberty is granted to the Applicant/Liquidator to



file a fresh application mentioning correct facts.

5. **Order**

- i.** In light of the above facts and circumstances, the Application bearing **IA-1677/2022** is **dismissed**.
- ii.** This Adjudicating Authority directs the Liquidator to be more cautious while filing the application in the future, as the present application doesn't fulfil the mandate of Regulation 38(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**