

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH, (COURT – 1) CHENNAI**

IA/838/2020 in CP/508/IB/2017

*(Filed under Sec. 35(1)(n) of Insolvency and Bankruptcy Code, 2016 read
with Regulation 44(2) of Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016)*

In the matter of **M/s. Ennore Coke Limited**

Anil Kumar Birla

Liquidator of

M/s. Ennore Coke Limited

1st Floor, Park Plaza, No.1, Park Road,

Tasker Town, Bangalore – 560 051

.. .. Applicant / Liquidator

Present:

For Liquidator : Vishnu Mohan, Advocate

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 3rd December 2020

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. The IA/838/2020 has been filed by the Liquidator under Regulation 44 of Insolvency and Bankruptcy of India (Liquidation Process) Regulations, 2016, seeking relief as follows;

- a. *Extending the liquidation process of the Corporate Debtor by a period of 9 months with effect from 23.03.2020 i.e. until 22.12.2020*
- b. *Pass any other orders as this Hon'ble Tribunal may deem fit under the circumstances of the case and thereby render justice.*

2. The Learned Counsel for the Applicant submitted that this Tribunal vide order dated 23.03.2018 passed an order of Liquidation as against the Corporate Debtor and appointed the Applicant herein as the Liquidator. Pursuant thereto, the Liquidator took steps as required under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and has made public announcement on 27.03.2019 inviting the claims against the Corporate Debtor and has also verified and consolidated the claims received in this regard. Further it was submitted that the Liquidator has filed the Preliminary Report and the Quarterly Report as stipulated under Regulation 13 and 15 of the IBBI (Liquidation Process) Regulations, 2016 and has also prepared the list of stakeholders as mandated under Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016.

3. The Learned Counsel for the Applicant submitted that the Liquidator prepared the Asset Memorandum as specified under

Regulation 34 IBBI (Liquidation Process) Regulations, 2016 and the same was filed before this Tribunal. Further, it was submitted that as a part of liquidation process, the Liquidator invited bids / expression of interest for taking over the assets of the Corporate Debtor and has totally conducted five e-auctions and all of them failed as there were no bidders. The details of the E-auction conducted by the Liquidator on various dates are as follows;

Sale Notice	Reserve Price (₹ in Crores)	Result of Auction
First Sale Notice published on 20.09.2018	42.85	Failed as there were no bidders
Second Sale Notice published on 26.10.2018	34.75	Failed as there were no bidders
Third Sale Notice published on 18.07.2019	30.00	Failed as there were no bidders
Fourth Sale Notice published on 11.10.2019	23.00	Failed as there were no bidders
Fifth Sale Notice published on 28.01.2020	21.50	Failed as there were no bidders

4. The Learned Counsel for the Liquidator submitted that subsequent to the efforts taken with respect to the sale of the Corporate Debtor as a going concern, the Liquidator has received enquiries from many entities; however the same did not materialize. It was further submitted that out of the 2 years time period prescribed under Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016 (*pre-amendment*), a total of seven

months could not be utilized in conducting the e-auction for the reasons that the lessor of the leasehold land viz. Haldia Development Authority had approached this Tribunal objecting to the advertisement for the e-auction on the ground that prior permission / no-objection had not been obtained. Further owing to the relinquishment of security interest by one of the Financial Creditors as per Section 52 of IBC, 2016, the Financial Creditor took a period of 6 months to issue the final relinquishment letter, which is evident from the fact that the Liquidator has issued the 3rd E-auction Sale notice only after a period of 6 months and as such the Liquidator has lost a considerable period of time.

5. It was submitted by the Learned Counsel for the Applicant that despite best efforts taken by the Liquidator, the assets of the Corporate Debtor could not be realized owing to the slow-down in economy and also owing to the capacity of the plant size, which is not advantageous to both large and small domestic manufacturers.

6. It is to be noted here that the Regulation which was prevalent at the time of passing the Liquidation Order mandates the Liquidation process to be completed within a period of 2 years and

as such the liquidation process in relation to the Corporate Debtor is required to be completed on or before 23.03.2020. However, the Liquidator being not in a position to complete the process has filed the present Application under Regulation 44(2) of IBBI (Liquidation Process) Regulations, 2016 (*amended upto 15.12.2016*) for continuation of the Liquidation period of the Corporate Debtor for a further period of 9 months. In this context it is relevant to refer to Regulation 44 of IBBI (Liquidation Process) Regulations, 2016 (*amended upto 15.12.2016*)

44. Completion of liquidation.

(1) The liquidator shall liquidate the corporate debtor within a period of two years.

(2) If the liquidator fails to liquidate the corporate debtor within two years, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

7. Regulation 44(2) of IBBI (Liquidation Process) Regulations, 2016, which was amended upto 15.12.2016, is taken into consideration for the facts of the present case and it contemplates that if the liquidator has failed to liquidate the Corporate Debtor within two years then he has to make an application to the Adjudicating Authority to continue such liquidation, along with a



report explaining why the liquidation has not been completed specifying the additional time that shall be required for completion of the liquidation.

8. The Applicant in the Application has averred that there was a delay on the part of the Financial Creditor in issuing the final relinquishment letter and also the objections raised by the Haldia Development Authority in relation to the Leasehold land rights and as such the Liquidator has lost a considerable period of time in the Liquidation Process of the Corporate Debtor.

9. It is also significant to note here that after filing of the present Applicant, owing to Covid-19 pandemic, lockdown was imposed by the Central / State Government from 24.03.2020 onwards. The present Application has been filed by the Applicant before this Tribunal on 26.02.2020 and the matter could not be taken up for hearing due to the lockdown imposed by the Central / State Government from time to time. In the meantime, the Regulator viz. Insolvency and Bankruptcy Board of India (IBBI) by way of an amendment inserted Regulation 47A in IBBI (Liquidation Process) Regulations, 2016, which states as follows;



Exclusion of period of lockdown.

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.

10. It is to be seen that the Applicant in the present Application eventhough has stated that the Liquidation process has to be extended till 22.12.2020, the Applicant is entitled to claim benefit of Regulation 47A in IBBI (Liquidation Process) Regulations, 2016, which excludes the period of lockdown imposed by both the Central and the State Government.

11. Thus, by taking into consideration all the facts mentioned above, this Authority feels that it is just and proper to extend the Liquidation period for a further period of 270 days and as such after excluding the lockdown arising out of Covid – 19 pandemic, the Liquidator is directed to complete the Liquidation of the Corporate Debtor within a period of 270 days from the date of pronouncement of this Order.

12. Further, the Liquidator shall make every endeavour to complete the liquidation process within the extended period and not

to seek for any further extension. The Liquidator in view of the extension granted as above, is directed to abide by the model timelines as prescribed by IBBI in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and thereby complete the process in all earnest and in accordance with the said Regulations including filing of reports as required, with this Tribunal.

13. In view of the above discussions, the IA/838/2020 for extension of liquidation period is **allowed**. The Liquidation of the Corporate Debtor shall be completed within a period of 270 days from the date of pronouncement of this order i.e. on or before 30.08.2021.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond