

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

IA No. 1085 of 2021

in

C.P. (IB) No. 1615/MB/2017

Application under Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with section 60(5) of the Insolvency and Bankruptcy Code 2016 and Rule 11 of the National Company Law Tribunal Rules 2016 seeking permission for conducting Private Sale of the Assets of the Corporate Debtor

Mr. Dhiren Shantilal Shah,
Liquidator for Norton Aluminium (India) Private Limited,
Registration No.: IBBI/IPA-001/IP-P00220/2017-18/10419
B-102, Bhagirathi Niwas, Near Natraj Studio, Sir MV Road,
Andheri-East, Mumbai-400069

...Applicant

In the matter of

Nortan Aluminium (India) Private Limited
4, Leela Park, Ground Floor, Off. M G Road,
Dhanukar Wadi, Kandivli (W), Mumbai-400067

...Corporate Debtor

Date of Order: 24.12.2021

CORAM:

Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)
Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Appearance:

Sd/-

Sd/-

For the Applicant: Adv. Aniruth Purusothaman.

Per: Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

ORDER

1. This is an application filed by the Liquidator Mr. Dhiren Shantilal Shah (Applicant) under Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the Regulations) read with section 60(5) of the Insolvency and Bankruptcy Code 2016 (the Code) and Rule 11 of the National Company Law Tribunal Rules 2016 (the NCLT Rules) seeking a permission for conducting the Private Sale of the Assets of the Corporate Debtor with the following prayers:
 - A. *Be pleased to allow the Applicant being the Liquidator of the Corporate Debtor to initiate private sale of land and building of the Corporate Debtor as enumerated in Exhibit-C for an aggregate consideration of Rs.10.60 Crore.*
 - B. *Pass ad-interim and interim reliefs in terms of clause (A).*
 - C. *Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.*
2. The details of land and building of the Corporate Debtor as Exhibit C of the Application:

'All that part and parcel of the land at Village Dheku, Takai Adoshi Road, Post Sajgaon (Khopoli), Taluka Khalapur, Dist-Raigad, Registration Sub-District Karjat bearing Gat No.211, admeasuring 4.195 hectares and Gat No.153 admeasuring 0.08 hectare, total admeasuring 4.275 hectares together with all buildings, structures and all other things attached to the earth/permanently flattened to anything attached to the earth, alongwith existing construction thereon:

 1. Gat No.211(Part) 27900 sq.mtrs.
 2. Gat No.211(Part) 14050 sq.mtrs. Factory/Shed is constructed on this part.
 3. Gat No.153 is 800 sq.mtrs

Total 42750 sq.mtrs (Physical Possession)'

3. The facts leading to the Application are as under.

- a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 22.06.2018 upon admission of a Petition under Section 10 of the Code and Applicant was appointed as the Interim Resolution Professional (IRP) and further Applicant was appointed as Resolution Professional of the Corporate Debtor.
- b. Since there was no Resolution Plan was approved by the CoC within statutory period provided for completion of the CIRP. Therefore, Applicant filed an Application bearing MA No.775 of 2019 for liquidation of the Corporate Debtor under Section 33 of the Code. And the same was allowed by this Tribunal vide its order dated 29.05.2019, wherein the Applicant was appointed as the Liquidator of the Corporate Debtor.
- c. Thereafter the status of the Corporate Debtor was changed as 'under Liquidation' applicant took charged of the Corporate Debtor as Liquidator.
- d. The Applicant as in capacity if the Liquidator submitted that he published the Public announcement dated 12.09.2019 for the 1st E-Auction process of the Corporate Debtor which was conducted on 30.09.2019 with Rs.18,00,00,000/- (Rupees Eighteen Crore only) as Reserve Price. However, the Corporate Debtor was unable to sell its assets through E-Auction.
- e. Further Applicant submitted that pursuant to failure of the 1st E-Auction Process, the Applicant published the Public announcement dated 24.10.2019 for the 2nd E-Auction process of the Corporate Debtor which was conducted on 07.11.2019 wherein the Reserve

Price was reduced to Rs.17,10,00,000/- (Rupees Seventeen Crore Ten Lakh only) from Rs.18,00,00,000/- (Rupees Eighteen Crore only).

- f. The Applicant further submitted that the State bank of India (Sole secured Financial Creditor of the Corporate Debtor) having security over said Land and Building has unsuccessfully attempted trice to sell by auction under provision of the SARFAESI Act, 2002. The details of auctions conducted by the State Bank of India is as under:

Sr. No	Date of Auction by the SBI	Reserve Price
1	09.06.2017	14.40 cr.
2	23.06.2017	14.40 cr.
3	07.12.2017	13.00 cr.

- g. The Applicant submitted that Adroit Appraisers and Research Private Limited was already appointed for valuation of the Land and Building and he had hired one more Registered Valuer i.e. Deepak Bansal. The details of liquidation value are as under:

Sr. No.	Name of Registered Valuer	Land (amt in Rs.)	Building (amt in Rs.)
1	Deepak Bansal	11,07,40,000/-	23,48,234/-
2	Adroit Appraisers and Research Private Limited	12,33,96,000/-	23,54,000/-

- h. The Applicant submitted that till date 5 public auctions of the said property are conducted, however no bid is received either by the Liquidator or by the State Bank of India.
- i. The Applicant further submitted that he has received an offer for the purchase of land and building of the Corporate Debtor from Mr. Sunil Chandrarao Marne on 18.03.2021, who has offered Rs.10,60,00,000/-. Further the Applicant submitted that Mr. Sunil furnished an DD bearing No.003191 dated 18.03.2021 issued by Axis Bank for an amount of Rs.1,06,00,000/- along with comfort letter depicting

balance in the account as token amount for purchase of said land and building.

- j. Further applicant informed the SBI about the same offer received from Mr. Sunil, by its email dated 23.03.2021. The Applicant received consent letter from SBI dated 12.04.2021 for accepting the proposed offer made by Mr. Sunil. The copy of same is annexed to Application as Exhibit N.
- k. The Applicant contended that due to E-Auction process of the Corporate Debtor being unsuccessful twice and also submitted that there is no objection from the Stakeholder. Therefore, he has no other option other than to approach before this Bench to ask permission in conducting the Private Sale of the said Land and Building.
- l. Hence the Applicant filed the present Application on 23.07.2021.
4. It is pertinent to note that liquidator received on offer from Mr. Sunil and the SBI the Financial Creditor of the Corporate Debtor has also given consent for the said offer. It is also noted that the said Land and Building is the only immovable property of the Corporate Debtor which remains to be sold.
5. It is in the view that the said Land and Building to be sold by means of Private Sale as per the Regulation 33(2)(d) of the Regulations. The Regulation 33 of the Regulations is as:

"33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

PROVIDED that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties."

6. In view of the above-mentioned facts and circumstances, wherein there is no objection from the Stakeholder and multiple attempts of public auction by the Liquidator and SBI, this bench is of the view that this is a fit case for granting the permission for private sale of said Land and Building as under Regulation 33(2)(d) of the Regulations.
7. Under the facts and circumstances as narrated above, we allow the present Application by permitting private sale of said Land and Building as under Regulation 33(2)(d) of the Regulations.
8. Accordingly, the IA No. 1085 of 2021 is allowed and disposed off.

Sd/-

Narender Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)