IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court – II)
KOLKATA

IA(IBC)/321(KB)2022
in
CP (IB)/852(KB)2018

An application u/s. 35 of the Insolvency and Bankruptcy Code, 2016 read with regulations 32 and 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

In the matter of:

Reliance Commercial Finance Limited;

... Financial Creditor

Versus

New Win Win Feeds Private Limited;
(CIN: U01403WB2012PTC179334)

...Corporate Debtor

And

In the matter of:
Mr. Kanchan Dutta,
Liquidator of New Win Win Feeds Private Limited

… Applicant

Order reserved on: 19/09/2022

Order pronounced on: 27/09/2022

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through video conferencing):

For applicant	:	Mr. Rahul Auddy, Adv.

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

2. IA(IBC)/321(KB)2022 is an application filed by the applicant praying for conducting private sale of the remaining unsold assets of the Company (Corporate Debtor) under liquidation being Building Unit – II consisting of Factory Shed, Godown, Pre-Mix Room, Electronic Room, Generator Weigh Bridge Room, Storage Room, etc., and machineries, in compliance of the provisions of the Code and the relevant regulations.

3. This is a matter where this Adjudicating Authority had initiated CIRP against the Corporate Debtor vide its order dated 20/03/2019. Liquidation order was passed on 19/09/2019. The instant application has been filed by the applicant on 12/04/2022, which is supported by an affidavit duly affirmed by the applicant/Liquidator.

4. The main assets of the Corporate Debtor were comprising of two factory units, known as Unit - I and Unit – II. There were certain other assets such as motor cars, machineries etc. The land was owned by the directors in their personal capacity and hence the Corporate Debtor did not have any ownership right over the land.

5. *Vide* order dated 31/08/2021 passed in IA(IB)1429(KB)2020, this Adjudicating Authority directed the Indian Bank to handover the asset in their possession back to the Liquidator within 7 days of the order. In compliance of the aforesaid order dated 31/08/2021, the Liquidator visited the Indian Bank, Berhampur Branch and found that the land on which the factory building of the Corporate Debtor is situated is in the name of the Directors of the Corporate Debtor, which is mortgaged to Indian Bank by the directors as owners of land, whereas the factory and the plant & machineries are in the name of the Corporate Debtor. Since the Land is owned by the Directors of the

Corporate Debtor and the Factory Building, Plant & Machineries and Building are owned by the Corporate Debtor, the applicant recommended that the Land be sold by the Indian Bank and the Factory Building, Plant and Machineries be sold by the applicant through e-auction on the same day.

6. Ld. Counsel for the applicant submits that in spite of three public auctions[1] advertised on 30/11/2019, 10/12/2021 and 14/01/2022 nobody participated in the public e-auctions.

7. Ld. Counsel for the applicant further submits that at the 6th Stakeholders Consultation Committee ("**SCC**") meeting[2] held on 04/02/2022, members of the SCC agreed to seek private quotations and requested the Liquidator to proceed for private sale of the assets of the Corporate Debtor. After the aforesaid meeting, the applicant received an e-mail[3] dated 07/02/2022 from the Indian Bank stating that the Liquidator should go for another e-auction process. In pursuance thereof, the applicant published an advertisement[4] in newspapers on 11/02/2022, being 4th public e-auction notice, for sale of assets of the Corporate Debtor.

8. Ld. Counsel for the applicant submits that at the 4th e-auction, which was held on 25/02/2022, the building Unit – I and vehicles were sold. However, the remaining assets consisting of Building Unit - II (Factory Shed, Godown, Pre-Mix Room, Electronic Room, Generator Weigh Bridge Room, Storage Room, etc.), and machineries could not be sold.

9. At the 7th SCC meeting[5] held on 03/03/2022 the members of the SCC deliberated on the issue of sale of Building Unit – II (Factory Shed, Godown, Pre-Mix Room, Electronic Room, Generator Weigh Bridge Room, Storage Room, etc.) and machineries and agreed to seek private quotations for the

[1] Annexures "A", "B" & "C" at pages 20 to 22 of the application
[2] Annexure "D" at pages 23 to 30 of the application
[3] Annexure "E" at pages 31 to 32 of the application
[4] Annexure "F" at page 33 of the application
[5] Annexure "G" at pages 34 to 39 of the application

remaining assets and permitted the Liquidator to proceed for private sale since no entity has shown their interest in the remaining assets of the Corporate Debtor.

10. The applicant thereafter published another advertisement[6] on 11/03/2022, being the 5th public e-auction for sale of remaining assets of the Corporate Debtor, but there was no response.

11. Ld. Counsel for the Liquidator submits that after granting exclusion of 162 days due to COVID-19 and extensions of liquidation period from time to time, the last one has been granted vide order dated 19/09/2022 passed in IA(IBC)882(KB)2022, the liquidation period will come to an end 24/02/2023.

12. Ld. Counsel for the Liquidator further submits that in spite of conducting several e-auctions, the Liquidator could able to sell only the Unit – I of the Corporate Debtor but could not succeed in selling the Unit – II comprising of Factory Shed, Godown, Pre-Mix Room, Electronic Room, Generator Weigh Bridge Room, Storage Room, etc. and machineries.

13. In the above circumstances, Ld. Counsel for the applicant submits that the Liquidator seeks permission of this Adjudicating Authority to go for private sale as per section 35 of the Code read with regulations 32 and 33 of the IBBI (Liquidation Process) Regulations, 2016 in order to complete the liquidation process within the extended period, i.e., 24/02/2023.

14. We have heard the Ld. Counsel for the applicant and perused the application and the documents attached therewith. Under the IBBI regulations (Liquidation Process) regulation 33, the code enjoins upon the liquidator to seek prior permission of the Adjudicating Authority to effect the private sale. It appears that in spite of several e-auctions, the Liquidator could succeed in selling the Unit – I only. Therefore, the Liquidator may explore possibility of

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[6] Annexure "H" at page 40 of the application

selling the remaining assets of the Corporate Debtor through private sale with the reserve price fixed for the last auction. While exploring the possibility of private sale, the Liquidator shall adhere to the provisions of the Insolvency and Bankruptcy Code, 2016 and the IBBI (Liquidation Process) Regulations, 2016, with an ultimate objective of maximizing the value of the assets and may resort to all available modes including Swiss Challenge Method.

15. The application bearing **IA(IBC)/321(KB)2022** shall stand disposed of in terms of the above directions.

16. **CP(IB)/852(KB)2018** to come up for filing of periodical report on **10.11.2022**

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 27th day of September, 2022

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