SL. No.6

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 18.12.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1581/2023 in CP (IB) No.128/10/HDB/2017
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	Neeta Chemicals India Pvt Ltd
NAME OF THE RESPONDENT(S)	State Bank of India
UNDER SECTION	10 of IBC

ORDER

IA (IBC)/1581/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Apoorva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No. 1581 of 2023 in
CP(IB) No.128/10/HDB/2017

In the matter of:

M/s. Neeta Chemicals (India) Private Limited (Under Liquidation)

Between:

STATE BANK OF INDIA,
Stressed Assets Management Branch - II,
D. No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda, Hyderabad-500027

……Applicant/Financial Creditor

And

1. NEETA CHEMICALS (INDIA) PRIVATE LIMITED
(UNDER LIQUIDATION)
Represented by its liquidator K.V. Srinivas
Flat 402, 4th Floor, Alcazar Plaza & Towers,
Road No. 1, Banjara Hills, Hyderabad - 500003
Email: liquidator.neetachem@aaip.co.in

……Respondent No. 1/Liquidator

2. B. Vijayvardhan S/o Borra Chandrashekhar Rao
R/o. 4-8,9,10, Flat No. 403,
Gayatri Nilayam, Vikasnagar Colony,
New Dilsukhnagar, Hyderabad-26

.......Respondent No.2/Sole Bidder

Date of order:18.12.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant	:	Mr. G.P Yash Vardhan, Ld. Counsel
For Respondent No.1	:	Dr. K.V Srinivas, Ld. Liquidator
For Respondent No.2	:	Ms. Kalyani

Per : Rajeev Bhardwaj

ORDER

1. This application is filed by the State Bank of India, Financial Creditor (**Applicant**) under Section 60(5) of Insolvency and Bankruptcy Code 2016 (**IBC**), praying the following reliefs:

a) Remove and replace the current liquidator and appoint Mr. Kambhammettu Sri Vamsi, Regn No: IBBI/IPA-001/IP-P00664/2017-18/11141, as the liquidator of the Corporate Debtor in the interest of the justice.

b) Issue necessary directions for setting aside all the proceedings conducted by the liquidator in pursuance of the notice for assignment dated 17.02.2023 issued by the liquidator.

c) Pass an order that the relinquished asset i.e., all that piece and parcel land of Sy.No.60/part, admeasuring 3630 Sq.yards or equivalent to 3035.14 Sq.mtrs., situated at jeedimetla village, Quthubullapur Manda and GHMC Circle together with all documents title deeds etc., be handed over to the SBI by the liquidator, so as to enable SBI to realize the asset under the provisions of the SARFAESI Act.

d) As an interim measure, may issue interim orders staying all the proceedings in connection with the sale of the assets of the Corporate Debtor by the Liquidator until the captioned I.A. is disposed of.

The Application:

2. M/S Neeta Chemicals (India) Private Limited (**CD**) filed petition seeking initiation of Corporate Insolvency Resolution Process (**CIRP**) under Section 10 of IBC and the petition was admitted vide order dated 14.05.2018. Later on, the CD was ordered for Liquidation vide order dated 28.06.2019.

3. The Applicant sanctioned various credit facilities of Rs 197.80 Crores to the CD against the security of assets of the CD. The Applicant relinquished its security interest in favour of the Liquidation Estate and became the sole member of the Stakeholder Consultation Committee (**SCC**). The description of the Assets is as follows:

Sr. No.	Details of the Assets
1.	All that piece and parcel of property of plot bearing No. 151, Survey No 125 part admeasuring 2152.72 Sq. Yards or 1799.94 Sq.Mtrs situated in Mallapur Industrial Area of Andhra Pradesh Industrial Infrastructure Corporation (APIIC), along with G+3 floors of RCC frame/structure at uppal Mandal **("Asset No. 1"**)
2.	All that the open land in Sy.No 60/part, admeasuring 3630 Sq.yards or equivalent to 3035.14 Sq.mtrs, situated at jeedimetla village, Quthubullapur Mandal and GHMC Circle. **("Asset No. 2")**

4. The Respondent No.1 (**Liquidator**) conducted an e-auction for the sale of above-mentioned assets on various dates. The Asset No. 1 was sold in the e-auction conducted on 07.12.2020. The Asset No.2 could not be sold in the e-auction.

5. The endowment department had raised a claim over Asset No. 2 as it was prohibited under Section 22A of the Registration Act. The

Liquidator had filed IA No.73 of 2021 before this Authority against the endowment department seeking to lift prohibitory orders with respect to Asset No.2.

6. After coming into force of Regulation 37-A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**) in November, 2020, the Liquidator attempted to assign Asset No. 2 along with the accounts receivable including advances, other receivables and transactions classified as avoidance transactions under Sections 45 and 66 of the IBC under assignment of Not Readily Realizable Assets (**NRRA**). Accordingly, public notice was issued on 05.12.2021, 05.08.2022 and 21.09.2022 inviting Expression of Interest (**EOI**) from the prospective bidder(s).

7. After the e-auction, Respondent No 2 approached this Authority for directing the Liquidator to consider his EOI for the purchase of Asset No 2. Under the direction of this Authority, another Public Notice was issued on 17.02.2023. In the notice of assignment of NRRA, it was stated that

> "interested parties were to submit along with the Application Form refundable security deposit of Rs.50.00 Lakhs for carrying out access to the documents/information for carrying out due diligence for submission of the offer."

The Liquidator then received EOI from Respondent No 2 who was the sole bidder and received an EMD of Rs 50 Lakhs. It is claimed that the Applicant was not aware of the reserve price fixed for sale under NRRA.

8. The Liquidator had appointed two valuers to conduct the valuation of Asset No 2 in accordance with Regulation 35 of IBBI. In the letters **Annexure 2**, the vlauers observed that valuation of Asset No.2 could not be conducted because Asset No. 2 is under list of prohibited properties by the SRO.

9. The Liquidator arrived at the Average Liquidation Value of the CD at Rs 1,21,830 and vide email **Annexure 3** dated 15.05.2023 informed the Applicant that he had received a firm offer of Rs 17,00,000 for the assignment of NRRA of the CD to Respondent No 2. The Liquidator sought the opinion of the Applicant by the end of the day.

10. The Liquidator did not wait for the Applicant's opinion and sent an email dated 09.06.2023 informing that he is proceeding with the next steps in the assignment of the NRRA of the CD. In response to email dated 09.06.2023, the Applicant sent an email on the same day to the Liquidator that the Applicant is not in favor of the assignment of NRRA of the CD and requested the Liquidator to defer NRRA proceedings until further notice. The Applicant sent another notice dated 23.06.2023 to Liquidator that the Applicant is not in favor assignment of NRRA of the CD.

11. The Liquidator however, without informing or impleading the Applicant, approached this Authority in IA 1008/2023 to obtain directions against the Applicant for approval of the sale under Regulation 37A of the Liquidation Regulations.

12. The Applicant sent another email dated 30.06.2023 stating that the SCC was not in favor of the assignment of NRRA of the CD and requested

the Liquidator to handover Asset No. 2 to the Applicant immediately.

13. Later, the Applicant vide email on 03.07.2023 informed the Liquidator to defer the NRRA proceeding for the time being. The Applicant in email stated their concerns about the status and progress of the Liquidation and the realization of its dues. Applicant wished to explore further course of action and alternatives and requested to convene a physical meeting of the SCC at the earliest. However, Liquidator failed to conduct the meeting.

14. It is alleged that the Liquidator neglected to conduct timely SCC meetings. Despite repeated requests, the Liquidator held meetings irregularly, with significant gaps between 01.03.2023 and 03.08.2023. The Applicant vide email dated 28.07.2023 informed the Liquidator to conduct the meeting on 03.08.2023. During the meeting on 03.08.2023, SCC informed the Liquidator that they are neither accepting the offer of Respondent No. 2 nor the proposal to share the outcome from the proceeds of the PUFE transactions in the ratio of 50:50.

15. The Applicant with the intention to ascertain the present and accurate valuation of Asset No. 2, appointed IBBI registered valuer to conduct a technical valuation of Asset No.2. As per the said valuation report **Annexure 10** dated 19.07.2023, the fair Market Value of the Asset No. 2 was Rs 16,69,80,000, the Realizable Value was Rs 14,19,33,000 and the Distress Value was Rs 11,68,86,000.

16. In the given circumstances, it is asserted that the Liquidator ought to have conducted another round of valuations of Asset No. 2 in order to obtain the accurate value of Asset No. 2. The Applicant raised concern

regarding the Liquidator's assessment of the Corporate Debtor's liquidation value at Rs. 1,21,000 which was totally incomprehensible in the light of latest valuations obtained by the Applicant.

17. However, the Liquidator tried to justify the offer of Rs 17,00,000 by stating that the Liquidation value of the Corporate Debtor is Rs 1,21,000 which is very low even considering the distress value of Asset No. 2 which is Rs 11,68,86,000. This, according to the Applicant, clearly demonstrates that the Liquidator has not performed his duties in the best interest of the Stakeholders and his actions are completely contrary to the object of the Code which is maximization of the value of asset of the Corporate Debtor.

18. The Applicant also asked the Liquidator to defer finalizing the sale of Asset No. 2, but he proceeded with the sale process. The Liquidator even sought this Authority approval for the sale under Regulation 37A of the Liquidation Regulations, 2016, without involving the Applicant as a party. The Applicant alleges potential collusion among the Liquidator, bidder, and promoters of the Corporate Debtor to sell Asset No. 2 at an undervalued price, bypassing the Applicant’s consent, despite its relinquishment of security interest in favor of the liquidation estate.

19. It is claimed that Liquidator even started to follow up with the Applicant and insisted for approval. The Liquidator has made several calls for persuading the Applicant to agree to the amount of Rs. 17,00,000. Thus, the Liquidator by misusing his position resorted to this unfair sale of the assets of the CD and it is a clear abuse of powers under the IBC.

20. The Liquidator's misconduct threatens to cause irreparable harm to stakeholders as outstanding recovery of Rs. 535.77 crores (including notional interest as of 31.03.2023) from the CD and its Guarantors is still due.

Counter of the Respondent No.1(Liquidator)

21. In the absence of clear title over the Asset No.2, there was no response for its sale after conducting multiple e-auctions. The RDO issued an ORC for the property on 04.01.1992, which was purchased by M. Narsing Rao & Others. However, on the appeal filed by the Endowment Department, the Joint Collector set aside the order of the ORC on 13.03.2000. The purchasers then filed a CRP in the High Court, which on 07.12.2012 remanded the case to the RDO for further inquiry. In its final order on 07.09.2019, the RDO concluded that the land was temple Inam land and the original ORO had been issued illegally.

22. For the above reasons, Asset no 2 has been classified as a NRRA under Regulation 37A Liquidation Regulations. In compliance with Regulation 37A, the Liquidator in consultation with the Applicant, initiated the process of assigning the NRRA of the Corporate Debtor.

23. The Applicant had previously consented to and directed the Liquidator to assign the NRRA of the Corporate Debtor under Regulation 37A of the Liquidation Regulations. This was communicated during meetings and correspondences on 23.01.2022, 16.02.2023, and 01.03.2023.

24. The Applicant vide email dated 16.02.2023 directed the Liquidator to proceed with the publication calling for an EoI from prospective bidders for the assignment of NRRA, with a request to negotiate for the

'maximum possible amount' from the bidders and to endeavor to distribute the proceeds of the assignment to the bank by 31.03.2023.

25. The opinion of SBI's panel advocate vide letter dated 10.08.2015 was also sought regarding the Asset No.2 and it was opined that the Asset No. 2 is notified as government and endowment land and is subject to a stay order and pending dispute before the DRT Hyderabad. Due to these complications, the advocate was unable to provide a legal opinion and returned the documents.

26. The Applicant did not object for assignment of NRRA and every stage was duly informed and had obtained their approval. The Liquidator issued each Public Auction notice only after the Applicant approved the draft notice, and there was no mala fides of the Liquidator. The Applicant was aware that no reserve price was set for the NRRA assignment due to the asset's unique nature, legal challenges, and high risk for bidders. The valuation report confirmed that assigning a value was not possible. The lack of interest in the repeated auction notices reflected the difficulties with the title of Asset No. 2.

27. It is denied that the Applicant was unaware that no reserve price was fixed. During a meeting on March 1, 2023, it was noted that no reserve price would be set for the NRRA assignment, although a refundable security deposit of Rs. 50 lakhs was fixed. The Applicant was fully aware of this process, having approved all advertisements and received documentation regarding the auction procedures.

28. Upon receiving no response from the Applicant to the email dated 15.05.23 regarding the bidder's offer, the Liquidator confirmed the

assignment of the NRRA to the successful bidder on 16.05.2023 by following the prescribed procedure. The bid amount was adjusted against the deposit at the bidder's request. Once the auction was completed, the Liquidator had no legal authority to cancel the confirmed auction, and the Applicant had no locus to demand such a cancellation. Allowing this would contravene the law and set a precedent for unnecessary disputes. Reliance is placed on the Hon'ble Supreme Court's judgment in ***EVA Agro Feeds Private Limited vs. Punjab National Bank & Anr***, which held that a liquidator's discretion to cancel an auction is not absolute or unfettered.

29. The Liquidator informed the Applicant on 15.05.2023, and sought their objections by 16.05.2023. The Liquidator further negotiated, after which Respondent No. 2 improved the offer to include a 50% share of proceeds from pending IAs, along with ₹17,00,000. With no objections from Applicant, the Liquidator accepted the offer and issued a Certificate of Assignment on May 16, 2023, in compliance with relevant regulations.

30. It is further denied that the Liquidator failed to provide sufficient time for the Applicant to procure necessary approvals. The Liquidator is not required to wait indefinitely for the Applicant's opinion, especially after the Applicant had relinquished its security interest and consented to assign the NRRA under Regulation 37A. The Applicant had previously authorized the Liquidator to proceed with negotiations and requested timely distribution of proceeds.

31. Similarly, the Applicant cannot object to the transparent assignment of the NRRA of the Corporate Debtor conducted in accordance with

Regulation 37A, especially after providing its consent and direction to the Liquidator for the assignment. Therefore, the Applicant is not entitled to any relief as sought in the instant application.

<u>Counter of Respondent No.2 (The Bidder)</u>

32. The Respondent no 2 has claimed himself to be a bonafide bidder, who had bid for assignment of NRRA of the CD in pursuance of public notice dated 17.02.2023 given by the Liquidator. After submission of EoI, the Liquidator was requested to give access to the data room for verification of the records and revelation of commercial validity in offering consideration for the NRRA of CD. The access to the data room was provided after encashment of demand draft of Rs 50.00 lakhs given by the Respondent No 2.

33. The notice dated 17.02.2023 consisted of all the assignment of NRRA of the CD including Asset no 2, and stated as follows:

> *All the beneficial interests in the Financial Assets of the Corporate Debtor including but not limited to the sundry debts, refunds from the Government and its agencies; contingent receivables, disputed receivables, sub-judice receivables, Assets underlying preferential, undervalued, extortionate credit and fraudulent transactions in pursuant to section 43 to 66 of the Code filed by the Liquidator Vide IA No.s 715/2021 & 716/2021 before the Hon'ble NCLT, Hyderabad Bench - II right to benefits arising out of revocation of cancellation of Sale Deed dated 29.07.2011*

34. After verifying the record in the data room, Respondent No 2 vide email dated 15.05.2023 initially gave an offer of Rs 17,00,000 for the assignment of the NRRA of the CD. After the Liquidator consulted the SCC, he was asked to improve the offer taking into consideration the advance status of pending IAs and the possibility of substantial

realization of amounts therefrom. The Respondent No 2 had immediately agreed to share the proceeds from the outcome of pending IAs equally and requested the Liquidator to confirm if the same is acceptable and to adjust the offer amount of Rs. 17,00,000/- from the deposit amount of Rs. 50,00,000/- and refund the balance amounts. Then the Liquidator accepted and confirmed the said offer and issued a 'Certificate of Assignment' dated 16.05.23, thereby completing the auction process in accordance with the procedure, rules and regulations under IBC, 2016.

35. Reliance has been placed on the decisions in ***Sadashiv Prasad Singh vs Harendar Singh & Ors, CIVIL APPEAL NO. 162 OF 2014*** and ***Ashwin Mehta and Another vs Custodian and Others (2006) 2 Supreme Court Cases 385*** that neither the Liquidator nor the stakeholders have a say in completing the legal formalities for the culmination of the auction process.

36. It is also claimed that there is no legal requirement or procedure for the Liquidator to follow under the IBC to seek repeated approval of the creditor. The SCC/Applicant having consented to the assignment of NRRA, is estopped from questioning the decision of the Liquidator in the absence of any procedural lapse.

37. The Applicant has also relied on an illegal valuation report in support of its plea which is not admissible as the same was obtained with malicious intent under the SARFSESI Act and not under IBC, 2016.

<u>Rejoinder</u>

38. The Applicant has referred to the following order dated 23.06.2023 in

IA No 1008 of 2023 passed by this Authority to submit that the Respondent No.1 has concealed material facts and the Liquidator was not having any authority to take independent and arbitrary decision:

> *"that the Liquidator shall wait till the SBI responds on the new bid document. The SBI shall expedite the process by getting the approval from the competent authority as quickly as possible not later than 15 days from the date of this order. Post on 10.07.2023".*

This order reflects that the Liquidator instead of adhering to the request of the Applicant to defer the assignment of NRRA of CD, issued the Certificate of Assignment to Respondent No 2.

39. The Applicant being the sole stakeholder had every right to decide the price at which the Asset No 2 along with all the beneficial interest in the financial assets of the CD were to be sold. The Applicant was not aware of the price at which the NRRA of the CD was to be sold. The Liquidator should have waited for the decision of the Applicant as to whether to assign Asset No 2 along with beneficial interest of financial assets of the CD to Respondent No 2.

40. The Applicant has given consent for exploring option of assignment under the NRRA of the Corporate Debtor and the price at which the same shall be sold/assigned has to be mutually agreed. The right of selecting and declaring the successful bidder was to be done with the approval of the Applicant.

41. We have heard Ld. Counsel for both the parties and have also gone through the entire record including written submissions.

The Findings

The background

42. The genesis of controversy is the auction of Asset No.2 in pursuance of notice for assignment/transfer dated 17.02.2023 (**Annexure-1),** of the application. This property along with one more property of the CD was secured with the Applicant for the repayment of loan. The Applicant relinquished its security interest in the assets vide letter dated 07.08.2019 (**Annexure-3** of the counter). After the liquidation order on 28.06.2019, the Liquidator conducted auction for the sale of both properties on various occasions and finally the Asset No. 1 was sold in the e-auction conducted on 07.12.2020.

43. The Asset No.2 was in litigation before various forums under the provisions of the Charitable Hindu Religious Institutions and Endowment Act, SARFAESI Act etc and even the sale deed executed in favour of the CD was cancelled. Therefore, this property was treated as Not Readily Realizable Assets (NRRA) after the insertion of Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016 by Notification No. IBBI/2020-21/GN/REG067, dated 13.11.2020. Subsequently, the Liquidator made attempts to assign this property along with accounts receivables etc., under the Regulation 37A of Liquidation Regulations.

44. The auction of Asset No.2 failed on 05.12.2021, 05.08.2022 and 21.09.2022. In IA No.587/2022 filed by the Respondent No.2, the Liquidator was asked vide order dated 14.07.2022 to invite fresh EoI through publication once again. Consequently, the impugned notice **Annexure-1** of the application was issued by the Liquidator for the assignment of the NRRA.

Role of Liquidator: The Law

45. A Liquidator can transfer or assign a NRRA through a transparent process to such persons who would otherwise have been eligible to submit a resolution plan during the insolvency resolution process, after deliberations with the consultation committee. Thus, any person who is ineligible to be a resolution applicant under Section 29A of the Code cannot be a buyer of a NRRA.

46. In view of conflicting stand of the parties, we need to have relook at the powers of the Liquidator vis-à-vis consultation committee in relation to NRRA. Regulation 37A of Liquidation Regulations speaks as how the Liquidator will take decision in such matters.

> ***37A.*** *(1) A liquidator may assign or transfer a not readily realizable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.*

Therefore, the Liquidator is required to remain transparent in his approach while dealing with NRRA in accordance with Regulation 31A.

47. The decision is to be taken by him in consultation with the consultation committee. In case of any conflict between them, Clause 10 of Regulation 31A provides:

> *(10) The advice of the consultation committee shall not be binding on the liquidator:*
> *Provided that <u>where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating</u>*

> *Authority and to the Board within five days of the said decision; and include it in the next progress report*

48. Hence, the decision of Liquidator shall prevail when there is difference of opinion between them, but reasons for dissensions are required to be recorded and the record is to be sent to the Adjudicating Authority and IBBI. Accordingly, the Liquidator may have his say but he needs consultation on every important matter with the consultation committee.

49. This has also been emphasized in the process documents dated 25.03.2023 (**Annexure-16** of counter), shared by the Liquidator with the Applicant. It is equally applicable for declaring the successful bidder. Clause K of **Annexure-16** under the heading "Declaration of Successful Bidder" only makes it explicit what is already in Clause 10 of Regulation 31A. The relevant part is:

> *"..This right of selecting and declaring the successful assignee/buyer/investor shall solely always rest with the Liquidator with the required approvals from stakeholders' consultation committee etc…"*

The aforesaid provision states unambiguously how the decision is to be taken by the Liquidator.

50. This is also the ratio of the decision of the Hon'ble Supreme Court in ***R.K. Industries (Unit-II) LLP v. H.R. Commercials Private Limited and Ors. (2024)4 SCC 166*** that while the advice offered by the Stakeholders' Consultation Committee is not binding on the Liquidator, as per the Regulations if the Liquidator arrives at a decision which is at variance with the advice given by the Stakeholders' Consultation Committee, he must record his reasons in writing for doing so and

mention it in the next progress report.

51. Coming to the Liquidator's assertions regarding adherence to the objectives of the IBC, including transparency, compliance with its provisions (particularly Regulation 37A of the Liquidation Regulations), and value maximization, these remain a far cry and appear only on paper.

Valuation of Asset No.2

52. The Applicant's primary contention against the Liquidator's claims of adhering to high moral standards is the transfer of the asset at an undervalued price of Rs 17 lakhs. This property has been valued by different valuers as follows:

Details	**Valuer Name**	**Date of Valuation Report**	**Value of the property**
Annexure 5 of the Counter (Page 61)	S. J. Ranganatha	11.10.2019	4,70,25,000 (liquidation value) Rs.6,27,00,000/ (Fair Market Value)
Annexure 5 (Page 82)	Inturi Veeraiah	12.10.2019	4,95,00,000 (liquidation value)
Annexure 7of the Counter (Page 111)	S. J. Ranganatha	23.03.2022	Valuation not possible
Annexure 7 of the Counter (Page 113)	Inturi Veeraiah	10.01.2022	Valuation not possible
Annexure 20 of the Counter (Page 377)	M. Aparna & Associates	29.12.2023	9,47,37,000
Annexure 10 of the Application (Page 26 of application)	Y.V.N.N. Sarma	19.07.2023	16,69,80,000 (Market Value)

53. Of the six valuation reports available, two were prepared prior to the assignment of the asset as NRRA. While these reports may not be binding or conclusive, they are intended to assist the Liquidator in the decision-making process. Following the classification of the property as NRRA, the Liquidator sought opinions from Mr. Inturi Veeraiah and Mr. S.J. Ranganatha, who both declined to provide a valuation, citing the ongoing litigation involving the property. Another valuation report was obtained to determine the fair value of the property for loan recovery under the SARFAESI Act, while the report attached as **Annexure 10** was provided by the Applicant.

54. It is not just the land but also other associated rights that were to be assigned through the auction notice. The Liquidator has failed to properly assess the minimum value of these rights. While it is true that Asset No. 2 was not formally valued due to the ongoing litigation, this does not imply that the property holds no value or should be sold for a negligible amount. Valuation reports serve as a guide for the Liquidator to determine a reasonable price, even considering the litigation. The bidder, on the other hand, would assess the value from their perspective. However, no prudent person would fix the price of the property at Rs 1,21,830/-, particularly when its average value could be around Rs 10 crores. At such a nominal price, it is only natural that many would attempt to acquire the property, regardless of the risk of losing the litigation.

Liquidator's Conduct

55. It is observed that at the time the auction notice was issued, the Liquidator had already filed IA No. 73 of 2021, seeking the lifting of

prohibitory orders concerning Asset No. 2. If the property's title is cleared at a later stage, it should not result in an undue windfall for the successful bidder. Furthermore, the value of Rs 1,21,830/- was determined based on a reference in **Annexure 18** attributed to Mr. N.V.K. Rao. However, his report pertains to the liquidation value of Securities and Financial Assets and does not address the valuation of Plant & Machinery or Land & Buildings. Whatsoever, this report is not available on record.

56. It is also intriguing that EMD was fixed at Rs. 50 lakhs, which as per Clause 3 of Schedule I of Liquidation Regulations shall not exceed 10% of the reserve price. When the auction fails, the reserve price is to be reduced by 25%. The relevant clauses are:

> *(3) The Liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any:*
>
> *PROVIDED FURTHER that the earnest money deposit <u>shall not exceed ten percent of the reserve price</u>.*
>
> *(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to <u>twenty-five percent of such value to conduct subsequent auction</u>.*

57. When the property could not be properly assessed, it raises questions as to how the Liquidator arrived at the Earnest Money Deposit (EMD) of Rs 50 lakhs, which also included receivables. There appears to be no reasonable basis or criteria for fixing the price at Rs 1,21,830/-.

58. Besides the arbitrarily fixing of the reserve price and assigning the Asset No.2, there are also other important factors which go to the root of controversy and cannot be ignored. The notice for assignment

Annexure-1 dated 17.02.2023 of the application stipulates certain basic conditions to be followed:

> *Interested parties to submit the Application Form along with required documents and refundable security deposit of Rs.50.00 Lakhs for getting access to documents/information for carrying out due diligence.* ***The last date for carrying out due diligence and submission of Offer to Liquidator for above mentioned assets is 03.03.2023.*** *Assignment of the above assets shall be as per the provisions of Insolvency and Bankruptcy Code, 2016. This EOI is being called for with the approval of the Secured Financial Creditor. Complete NRRA process document containing the details of eligibility criteria, assets and other relevant information related to the entire process would be available through email at liquidator.neetachem@aaip.co.in.*

Thus, due diligence and submission of the offer was to be made on or before 03.03.2023 and complete set of the terms and conditions of the auction contained in NRRA Process Documents (**Annexure-16** of the counter) were to be read with provisions of IBC.

59. Merely sharing documents with the Applicant does not absolve the Liquidator of responsibility. As an expert in this field, the Liquidator is expected to perform his duties diligently, intelligently, and transparently.

The Auction

60. The prospective bidder was to submit the documents for participation in this process in two phases. Firstly, as per the Clause F (Page 253) of **Annexure-16**. Based upon the initial documents, the Liquidator was to give access to detailed e-auction documents as per Clause G, detailing about the auction put forward for assignment and other related facts, which is also important to take note of:

*Upon submitting the relevant documents in accordance with Clause F above, <u>the prospective bidder will be required to make payment of EMD</u> in accordance with Clause K. Thereafter, the prospective(s) bidder(s) is also required to <u>fill up the bid form as per format prescribed in</u> **Annexure-II** with respect to block of contingent assets of the company for which the bidder proposes to submit a bid and take a print out of the filled form, sign and stamp the same and thereafter submit to the Liquidator along with duly signed, and stamped declaration as per format prescribed in **Annexure III**, <u>on or before the last date and time given in the sale/e-auction Process Information Document.</u> The bid form should be dully filled in and accordance with all the relevant details. <u>Please note that the bidder(s) will gain access to document, additional information required for due diligence, detailed list of assets only after due submission of the required documents as per clause.</u>*

61. The procedure as how and when the prospective bidder(s) will give the bid and then identification of such bidder(s) is to be done by the Liquidator as per Annexure IV (Pages 270-271) of **Annexure 16** of the counter. Clauses 5, 6 and 10 of this document are also material:

5. The Prospective Bidder(s) should submit the evidence for EMD deposit like UTR number <u>along with the Request Letter for participating in E-auction</u>.....

6. Name of Eligible Bidder(s) will be identified and conveyed by Liquidator to participate <u>in online e-auction on the portal https://www.eauctions.co.in.</u> E Auction Agency will provide User ID & Password to the Bidder(s) after due verification of KYC of the Bidder(s).

10. The blockwise E Auction/ bidding of the contingent assets of the company "Neeta Chemicals Private Limited in Liquidation" would be conducted <u>exactly on the schedule Date & Time as mentioned</u> against each Block of asset by way of inter-e bidding amongst the bidders. The bidder may improve their bid by a minimum incremental amount as given in table below for each block of asset or in multiples of these amounts.

Block of Asset	**Minimum Incremental amount or in multiples of these amount (in Rupees)**
Block A	

In case bid is placed in the last 5 minutes of the closing time of the e-auction, the closing time will automatically get extended for 5 minutes.

62. After total payment was received, the Liquidator was to issue letter of intent to the successful bidder. The earnest money that was to be deposited before the bid as per the Clause 2 of Annexure-III of the Process Documents. This clause is reproduced below:

> *2. I/ We declare that the Earnest Money Deposit (EMD) and the deposit towards purchase-price have been made by me/ us as against my/our bid and that the particulars of remittance and all other information given by me/us in the bid form is true and correct.*

63. The Liquidator received the offer from the Respondent No.2 by email on 15.05.2023 at 3.49 PM (**Annexure-18** of the counter), which was not only after the cut-off date 03.03.2023 but also contrary to other rules and regulations governing auction. Respondent No.2 in Para No. 6 of the counter has admitted giving initial offer on 15.05.2023.

64. The Liquidator did not follow the prescribed procedure for receiving bids and conducting the auction, as outlined in the process described above. Specifically, Clauses F and G of the Process Documents (**Annexure-16**) were ignored. Additionally, Clauses 5, 6, and 10 of Annexure IV of **Annexure-16** of the counter, were also not duly considered or complied with.

65. There was also violation of Clauses 1(C) and 1(D) of Schedule I of Liquidation Regulations, which prescribe time period for the completion of the auction process.

> *1(C) Notwithstanding anything contained in this Schedule, the liquidator shall complete an auction process within thirty-five days from the issue of public notice for auction*
>
> *1(D) The Liquidator shall provide at least fourteen days from issue of public notice for submission of eligibility documents by prospective bidder.*

66. The EoI was to be submitted by the prospective bidder before 03.03.2023 along with the EMD of Rs.50 Lakhs. There is also Clause 1(IF) of Schedule I prescribing that the EMD should be deposited two days before the auction. This was also not followed.

67. Clauses 7 and 8 of Schedule I of Liquidation Regulations state about how the Liquidator should do the auction i.e. through an electronic auction platform and if he wants to do the auction physically, he is supposed to do so after obtaining the permission of the Adjudicating Authority. He has not followed this process also. The relevant clauses are:

> *(7) From a date to be notified through circular by the Board, the liquidator shall sell the assets only through an electronic auction platform empanelled by the Board.*
>
> *(8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.*

68. Thus, if the Liquidator had come to the conclusion that the bid amount

will not achieve maximization of value, he could have sought permission of the Adjudicating Authority. He however did not consider it fit to approach this Authority.

69. In ***V.S. Palanivel vs. P. Sriram AIR 2024 SC 4862***, it was held by the Hon'ble Apex Court that that except for clauses 4A, 4B, 8 and Rule 11A in Schedule I where the word "may" has been used and it vests a discretion in the Liquidator to reduce the reserve price more than once and conduct multiple rounds of auctions with the purpose of maximizing realization from the sale of assets in the best interest of the creditors, in the remaining Rules, the word "shall" features prominently and without an exception. But that is not to say that wherever the word "shall" has been used in the Rules under Schedule I, it attains a mandatory nature. In the present case, almost all the clauses of Schedule I referred above are mandatory and accordingly this is sufficient for setting aside the entire auction process.

70. The Liquidator has not only ignored Schedule No.1 of the Liquidation Regulations, but his conduct is also questionable if we see when the relevant documents were inspected by Respondent No.2.

71. The original documents for inspection of the prospective bidder were received by Respondent No.2 after 03.03.2023. The Liquidator asked the Applicant vide emails dated 02.03.2023 (**Annexure-15** of the counter), 10.03.2023, 01.04.2023 and 04.04.2023 (**Annexure-18** of the counter), to supply the original documents. Finally, the documents were supplied to the Liquidator on 21.04.2023 as is clear from email **Annexure-17** dated 23.04.2023 of the counter. Thus, there was no occasion for examining the documents by the prospective bidders

before the cut-off date i.e. 03.03.2023.

72. Further, the demand draft of Rs.50 Lakhs was sent by the Respondent No.2 to the Respondent No.1 on 27.04.2023 as per email dated 27.04.2023 **(Annexure-18)**. Interestingly, Respondent No.2 has handed over only photo copy of the demand draft vide email dated 01.04.2023 (**Annexure-17)**. The offer of Rs.17 Lakhs was made by the Respondent No.2 vide email at 3.49 PM on 15.05.2023 (**Annexure-17)**. On the other hand, something contrary has been claimed by the Liquidator in e-mail dated 28.04.2023 (**Annexure-18** at Page 287), and the email dated 18.05.2023 (at Page 299 and 301 of **Annexure 18**)**.**

73. It is apparent that not only the cut-off date of 03.03.2023 was violated, but the Liquidator also did not adhere to various rules including Liquidation Regulations. He kept everything close to his chest by privately engaging with the Respondent No.2 and then suddenly allowed him to give offer on 15.05.2013.

74. When Respondent No. 2 neither deposited the EMD nor submitted a bid by 03.03.2023, as required by the auction notice, it is unclear how the Liquidator permitted him to submit an offer on 15.05.2023. The Liquidator appears to have adopted his own procedure, claiming that Respondent No. 2 was a 'prospective bidder,' despite the absence of necessary formalities. The Liquidator accepted Rs 17 lakhs on 15.05.2023 and continued to treat Respondent No. 2 as a prospective bidder until that date. Notably, the Liquidator referred to Respondent No. 2 as a prospective bidder in multiple documents, including emails dated 04.04.2023 (Page 284) and 18.04.2023 (Page 287) of **Annexure 18**. However, there is no evidence on record to indicate that Respondent

No. 2 made any offer before 03.03.2023, nor is there any proof that no other party, apart from Respondent No. 2, submitted an offer.

75. As per procedure, the Liquidator was to evaluate the offers after receiving the same and may engage in discussions/negotiations with the bidder(s) or can conduct a swiss challenge method to explore the best price. In the e-mail dated 04.04.2023 also, the Liquidator has talked about negotiation with the prospective bidder. However, no offer was received before 03.03.2023. In the email **Annexure 18** dated 27.04.2023 sent to the Applicant, the Respondent No.1 stated that one EoI has been received from a prospective assignee, but the documents for due diligence were received only on 21.04.223 and the Respondent No.2 made offer on 15.05.2023.

76. On 15.05.2023, the Liquidator sent an email stating that he was in discussions with Respondent No. 2 regarding the improvement of the earlier offer. However, before informing the Applicant about any further developments, the Liquidator proceeded to execute the assignment certificate on 16.05.2023. This was done despite the Liquidator being fully aware that the successful bidder was to be declared in consultation with the consultation committee. On the other hand, Respondent No. 2 claims (in Para 8 of the counter) that the final offer was accepted by the Liquidator only after the latter had informed the Applicant about the improved offer.

77. Transparency is the hallmark of the liquidation process; however, the Liquidator’s claim of transparency exists only on paper. In practice, he has blatantly disregarded the established procedure. The Liquidator's so-called transparency has come under scrutiny once again following

the offer received from Respondent No. 2. The unusual speed and alacrity with which the Liquidator acted after receiving this offer further cast serious doubt on the integrity of the entire process.

78. The offer was received via email (**Annexure-17**) on 15.05.2023 at 3:49 PM (Page 281). On the same day, at 4:28 PM, the Liquidator sent an email to Respondent No. 2, clarifying that the auction included not only the land in Survey No. 60 but also all other beneficial interests. This clarification was unnecessary, as these details were already clearly outlined in the auction notice and Process Documents. Furthermore, it was the responsibility of Respondent No. 2 to exercise due diligence by reviewing all relevant documents prior to submitting an offer.

79. Then the Liquidator received email from the Respondent No.2 at 5.30 PM that his offer of Rs.17 Lakhs stands and further any recovery from the IAs filed by the Liquidator can be shared in 50:50 ratio. In between, the Liquidator sent email at 4.44 PM **Annexure-18** (Page 288) to the Applicant that he had received an offer of Rs.17 Lakhs and pursuing the sole bidder to improve the offer and requested the opinion, if any, on this matter by the end of the day tomorrow.

80. However, the Liquidator misled the Applicant by sending note of assignment of NRRA, which is stated to be under consideration, vide email **Annexure 18** dated 18.05.2023 (Page 301) that in response to the public auction, he had received response from one applicant who deposited Rs. 50 Lakhs.

> *However, one party had responded to the P.A. given by the Liquidator in the month of February, 2023 and had also deposited the refundable bid amount of Rs. 50.00 lakhs by way of P.O.*

81. In the email dated 28.04.2023 (**Annexure 18**, Page 287) sent to the Applicant, the Liquidator claimed that Respondent No. 2 submitted a bid, provided an original demand draft of Rs 50 lakhs, and confirmed his intention to submit his best offer for the assignment after receiving the relevant documents. However, at Page 299 of **Annexure 18**, the Liquidator further stated that the Rs 50 lakhs was encashed, following which he shared all available information and original documents with the Applicant on 22nd April 2023. This contradictory sequence of events clearly reveals inconsistencies in the Liquidator's claims, demonstrating that falsehoods eventually unravel over time.

82. After 3 PM on 15.05.2023, Respondent No.1 became hyper active to close the auction with in no time. He had also expected that the officials of the SBI like him would respond within 15 minutes of receiving email before closing of the office and that is also if the email is checked. Without waiting for the response of the SBI, the Liquidator has hurriedly issued certificate of assignment **Annexure-18** on 16.05.2023 after adjusting Rs. 17 lakhs from EMD of 17 Crores.

83. There is also doubt about the issuance of assignment certificate on 16.05.2023. The Liquidator in his counter has claimed that the sale certificate was issued strictly in compliance with the provisions of the Regulation 11(12) r/w Regulation 37A Liquidation Regulations. The proforma of sale certificate was also sent to the Applicant vide email dated 25.03.2023 (**Annexure-16)**.

84. The Respondent No. 2 and Liquidator, both in their counters have submitted that the sale was complete after the issuance of this certificate by the latter. Interestingly, no reference of this certificate has been

made by the Liquidator in his immediate correspondence with the Applicant and in the IA No. 1008/2023.

85. The Liquidator on 09.06.2023 at 11.46 sent an email (**Annexure-4** of the application) to the Applicant and at that time also no reference of issuance of assignment certificate has been made. To the contrary, it was informed that in absence of response from the Applicant, *"the Liquidator will be proceeding with the next step is the assignment of NRRA of the CD"*. It was on the same day at 16.43 hrs, Applicant asked the Liquidator to defer the NRRA proceedings.

86. Instead of taking any action on the email dated 09.06.2023 of the Applicant, the Liquidator filed IA No.1008/2023 on 20.06.2023 registered on 22.06.2023, praying:

a. To extend the period of 2 years as stipulated under Regulation 44 of IBBI (Liquidation Process) Regulations, 2016 by another 1 month from the date of Order.
b. Allow the liquidator to execute 'Assignment of NRRA' of the Corporate Debtor in favour of the only bidder who had submitted his bid and paid the bid amounts.

87. Perusal of IA No. 1008/2023 shows that the Liquidator did not disclose about the issuance of the assignment certificate. He also omitted to state that the Applicant had raised objections, requesting that the NRRA proceedings be deferred until further notice. Instead, in Para 28 of the said application, the Liquidator misrepresented the facts by stating:

> "Having received no objections, liquidator had, vide email dated 09.06.23, informed State Bank of India that, he will be taking next steps in the assignment of NRRA of the Corporate Debtor."

The Liquidator thus attempted to mislead this Authority by withholding the true facts.

88. Furthermore, the Applicant was not kept informed about the proceedings in IA No. 1008/2023 and only became aware of the matter after the following order was passed on 23.06.2023.

> *Counsel for the Liquidator submits the bench thought it fit to put the stake holders on notice, with regard to the bid process. We also opine that the liquidator shall wait till the SBI responds on the new bid document. The SBI shall expedite the process by getting the approval form the competent authority as quickly as possible not later than 15 days from the date of this order.*

89. Following the passing of this order, the Liquidator attempted to cover up the irregularities by filing a memo dated 19.08.2023, attaching an email dated 09.06.2023 received from the Applicant. However, the Liquidator cannot absolve himself of responsibility by claiming that this Authority had granted time for the completion of the liquidation process only until 03.07.2023. Such a plea does not condone the wrong acts committed by him.

90. It is noteworthy that despite being tasked with completing the process within the stipulated timeframe, the Liquidator failed to do so, even after more than 5 years since the liquidation order was passed on 20.06.2019. Although auction notices were issued on multiple occasions to sell the assets of the Corporate Debtor, only one asset was sold on 07.12.2020. The Liquidator then took an unreasonably long period to dispose of Asset No. 2. A calculation of the expenditure incurred in assigning the present property would indicate that it far exceeds the amount realized by the Liquidator from the assignment of

the NRRA.

91. The Liquidator has attempted to absolve himself of his misdeeds by filing another IA No. 1464/2023 on 30.08.2023, notably after failing to obtain relief in IA No. 1008. In this application, he requested the appointment of another Insolvency Professional in his place and sought directions for the SCC to pay him fees of Rs. 1 lakh per month for discharging his duties as Liquidator. The reasoning provided—that he wishes to maintain a high standard of ethics by voluntarily stepping down—is farcical. After engaging in numerous irregularities and misconduct, this appears to be nothing more than an attempt to escape accountability and wriggle out of the situation.

92. The Liquidator has relied upon judgment of the Hon’ble Supreme Court ***EVA Agro Feeds Private Limited vs Punjab National Bank and another, Civil Appeal No. 7906 of 2021 decided on 06.09.2023*** that Liquidator’s discretion to cancel the auction cannot be absolute or unfettered**.** It is argued that after completion of the auction process, the Liquidator has no power to the cancel the auction nor does the Applicant has any locus to demand the same.

93. However, as it is already observed, the Liquidator blatantly disregarded the rules and procedures. Sharing documents with the Applicant does not absolve him of his responsibilities, as the Applicant cannot be expected to understand the intricacies and nuances of every aspect of the auction process. As a professional, the Liquidator was duty-bound to act diligently, preserve the interests of all stakeholders, and ensure the overall value maximization of the assets of the Corporate Debtor. Instead, he failed in this duty by keeping many critical aspects hidden

from the Applicant and failing to provide proper guidance. Among other lapses, he did not consult the consultation committee before declaring the successful bidder and filing IA No. 1008, let alone adhering to the applicable rules and regulations.

94. Similarly, the stand of the Respondent No.2, that he is a bonafide purchaser, is without any basis as the records reveal that the entire process was carried out in contravention of law and thus illegal. Consequently, this plea is not tenable.

95. Based on the above findings, it is evident that the entire process of assigning the NAAR was illegal, unwarranted, unjustified, and non-est. The Liquidator's claims of adhering to transparency and rules can be aptly summarized: while men may tell lies, circumstances do not.

Removal of Liquidator

96. Another prayer of the Applicant is to replace/remove the Liquidator. The Liquidator can be replaced by following the procedure under Regulation 31A(11) of the Liquidation Regulations, which provides:

> 31A(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator.

However, Regulation 31A is applicable after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019, while liquidation was started before the coming into force of the amendment.

97. Be that as it may, in view of Section 16 of the General Clauses Act,1897, the power to remove liquidator is implied when this Authority has power to appoint him. Here reference can also be made to the decision in ***IDBI Bank Limited versus vs. Venkata Sivakumar, IA/815/IB/2020 in CP/1307/IB/2018 decided on 01.07.2022***.

98. We may also profitably refer to Section 276 of the Companies Act, 2013 which contemplates this Tribunal can remove a liquidator on the following grounds, namely:

(a) misconduct;
(b) fraud or misfeasance;
(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

The facts and circumstances detailed in the preceding paragraphs are directly linked to the conduct and functioning of the Liquidator. If his actions conflict with the interests of the stakeholders or are such that they shock the conscience of the common man, his removal becomes justified. On similar grounds, the Liquidator can also be removed under the provisions of the IBC

99. Hon'ble NCLAT in ***Dr. K.V. Srinivas, Resolution Professional of M/s. Sainath Estates Private Limited (AT) (CH) (INS) No.319/2022*** even went to the extent of holding that apart from the grounds mentioned for change of Liquidator under the Companies Act, change can be done on grounds other than those mentioned under Section 34(4) of the I & B

Code, 2016.

100. The Liquidator has no unfettered powers to discharge his duties but he is required to function in a reasonable and prudent manner. The relationship between the Liquidator and the Adjudicating Authority is sort of fiduciary. Similarly, the Liquidator has also to maintain highest regard to the principles of integrity and honesty in dealing with all the stakeholders.

101. When we examine the facts of the case in the context of law, it is abundantly clear that the Liquidator here is guilty of misconduct including acting in a partial manner, creating a conflict of interest, misleading the consultation committee/adjudicating authority by providing false guidance and deceptive information etc. Hence, it is better to appoint some other Liquidator. By filing IA No.1464/2023, the present Liquidator himself has also desired to be discharged from his functions.

Decision

102. Consequent to our findings, we pass the following orders:

a. Mr. Kambhammattu Sri Vamsi, Registration Number: IBBI/IPA-001/IP-P00664/2017-18/11141 will replace, Dr. K.V. Srinivas/Respondent No.1 as the Liquidator.

b. All the proceedings conducted by Dr. K.V. Srinivas, Respondent No.1 in pursuance of assignment notice dated 17.02.2023 are set aside.

c. The Respondent No.1/Dr. K.V. Srinivas is directed to handover all the documents after the start of liquidation to the Applicant within 7 days of passing this order.

d. The matter is referred to IBBI for taking note of this order and for appropriate action against Dr. K.V. Srinivas/ Respondent No.1.

Sd/-	**Sd/-**
SANJAY PURI **MEMBER (TECHNICAL)**	**RAJEEV BHARDWAJ** **MEMBER (JUDICIAL)**

Apoorva