

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – I, CHENNAI**

IA(IBC)/1430(CHE)/2022 in IBA/446/2019

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

Mr. Ramakrishnan Sadasivan
Liquidator of
Terra Energy Limited
Old No. 22, New No. 28,
Menod Street, Purasawalkam,
Chennai – 600 007

... Applicant

Present:

For Applicant

:

Ramakrishnan Sadasivan, Liquidator

CORAM:

Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
Sh. L. N. GUPTA, MEMBER (TECHNICAL)

Order Pronounced on 18th January 2023

ORDER

Per: Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT

The present Application has been filed by the Liquidator of the Corporate Debtor viz. M/s. Terra Energy Limited under Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking relief as follows;



- a. *“Take note of the sale of the Corporate Debtor as a Going – concern to M/s. KALS Distilleries Private Limited pursuant to the E-Auction dated 03.08.2022 and on the terms and conditions mentioned in the E-Auction Process Memorandum dated 18.07.2022, Corporate Profile dated, Letter of Intent dated 03.08.2022 and the Certificate of Sale dated 04.11.2022 issued to the Successful Auction bidder.*
- b. *Direct closure of the Liquidation process of the Corporate Debtor and consequently discharge the Applicant herein as Liquidation of the Corporate Debtor.*
- c. *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.”*

2. The Ld. Liquidator submitted that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz. M/s. Terra Energy Limited was initiated by this Tribunal vide its order dated 20.11.2019 and one Mr. C. Sanjeevi was appointed as the ‘Interim Resolution Professional’ and subsequently replaced by Mr. R. Raghavendran by the CoC in its 1st meeting held on 03.01.2020.

3. It was submitted that during the CIRP of the Corporate Debtor, no resolution plan was received and hence, the Resolution Professional had filed an application bearing no. IA/1186/IB/2020 under Section 33 of IBC, 2016 seeking Liquidation of the Corporate Debtor. In pursuance of the same, this Tribunal vide its order dated 17.02.2022 has ordered for

liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator.

4. It was submitted that pursuant to the receipt of the Liquidation Order, the Applicant caused Public Announcement, informing commencement of Liquidation of the Corporate Debtor and calling for claims, which was published in Form-B on 21.02.2022 in English Daily "Business Standard"-all India Edition and Tamil Daily "The Hindu Tamil" in Tamil Nadu edition. The last date for submission of claims fixed on 19.03.2022. Accordingly, the Preliminary Report dated 02.05.2022 and Asset Memorandum dated 02.05.2022 were filed before this Tribunal.

5. It was submitted that the Applicant had constituted the Stakeholders Consultation Committee ("SCC") on 18.04.2022. It was submitted that in accordance with Regulation 35(2) of the IBBI (Liquidation Process) Regulations, 2016 the Liquidator had appointed 2 registered valuers to determine the realizable value of the assets being Land & Building, Plant & Machinery and Securities / Financial Assets.

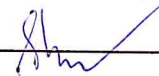


6. The summary of valuation of the assets of the Corporate Debtor are as follows:

S. No.	ASSET DESCRIPTION	RESERVE PRICE (RS. IN CRORE) LIQUIDATION VALUE
1	Land and Building	
	Thirumankudi	3.04
	A Chittur	2.96
2	Plant and Machinery	
	A Chittur	6.14
	Thirumankudi	5.18
	Thirumankudi& Others	6.84
3	Securities and Financial Assets	
	Investments	0.03
	Loans and Advances	0.15
	Trade Receivables	0.60
	Cash and Cash Equivalents	0.02
	Other Current Assets	2.69
	Total	27.65

The Liquidator has also filed Form H on record, wherein the Fair Market Value of the Corporate Debtor is disclosed as Rs 52.28 Crore and Liquidation value as 27.65 Crore.

7. It was submitted that in pursuance to the valuation of the assets of the Corporate Debtor at Rs.27.65 Crore, the Applicant / Liquidator had conducted 2 auctions on 10.06.2022 and 08.07.2022 with Reserve Price being Rs.28 Crore and Rs.25 Crore respectively. However, both the



auctions did not materialize. Subsequent to failure of the above 2 auctions, the 3rd auction for the sale of the Corporate Debtor as a “Going concern basis” was held on 03.08.2022 at a Reserve Price of Rs.23 Crore. It was submitted that the Earnest Money Deposit (EMD) was received only from one party, M/s. KALS Distilleries Private Limited, which was declared as the successful Auction bidder with the Highest Bid of Rs.23.05 Crore. Pursuant to the same, the Letter of Intent (LOI) was issued to the successful Auction Bidder on 03.08.2022.

8. It was further submitted by the Ld. Liquidator that as per Regulation 31A read with 32A of the IBBI (Liquidation Process) Regulations 2016, the sale parameters regarding the Manner of sale, Mode of sale, Pre-bid qualifications, Reserve Price and Earnest Money Deposit, were placed before the Stakeholders Consultation Committee (SCC) for their consideration and all the auctions were held only with the concurrence of the Stakeholders Consultation Committee.

9. It was further submitted that in pursuance of the e-auction sale, the Successful Auction Bidder had 90 days' time till 02.11.2022 for




remitting the balance sale consideration and accordingly, the Successful Auction Bidder had remitted the entire sale consideration on 28.10.2022.

10. Further, it was submitted by the Ld. Liquidator that on receipt of the entire sale consideration, it has distributed the sale proceeds to the stakeholders in accordance with the Scheme stipulated in Section 53 of the Insolvency and Bankruptcy Code, 2016. The schedule of Distribution to the stakeholders as filed by Ld. Liquidator on record is reproduced as follows:

S. No.	DISTRIBUTION MADE TO	AMOUNT IN Rs.
1	CIRP Cost	34,65,172
2	Liquidation Costs	1,14,80,086
3	PF Dues – Paid fully in priority over other dues	1,04,993
4.	Creditors - to be paid at par	
4.1	Secured Financial Creditors	20,88,39,649
4.2	Government Dues (In consonance with Supreme Court Judgment in the matter of State Tax Officer -Vs- Rainbow Papers Limited)	50,955
4.3	Workmen – Proportionate 24 Months Salary prior to the date of commencement of Liquidation	99,91,603
	TOTAL	23,39,32,458

11. It was submitted by the Ld. Liquidator that on receipt of the entire sale consideration from the Successful Auction Bidder, the



Applicant/Liquidator had issued the Certificate of Sale to the Successful Auction Bidder M/s. KALS Distilleries Private Limited.

12. It was further submitted by the Ld. Liquidator that there is no application filed before the NCLT pertaining to the Avoidance Transactions. However, the following cases pertaining to the Corporate Debtor are pending before various Judicial forums:

S. No.	CASE NO.	CASE DESCRIPTION
1	WP Nos. 33115 and 33116 of 2013	Writ Petitions filed by Terra Energy Limited before the Hon'ble High Court challenging the levy and manner of collection of start-up power charges power. This case has now been transferred to TNERC & numbered as TA 43 & 44 of 2022
2	WP Nos. 17255 of 2015	Writ petition filed by Terra Energy pertains to Writ of Certiorari calling for the records of the 4th Respondent in demand notice (Impugned notice) Lr. SE/TEDC/TJR/DFC/AO/R/RCS/AS/AI/F.AG Audit/ D 202/2015 dated 25.05.2015 calling for shortfall in collection of CC (Current Consumption) Charges contrary to the Applicable tariff orders, agreement between parties and order of interim stay granted by the Hon'ble Madras High Court in W.P. No. 33118 of 2013
3	WP No. 15119 of 2015 & WP No. 14953 & 14956 of 2014	Writ petition filed by Terra Energy pertains to a Writ of certiorarified Mandamus challenging the unjust excessive demand in the form of security deposit made 2014 by TANGEDCO for the drawal of power by the Sugar factory and bagasse based co-generating plant located

		Tirumandankud, Papanasam Taluk, for meeting their season and off-season requirements.
4	WP No. 24295 of 2015	Writ petition filed by Terra Energy Limited before the Hon'ble High Court challenging the demand in the form of charges towards Terminal Equipments provided by TNEB
4.1	WP No.13170 – 13174 of 2019	Writ Petition filed by Terra Energy Limited before the Hon'ble High Court Challenging the order passed by TNERC disposing the Dispute Resolution Petition (DRP No 25 of 2011), in the absence of Judicial Member.
6	Appeal against DRP 15 & DRP 16 of 2011	Appeal filed by PTC India Limited contesting to make payment of a sum of Rs.59,54,077/- illegally levied as penalty upon the Corporate Debtor

13. The Ld. Liquidator has submitted that in the 5th SCC Meeting held on 03.11.2022, the Stakeholders were also duly intimated about the filing of an application for closure of the Liquidation Proceedings of the Corporate Debtor. No objections were raised by the stakeholders present for the meeting.

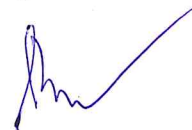
14. The Ld. Liquidator submitted that the total Liquidation expenses incurred from 17.02.2022 to the instant date of filing of this application is to the tune of Rs. 1.15 Crore. Thus, as on date, payment of all the liquidation expenses and the distribution to stakeholders stand



completed. The Liquidation Bank statement is appended as 'Annexure 14'. The Liquidator's Receipts and Payments Account for the Period from 17.02.2022-15.11.2022 is appended as 'Annexure 15'.

15. In terms of Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, "*The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern*". Accordingly, the Applicant/Liquidator has filed the present Application seeking directions before this Tribunal for closure of the liquidation process of the Corporate Debtor which has been sold as a Going-concern.

16. We have heard the submissions of the Ld. Liquidator and gone through the documents placed on record. The Liquidator has submitted its Final Report as per Regulation 45 of the IBBI (Liquidation Process) Regulations, 2016 on 23.11.2022, which is appended as 'Annexure – 18' and Form H i.e., Compliance Certificate under Regulation 45(3) of the



IBBI (Liquidation Process) Regulations, 2016 dated 23.11.2022, which is appended as 'Annexure – 17'.

17. The Liquidator by way of a memo has also filed the Affidavit of the Successful Auction Bidder M/s. KALS Distilleries Private Limited under Section 29A of IBC, 2016 along with the Due Diligence Report of the Liquidator. A perusal of the aforesaid Report filed by the Liquidator manifests that the Successful Auction Bidder M/s. KALS Distilleries Private Limited satisfies the eligibility requirements in accordance with Section 29A of IBC, 2016. The Liquidator has distributed the sale consideration received as per the scheme stipulated in Section 53 of the Code.

18. In view of the aforesaid facts and circumstances, we allow the closure of the Liquidation Process of the Corporate Debtor.

19. The Liquidator shall stand discharged from its responsibilities, subject to procedural compliances. The Liquidator shall handover all the books and files of the Corporate Debtor, after retaining copies of the



same for future requirement, if any, to the successful bidder viz. M/s. KALS Distilleries Private Limited.

20. The Successful Bidder is also directed to pursue the litigations filed by or against the Corporate Debtor which are reflected in Para 12 of this order.

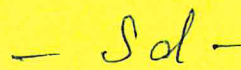
21. IA(IBC)1430(CHE)/2022 stands **disposed of** accordingly.

22. The Registry is directed to email copies of the order forthwith to the Applicant, the Registrar of Companies, Chennai, and also to IBBI for information.

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



(L.N. GUPTA)
MEMBER (TECHNICAL)



(Justice RAMALINGAM SUDHAKAR)
PRESIDENT

Raymond