THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 4918 OF 2023

Under Section 35(1)(n) and u/s 60(5) of Insolvency & Bankruptcy Code, 2016

Mr. C. Bala Mouli,

…Applicant

In the matter of

C.P.(IB) No. 1239/MB/2017

Gupta Global Resources Private Limited

…Corporate Applicant

Order delivered on: 16.01.2024

Coram:

Shri Prabhat Kumar Hon'ble Member (Technical)	**Justice Shri V.G. Bisht** Hon'ble Member (Judicial)

Appearances

For the Applicant : Ms.Barsha Dikshit, PCS a/w Adv. Shaivi Bhamaria, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA 4918/2023 is filed by Mr. C Bala Mouli, the Liquidator ("Applicant") in the Liquidation proceedings of Gupta Global Resources Private Limited ("Corporate Debtor") seeking

permission of this Tribunal in terms of Regulation 37A of Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 to sell interest in the Avoidance Applications pending adjudication before this Tribunal.

2. The National Company Law Tribunal, Mumbai Bench, vide its order dated 28 August, 2018, ordered for commencement of liquidation process of Gupta Global Resources Private Limited (hereinafter referred to as "Corporate Debtor") and appointed the Applicant as the Liquidator.

3. The Applicant reported in the 21 Progress Report that all the assets of the Corporate Debtor have been duly realised and distribution thereof is pending in view of one pending litigation wir.t. determining the priorities for distribution among the secured creditors

4. Apart from the above, the Liquidator had also identified avoidance Transactions in the Corporate Debtor and had filed applications before the Hon'ble Bench u/s 43, 45, 49 and 66 of the Code. These applications are pending before this Tribunal for final adjudication.

5. In terms of Regulation 37A(1) of the Liquidation Regulations, such assets, being not readily realisable, can be assigned or transferred through a transparent process, in consultation with stakeholders' consultation committee for a consideration to any person who is eligible to submit resolution plan during CIRP.

6. Accordingly, a meeting of stakeholder consultation committee was convened on 4 July, 2023, wherein, it was suggested by the stakeholders to explore the option for assignment of avoidance transaction proceedings. While exploring the option to assign the avoidance transaction proceedings, the Liquidator has received positive response from a legal firm, viz. Legalpay, based in New Delhi, which is largely

engaged in playing in NRRA's and Legal Recoveries, which expressed interest for acquiring assets underlying avoidance transaction applications and submitted their proposal.

7. The said proposal was placed before the stakeholder committee on 21 July, 2023 and thereafter or 31 July, 2023. In the said meeting, the stakeholders proposed to convene E-voting for the purpose of taking views of the members of the Committee. Accordingly, the Liquidator made arrangements to convene E-voting on 30 August, 2023. However, in the meantime, one of the members of the Committee viz. IDBI Bank, raised some apprehensions about the legality of an assignee to carry out the recovery process under the IBC Code 2016 in view of order passed by NCLT Delhi Bench in the matter of Ritu Tandon (Applicant/Operational Creditor) Versus M/s Rain Automotive India Private Limited. In view of these legal developments, the proposal of the Assignment of Avoidance transactions to the legal firm was dropped and the E-voting scheduled on 30th August 2023 was cancelled.

8. Given that assets underlying the avoidance transaction applications are the only assets pending realisation, hence, in order to expedite the realisation process, and maximise value of the liquidation estate, the Liquidator intends to seek necessary directions from the Bench to sell the assets underlying avoidance transaction applications. Hence, the present application.

9. Heard the learned Counsel and perused the material available on record.

10. Regulations 37A of Liquidation Process Regulations reads as under –

1) A liquidator may assign or transfer a not readily realisable 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.*

Explanation.—For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code

11. From a bare perusal of the above provisions, we find that the Liquidator, subject to concurrence of Stakeholder's committee, is vested with the power and authority to assign the asset considered to be Not readily realisable asset. Further, Regulation 38 of Liquidation Process Regulation also contemplate distribution of such assets amongst the stakeholders. Accordingly, we have no hesitation to hold that the Liquidator may proceed to consider assigning the Avoidance Applications to third party in consultation with the Stakeholder's consultation committee. In so far as prosecution of such pending application by such assignee is concerned, we are of considered view that the applications already filed by the person competent to do so, can be prosecuted by the assignees subsequently.

12. In view of the above, IA 4918/2023 is allowed and disposed of accordingly.

Sd/-	Sd/-
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)