



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

**IA (IB) No. 1329/KB/2023
in
CP (IB) No.1178/KB/2018**

In the matter of:

JM Financial Asset Reconstruction Company Limited

...Financial Creditor

Versus

Aditi Health Oils Private Limited (in Liquidation)

... Corporate Debtor

IA (IB) No. 1329/KB/2023

In the matter of:

Mr. Ajay Kumar Agarwal, directors of the suspended board of Directors

...Applicant

Versus

Mr. Krishna Kumar Chhparia, liquidator of Aditi Health Oils Private Limited (In Liquidation)

...Respondent

Date of hearing: 27 July, 2023

Order pronounced on: 28 August, 2023

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/Physical hearing):

For the Applicant in IA/1329/2023

: Ms. Manju Bhuteria, Adv.

Mr. Kuldip Mallik, Adv.

Mr. Ajit Keshari, Adv.


For the Liquidator

Mr. Vikash Singh, Adv

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. This court convened *via* hybrid mode.
2. This is an application filed by Mr. Ajay Kumar Agarwal (***‘Applicant’***), one of the directors of the suspended board of directors and is the shareholder of Aditi Health Oils Private Limited (***‘the Corporate Debtor’***) against Mr. Krishna Kumar Chhaparia is the Liquidator of Aditi Health Oils Private Limited (In Liquidation) (***‘Respondent’***) *inter-alia* seeking for the following reliefs;
 - a. *Respondent be restrained by an order of injunction either by itself and/or by its men, agents, assigns and/or representatives from taking any steps or further steps and giving any effect or further effect to the Auction to be held on 27th July, 2023 in pursuance of the Sale Notice dated 30th June, 2023, being Annexure- O to this instant application, till the instant application is finally adjudicated.*
 - b. *Sale Notice dated 30th June, 2023, being Annexure- O, to this instant application, and all consequential actions on the basis of the same be declared as illegal, null and void.*
 - c. *An order be passed directing the Respondent to provide the Applicant with the Valuation Report of the Corporate Debtor during Corporate Insolvency Resolution Process.*
 - d. *An order be passed directing the Respondent to conduct fresh valuation of the Corporate Debtor (In Liquidation).*
 - e. *Ad interim order in terms of prayers above;*
 - f. *Pass such further or other order or order and/ or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*
3. ***Submissions by the Applicant in IA (IB) No. 1329/KB/2023***
 - 3.1 The Applicant is one of erstwhile directors of the Corporate Debtor and is a shareholder of the Corporate Debtor. The Adjudicating Authority *vide* its order dated 21 November, admitted the Corporate Debtor into Corporate Insolvency Resolution Process (***‘CIRP’***). Thereafter, the Corporate Debtor entered Liquidation on 12 January, 2021.

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- 3.2 The present Application has been filed for restraining the holding of auction and for directions upon the Liquidator to provide Valuation Report of the Corporate Debtor during CIRP; and for direction upon the Liquidator to conduct fresh valuation of the Corporate Debtor.
- 3.3 The Applicant had applied before this Adjudicating Authority and pursuant to the order of the Adjudicating Authority dated 19 June, 2023 [*annexed at Pg 72 to 79 of the Application*] the report of the valuation done during Liquidation period was handed over. However, the valuation report during CIRP was not handed over. The valuation report during CIRP was handed over during the course of hearing of this Application.
- 3.4 Pursuant to the order dated 19 June, 2023 passed by this Adjudicating Authority, the Liquidator had shared with the Applicant copies of Valuation Report prepared by the registered values being Resolute Valuers and Consultants Private Limited (*'Resolute Valuers'*) and Mr. Debashish Ghosh and Mr. Vivek Jagtap during the Liquidation Process.
- 3.5 The Valuation Report prepared by Resolute Valuer is annexed to the Application at Pages 80 to 130. The Valuation Report prepared by Debashish Ghosh for Plant and Machineries is annexed to Application at Pages 131 to 161. The Valuation Report prepared by Vivek Jagtap for Land and Building is annexed to Application at Pages 162 to 180.
- 3.6 The Applicant states that the Valuation Reports prepared by the abovementioned Valuers during the Liquidation Process is not in accordance with Regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Liquidator is bound to consider the valuation arrived at during CIRP.
- 3.7 In case the liquidator is of the opinion that fresh valuation is required then he is to within seven days of the liquidation commencement date, appoint two registered values to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the Liquidation Regulations.
- 3.8 The Liquidator has to explain the circumstances under which he was of the opinion that fresh valuation was required. It would appear from the minutes of

the Stakeholders meeting held on 16 April 2021 [*annexed @ Pg 182 to 189 of the Application*] that no reason has been given for fresh valuation.

3.9 The Liquidator has neither formed an opinion nor did he appoint any valuer within seven days from the liquidation commencement date. The values have been appointed after a period of more than three months and the said valuers have submitted their reports after a period of one year from their appointment, particulars whereof are as follows:

- a) It would appear from the Valuation Report of Resolute Valuers that they were appointed to conduct valuation on 29 April, 2021. However Resolute Valuers have submitted the Report on 29 April, 2022 i.e. after a period of one year (*as mentioned @ Pg 88 of the Application*).
- b) Mr. Debashish Ghosh was appointed as the Registered Valuer on 29th April, 2021 and has submitted the report on 5th May, 2022 i.e. after a period of more than a year (*as mentioned @ Pg 132A of the Application*).
- c) Mr. Vivek Jagtap has submitted his valuation report on 12th May, 2022 (*as mentioned @ Pg 163 of the Application*). No date of appointment has been mentioned in the Report of Mr. Vivek Jagtap.

3.10 The valuation of land, building and shed as mentioned in all the reports are undervalued. In the report of Resolute Valuers the value of the land has been mentioned at Pg 90 of the Application as Rs. 3,17,24,000/- as Estimated Liquidation Value of Land on a Going Concern Basis and Rs. 2,37,93,000/- as Estimated Liquidation Value of Land on a Standalone Basis. In the report of Resolute Valuers' the value of building and shed at Pg 90 of the Application has been mentioned as Rs. 3,66,57,000/- as Estimated Liquidation Value of Land on a Going Concern Basis and Rs. 2,56,60,000/- as Estimated Liquidation Value of Land on a Standalone Basis.

3.11 In the report of Vivek Jagtap the value of the land has been mentioned at Pg 176 of the Application as Rs. 3,32,02,500/- as Estimated Liquidation Value of Land on a Going Concern Basis and Rs. 2,49,01,875/- as Estimated Liquidation Value of Land on a Standalone Basis. In the report of Vivek Jagtap the value of the building and shed has been mentioned at Pg 177 of the Application as Rs.

3,75,75,000/- as Estimated Liquidation Value of Land on a Going Concern Basis and Rs. 2,63,02,500/- as Estimated Liquidation Value of Land on a Standalone Basis.


3.12 In fact, the value of the assets is much higher than the figures mentioned in the valuation report. The applicant had raised a query being 2001964775/2023 on the portal of ‘Directorate of Registration & Stamp Revenue’, Government of West Bengal in respect of the land, building and shed in respect of the corporate debtor by mentioning all particulars regarding the land and building and shed. To such query an e-Assessment Slip dated 1st August, 2023 was issued by ‘Directorate of Registration & Stamp Revenue’, Government of West Bengal wherein the value the land and building of the CD has been assessed to be Rs. 19,18,80,119/-. The value of the land has been assessed at Rs. 7,93,08,875/- and the value of the building and shed has been assessed at Rs. 11,25,71,244/- aggregating to Rs. 19,18,80,119/-.

3.13 It is pertinent to mention that in the sale notice dated 30th June, 2023 @ Pg 190 of the Application, the reserve price for sale of assets for land and building is Rs. 3,11,00,000/-. The reserve price mentioned in the sale notice dated 30 June, 2023 is based on the valuation prepared by the aforementioned Registered Valuers and hence is bad in law and is liable to set aside.

4. Reply by the Respondent in IA (IB) No. 1329/KB/2023

4.1 The assets of the Corporate Debtor are laying in a single factory complex having the presence of assets of three other group companies, namely, Aditi Oil Extraction Private Limited (in liquidation), Aditi Logistics Private Limited (under SARFAESI) and Aditi Agro Private Limited (under SARFAESI). K.K. Chhparia is also the appointed liquidator of Aditi Oil Extraction Private Limited (in liquidation).

4.2 Stakeholders Consultation Committee (**‘SCC’**) inter-alia comprises of two financial creditors, namely, JM Financial Asset Reconstruction Company Limited and ASREC (India) Limited. Both the Financial Creditors are Asset Recovery Companies (**‘ARC’**) who have expertise in taking stressed assets and acting as a guiding factor in the liquidation process.

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- 4.3 Till date 12 SCC Meetings were held - Signed Agenda and Minutes of each SCC Meetings were sent to all stakeholders before and after the meeting.
- 4.4 In the 1st SCC Meeting held on 16 April, 2021, it was decided to appoint Surveyor since the complex is bounded as single premises and there was no demarcation of the landed property of the four corporate entities having assets there. The entire set up was created as a single factory, without any demarcation of assets as to which assets belong to which company.
- 4.5 In the said meeting, the Stakeholders advised for appointment of same valuers who had done valuation during CIRP period. In the said Meeting, Shri Ajay Kumar Agarwal on behalf of suspended Board was also present.
- 4.6 It is evident from the said Valuation Reports [*Page 204 to 312 of the Compilation Book*] that the average of value of the two valuers for all the assets of Aditi Health Oils Pvt Ltd was Rs. 1255.29 lakhs (on going concern basis and Rs. 869.16 lakhs (on stand-alone basis). The valuation was inter-alia done by Resolute Valuers and Consultants Pvt Ltd who at the relevant time was the only registered valuer (at entity level) as per IBBI list of registered valuers. The other values were also IBBI Registered valuers and as evident from their Registration Number appearing at 205, 283 and 297 respectively of Compilation Book.
- 4.7 On taking charge as a liquidator from 03 November, 2021, the present liquidator (i.e., the Respondent) found that Surveyor Report and Valuation Report was not given by the respective Surveyor/ Valuer
- 4.8 In 3rd SCC Meeting held on 01 December, 2021 - The present Liquidator pointed out that as per the Draft Surveyor's Report, some of the factory sheds of the Corporate Debtor were found to be falling outside the land area owned by the Corporate Debtor.
- 4.9 Thus, pursuant to discussions in the said Meeting, in which the Applicant was also present, it was decided that attempt should be made to get the valuation done for all the four corporate entities from the same set of valuers.
- 4.10 The Valuation Report of Resolute Values and Consultants Pvt Ltd for valuation of entire assets (land, Building & shed and Plant & Machinery) was received on 29.04.2022. As evident from the Valuation Report (Page No. 80 to 130 of the

application filed by Ajay Kumar Agarwal), the valuation of the entire assets of Aditi Health Oils Pvt Ltd was Rs. 2039.32 lakhs (on going concern basis) and Rs. 1511.71 lakhs (on stand-alone basis).

- 4.11 The Valuation Report of Vivek M. Jagtap for valuation of Land and Building & Shed was received on 12.05.2022. As evident from the Valuation Report (Page No. 162 to 180 of the application filed by Ajay Kumar Agarwal), the valuation of the land and Building & shed of Aditi Health Oils Pvt Ltd was Rs. 707.78 lakhs (on going concern basis) and Rs. 512.05 lakhs (on stand-alone basis).
- 4.12 The Valuation Report of Debasish Ghosh for valuation of Plant and Machinery was received on 05.05.2022. As evident from the Valuation Report (Page No. 132 to 161 of the application filed by Ajay Kumar Agarwal), the valuation of the Plant and Machinery of Aditi Health Oils Pvt Ltd was Rs. 1355.51 lakhs (on going concern basis) and Rs. 1017.18 lakhs (on stand-alone basis).
- 4.13 The above valuation was significantly higher than the valuation arrived by the same valuers during CIRP period. It is further evident from the Valuation Report received during the liquidation period that the Valuers has taken photographs of different portion of assets of the Corporate Debtor. Refer Page 112 to Page 126, Page 140 to 160 of the application filed by Ajay Kumar Agarwal.
- 4.14 The valuation done during the liquidation stage were all done by IBBI Registered Valuers as evident from their IBBI Registration No. appearing in their respective Reports. Reference may be made to Page 80, 131 and 163 of the application filed by Ajay Kumar Agarwal. All the Valuation Reports were discussed in 5th SCC Meeting dated 12.05.2022 [Page 33 and 38 of the Compilation Book].

Analysis & Findings

5. We have heard the Ld. Counsel appearing on behalf of the Applicant and the Ld. Counsel appearing on behalf of the Respondent and perused the records.
6. The applicant has as certainly claimed that the valuation prepared by the aforementioned Registered Valuers is bad in law and is liable to set aside as the valuation would be much higher than what is projected by the valuers.
7. Further, the Applicant has submitted in their written submissions that an e-Assessment Slip dated 1st August, 2023 was issued by 'Directorate of

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Registration & Stamp Revenue’, Government of West Bengal wherein the value the land and building of the Corporate Debtor has been assessed to be Rs. 19,18,80,119/-. The value of the land has been assessed at Rs. 7,93,08,875/- and the value of the building and shed has been assessed at Rs. 11,25,71,244/- aggregating to Rs.19,18,80,119/-. But no such claims was made by the Applicant in their pleadings.

8. A fare perusal of the Annexure –A to the written submissions demonstrates that what is claimed to be an e-Assessment Slip dated 1st August, 2023, issued by ‘Directorate of Registration & Stamp Revenue’, Government of West Bengal) it is not the original e-Assessment Slip, the one that they have attached is nothing but a type out of land details and Structure details with no valuation of property figuring therein. Hence, the stand taken by the Applicant is not properly substantiated.
9. Accordingly, **IA (IB) No. 1329/KB/2023** is **dismissed**.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The Order is pronounced on 28th day of August, 2023

SA (LRA)