



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA NO.337/2022
IN
CP (IB) NO.131/ALD/2017**

In the matter of

*An application under Section 60(5) of Insolvency & Bankruptcy Code, 2016
read with other provisions and Rules made thereunder.*

In the matter of:

Mr. Sanjay Chaturvedi

..... **Ex-Director/ Applicant**

Versus

Sanjay Gupta

..... **Liquidator/ Respondent**

In the matter of:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

.....**Financial Creditor**

Versus

SHAMKEN SPINNERS LIMITED

.....**Corporate Debtor**

Order pronounced on 1st June, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances :

Sh. Arun Saxena with Sh. Vikas Ashwani, Advs.

: For the Ex-Director/ Applicant

Sh. Amar Vivek with Ms. Shalya Agarwal, Advs.

: For the Liquidator Mr. Sanjay Gupta present in person



ORDER

IA NO.337 OF 2022

1. This application has been filed U/s 60(5) of the Code for declaring the sale notice dated 02.03.2022 issued by the Liquidator as null and void and further to declare all the processes of auction conducted under the sale notice dated 02.03.2022 by the Liquidator as null and void. The applicant is a shareholder of the Corporate Debtor.
2. It is averred in the application that the liquidation process was set into motion in terms of Section 33 of the Code as per the order dated 26.10.2021 passed by this Tribunal, and Mr. Sanjay Gupta was appointed as Liquidator of the Corporate Debtor. A challenge was laid to the order dated 26.10.2021 by the present applicant and one of the resolution applicants before the Hon'ble NCLAT bearing Company Appeal No.204/2022 and 211/2022 respectively. The Hon'ble NCLAT issued notice on 02.03.2022.
3. The Liquidator published the sale notice on 02.03.2022 and auction was conducted on 31.03.2022. It is alleged by the Applicant that the Liquidator has not complied with the order dated 26.10.2021 passed by this Tribunal, though as per the order dated 26.10.2021, the Corporate Debtor was to be sold as a going concern.
4. It is further stated that the Hon'ble NCLAT vide an order dated 12.04.2022 passed in the aforementioned appeals,



granted an ad-interim stay to the effect that the auction which has been held on 31.03.2022 shall not be confirmed till the further decision of this Court.

5. It is further alleged by the Applicant that as per the provisions of Regulation 31A of the Liquidation Regulations, the Ex-Directors are to be included in the list of the Stakeholder Consultation Committee, however, no such communication was sent by the Liquidator to the Applicant in this regard, and therefore, the constitution of SCC itself was erroneous.
6. Per contra, the Liquidator has stated in his reply that an admission order was passed on 29.05.2018 in a petition filed U/s 7 and after inviting the resolution plans and on receiving no response with regard to the resolution plans, the CoC in its 11th meeting held on 18.02.2019 with a 100% voting unanimously resolved to liquidate the Corporate Debtor and accordingly vide an order dated 26.10.2022 passed by this Tribunal, the liquidation process was set into motion. As per the order dated 26.10.2021, this Tribunal had directed that the Liquidator shall first try to transfer the Corporate Debtor by formulating the scheme of compromise and arrangement in terms of Regulation 2B of the Liquidation Process Regulations, thereafter, the Liquidator shall try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) or 32(f) of the



Liquidation Process Regulations, 2016.

- 7.** It is submitted on behalf of the Liquidator that in pursuance to the order of liquidation, he has diligently performed all the duties and actions in compliance of the said order. The Liquidator had published the EOI/ notice on 11.12.2021 inviting a scheme of compromise and arrangement U/s 230 of the Companies Act from the creditors, or any class of creditors/ members, or any class of them. The last date for submission of EOI was 30.12.2021. However, since no scheme for compromise and arrangement U/s 230 of Companies Act was received, the Liquidator in compliance of the order dated 26.10.2021 endeavoured to sell the Corporate Debtor as a going concern, for which the reserve price of Rs.22 Crore was fixed in the SCC meeting held on 22.02.2022. In order to constitute the SCC, the Liquidator had circulated the nomination sheet to the stakeholders *vide* an email dated 31.12.2021, and accordingly, based upon the nomination process, the Liquidator had formed the SCC on 10.01.2022. As stated earlier, the SCC in its meeting held on 22.02.2022, the reserve price was accordingly fixed.
- 8.** The Liquidator further stated that he has made all efforts to widely publicise the sale of the Corporate Debtor as a going concern and for this reason, he even listed the properties of the Corporate Debtor on the popular online property portals namely; www.99acres.com,



www.magicbricks.com, www.realestateindia.com and www.indiaproperty.com.

9. The Liquidator also published sale notice dated 04.03.2022 in Financial Express, all India Edition and in Jansatta having circulation in Delhi NCR and Mathura inviting prospective bidders to bid on the block of assets of the Corporate Debtor at a reserve price of Rs.22 Crores, and the date of auction was fixed on 31.03.2022. For the purpose of making the entire details/ data available, a Virtual Data Room (VDR) was also created and made available to the prospective buyers.
10. After following all these procedures, it is further stated by the Liquidator that the Corporate Debtor was sold as a going concern to one Sujeet Motors (P) Limited, who was declared as H1 Bidder during the aforesaid e-auction held on 31.03.2022, and accordingly, a Letter of Intent (LOI) was issued on 02.04.2022. However, subsequently the Hon'ble NCLAT *vide* an order dated 28.09.2022 dismissed the appeals filed by the applicant, whereby the challenge has been laid to the order of liquidation dated 28.09.2022. The relevant part of the Hon'ble NCLAT order dated 28.09.2022 is as under :-

“16. The CoC having rejected the Resolution Plan submitted by the Resolution Applicant after due deliberation and discussion, the decision taken by the CoC is a decision taken in the commercial wisdom of the CoC which cannot be interfered



with in exercise of jurisdiction by the Adjudicating Authority or by this Tribunal.

17. The submission of Learned Counsel for the Appellant that no reasons have been given by the CoC for rejecting the plan has also no legs to stand when a decision is taken after due deliberation. The decision of the CoC is reflected in the result of the voting which cannot be questioned. In so far as reliance on 14th CoC meeting dated 22.07.2021 is concerned, the Resolution Professional has brought into notice of CoC about the e-mail send by Resolution Applicant revisiting his offer, which fact although was noticed but no decision was taken by CoC to consider the e-mail by reversing its earlier decision of rejection of plan. Thus, the minutes of 14th CoC in no manner helps the Appellants.

18. We, thus, are satisfied that no error has been committed by Adjudicating Authority in directing for liquidation of the Corporate Debtor. No grounds have been made out to interfere with the Impugned Order dated 26th October, 2021 passed by the Adjudicating Authority. Both the Appeals are dismissed, accordingly. The Interim Order stands discharged.”

- 11.** It has been alleged by the Liquidator that the present application thus, has been filed in an attempt to remain in possession of the assets of the Corporate Debtor and to create impediment in the smooth liquidation process to be completed.
- 12.** We have considered the rival submissions made by the parties and have also perused the record.
- 13.** We find that as per the order dated 26.10.2021, the



Liquidator was directed to first try to transfer the Corporate Debtor by compromise of arrangements in terms of Regulation 2B of the Liquidation Process Regulations, and thereafter, the Liquidator shall try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and 32(f) of the Liquidation Process Regulations. The Liquidator in the first instance, has invited the EOI for the scheme of compromise and arrangement U/s 230 of the Companies Act, however, there were no response received in this regard. Thereafter, in pursuance of the said order dated 26.10.2021, the Liquidator proceeded with the issuance of the sale notice, which has been annexed as Annexure-R2 at page 36. The e-auction was to take place on 31.03.2022 at 03:00 PM to 05:00 PM and the said e-auction was to be conducted on “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER THERE IS” and “WITHOUT RECOURSE BASIS”. With regard to the assets description it was mentioned that the auction is of complete plant on going concern basis, which included land and plant and machinery situated at the premises.

- 14.** We have also further perused the LOI for sale of assets dated 02.04.2022 placed at Annexure-R3 at page 39 of the reply filed by the Liquidator. In the said LOI in the column of Asset, it has been mentioned that the complete plant is on going concern basis, and the auction amount was Rs.41.05 Crores as against the reserve price of Rs.22



Crores, as admittedly being the highest bid amount as H1. The description of the assets have also been provided in schedule attached with the LOI.

- 15.** We therefore, do not find any infirmity in the process having been conducted by the Liquidator in pursuance of the Liquidation order.
- 16.** As regards to the objection of the applicant for not being made as a part of the SCC, the Liquidator has stated that due communications were sent to all and as per the provisions of Regulation 31A(2) of the Liquidation Process Regulations, it is stipulated that the promoters, directors and partners or their representatives may attend the meeting of the SCC, but shall not have any right to vote. The provisions of Regulation 31A(2) is as under :-

“(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:

Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;

Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote.

Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.”

- 17.** It has been stated by the Liquidator that mere fact that



the Ex-Director did not attend the SCC meeting shall not invalidate the entire liquidation and e-auction process, in view of the fact that they did not have any right to vote.

- 18.** Another objection has been raised by the applicant that the property under reference which had been put to auction bearing Khasra numbers, were not the actual properties having that particulars of the Khasra numbers. It has been vehemently denied by the Liquidator that there is no proof furnished by the applicant to substantiate this allegation that the said properties situated at Khasra nos.316 & 318 are the assets of the applicant and not that of the Corporate Debtor.
- 19.** The contention of the Liquidator for putting the properties on auction as a going concern finds supports from the judicial precedents relied upon by him in the matter of, *'M/s Visisth Services Ltd. Vs. Mr. S. V. Ramani, Liquidator of United Chloro-Paraffins Pvt. Ltd.'* (2022) *ibclaw.in* 33 NCLAT, wherein it has been held that :

*“it can be seen from the Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 that **Sale as a ‘Going Concern’ means sale of assets as well as liabilities and not assets sans liabilities. We conclude that Sale of a Company as a ‘Going Concern’ means sale of both assets and liabilities, if it is stated on ‘as is where is basis’.**”*

Further, in the matter of, *'M.S. Viswanathan Vs. Pixtronic Global Technologies Pvt. Ltd. in CP(IB) No.*



CP/699/IB/2017, NCLT, Chennai, it has been held that :

*“in so far as Sale as a going concern is concerned, **the terms ‘going concern’ means all such assets and the liabilities, which constitute an integral business or the Corporate Debtor, that must be transferred together, and the consideration must be for the business or the Corporate Debtor.**”*

- 20.** In view of our following discussions, we do not find any infirmity in the action taken by the Liquidator in putting the assets of the Corporate Debtor on e-auction on the basis of the sale as a going concern.
- 21.** The IA No.337/2022 is hereby dismissed with no order as to cost.
- 22.** Certified copy of this Order be supplied, if applied for, subject to compliance with usual formalities in the Registry.

Ashish Verma
Member (Technical)

Praveen Gupta
Member (Judicial)

1st June, 2023