

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Web-based Video Conferencing Platform)

I.A. No.245 of 2021 in
CP (IB) No.14/BB/2018
U/s 42 r/w Sec. 37(2) and (3) of IBC, 2016
R/w Regulations 5, 6, 15(4) and 34(5) of
IBBI (Liquidation Process) Regulations, 2016

BETWEEN:

**M/s. Bennett Property Holdings
Company Limited**

Regd. Off: 5th Floor, Times Tower,
Kamla Mills Compound,
S.B. Marg, Lower Parel,
West Mumbai – 400 013.

... Applicant/Financial Creditor

AND

The Liquidator

In the liquidation of

**M/s. Biodiversity Conservation
(India) Private Limited**

Regd. Off: No.37-1/1, R.K. Chambers,
Ground Floor, Aga Abbas Ali Road,
Bangalore – 560 042.

... Respondent

Order delivered on: 02nd February, 2022

CORAM: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant in
IA No.245 of 2021

: Shri Manu Kulkarni, Adv.

For the Respondent in
IA No.245 of 2021

: Shri Raghuram Cadambi, Adv.

— Sd —

ORDER**Per: Ajay Kumar Vatsavayi, Member (J)**

1. M/s. Bennett Property Holdings Company Limited filed the instant I.A. against the Liquidator of M/s. Biodiversity Conservation (India) Private Limited ('Corporate Debtor') under Section 42 read with Section 37(2) and (3) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 5, 6, 15(4) and 34(5) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, seeking the following reliefs:
 - i.) *Set aside the letter dated 18.07.2021 issued by the Respondent;*
 - ii.) *Declare that the Financial Creditor is not liable to pay corporate insolvency resolution fees for the corporate insolvency resolution process of Biodiversity Conservation India Private Limited;*
 - iii.) *Declare that the Financial Creditor is liable to pay liquidation costs for the liquidation process of Biodiversity Conservation India Private Limited only from 04.04.2021;*
 - iv.) *Declare that the Financial Creditor is only liable to pay the liquidation costs in proportion to the amounts recovered by it towards its claim of Rs.33,64,47,700/- in the liquidation of Biodiversity Conservation India Private Limited and after such amounts are recovered from the proceeds of the sale of the liquidation assets and not prior to realisation from sale;*
 - v.) *Declare that the liquidation costs payable by the Financial Creditor shall be proportion to the proceeds from sale of liquidation assets realised and in terms of Section 34(8) and (9) and Section 53(3) of the Insolvency and Bankruptcy Code, 2016 and Regulation 4 and Regulation 42 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and not in proportion to the admitted claim of the Financial Creditor of Rs.33,64,47,700/-.*
 - vi.) *Direct the Respondent to share with the Financial Creditor Financial Information pertaining to the Corporate Debtor including but not limited to the documents sought by the Financial Creditor in its letter dated 28.06.2021;*
 - vii.) *Direct the Respondent to share with the Financial Creditor resolution of the committee of creditors of Biodiversity Conservation India Private Limited under Regulation 39-D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, if any;*
 - viii.) *Direct the Respondent to share with the Financial Creditor details of amounts realised and amounts distributed to all stakeholders*

in the liquidation of the Corporate Debtor till date and going forward in the liquidation of Biodiversity Conservation India Private Limited.

- ix.) *Direct the Respondent to share with the Financial Creditor a copy of the asset memorandum prepared in the liquidation of Biodiversity Conservation India Private Limited including the asset memorandum as may be amended from time to time in the liquidation of the Biodiversity Conservation India Private Limited.*
- x.) *Direct the Respondent to share with the Financial Creditor a copy of all progress reports prepared in the liquidation of Biodiversity Conservation India Private Limited thus far and all future progress reports as may be prepared in the liquidation of the Biodiversity Conservation India Private Limited.*
- xi.) *Pass any further orders in the interest of justice and equity.*
- 2.** Heard Shri Manu Kulkarni, learned Counsel for the Applicant and Shri Raghuram Cadambi, learned Counsel for the Respondent / Liquidator and carefully perused the pleadings on record.
- 3.** It is submitted on behalf of the Applicant that its claim for an amount of Rs.33,64,47,700/- was admitted by the Respondent-Liquidator on 04.04.2021, in the process of the liquidation of the Corporate Debtor. The Liquidator treated the Applicant as a Secured Financial Creditor but it was not a part of the Committee of Creditors before passing of the liquidation order or part of the Stakeholders Committee after passing of the liquidation order even after admitting its claim to the extent as referred above. It is also submitted that the Applicant has not relinquished its interest in its securities.
- 4.** It is further submitted on behalf of the Applicant that the Respondent-Liquidator vide impugned letter dated 18.07.2021 directed the Applicant to remit Rs.68,64,550/- (Rupees Sixty-Eight Lakhs Sixty-Four Thousand Five Hundred and Fifty Only) towards its share of liquidation costs payable under Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016, to the Corporate Debtor's Bank Account. It is also submitted that the Applicant being a Secured Financial Creditor is entitled for certain information and copies of certain documents from the Liquidator and when the Applicant sought for the same, the Liquidator refused to share the

information and to furnish the documents sought for by the Applicant. Hence, the I.A.

5. The learned Counsel for the Applicant while placing reliance on the first proviso to Regulation 21A (2) (b) of the IBBI (Liquidation Process) Regulations, 2016 in support of the I.A. averments in respect of the issue of its liability to pay its share of liquidation costs contended as under:
- i.) The Applicant is not required to pay the insolvency resolution process costs at all.
 - ii.) The Applicant is required to pay the liquidation costs only with effect from 04.04.2021 i.e., the date on which its claim was admitted.
 - iii.) The Applicant is required to pay the liquidation costs in proportion to the amounts actually recovered by it but not in proportion to its admitted claim.
 - iv.) The Applicant is required to pay the liquidation costs only after the realisation of its security interest and once monies are received by it.
6. The learned Counsel appearing for the Respondent-Liquidator on the other hand submits that first proviso to Regulation 21A (2) (b) of the IBBI (Liquidation Process) Regulations, 2016 is not applicable to the facts of the case; whereas Section 53(1)(a) of the I&B Code, 2016 is applicable to the Applicant and hence it is liable to pay the costs as determined by the Liquidator.
7. In this view of the matter, it is necessary to refer to the relevant Provisions / Regulations on which the learned Counsel placed reliance:

Section 53 of I&B Code, 2016:

“53. Distribution of assets. - (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -

- (a) the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following:
 - (i) workmen’s dues for the period of twenty-four months preceding the

- liquidation commencement date; and
- (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) the following dues shall rank equally between and among the following: -
- (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation. – For the purpose of this section-

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).”

Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016:

“21A. Presumption of security interest.

- (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

- (2) Where a secured creditor proceeds to realise its security interest, it shall pay-
- (a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good

by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.”

- 8.** A careful examination of the above referred provisions / regulations reveals that the contention of the Applicant is misconceived and not supported by any provision of I&B Code, 2016 or by any applicable Regulations. Even in any of the judgments on which the learned Counsel for the Applicant placed reliance, nowhere it was stated that a claimant in a liquidation process need not pay CIRP / liquidation costs at all. Similarly, there was nothing to show that a claimant in a liquidation process required to pay the liquidation costs only from the date of admission of its claims and that too in proportion to the amounts actually recovered by it and not in proportion to its admitted claim. Similarly, there was nothing to show that the Applicant is required to pay its share of the liquidation costs only after the realisation of its security interest and once monies are received by it.
- 9.** In this view of the matter, we reject the contention of the Applicant in respect of its liability to pay its share of liquidation costs in terms of the impugned letter dated 18.07.2021.
- 10.** With regard to the other relief claimed by the Applicant for furnishing of information / documents by the Liquidator, the Liquidator submitted as under:

“B. INFORMATION / DOCUMENTS SOUGHT BY THE APPLICANT:

31. The Applicant has sought certain documents as set out in paragraph 39 at page 31 of the Application. It is submitted that these documents can be divided into two categories – (a) those which are covered under Regulation 5 of the Liquidation Regulations; and (b) those which are covered under Regulation 6 of the Liquidation Regulations.

32. The Respondent, as a stakeholder, is entitled to certain documents under Regulation 5(3) of the Liquidation Regulations. These documents include the preliminary report, all progress reports, sale reports, and minutes of stakeholder meetings, i.e., the documents mentioned as points (a) to (c) in paragraph 39 at page 31 of the Application. The Respondent has no difficulty in providing the same to the Applicant.

33. The Applicant has also sought for the minutes of the stakeholder committee meetings, which is contained in Regulation 5(1)(e). While ordinarily, the Applicant,

as a stakeholder, would have been entitled to these documents, the Applicant has chosen to stand outside the liquidation proceedings, and realize its security interest. Under Regulation 31A, the Applicant, therefore, is not a member of the stakeholders' committee. Therefore, it is submitted that the Applicant is not entitled to these documents.

34. The other documents mentioned under paragraph 39 of the Application are instead covered by Regulation 6 of the Liquidation Regulations. Unlike in Regulation 5, there is no provision permitting stakeholders to access these documents. Indeed, it cannot be so, given that all these documents pertain to the day-to-day running of the Corporate Debtor. No creditor can have a right to access these documents, and indeed, if one creditor is permitted, all creditors would make similar requests.

35. The Applicant's reliance on Section 39 of the IBC is misplaced. The provision clearly states that 'financial information' is to be shared with a creditor in such manner as may be specified. The specifications in the Liquidation Regulations clearly exclude most of the documents requested by the Applicant from being shared.

36. The Applicant has also made a prayer for a copy of the Asset Memorandum as filed by the Respondent before this Hon'ble Tribunal. This prayer is to be rejected for the following reasons:

(a) No specific pleadings are contained in the application as to why the Applicant requires a copy of the Asset Memorandum;

(b) Regulation 34(5) of the Liquidation Regulations makes it clear that no person shall have access to the asset memorandum, unless permitted by this Hon'ble Tribunal. This underlines the confidential nature of this document, which, unlike other documents, no stakeholder or creditor has the right to access.

(c) Given the confidential nature of the information contained in the Asset Memorandum, which would have a bearing on all future auctions and sales in the liquidation process, it is humbly submitted that it would be unfair for one stakeholder to be provided with access to this information. The asset memorandum contains extremely sensitive information that if shared, could damage the prospects of liquidation sales. This would be adverse to all stakeholders."

11. It is not in dispute that the Applicant is a claimant and its claim also admitted to an extent of Rs.33,64,47,700/-. We have already held herein above that the Applicant whose claims are admitted by the Liquidator to the said extent, is liable to pay its share of the liquidation costs without reference to the date of admission of its claims and without reference to the monies to be received by it. Hence, we are of the view that though the Applicant has chosen to stand outside the liquidation proceedings and to realise its security interest, and not a stakeholder, it is also entitled for the same information and documents as entitled by a stakeholder of the liquidation process. Therefore, the Liquidator is liable to share the

— Sd —

information and furnish the documents to the Applicant, on par with any other stakeholder of the liquidation process.

12. In the circumstances and for the aforesaid reasons, the instant I.A. is disposed of as under:

- i.) The various reliefs claimed with regard to the liability of the Applicant to pay its share of the costs as detailed in the letter dated 18.07.2021 of the Liquidator are rejected.
- ii.) The various claims of the Applicant with regard to the sharing of the information and furnishing of the documents, the Liquidator is directed to share the information and furnish the documents to the Applicant on par with any other stakeholder of the liquidation process.

13. Accordingly, I.A. No.245 of 2021 is disposed of.

— sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Krishna