

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

C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 749/KB/2022

*An application under Section 60(5) of the IBC, 2016 and Rule 11 of the
Insolvency and Bankruptcy Code, 2016.*

In the matter of:

(1) Sendoz Commercial Private Limited

... Operational Creditor

-Versus-

(1) Kohinoor Paper and Newsprint Private Limited

... Corporate Debtor

-And-

In the matter of:

(1) Ajay Agarwal, Authorized representative of existing Workmen/Employees of
Kohinoor Paper and Newsprint Pvt. Ltd.

... Applicant

-Versus-

(1) Kohinoor Paper and Newspaper Private Limited, through its liquidator viz.
Uday Narayan Mitra, having his office at C/o Manish Mahavir & Co, 2B, Grant
Lane, 3rd Floor, Room No. 303, Bajrang Kunj, Kolkata – 700012. **Registration**
No. IBBI/IPA-001/IP-P00793/2017-2018/11360 and E-mail ID:
udaynarayanmitra@yahoo.co.uk.

(2) Union Bank of India earlier Corporation Bank, having its office address at
Dharmatala Branch, 8 Lenin Sarani, Kolkata – 700013.

(3) Indian Bank and Allahabad Bank, having its office address at 5B, Russel
Street, Kolkata – 700001.

(4) Bank of Baroda and Dena Bank, having its office address at 4, India Exchange
Place, Kolkata – 700001.

(5) Indian Overseas Bank, having its office address at 6, Royd Street, Kolkata –
700016.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court –II)
SPECIAL BENCH
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C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 749/KB/2022



- (6) **ICICI Bank**, having its office address at 22, R.N. Mukherjee Road, Kolkata – 700001.
- (7) **Federal Bank**, having its office address at Chittaranjan Avenue, Kolkata – 700072.
- (8) **Punjab National Bank earlier Oriental Bank of Commerce**, having its office address P-22, Bondel, 1st Floor, Kolkata – 700019.

... Respondents

Date of hearing: 19/01/2023

Date of pronouncing the order: 13/09/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically):

Mr. Joy Saha, Sr. Adv.] For the Stakeholders Committee
Mr. Avishek Guha, Adv.]
Ms. Sonali Mukhopadhyay, Adv.]
Mr. Chitresh Saraogi, Adv.]
Ms. Arunika Dutta, Adv.]

Mr. Jishnu Saha, Sr. Adv.] For Ajay Agarwal
Ms. Debaleena Ganguly, Adv.]

Ms. Shreya Chaudhary, Adv.] For the Liquidator in IA 946/2020, IA No. 201 of 2020, IA No. 695/2022

Mr. Ratnako Banerjee, Sr. Adv.] For the Liquidator in IA 749 & 966 of 2022
Mr. Swatarrup Banerjee, Adv.]
Mr. S.K. Tiwari, Adv.]
Mr. Jayesh Kr. Choradia, Adv.]

Mr. Arindam Paul, Adv.] For Contemnor No. 1 in IA 809/2021
Mr. Uday Narayan Mitra, Adv.] Liquidator of the Corporate Debtor

Mr. Shuvasish Sengupta, Adv.] In Cont. A/9/2022, IA/809/2021
Mr. Aniruddha Singh, Adv.]



Mr. Rishav Banerjee, Adv.] For the Applicant in IA 762/2022
Mr. Rajarshi Banerjee, Adv.]
Mr. Madhu Sudan Sarkar, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. counsels for the parties.
2. This application has been preferred to seek the following reliefs, inter alia: -
 - (a) Direction upon the liquidator to revise the invitation of expression of interest dated 25th June, 2022 as modified and issue fresh invitation of expression of interest with modifications so as to honour the order passed by this Hon'ble Court on 10th June, 2022.
 - (b) Stay of the invitation of expression of interest dated 25th June, 2022 till disposal of the instant Application;
3. The Order dated 10.06.2022 referred to above reads as under: -
 - a) **IA(IBC)/122(KB)2022**
 - (i) Vide order dated 21/12/2021, the request of the Liquidator was allowed and the liquidation period was extended by 90 days to sell the Corporate Debtor as a going concern as per rule 32A of the IBBI (Liquidation Process) Regulation, 2016. Since, extended time of 90 days has already expired, the Stakeholders Consultation Committee at its meeting held on 10/01/2022 was unanimously of the opinion that the liquidation value obtained during the Corporate Insolvency Resolution Process period to be considered as the reserve price for such e-auction/sale of the Corporate Debtor as a going concern to maximise the sale value. It is submitted by the Liquidator that if

another opportunity for a limited period of 90 days is granted, he will try his level best to sell the Corporate Debtor as a going concern.

(ii) We, therefore, extend the liquidation period by a further period of 90 days from today in order to enable the Liquidator to proceed with the sale of the Corporate Debtor as a going concern. The Liquidator is directed to complete the process and file dissolution application within the extended period.

(iii) IA(IBC)/122(KB)2022 stands **disposed of** accordingly.

4. Submissions of the Applicant: -

4.1 The Petitioner is the authorized representative of 100 nos. of workmen/employees of the corporate debtor which was put under CIRP by an order dated September 26, 2019 passed by this Tribunal under Section 9 of the Insolvency & Bankruptcy Code, 2016 in C.P. (IB) No. 1694/KB/2018, when the Corporate Debtor was a going concern. Its factory premises was situated at Falta Industrial Growth Center Phase II Sector – V and its workmen and contract labourers used to earn their livelihood from working at the said factory.

4.2 It is alleged that since initiation of the CIRP process, the plant of the corporate debtor is lying closed whereas in terms of Section 20 of IBC, 2016 it was the duty of the Resolution Professional (in short “RP”) to keep the Corporate Debtor as a going concern.

4.3 Further that the super cyclone Amphan in May 2020 caused a massive damage to the said plant and the factory was blown away. Again, in the year May 2021, cyclone Yash badly affected the plant area and all its plant/machineries are all lying idle and are daily exposed to corrosion from rusting of iron. It is alleged that no steps have been taken by the then Resolution Professional, now the liquidator or the then Committee of Creditors, now the stakeholders committee, to prevent the plant and machineries from getting damaged.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court –II)
SPECIAL BENCH
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C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 749/KB/2022



4.4 Vide an order dated 12th July, 2021, in IA No. 1174/KB/2020 filed by Sri Uday Narayan Mitra, the RP of the Corporate Debtor, the Corporate Debtor was ordered to be liquidated in terms of section 33(2) of the Code and vide order dated 10th June, 2022 the corporate debtor was directed to be sold as a going concern.

4.5 It is alleged that the sole intention of the RP/Liquidator from the very beginning was to sell the assets of the Corporate Debtor by slump sale, as it would be now evident from the invitation of expression of interest dated 25th June, 2022.

4.6 It is alleged that the liquidation value of the corporate debtor was valued by the registered valuer at a much lesser value than the reserve price. The reserve price to sale the corporate debtor as a going concern has been fixed at Rs. 48,58,28,350/- (Rupees Forty-Eight Crore Fifty-Eight Lakh Twenty-Eight Thousand Three Hundred Fifty), higher than the liquidation value, with an intention that no purchaser would be willing to buy the corporate debtor as a going concern at a higher value than the valuation of the company, since he would have to make huge investment after acquiring the property as a going concern, when the assets, plant, machinery as well as the factory premises are at a ruinous state.

4.7 The fresh valuation of the plant and machinery, during the liquidation process has been depicted as hereunder Average Valuation as per sub-regulation (4) of regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016, from valuers appointed on 17.03.2021.

Valuer Name	Regn. No.	PAN No.	Asset	Valuation (Rs.)	Average Valuation as per Sub-regulation 35 (Liquidation) IBBI

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

C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 749/KB/2022



Pradipta Das	IBBI/RV/02/ 2019/11349	ADRPD5487A	Land and Building	1913.17 lacs	1937.58 lacs
Pritam Kumar Nag	IBBI/RV/04/ 2019/11330	ADDPN1421Z	Land and Building	1962.0 lacs	
Asim Maity	IBBI/RV/04/ 2019/10999	ADOPM7144E	Plant and Machinery	1777.98 lacs	1774.54 lacs
Gautam Kumar Jain	IBBI/RV/02/ 2019/12092	AGQPJN557P		1771.09 lacs	
Santanu Brahma	IBBI/RV/06/ 2019/11686	AIGPB7027C	Securities and Financial Assets	74,584	74,584
Bimal Kranti Choudhury	IBBI/RV/05/2 020/13126	ABWPC3319D	Securities and Financial Assets	74,584	

4.8 It is alleged that previously Rare Asset Reconstruction Private Limited a prospective resolution applicant had submitted a resolution plan of Rs. 59 crores plus, yet the committee of creditors rejected the resolution plan. Moreover, certain pictures of the machineries have been doing the rounds in the social media which would make it more evident that the machineries are intended to be sold in slump sale. The ‘eligibility’ criteria set forth in the invitation of expression of interest dated 25th June, 2022 is without any conditions as to the



competency of the intending purchaser to have manufacturing experience whereas the liquidator ought to have set a pre-condition in the “ELIGIBILITY OF A PERSON TO PARTICIPATE IN E-AUCTION PROCESS” requiring the person/individual and not only cooperate/FIS to have a certain net worth which shall automatically eliminate scrap buyers.

4.9 That vide publication dated 8th July, 2022 the liquidator modified the earlier publication of the sale notice dated 25th June, 2022 whereby a clear attempt was made to circumvent the order of this Hon’ble Tribunal directing that the Corporate Debtor be run as a going concern.

4.10 It is submitted that an application was previously filed by the workers of the Company during the CIRP of the corporate debtor being IA No. 1428 of 2020 inter alia praying inter alia for directions upon the then resolution professional to run the corporate debtor as a going concern.

4.11 It is alleged the liquidator in collusion with the stakeholders committee has failed to act in the spirit of the said Code which aims at maximization of value of assets even after, *vide* order dated 21st December, 2021. The time period for selling the corporate debtor as a going concern was extended by 90 days and to a further period of 90 days vide an order passed on 10th June, 2022 for selling it as a going concern.

5. The Liquidator, Uday Narayan Mitra has refuted the allegations stating that: -

5.1 That the corporate debtor was a loss-making organization for a long time prior to the commencement of Corporate Insolvency Regulation Process and as on the date of the Corporate Insolvency Regulation Process there was no manufacturing activity.

5.2 That on 14th December, 2019 the said factory was closed in terms of order for closure dated 14th December, 2019 passed by West Bengal Pollution Control Board. A lockout was declared by the then Resolution Professional

on 14th December, 2019 which was reported to the CoC, in its 3rd meeting held on 30.12.2019. Further, a profitability analysis was done.

5.3 In the first CoC meeting held on 25.10.2019 the then RP proposed for making payment of all the expenses for raw materials, salaries & wages to existing permanent laborers, contract laborers, other staff of corporate debtor and other expenses, to run the corporate debtor as going concern during Corporate Insolvency Regulation Process period.

5.4 A report was placed in 3rd CoC meeting dated 30.12.2019. After studying the possibilities, the CoC concluded that there is no guarantee as to the profit from the operation of the factory of the corporate debtor and also estimated that there can be losses also, thereby increasing the liabilities of the CD.

5.5 That the decision of resumption of the operations at the factory or to run the corporate debtor as a going concern is a commercial decision of the CoC. The said decision of approval of lockout by CoC was based on the facts that the corporate debtor was a loss-making organization for a long time prior to the commencement of Corporate Insolvency Regulation Process.

5.6 The then Resolution Professional took steps to keep the corporate debtor as a going concern and tried to resume the operations at the factory by doing the profitability analysis. The sale of the corporate debtor was endeavoured to be done as a going concern.

5.7 That the order dated 12th July, 2021 was uploaded on 3rd August, 2021 and a public announcement was made on 5th August, 2021.

5.8 In the first meeting of the Stakeholders Consultative Committee, it was decided that an application for extension of time for making sale as a going concern shall be filed. After consulting the Stakeholders Consultative Committee, e-auction sale notice was published on 25th June, 2022 after two extensions granted by this Tribunal.



5.9 Two liquidation value, one at the start of the Corporate Insolvency Regulation Process period and another obtained at the start of the liquidation period having been obtained, an application being IA(IBC)/952/(KB)2021 was filed by the liquidator (after consulting the Stakeholders Consultative Committee) seeking a direction from this Tribunal for fixation of reserve price. By an order dated 10th June, 2022 this Tribunal was pleased to direct that the liquidator shall decide the liquidation value in terms of the minutes of the Stakeholders Consultative Committee held on 10th January, 2022.

5.10 Accordingly, the reserve price to sale the corporate debtor as a going concern was fixed at Rs. 48,58,28,350/- i.e., at the liquidation value obtained at the start of Corporate Insolvency Regulation Process period. Hence, the reserve price to sale the corporate debtor as a going concern has been fixed at Rs. 48,58,28,350/-.

5.11 The eligibility criteria set forth in the invitation of expression of interest dated 25th June, 2022 was done in Consultation with the Stakeholders Consultative Committee which included Mr. Shekhar Soni as the worker's representative in the said Committee.

6. Rejoinder: -

By way of rejoinder the applicant has almost reiterated the facts stated in the original application except a minor addition that the total value of the Corporate Debtor was coming to Rs. 37.12 crores approximately. And hence, the liquidator, in the invitation of expression of interest dated 25th June, 2022, arbitrarily proceeded to fix the reserve price of the Company in liquidation at Rs. 48,58,28,350/-, without any justification.

7. The Stakeholders Committee, the Assistant General Manager of Union Bank of India, the respondent no. 2 on behalf of the Stakeholders Committee has submitted that more than 22 months has elapsed since the Corporate Debtor was admitted into CIRP. That the Stakeholders Committee advised the liquidator to



conduct valuation of the assets of the Corporate Debtor once again. The valuation marked at Rs. 36 crores is Rs. 12 crores less than the earlier valuation. That some of the prosecutive bidders had given offers even going upto Rs. 50 crores. At the third Stakeholders Committee meeting 10th June, 2022. The Members of CoC advised the liquidator of e-auctioning the Corporate Debtor as a going concern as the same would fetch a greater value.

8. It has been strongly denied that they had any intention to sell the assets of the Corporate Debtor by way of slump sale as alleged.
9. The applicant by way of written notes of arguments has urged that Regulation 35 of IBBI (Liquidation Process), Regulations 2016 read with Schedule 1 Clause 1 Sub-Clause 4 is a mandatory provision and the liquidator was bound to go by the valuation of the Corporate Debtor obtained during liquidation. Reference is made to *Khub Chand And Ors vs. State of Rajasthan & Ors (AIR 1967 SC 1074)* and another *State of Haryana vs. Raghbir Dayal (1995) 1 SCC 133* to contend that the word “shall” ought to be construed in the context in which it is used and the purpose it seeks to serve and as mandatory or as directory accordingly.
10. Respondents 2 to 8 have alleged that Mr. Ajay Agarwal has initiated the instant proceedings at the behest of Mr. Vijay Bothra, the promoter director of the CD and they had jointly attended other stakeholder committee meetings as representatives of Suashish Capital Private Limited.
11. Affidavits have been filed by the said incumbents Mr. Ajay Agarwal stating that he has been authorised to ensure the cause of other workmen and denying the fact that he was an employee of Suashish Capital Private Limited or even drawn salary, while Mr. Vijay Bothra was the earlier controller of the Company.
12. Be that as it may upon delving into the allegations made in the petition and the corresponding reply filed by liquidator as well as SCC, we find no plausible explanation coming to the fore which would inspire us to give a direction upon

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

C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 749/KB/2022



the liquidator to revise the invitation of expression of interest dated 25th June, 2022 for the reasons mentioned in the application that the tentative offers of the bidders as on March 2022 were in fact ranging between Rs. 45 crores to Rs. 50 crores, as would be evident from the reply affidavit of the Stakeholders Committee. The allegations of the applicant stand uncorroborated, unsubstantiated and hence have no legs to stand on.

13. Accordingly, the application stands dismissed.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 13th day of September, 2023.

AR.