

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT V  
INTERLOCUTORY APPLICATION. No. 2327/2022**

**In  
CP(IBC)No. 3434/MB/C-V/2019**

*Application filed under Rule 11 of the N.C.L.T Rules,  
2016.*

*In the matter of*

**Bank of Baroda**

**...Applicant**

**V/s**

**UTI Structured Debt Opportunities Fund-1  
And Others.**

**...Respondent**

**In the matter between:**

**Halliburton Offshore Services Inc ....Petitioner**

**v/s**

**Mercator Petroleum Limited ...Corporate Debtor**

**Order Pronounced on :- 02.11.2023**

***Coram:***

**Smt. Anuradha Sanjay Bhatia : Member (Technical)**

**Shri. Kuldip Kumar Kareer : Member (Judicial)**

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

I. A. No. 2327/2022

In

CP No. 3434/MB/C-V/2019

*Appearances:*

**For the Applicant** : AVP Partners.

**For the Respondent** : I.C. Legal.

**ORDER**

*Per: Shri. Kuldip Kumar Kareer (Judicial Member)*

1. This is an application filed by the Applicant under Rule 11 of the N.C.L.T Rues, 2016 challenging the resolutions passed by the UTI Structured Debt Opportunities Fund-I (hereinafter referred to as "UTI") in the 11<sup>th</sup> Committee of Creditors Meeting held on 11<sup>th</sup> July, 2022 for discarding the valuation reports prepared by the registered valuers and calling for a fresh valuation report. The Respondent No.02- Mr. Satish Kumar Gupta is the Resolution Professional ('RP') of the Corporate Debtor named M/s. Mercator Petroleum Limited.

**Case of the Applicant in brief:**

2. As per the requirements of the CIRP Regulations, the IRP appointed two registered valuers namely, Protocol Valuers Pvt. Ltd. and Den Valuation (OPC) Pvt. Ltd. ("Registered Valuers") for preparing a report and arriving on the fair value and liquidation value of the assets of the Corporate Debtor,

in compliance with the provisions of the Code. After having completed their valuation, the Registered Valuers submitted their respective valuation reports which are currently in the possession of the IRP in a sealed cover. The IRP is to provide the fair value and liquidation value of the assets of the Corporate Debtor to the CoC, after receipt of the resolutions plans from prospective resolutions applicants, in accordance with Regulation 35(2) of the CIRP Regulations. On June 13, 2022, in the eighth meeting of the CoC, UTI enquired whether the valuation reports of the Corporate Debtor could be modified considering the dynamic changes in the crude oil industry since last one year. In response, the Applicant stated that any change in the industry dynamics would not affect the valuation reports, as the valuations of the assets are carried out from the insolvency commencement date of the Corporate Debtor (i.e. August 31, 2020, in the present case).

3. In the tenth and eleventh meeting of the CoC meetings, UTI raised several concerns in relation to arriving at a liquidation value by taking into consideration Oil Blocks assets of the Corporate Debtor. UTI then requested the Resolution Professional to inter alia discard the valuation reports prepared by the Registered Valuers and call for a fresh valuation report. The Resolution Professional as well as the Applicant explained that the Code and/or the CIRP Regulations do not permit discarding valuation reports or appointing fresh valuers. UTI, having the majority voting share of 68.20% addressed a letter dated July 7, 2022 to the Resolution

Professional ("UTI Letter"), requesting the Resolution Professional to call for a meeting of the CoC under Regulation 18(2) of the CIRP Regulations. The UTI Letter additionally proposed the Resolutions to be put to vote in the CoC under Regulation 18(3) of the CIRP Regulations.

4. The Resolution Professional informed the CoC of the resolutions contained in the UTI Letter and stated that passing a resolution for simply discarding the report of the registered valuers, would be against the provisions of the Code and the CIRP Regulations. The Resolution Professional stated that the CoC has the right to take action under the Code with requisite majority of 66% or more. However, the authority to carry out certain acts and to exercise certain powers under the Code are exclusively with the resolution professional. Disregarding the legitimate concerns made by the Resolution Professional and the Applicant, UTI directed the Resolution Professional to put the Resolutions proposed in the UTI Letter for voting. At this stage, without there being any prior agenda on the same, UTI further directed the Resolution Professional to also put a resolution to replace the Resolution Professional. Later, UTI, having 68.20% majority voting share in the CoC, assented to the Resolutions put-forth for voting in the Eleventh CoC Meeting and voted in favour of the Resolutions, which are illegal. Hence, the Applicant has moved this I.A.

**Submissions of the Respondents:**

5. The Respondent submits that the present IA is not maintainable and is liable to be summarily dismissed on the grounds stated hereafter. This IA seeks to challenge the decision of the CoC for obtaining fresh valuations in view of the fact that there are defects in the methodology adopted while obtaining the valuation report as well as the report being old, especially when the market conditions have drastically changed. It is a decision taken by COC which will be implemented by the Resolution Professional. This decision is not open for challenge at this stage in CIRP proceedings. The Respondent No.01 submits that there is no provision which permits the Applicant to approach the Tribunal challenging the decision of CoC and the steps taken by RP.
  
6. The Respondent has stated that the Application is premature as there is no cause of action to challenge. The Applicant cannot merely raise technical objections to fresh valuations being called without demonstrating in what manner such fresh valuation will or is causing any prejudice to the Applicant. The Applicant, officially is not aware about the value ascertained in the initial valuation. In absence of same the Applicant is not in position to contend that the fresh valuation causes any prejudice to the Applicant.

7. The Respondent states that there is no bar to call for fresh valuations by the CoC under Regulation 27 and/or Regulation 35 of the CIRP Regulations. The Hon'ble NCLAT in the case of Indian Bank vs Charu Desai RP (Mandhana Industries) in Company Appeal (AT)(Ins) No.644 of 2021 has held that there isn't any bar under the Code provisions for the COC to call for a fresh valuation report and upheld the decision of COC to obtain a fresh valuation for the Corporate Debtor and further held that the same could not be faulted nor can it be said to have contravened any provisions of the Code or Regulations.
8. The Respondent submits that the proper and recent fair value and the liquidation value are required by the CoC to take commercial decisions. Incorrect valuations would lead to serious issues considering that the future course of action including the resolution of the Corporate Debtor has to be decided based on such valuations. Seeking valuations is the prerogative of the COC. If the valuations are not proper and do not reflect lawful value, the same could lead to a possibility of acceptance of a Resolution Plan which would be below the proper value for resolution of the Corporate Debtor and would cause harm, loss and prejudice to the Corporate Debtor and all stakeholders including the CoC.
9. The Respondent submits that substantial time has elapsed, nearly 2 years from Insolvency Commencement Date ("ICD") and the oil industry has

completely changed, due to which up-to-date valuations are sought for considering the Resolution Plans. Due to the pandemic and Russia-Ukraine War, the oil price has changed drastically. On 31<sup>st</sup> August, 2020 the price of oil per barrel was \$43 approx. Whereas on 19<sup>th</sup> September, 2022 the price of the oil per barrel increased to \$84. Further, the dollar value has also changed from INR 73/\$ on 31/08/2020 to INR 80/\$ on 19/09/2022. Hence, the revised valuations are justified in view of the change in market scenario and the exchange rate.

10. Since the valuations were never opened, no possible prejudice has been caused or could be caused to the Applicant. Even if the valuations were opened, fresh valuations would only benefit the Applicant by providing more accurate, reliable and recent information for the purpose of evaluation of resolution plans and no possible prejudice could be caused to the Applicant. Thus, there is no cogent reason and/or justification to object to the fresh valuations. This without prejudice to the fact that the valuations are grossly erroneous and bad, which is apparent from the discussions with valuers as stated herein. It is also pertinent to note that the Applicant has refused even to consider and strenuously objected to updating/ revising of the existing valuations from the existing valuers which the Applicant had approved, at this stage (though not initially) and apparently seeks only the initial valuation report without any variations therein, without even having officially seen it, which was originally submitted by the valuers in March,

2021 when the Applicant was the sole member of the CoC. The said valuations were obtained when the CoC had been illegally and invalidly constituted and only the Applicant was part of the CoC. It is only with effect from 01<sup>st</sup> April, 2022 the Respondent No.01 came onto the CoC and the CoC was, thus, validly constituted.

### **ANALYSIS AND FINDINGS**

11. We have heard the learned counsels for the Applicant as well as for the Respondent. We have also gone through the records, documents and the written submissions placed before us.
12. The present Application has been filed by Bank of Baroda, a financial creditor of Mercator Petroleum Limited ("Corporate Debtor") holding 31.80% voting share in the committee of creditors of the Corporate Debtor ("CoC"). The Applicant is seeking directions from this Hon'ble Tribunal, for discarding the valuation reports prepared by the registered valuers and calling for a fresh valuation report.
13. The Applicant has filed several other applications before this Tribunal of interlocutory nature. I.A. No. 3233/2022 was filed by the Applicant for to restrain the Respondent therein (UTI) from abusing its majority voting share and to not allow the Respondent therein to vote on the resolutions

proposed by it in the CoC meetings. Intervention Petitions No.10 and 11 of 2022 have also been filed by the Applicant seeking intervention in I.A Nos. 3191 and 3433 of 2022 respectively. Pursuant to filing of aforementioned applications, there were several rounds of negotiations/discussions between the UTI and the Applicant i.e. Bank of Baroda. Simultaneously, there were negotiations/discussions between the members of the committee of creditors and the Resolution Applicant. UTI and the Applicant have agreed to mutually resolve their differences. It was agreed that the resolution plan proposed will be approved by both the parties. The creditors also agreed to share the proceeds given by the Resolution Applicant in the ratio of 60:40 in which the Applicant's share is 60% and UTI's share is 40%. Based on this understanding distribution which is agreed between the members of CoC, the Resolution Plan was considered by the Applicant and the UTI, and was also approved. **This approved Resolution Plan is now pending for approval of the Adjudicating Authority u/s 31 of the Code in I.A. No. 1124 of 2023.**

14. As the resolution plan has already been approved by the Committee of Creditors comprised of the Applicant and the Respondent No.01, the whole exercise of discarding the valuation reports prepared by the registered valuers and calling for a fresh valuation report has become meaningless. No doubt, under Regulation 35(1)(b) the resolution professional may, on receipt of a proposal from the committee of creditors, appoint a third

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

I. A. No. 2327/2022

In

CP No. 3434/MB/C-V/2019

registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in Reg. 35(1)(a). The change in the circumstances such as the change in oil prices and the exchange rate as referred to in Para 9 above, justify the decision of CoC to obtain a revised valuation report from a third registered valuer. However, in view of the facts and circumstances of the case, and in view of the fact that the inter se differences being mutually resolved by the parties herein, we are of the considered opinion that this I.A. should be dismissed as having become infructuous as the whole exercise of seeking a fresh valuation report would be an exercise in futility. Hence, we pass the following order:

**ORDER**

- a. The Interlocutory Application No.2327 of 2022 in Company Petition (IB) No. 3434 of 2019 is hereby **dismissed** having become infructuous.
- b. There shall be no order as to costs.
- c. Accordingly, this I.A. stands disposed off.

Sd/-

**ANURADHA SANJAY BHATIA**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**