

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

C.P. (IB)/1306(KB)2018

IA(I.B.C)/869(KB)2022

An application under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

(1) K. B. Polychem (India) Ltd., having its office at F-25, Site C UPSIDC Industrial Area, Sikandra, Agra – 282007, U.P.

... Operational Creditor

-Versus-

(2) Kaygee Shoetech Private Limited, Regd. Office 41, Matheshwartala Road, Kolkata, West Bengal – 700046. Also at, 33/A, Tarachand Dutta Street, 6th Floor, Kolkata, West Bengal – 700073 (Under Corporate Insolvency Resolution Process).

... Corporate Debtor

-And-

In the matter of:

(1) Pankaj Kumar Kedia, Liquidator for Kaygee Shoetech Private Limited 1, R.N. Mukherjee Road, Martin Burn, 5th Floor, Room No. – 4, Kolkata – 700001.

... Applicant

-Versus-

(2) Axis Bank Limited, having its registered office at Trishul, Third Floor, Opp. Samartheswar Temple, Law Garden, Ellisbridge, Ahmedabad 380006, Gujarat, India and having one of its branch office at 2nd Floor – E, Axis House, Bombay Deying Mills Compound, Pandurang Budhkar Marg, Worli, Mumbai – 400025, Maharashtra, India acting through its Kolkata Corporate Banking Branch at AC Market Building, 3rd Floor, 1, Shakespeare Sarani, Kolkata – 700001.

... Respondent

Date of hearing: 04/10/2023

Date of pronouncing the order: 17/11/2023

Coram:

Smt. Bidisha Banerjee : Member (Judicial)
Shri Arvind Devanathan : Member (Technical)

Appearances (via video conferencing/physically):

Mr. Rajdip Ray, Adv. : For K M C
Mr. Goutam Dinda, Adv. :
Mr. Anindya Sunder Chatterjee, Adv. :

Mr. Mayukh Roy, Adv. : For Axis Bank

Mr. Raj Singhanian, FCA : For Respondent

Mr. Udit Agarwal, Adv. : For the Liquidator
Mr. Pankaj Kehu, Liq.-in-person

Mr. Rasik Singhanian, Liquidator

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard. Ld. Counsel for the parties.
2. This is an application under Section 35(1)(n) of the Code, and the liquidator has come up to seek the following reliefs, inter alia: -
 - (a) To direct the respondent for handing over the possession of secured assets of the Corporate Debtor to Liquidator to form part of Liquidation estate;
 - (b) To pay the liquidation cost on proportionate basis incurred till date;
3. Submissions of the Applicant/Liquidator: -
 - (a) Liquidator would submit that the liquidation commenced on 25.10.2021.
 - (b) Public announcement was made on 10.11.2021 in Form B of Schedule II in two newspapers namely Financial Express (English Newspaper) and Aajkal (Regional Language).

- (c) All the assets of the Corporate Debtor, being movable or immovable are mortgaged with the respondent Axis bank and security interest is created in favour of Axis Bank, the secured creditor.
- (d) Axis Bank being the Secured Creditor of the Corporate Debtor filed its claim in Form D on 09.12.2021 and decided to realise the same under Section 52 of the Code under the provisions of the SARFAESI Act, 2002.
- (e) On 01.03.2022, Liquidator handed over the possession of the secured assets to the Axis Bank.
- (f) Axis Bank made several publications for sale of the secured assets on 29.07.2022, 13.12.2022, 13.01.2023, 21.03.2023, 29.04.2023, 27.07.2023 and 21.09.2023, but failed to get the immovable assets sold.
- (g) Regulation 21 A of IBBI (Liquidator Process) Regulations, 2016 envisages as under: -
- a. Under Sub-Regulation 2 (a) of Regulation 21 A of IBBI (Liquidation Process) Regulations 2016, secured creditor shall pay within ninety days from the liquidation commencement date to the liquidator Insolvency resolution process costs and liquidation costs in full and Workmen's dues for the period of twenty-four months preceding the liquidation commencement date;
 - b. Under Sub-Regulation 2 (b) of Regulation 21 A of IBBI (Liquidation Process) Regulations 2016, shall pay 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.
 - c. Under Sub-Regulation 3 of Regulation 21 A of IBBI (Liquidation Process) Regulations 2016, provides if the Secured Creditor fails

to comply with Sub-Regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

4. It is the submission of the Liquidator that since the Axis Bank failed to carry out any sale in terms of Sub-Regulation 2(b) and make payment in terms of Sub-Regulation 2(a) of Regulation 21 A of IBBI (Liquidation Process) Regulations 2016, the secured assets have become part of the liquidation estate by operation of law and there is no alternative left for the Secured Creditor but to handover the assets to the liquidator, the timeline of 90 days and 180 days being mandatory.
5. The assets secured with the Secured Creditor having already become a part of the liquidation estate of the Corporate Debtor the liquidator has prayed for a direction upon the respondent to handover the possession of unsold secured assets of the Corporate Debtor to the Liquidator, to form part of the Liquidation estates.
6. Reference is made to the following decisions: -
 - I. NCLAT – Company Appeal (AT) (Ins) No. 777 of 2021, Dhanlaxmi Bank Ltd. VS Techno Fab Manufacturing Ltd. & Ors. – **Paragraph 1 and 3**
 - II. NCLT, Kochi Bench – MA (IBC)/04/KOB/2023 in IBA/37/KOB/2020 – IDBI Bank VS Liquidator of M/s. Koyenco Autos Private Limited & Ors. – **Paragraph 1, 4, 7, 8 and 10**
 - III. NCLT, Kochi Bench – IA (IBC)/139/KOB/2023 in IA (IBA)/176/KOB/2022 in IBA/25/KOB/2020 – The Federal Bank VS Ruben George Joesph – **Paragraph 1, 3, 4 and 7**
 - IV. NCLAT, Kolkata Bench – IA (IB) No. 904/KB/2021 in CP (IB) No. 1889/KB/2019 – Ply Com Private Limited VS Nippon Alloy Limited – **Paragraph 1, 9, 28, 29, 30 and 33**
7. We heard the parties on 04th October, 2023 and directed for convenient note or written notes to be provided within three days. Although the Liquidator has filed

his written notes of arguments, the respondent Axis Bank did not and, therefore, we proceed to pass an order on the basis of the pleadings and the oral arguments advanced in this matter.

8. Ld. Counsel for the Axis Bank has failed to bring to our notice any decision from the superior fora indicating that the regulations will not have a mandatory effect, whereas under identical circumstances, this Bench in IA 904 of 2021 out of C.P. (IB)/1889(KB)2019 had passed the following orders: -

(i) On the other hand, Respondent No. 2, in spite of having been given ample opportunity to file a reply – affidavit, has failed to do so. However, the communication that took place between the Applicant and Respondent No. 2 on 28th June, 2021 indicates that Respondent No. 2 sold one of the four properties of the Corporate Debtor but failed to sell the rest even after six months from commencement of liquidation. As such the rest of the assets under the charge of the Respondent No. 2 should become a part of the liquidation estate.

(ii) In view of the above facts and circumstances, this Bench, hereby orders as follows: -

- a) Respondent Nos. 1 and 2 are directed to pay to the liquidator the liquidation costs and Workmen's dues for the period of twenty-four months preceding the liquidation commencement date, if not already paid.*
- b) The application, to the extent of the Applicant taking possession of the assets forming part of the security interest for Respondent No. 1, is hereby dismissed. The dismissal of the present application shall not stand in the way of any other remedy pursued by the Applicant in a manner known to law.*
- c) Respondent No. 2 is directed to handover the possession of the assets forming part of the security interest that have not been sold yet, to the Applicant immediately.*

d) Further, regarding the property that has been sold by Respondent No. 2 in realisation of their security interest, Respondent No. 2 is directed to provide to the Applicant, an account of the sale details and to pay to him the excess of the realized value of the said asset.

(iii) With these directions, I.A. No. 904/KB/2021 shall stand disposed of.

9. In the aforesaid backdrop, having considered the submissions and the pleadings of the parties and the mandatory effect of the provisions in Regulation 21(A) (supra) we pass the following order: -

- a) The Applicant is allowed to take possession of the assets forming part of the security interest for the Respondent Axis Bank.
- b) The Respondent Axis Bank is directed to handover to the applicant, possession of the assets in question, forming part of the security interest that it failed to get sold, to the Applicant immediately, preferably within 3 days from the receipt of a copy of this order.

10. Hence, this IA thus stands **allowed**.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on this, the 17th day of November, 2023.

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