IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

C.P.(IB)/1172(KB)2019
IA(I.B.C)/1562(KB)2024

An application under Section 66 of the Insolvency & Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules").

IN THE MATTER OF:

State Bank of India**;**

... FINANCIAL CREDITOR

-Versus-

Adi Ispat Private Limited**;**

... CORPORATE DEBTOR

-And-

Mr. Daulat Ram Jain, Insolvency Professional, having Registration No.IBBI/IPA-001/IP-P00945/2017 – 2018/11565, Liquidator of Adi Ispat Private Limited, having his Office at 33, Shakespeare Sarani, Police Station-Shakespeare Sarani, Post Office- Circus Avenue, Kolkata – 700 017**;**

... Applicant

-Versus-

ASL Enterprises Limited, company incorporated under the Companies Act, 1956 and an existing company within the meaning of the Companies Act, 2013 having its Registered Office at 1st Floor, Punwani Chambers, 7B, Kiran Shankar Roy Road, Kolkata – 700 001**;**

... Respondent

Date of pronouncement of the Order: 17.12.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically):

Mr. A. K. Shrivastav, Adv.	] **For the ASL Enterprises Ltd.**
Ms. Manisha Rani, Adv.	]
Mr. Akash Sharma, Adv.	]
Mr. Prince Verma, Adv.	]
Mr. Riyanshu Agarwal, Adv.	]
Ms. Urmila Chakraborty, Adv.	] **For the Liquidator**
Mr. Snehasish Chakraborty, Adv.	]

O R D E R

Per: D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode**.**

2. Learned Counsel appearing on behalf of the parties heard *in extenso***.**

3. This application being **IA(I.B.C)/1562(KB)2024** has been preferred by **Mr. Daulat Ram Jain,** the liquidator of Adi Ispat Private Limited, the Corporate Debtor, under Section 66 of IB Code, 2016 seeking for the following relief(s), *inter alia***: -**

> ***(i)*** *An Order thereby recalling and/or setting aside of the impugned order dated May 10, 2024 passed by this Tribunal in IA No. 240/KB of 2024 filed by the respondent herein**;***
>
> ***(ii)*** *An order of declaration that the sale of the assets of the corporate debtor was done on "AS IS WHERE IS BASIS" and "AS IS WHAT IS BASIS" and "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS" and not on a going concern basis**;***
>
> ***(iii)*** *Ad-interim orders in terms of Prayers above**;***

(iv) *Costs;*

(v) *Such further and/or other directions be passed as this Tribunal may deem fit and proper.*

4. Factual matrix of the case is as under: -

4.1 The Order of liquidation of the corporate debtor Adi Ispat Private Limited was passed by this Tribunal on September 21, 2021.

4.2 The corporate debtor had following premises/assets: Factory/Plant – the Induction Furnace with rolling mill situated at Dumri Road, P.O. Giridih, Jharkhand, including land, building, plant and machinery. However, the plant was not in operation for the last six years and the corporate debtor had no raw materials or finished goods at the time of commencement of liquidation.

4.3 Therefore, in the 12th CoC meeting it was resolved by the Stakeholders committee that the Corporate Debtor may be sold on slump sale basis which is well within the regulation 32 of IBBI (Liquidation Process) Regulations 2016 as amended.

4.4 Accordingly, advertisement was made on 28th October, 2022 putting the entire plant and machinery, Induction Furnace with rolling mill situated at Dumri Road, P.O. Giridih, Jharkhand on "as is where is basis" , "as is what is basis" , "whatever there is basis" and "no recourse basis".

4.5 During the liquidation process, the respondent, namely, **ASL Enterprises Limited** was the highest bidder, and accordingly, the possession of the plant and machinery was handed over to him after issuing sales certificate .

4.6 It is the claim of the applicant that the respondent has filed an application being IA numbered I.A.(I.B.C)/240(KB)2024, *inter alia*, praying for various relief and concessions from this Tribunal.

4.7 It was claimed in that application by the Respondent herein that the corporate debtor was sold as a going concern basis, and accordingly, this Tribunal was pleased to grant certain reliefs and concession to enable the respondent herein to run the Company as a going concern.

4.8 It is the claim of the applicant herein that the corporate debtor was not sold as a going concern but on slump sale basis, and consequently, the reliefs and concession granted to the respondent herein in IA(I.B.C)/240(KB)2024 is erroneous, and accordingly, the said Order may be recalled.

4.9 The applicant also seeks declaration that the sale of the assets of the corporate debtor was done on "as is where is basis" , "as is what is basis" , "whatever there is basis" and "no recourse basis".

4.10 Meanwhile, the liquidator had filed and IA being IA(I.B.C)/1687(KB)2023 for dissolution of the corporate debtor. The Order on the application for dissolution was reserved for Order(s) by this Adjudicating Authority on 04.01.2024, which was allowed by an order dated 18.06.2024 ordering dissolution of the Corporate debtor.

4.11 Against the above order of an appeal was filed by the respondent herein before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1294 of 2024 where in it has been held as under:

"Learned counsel for the appellant submits that in application filed by the dissolution, the appellant was not made a party and the appellant was not heard when the Tribunal allowed the dissolution. It is submitted that appellants could not bring to the notice of the Adjudicating Authority of the earlier Order dated 10.05.2024 by which Order several reliefs and concession were granted and the Order dated 18.06.2024 ordering dissolution was passed in ignorance of the Order dated 10.05.2024 which needs to be set aside."

4.12 Consequent to this finding, the Hon'ble NCLAT held as under:

"It thus appears that the Adjudicating Authority has passed the impugned Order dated 18.06.2024 in ignorance of the Order dated 10.05.2024. The appellant being not before the Adjudicating Authority at the time of reserving the Order for dissolution application, the facts could not be noticed by the Adjudicating Authority. The Adjudicating Authority have already granted reliefs and concession by Order dated 10.05.2024, the Order was passed in ignorance of the Order dated 10.05.2024 which Order deserves to be set aside on the ground. We thus allow the appeal and set aside the Order dated 18.06.2024"

4.13 Accordingly, our Order of dissolution stands stood aside by the Hon'ble NCLAT.

5. Ld. Counsel for the Applicant: -

5.1 Ld. Counsel for the applicant submits that the corporate debtor was sold "as is where is basis" , "as is what is basis" , "whatever there is basis" and "no recourse basis".

5.2 He brought our attention the sale notice that was issued on October 28, 2022 which has been annexed as 'Annexure – E' to the application.

5.3 He also brought to our attention the sale certificate dated 28th March, 2023 which clearly sets sale and possession of the assets of the corporate debtor "as is where is basis" "as is what is basis" "whatever there is basis" and "no recourse basis".

5.4 He brought our attention the minutes of the second meeting of the Stakeholders' Consultation Committee (in short "SCC") of the corporate debtor held on 12th October, 2022, wherein the SCC considered and resolved to sell the corporate debtor as a going concern for the first 90 days. However, it appears that the Chairman informed that the corporate debtor is not in operation since last 6 years, and therefore, the corporate debtor should be sold on slump sale basis which is well within the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016. Accordingly, a resolution was passed and minuted.

5.5 Therefore, the ld. counsel submits that the Order of dissolution passed on 18.06.2024 in IA (I.B.C)/1687(KB)2023 is legally correct wherein this Tribunal Ordered for dissolution of the corporate debtor.

6. Ld. Counsel for the Respondent: -

6.1 Ld. Counsel for the respondent submits that IBC does not contemplate dissolution of the Company at any stage as is reflected in Rule 32 of the IBBI (Liquidation Process) Regulation, 2016.

6.2 He also submits that it is only buyer who can decide what is to be done with the corporate debtor or its business and he can only decide whether the corporate debtor can be carried on as a going concern with the available factory and assets. After refurbishing /repairing the plant and machinery if the corporate debtor can be run as a going concern, then it is not open for the seller to object to such decision of the buyer.

6.3 He submits that it has been consistently held by the Hon'ble High Courts and various other Courts that a revival of a Company must be explored till the last date of proceedings and even if during liquidation process the Company is left with residual assets, even if at that stage an investor interested to revive the same, then the investor should be allowed to do so.

6.4 He relied on the **Hon'ble Supreme Court** judgment in the case of ***K N Rajakumar vs. V Nagarajan & Others.;*** **(2022) 4 SCC 417,** wherein it has been held that **"**principal objects of I&B Code are, providing for revival of the Corporate Debtor and to make it a going concern. Therefore, every attempt has to be made first to revive the concern and make it a going concern, liquidation being the last resort.**"**

6.5 He further submits that in the application being IA (I.B.C)/240(KB)2024 filed by the respondent herein the applicant herein did not even file reply. However, the applicant was present when the matter was heard and reserved for Order(s). Even during that time no objections were made by the applicant herein and accordingly, no objections made by the applicant herein have been recorded in the said Order dated 10.05.2024 in the IA being IA (I.B.C)/240(KB)2024 which granted relief(s) and concession to the respondent herein for running the Company as a going concern.

6.6 Instead of withdrawing the IA (I.B.C)/1687(KB)2023 after Order dated 10.05.2024 was passed the Applicant pressed the application for dissolution without bringing to the notice the Order passed by this Tribunal in IA (I.B.C)/240(KB)2024 and obtained an Order of dissolution in the absence of respondent herein. Therefore, there is no merit in this application and hence liable to be set aside.

7. Analysis & Findings: -

7.1. We find from the sale notice published the corporate debtor was to be sold "as is where is basis" "as is what is basis" "whatever there is basis" and "no recourse basis".

7.2. The advertisement includes land, buildings, plant and machinery of the corporate debtor in its entirety. The advertisement has neither indicated that it is a slump sale or sale as a going concern.

7.3. It is not the case of the liquidator that the entire plant along with its plant and machineries was not sold to the respondent. The case of the liquidator is only that the plant was not functioning for the past 6 years, and therefore, the plant and machinery are not in working condition to be sold as a going concern.

7.4. We are of the view that the intention and the decision taken by the SCC to sell the corporate debtor on slump sale basis has not come out clearly in the advertisement when the entire factory is sold along with the plant and machinery. In such a scenario it is open for the auction purchaser to treat the sale on going concern basis, particularly when the entire plant, along with land, buildings, machineries has been sold. It is the successful auction purchaser who is in a position to decide whether he will be in a position to run the Company as a going concern or not with or without carrying out necessary repairs/refurbishing.

7.5. We see no allegation from the liquidator that the Successful Auction Purchaser (Respondent) is planning to misuse the reliefs and concession or not going to run the company as a going concern.

7.6. Regulation 32(a) of liquidation Rules, 2016 contemplates SCC and/or Liquidator to sell the Company as a going concern in terms of Regulation 32 (d) and (e).

7.7. Regulation 32(d) contemplates sale of the corporate debtor as a going concern and Regulation 32(e) contemplates sale of even business or businesses of the corporate debtor as a going concern.

7.8. In this case, it is evident that the buyer of the plant is interested to run the corporate debtor as a going concern and the plant has been purchased in its entirety.

7.9. When that being the case, the Stakeholders' Consultation Committee decision to sell the corporate debtor as a slump sale basis without exploring the options provided in Regulation 32(d) and 32(e) is against the objectives of the Code. In any event, neither the sale notice nor the sale certificate has indicated that the sale was slump sale except that both the documents contained the words "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse basis".

7.10. Under the said facts and circumstances of the case, it is open for the respondent to treat the sale as a going concern and run the Company as a going concern.

7.11. The primary goal of the Resolution Plan as well as sale of the Corporate Debtor the revival of the corporate debtor business.

7.12. In view of above discussions, we are of the view that this application is meritless, and accordingly, this application stands dismissed.

8. Hence, this application, i.e., **IA(I.B.C.)/1562(KB)2024** is **dismissed** accordingly.

9. The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

10. Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

11. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 17th day of December 2024.

Ar. [steno]