

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 4388 OF 2023

IN

C.P. (IB) No. 2392 of 2019

Under Section 60 (5) of the Insolvency &
Bankruptcy Code, 2016

Ms. Rekha Shah

...APPLICANT

vs.

Stressed Assets Stabilisation Fund

...RESPONDENT

In the matter of:

Stressed Assets Stabilisation Fund

...ORIG. PETITIONER

vs.

Adya Oils and Chemicals Ltd.

...CORPORATE DEBTOR

Order Dated: 18.12.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)
Hon'ble Sanjiv Dutt, Member (Technical)

Appearance (Physically):

For the Applicant: Mr. Devarajan Raman a/w Adv. Shaila Tawde &
Ms. Rekha Shah

For the Respondent: Adv. Amir Arsiwala

1. The above application bearing I.A. No. 4388 OF 2022 is filed by Ms. Rekha Shah, liquidator (hereinafter referred to as the “**Applicant**”) seeking directions against Stressed Assets Stabilisation Fund (hereinafter referred to as the “**Respondent**”) under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter called as “**the Code**”), praying for following directions:

i. *“Whether to cancel the auction and refund the money paid by the Successful Auction buyer in the light of the order of this Hon’ble Tribunal containing the interim relief till the next date of hearing on 30.08.2023.*

Or

ii. *Complete the auction by handing over to the Successful Auction buyer the building auctioned and for which the entire amount has been paid.*

iii. *Whether to defer further auction of the land blocks 77 & 79 pending hearing and disposal of I.A. 883/2023.*

iv. *Any other order that this Hon’ble Tribunal may deem fit under circumstances.”*

Brief Facts of the Case

2. The Applicant is the Liquidator of “Adya Oils and Chemicals Limited”, the Corporate Debtor in C.P. No. 2392 of 2019 and has filed the present Interlocutory Application seeking clarification on the interim stay that was granted in I.A. 883 of 2022 by this Hon’ble Tribunal vide order dated 30.08.2023.

3. The Applicant submits that I.A. 883 of 2022 was heard on 05.04.2022 and this Tribunal restrained the liquidator from taking any action till the date of next hearing. The case was posted on

11.04.2022. On 11.04.2022, this Tribunal continued the interim relief till 06.06.2022. On 06.06.2022, again this Tribunal directed the interim order to continue in I.A. 971 of 2022. However, it was presumed by the Applicant that the order was actually passed by this Tribunal under I.A. 883 of 2022 and I.A 971 of 2022 was mentioned due to oversight.

4. Thereafter, till 26.06.2023, no order for the continuation of the interim relief was passed by this Tribunal and on 20.07.2023, the matter was heard with the direction to complete the pleadings. However, no order for continuation of interim relief was passed nor was any request made by the Applicant in I.A. 883 of 2022 for seeking such relief.
5. Pursuant to above and in view of the fact that the process was getting delayed, admittedly the Applicant/Liquidator sought clarification whether the Applicant could proceed to sell the Assets as the interim stay earlier granted had not been extended. It is submitted by the counsel for the Applicant that the court orally stated that there was no need to seek permission from this court for Liquidator to decide if there was no stay on the sale of Assets. However, as a matter of caution, the Applicant sought legal opinion from Shah & Furia Associates, Advocates and Solicitors. On the strength of the opinion received, the Liquidator proceeded with the auction sale. The Liquidator initiated the sale of assets in the interest of maximising value and closing the process. The period of extension of liquidation process was till 06.09.2023.
6. The Applicant has relied on the ***Hon'ble Supreme court order dated 15.10.2020 in Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs Central Bureau of Investigation in Miscellaneous Application No. 1577 of 2020*** wherein it has been laid down that in all Civil and Criminal proceedings, any interim relief granted

cannot exceed 6 months unless similar extension is granted by a speaking order.

7. Thereafter, the Applicant proceeded with the Public auction of the two assets i.e. Block Nos. of 77 & 79 and Building in Block No. 83 which was a dilapidated incomplete structure. The details of the auction have been furnished as follows:

Sr. No.	Activity	Date
1	Public Notice for Auction	05.08.2023
2	Last date for submission of eligibility document	18.08.2023
3	Date of intimation of qualified buyer	20.08.2023
4	Last date for inspection	27.08.2023
5	Last date for EMD	28.08.2023
6	E-Auction Date	30.08.2023

8. The Applicant did not receive any bid for the land block. However, bid for the building structure was received for Rs.19 Lakhs against reserve price of Rs.18 Lakhs, which was paid entirely by the auction purchaser. The valuation of the building was Rs.11 Lakhs.
9. The Applicant submits that on the day of auction, this Tribunal incidentally passed an order dated 04.07.2023 for continuing the interim relief till next date of hearing on 06.10.2023.
10. The Applicant further submits that the actions of the Applicant were intended to maximise value and complete the process at the earliest and not to violate the order of this Hon'ble Tribunal.

11. Further, the sale of building was discussed in the SCC meeting dated 09.03.2022 and the same was not objected to by the SCC. The Applicant thus submits that the building realised a good value of Rs.19 lakhs in auction and therefore the said sale should be permitted to continue.
12. Though the Respondent appeared on notice, it did not file any reply to the present I.A. but advanced oral arguments.
13. The case of the Respondent is that filing of the present Application by the Liquidator is an attempt to cover up the contemptuous conduct on her part, as the Liquidator is guilty of contempt of the order passed by the Hon'ble Tribunal. The Respondent submitted that the Liquidator in an attempt to hurriedly dispose of the secured assets of the Corporate Debtor deleted several blocks of land from the asset memorandum and there after sought to individually auction each remaining block which has deteriorated the value of the assets of the Corporate Debtor. The Respondent being prejudiced and dissatisfied with the conduct of the Liquidator had filed an IA 883 of 2022 for restraining the Liquidator from proceeding with the sale of the assets of the Corporate Debtor. On 05.04.2022, the Hon'ble Tribunal was pleased to direct the Liquidator not to take any further steps till the next date of hearing. The case was posted for 11.04.2022 when the interim order was directed to be continued till the next date, that is, 06.06.2022. On 06.06.2022 and 04.07.2022, the interim order was further directed to continue. Thereafter, on subsequent twelve occasions i.e., dated 02.08.2022, 12.08.2022, 12.09.2022, 12.10.2022, 03.11.2022, 17.11.2022, 01.01.2023, 16.02.2023, 27.02.2023, 11.04.2023, 01.05.2023 and dated 26.06.2023, there was no continuation of interim orders. However, on 30 August 2023, interim relief was granted. Hence, the Respondent contends that it is evident that the

Liquidator has exceeded its brief and committed contempt of the orders of the Hon'ble Tribunal.

Findings:

14. After hearing the counsels for the parties and in the peculiar facts and circumstances of the present case, we deem it appropriate to peruse all the orders passed by this Hon'ble Tribunal. The relevant orders are being reproduced hereunder after due appreciation. The **order dated 05.04.2022** vide which the interim stay initially was granted is as under :-

5. This Bench directs that no action will be taken by the Liquidator with regard to auction of sale of assets till the next date of hearing.

The **order dated 11.04.2022** is reproduced hereunder.

8. IA 883 of 2022- Mr. Amir Arsiwala, Counsel for the Applicant is present and seeks indulgence to file short rejoinder. Permitted.
9. List the matter on **06.06.2022**. Interim relief continued till 06.06.2022.

On **06.06.2022** also this Hon'ble court was pleased to direct :-

4. The Professional appearing for the Applicant is directed to file affidavit of service. Interim orders to continue.

A perusal of the order dated 05.04.2022 reveals that this Tribunal had directed the Liquidator that no action will be taken with regard to the auction sale of the assets till next date of hearing and the matter was posted on 11.04.2022. On 11.04.2022, this Bench again directed for continuing for the relief sought by the Applicant in I.A. 883 of 2022 to restrain the liquidator from sale of assets till 06.06.2022. On 06.06.2022, also this Bench has ordered

continuation of the interim relief restraining the Liquidator for the auction of the assets, but this order inadvertently was passed in I.A. 971 of 2022. However, in this order no date was mentioned about the validity of the Order.

15. Thereafter, when the case was listed on 02.08.2022, 12.08.2022, 12.09.2022, 12.10.2022, 03.11.2022, 17.11.2022, 01.01.2023, 16.02.2023, 27.02.2023, 11.04.2023, 01.05.2023 and 26.06.2023, no specific dated bound order for the continuation of the interim relief granted. Further when the matter was listed on 27.07.2023, this bench only directed the Respondents in I.A. 883 of 2022 to file their reply within two weeks by serving a copy of the same to the other side. The matter was posted for hearing on 30.08.2023. On 30.08.2023, the counsel for the applicant prayed for continuation of interim relief having been granted vide order dated, after perusing the order dated 05.04.2022, directed the liquidator to not take any action for the auction or sale of assets. The extracts of the order dated 30.08.2023 is as under:-

Order dated 30.08.2023

I.A. 883 of 2022

Vide order dated 05.04.2022 this Court was pleased to direct as under:

"5. The Bench directs that no action will be taken by the Liquidator with regard to auction of sale of assets till the next date of hearing"

Subsequently vide an order dated 04.07.2023, the interim order has been directed to continue. Let the interim order continuing till the next date of hearing. Adjourned to 16.10.2023.

It is pertinent to note that on the date of the above said order, the auction was to be conducted by the Liquidator and the said fact was to the knowledge of the Respondent. The case of Applicant is

that she had sought the legal opinion on the issue of vacation of the stay granted. In view of the fact that the time was running out and the last date for the liquidation was 06.09.2023. In terms of Schedule I of Regulation 33 of the Liquidation Regulations, the time was running out. The Legal opinion sought by the Applicant was rendered on the strength of the judgement dated 15.10.2020 by the **Hon'ble Supreme court in Asian Resurfacing of road Agency Pvt. Ltd. & Anr. Vs Central Bureau of Investigation in Miscellaneous Application No. 1577 of 2020** wherein the Hon'ble Supreme Court held that where stay is granted, the same will end on the expiry of six months from the date of such order unless extended by the Speaking order. The perusal of the facts of this case makes it evident that the interim stay granted vide order dated 05.04.2022 in IA 883 of 2022 was granted upto 11.04.2022. On 11.04.2022 the said interim relief was extended till 06.06.2022 and on 06.06.2022 the Hon'ble Court though directed the interim order to continue but inadvertently the said order which was supposed to be in IA 883 of 2022 was issued in IA 971 of 2022.

That when the matter was taken up on 30.08.2023, the Respondent being fully aware of the fact that on the same date i.e. 30.08.2023, the e-auction was already fixed by the Liquidator still requested the Hon'ble Court for grant of continuation of interim relief which was granted vide order dated 05.04.2022 and 04.07.2022. The Hon'ble Court directed the interim order to continue till the next date of hearing. It deserves to be taken note of that neither the very first order 05.04.2022 granting interim relief initially nor the order dated 30.08.2023 is a speaking order. The Hon'ble Supreme court **in Asian Resurfacing of road Agency Pvt. Ltd. & Anr. Vs Central Bureau of Investigation** had made very clear that the stay granted is bound to expire after 6 months if the same is not extended by the speaking order. Thus in view of

the law laid down by the Hon'ble Supreme Court and in view of the findings recorded in I.A. 883 of 2022 vide separate order, we deem it appropriate to direct the Applicant to complete the Auction having been conducted on 30.08.2023 by handing over the possession of the property for which the entire amount has been paid.

In view thereof the Present I.A. 4388 of 2023 stands allowed.

SD/-

Sanjiv Dutt
Member (Technical)
/Abhay/

SD/-

Reeta Kohli
Member (Judicial)