

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 698 of 2020 in CP(IB) 53/NCLT/AHM/2017

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.12.2020**

Name of the Company: Sundresh Bhatt Liquidator of ABG
Shipyard Ltd

Section 60(5) of IBC r.w reg 33(2)(b) of IBBI,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.		<u>ORDER</u> (Through Video Conferencing)		
	Advocate, Ms. Rashmi Jain is present on behalf of Advocates, Mr. Nipun Singhvi and Mr. Vishal Dave, for the applicant.			
	The order is pronounced in the open court, vide separate sheet.			
				
	CHOCKALINGAM THIRUNAVUKKARASU MEMBER (TECHNICAL)			MANORAMA KUMARI MEMBER (JUDICIAL)
	Dated this the 2 nd day of December, 2020.			

**BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

**IA No. 698 of 2020
in
C.P. No.(IB) 53 of 2017**

In the matter of:

Mr. Sundaresh Bhat,
Liquidator of
ABG Shipyard Limited

...Applicant/ Liquidator

In the matter of:

ICICI Bank Ltd.

... Financial Creditor

Versus

ABG Shipyard Limited

... Corporate Debtor

Order delivered on 2nd December, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate Mr. Nipun Singhvi for the Applicant

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. The Instant Application is filed by Mr. Sundaresh Bhat, Liquidator of ABG Shipyard Limited, the Corporate Debtor, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 33(2)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, with the following prayer:

Chockalingam

Manorama

- i. To allow the Liquidator to apply Clause 12 of Schedule-I of the Liquidation Regulation as amended on 25 July 2019, for the liquidation process of the Corporate Debtor in exercise of power under Rule 11 of NCLT Rules, 2016;

Alternatively,

To declare that the Clause 12 of Schedule-I of the Liquidation Regulation as amended on 25 July 2019, shall be applicable for the liquidation process.

- ii. To allow the Liquidator to permit the highest bidder of an auction to provide balance sale consideration within 90 days from the date of such demand in accordance with the specific terms of Clause 12 of Schedule-I of the Liquidation Regulation as amended on 25 July 2019;

Alternatively,

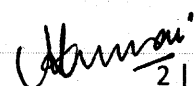
To declare that time limit of 90 days may be permitted in accordance with Clause 12 of Schedule-I of the Liquidation Regulation as amended on 25 July 2019.

- iii. Consider and allow the present IA in terms of Section 60(5) read with Regulation 33(2)(b) and Clause 12 of Schedule-I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iv. To permit the Liquidator to sell the assets of the Corporate Debtor by way of private sale in terms of Regulation 33(2)(d) of the Liquidation Regulations in case e-auction fails;
- v. And for such other/further order(s) and/or direction(s) as the facts and circumstances of the case may warrant.

2. The brief facts of the case are as under: -

2.1 CP(IB) No. 53 of 2017 was filed by Financial Creditor viz. ICICI Bank, under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code"), seeking



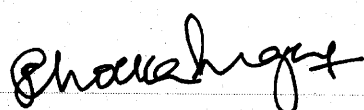

2 | Page

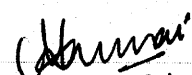
initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 01.08.2017 by this Adjudicating Authority. Mr. Sundaresh Bhat was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 The Committee of Creditors (hereinafter referred as "CoC") later on confirmed Mr. Sundaresh Bhat as Resolution Professional (hereinafter referred as "RP") and thereafter, since no Resolution Plan was approved by the CoC, Liquidation application was filed and Liquidation order was passed on 25.04.2019.

2.3 It is submitted by the applicant that the applicant had put the assets of the Corporate Debtor for sale through public auction by way of e-auction starting from public advertisement dated 17 September, 2019 but has failed for four consecutive attempts on one or the other reasons, even after reduction of the reserve price of the assets of the Corporate Debtor, time and again, with regard to different e-auctions.

2.4 It is submitted by the applicant that after the failure of four e-auctions and during the pendency of the fifth e-auction, the applicant has attempted to understand the local market scenario and learnt regarding the possibility of attracting few buyers. However, the time frame of payment of sale consideration within fifteen days on conclusion of the e-auction and declaration of the highest bidder is considered to





be too short especially keeping in mind the quantum of sale consideration and the ongoing economic slow-down due to the COVID-19 pandemic.

3. QUESTIONS RAISED:

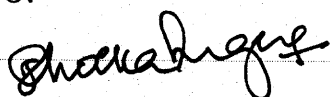
- i. Whether the Liquidator, with respect to the assets of the Corporate Debtor (in liquidation) of which liquidation process had commenced before 25 July, 2019, can be permitted to grant the benefit of the amendment regarding the payment of the balance consideration within 90 days to the highest bidder instead of 15 days, as applicable to the liquidation processes commenced before the date of amendment?
- ii. Whether the Liquidator can be permitted to sale / dispose of the assets of the Corporate Debtor (in liquidation) by way of private sale after having failed to sell / dispose of the said assets by way of e-auction?

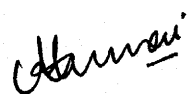
FINDINGS:

4. Regarding the first issue of granting of the permission to the liquidator for granting the benefit of the amendment to the highest bidder of an auction, it is important to deal with the relevant provisions and other material as mentioned hereinafter:

Legal Position before the amendment on 25th July, 2019:

Relevant extract of the Clause 12 of the Schedule I to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:





“(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within fifteen days of the date when he is invited to provide the balance sale consideration. On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.”

Legal Position on and after the amendment on 25th July, 2019:

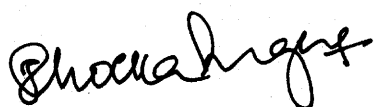
Relevant extracts of the Clauses 12 and 13 of the Schedule I to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:

“(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:

Provided that payments made after thirty days shall attract interest at the rate of 12%:

Provided further that the sale shall be cancelled if the payment is not received within ninety days.

(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.”

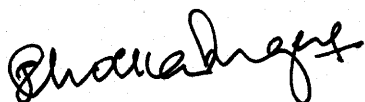


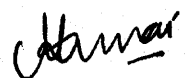


Relevant extract of the circular issued by the Insolvency and Bankruptcy Board of India bearing reference no. IBBI/LIQ/024/2019 dated 20" August,2019:

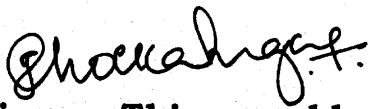
"2. The stakeholders have expressed a difficulty in applying the Amendment Regulations to a Liquidation process, which commenced before 25th July, 2019. It is reiterated that the provisions of Amendment Regulations are not applicable to the Liquidation processes, which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to liquidation processes, which commenced on or after 25th July, 2019."

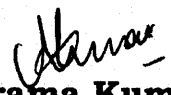
5. It is a matter of record that the liquidation order with regard to the present Corporate Debtor was passed under section 33 of the IB Code, 2016 and the Applicant was appointed as the liquidator on 25th April, 2019 i.e. much prior to the date of the amendment to the regulations relating to the liquidation process which are under consideration.
6. As per the provisions of section 35 (1) (f) of the Code, the liquidator is under obligation to sell / dispose of the assets of the Corporate Debtor (in liquidation) by way of public auction or private contract or in parcels as may be specified by the Board through the Insolvency and Bankruptcy Board of India(Liquidation Process) Regulations, 2016.





7. It is observed that after the failure of four e-auctions and during the pendency of the fifth e-auction, it is felt by the applicant that time frame of payment of sale consideration within fifteen days as applicable to the Corporate Debtor is considered to be too short especially keeping in mind the quantum of sale consideration and the ongoing economic slow-down due to the COVID-19 pandemic. However, it is pertinent to mention that applicant had commenced the e-auction processes with effect from 17th September, 2019 and the COVID-19 pandemic and imposition of the lockdown thereto had taken effect from 25th March, 2020.
8. It is a matter of record that Liquidation application was allowed much prior to the amendment and thereafter, amendment came into force. Hence, the amendment benefit cannot be granted to the Applicant retrospectively in view of the clarification made therein dated 26.08.2019. Therefore, only option left is private sale which is allowed by this order.
9. Under the facts and circumstance as narrated above, we partially allow this application by permitting Prayer 4 only. Accordingly, the instant application stands disposed of.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)

Shreya