THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 1040 OF 2023

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

Melkar TTI Biofuels Limited

…Applicant/

Vs.

Gulshan Kumar Gupta & Others

…Respondent

In the matter of

C.P.(IB) No. 977/MB/2019

United Bank of India

…Financial Creditor

Vs.

Gadhinglaj Agro Alchochem Limited

Corporate Debtor

Order delivered on: 12.03.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. B.Gopalakrishnan, Advocate

For the Respondent : Mr. Soham Bhalerao, Advocate

For State Tax Department : Mr. Amar Mishra, Advocate

For the Liquidator : Mr. Navin Arora, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 1040 of 2023 is filed by Melkar TTI Biofuels Limited u/s 60 (5) of the Insolvency and Bankruptcy Code, 2016 on 14.03.2023 in the liquidation proceeds of Gandhinglaj Agro Alchochem Limited (Corporate Debtor) seeking following reliefs:

   a. *The Tribunal be pleased to hold that the collection by Respondent no.. 2 i.e. The Commissioner, Maharashtra Excise Department from the Applicant being the amount due and payable by the Corporate Debtor company which is under Liquidation is ipso facto void-ab-initio since it is a settled law that the auction purchaser namely the applicant is not liable for the dues of the Corporate Debtor and the said dues has to be collected in accordance with the law from either the Resolution Applicant or the Liquidator as the case may be'*
   b. *Direct the Respondent No.2 to refund the amount of Rs. 43,75,091/- (Rupees Forty Three Lakhs Seventy Five Thousand Ninety One Only)- paid by the Applicant under protest and as collected by the Respondent no. 2 towards the past dues arising from the Corporate Debtor who is under Liquidation;*
   c. *Direct Respondent No. 2,3 and 4 i.e. The Commissioner Maharashtra Excise Department, Maharashtra State Electricity Distribution Company Limited, Kolhapur and Maharashtra Sales Tax*

Department, Mumbai respectively to release their attachments and transfer the licenses, electricity meters, and mutate the land pertaining to the Applicant's purchase in the name of Applicant and not to proceed against the Applicant for any dues that may have arisen or payable pertaining to a period prior to the date on which the Applicant has acquired the Distillery plant along with the land and other fixtures pertaining to the said land including the right of way;

d. *The Tribunal be pleased to hold and order that the Applicant being an auction purchaser as a going concern of the Distillery Plant and land appurtenant thereto is not liable for any dues which remains unpaid or which has arisen on account of the non-payment by the Corporate Debtor and the Applicant be protected from further such illegal claims by the Respondent No. 2 to 4;*

e. *This Tribunal may be pleased to restrain Respondent Nos. 2 to 4 from taking any steps against the Applicant to recover the dues, if any, which are payable by the Corporate Debtor for a period prior to the date on which the business of distillery manufacturing was sold to the Applicant;*

f. *That this Tribunal may pass such other orders which in the interest of the justice, equity and good conscience this Hon'ble Tribunal deems fit including imposition of cost on Respondents.*

2. The Applicant company is the successful bidder in the case of an e-auction conducted by the Respondent No. 1 who is the Liquidator of Gadhinglaj Agro Alcochem Ltd (in liquidation) on 23.07.2021 wherein the distillery business of the Corporate Debtor was sold to the Applicant as a going concern for a consideration of Rs.17,10,00,000/- (Rupees Seventeen Crores Ten Lakhs Only).

2.1. The sale of the Distillery Manufacturing Business of the Corporate Debtor was confirmed by Respondent No. 1 vide Sale Certificate dated 27.10.2021 issued by Respondent No. 1 who is the liquidator of the Corporate Debtor. The Liquidator of the Corporate Debtor had issued a Possession Letter dated 27.10.2021 to the Applicant wherein the possession of all the assets sold through the e-auction was handed over to the Applicant.

2.2. The Applicant applied to various authorities including Respondent No. 2 and 3 vide various letters informing them that the distillery manufacturing business of the Corporate Debtor has been sold to the Applicant company vide an e-auction.

2.3. To the shock of the Applicant, the Applicant received letters from Respondent Nos.2 and 3 wherein it was claimed by them that they will not be in a position to transfer the existing licenses and/or permissions in favour of the Applicant unless otherwise the dues overdue and payable by the company in liquidation prior to the period of sale as a going concern are paid and cleared.

2.4. The amounts that are alleged to be outstanding from the Corporate Debtor are reportedly for a period which is much before the Applicant took over the business of distillery manufacturing of the Corporate Debtor through the process of e-auction as conducted by the liquidator.

2.5. The Applicant submits that even as per the Sale Certificate dated 27.10.2021 issued by the Respondent No. 1 to the

Applicant, it was made absolutely clear that the Applicant shall not be liable for any dues payable by the Corporate Debtor.

2.6. The actions of the Respondent Nos. 2 and 3 appear to be a deliberate attempt whereby instead of filing their claims with the liquidator they are attempting to bypass and circumvent the mechanism provided in the Insolvency and Bankruptcy Code and demanding from the applicant herein.

2.7. Respondent No. 4 herein has marked a lien on the land belonging to the Corporate Debtor subsequent to the commencement of the CIRP in gross contravention of the provisions of the 1&B Code.

2.8. The Applicant had filed IA No. 1409/2022 wherein the Applicant had arrayed 17 parties as respondents including the Respondents named in this IA and even though Respondent No. 1 supported the contention of the Applicant that the Applicant is not liable for the prior dues, Respondent Nos. 2,3 and 4 chose to remain unrepresented with the sole intention to frustrate the proceedings.

2.9. Since the Applicant was incurring huge losses for the delay caused, the Applicant had no other option but to pay, under protest, a sum of Rs. 43,75,091/- (Rupees Forty-Three Lakhs Seventy Five Thousand Ninety One Only) to the Respondent No. 2. The Applicant, through this IA, is praying for refund of the said amount paid to Respondent No. 2 as well as for other prayers as mentioned in the Interlocutory Application.

3. The Respondent No.1 had filed an affidavit in reply dated 03.04.2023 stating that

3.1. The resolution process was carried in accordance with the provisions of Insolvency and Bankruptcy Code 2016 (IB Code) and no resolution plan was received for resolution of the Corporate Debtor. Therefore, the COC unanimously agreed to liquidate the Corporate Debtor and, on an application filed by the RP, this Tribunal was pleased to pass an order for commencement of liquidation of Gadhinglaj Agro Alcochem Limited vide order dated 27.01.2021 and Mr. Gulshan Kumar Gupta, the Resolution Professional was appointed as Liquidator.

3.2. As per public announcement the last date for submission of claims was 25th February, 2021. After verification of claims, a list of stakeholders was finalized and a submitted to IBBI

3.3. .The valuation of assets of the Corporate Debtor was conducted in accordance with the provisions clauses (a) to (f) of regulation 32 of the IBBI (Liquidation Process) Regulations, which clearly suggest that the assets of the Corporate Debtor can be maximized in case these are realised on a going concern basis. A summary of such valuation is as follows:

Mode of valuation	Land and Building Average realization value (Rs.)	Plant and Machinery Average realization value (Rs.)	Total Average realization value (Rs.)
Assets on a standalone basis	1,55,99,924	8,85,09,047	10,41,08,971
Assets in slump sale	3,09,66,992	10,58,00,000	13,67,66,992
Assets collectively	-	10,15,70,199	-
Assets in parcels	-	-	-
The Corporate Debtor as a going concern	3,67,58,048	11,82,50,000	15,50,08,048
The distillery business of the Corporate Debtor as a going concern	3,67,58,048	11,82,50,000	15,50,08,048

3.4. That the matter regarding sale of assets of the Corporate Debtor was discussed with the Stakeholders Consultation Committee ("SCC"). The committee after deliberations agreed that in order to maximize the value, the liquidator should proceed with sale of the business of the Corporate Debtor as a going concern and fixed the reserve price at Rs. 15.51 crore.

3.5. The first sale notice was issued by the liquidator after strict restrictions imposed during the second wave of covid were relaxed for inviting bids for sale of distillery business on going concern basis. However, no bids have been received by the liquidator in response to the first sale notice. Thereafter, the matter was deliberated in the SCC meeting and the reserve price was reduced to 14.00 crore. Thereafter, in accordance with the decision of the second sale notice was issued by the liquidator.

3.6. In response to the aforesaid sale notice, the e-auction was conducted on 23.07.2021 and the applicant herein i.e., M/s Seebhal Mikelin Distillery Private Limited offered the highest bid of Rs. 17.10 crore and he was declared as successful bidder. The total bid money of Rs. 17.10 crore along with applicable interest was deposited by the successful bidder and accordingly the possession of the distillery unit was handed over to him on 27.10.2021, and upon handover of the possession, the sale was completed and accordingly sale certificate was issued on 27.10.2021 itself.

3.7. The sale was completed as above and no further action is required on the part of responded herein except the execution and registration of sale deed with the competent authority. The registration of sale deed is pending for action on the part of successful buyer in view of certain legal impediments as claimed in his application.

3.8. In accordance with the terms of the sale notice and the e-auction process documents, the respondent herein is in no way responsible and is not required to take any action for renewal and transfer of various licenses and permission in favor of the successful buyer which were issued by the different authorities to the Corporate Debtor for carrying on the distillery business.

3.9. It will also be pertinent to note that the prime difference in the valuation of assets is only due to the fact that the assets are sold on a going concern basis. In all the mode of valuations, the successful buyer shall have acquired all tangible assets. However, the valuation arrived in case of a sale on going concern basis is only and only due to the fact that the assets are to be used to carry on the distillery business on a going concern basis. The successful buyer can carry on the distillery business on a going concern basis only after such licenses and approval are renewed. In case of such licenses and permissions are not transferred in favor of the applicant, the assets cannot be used to carry on the distillery business on a going concern basis and ultimately it will defeat the basis objective of IB Code in order to maximize the value of assets of a Corporate Debtor.

3.10. In accordance with the terms of e-auction, the necessary action for renewal, validation and transfer of such licenses and permission are required to be taken by a successful buyer and not by the liquidator. However, the liquidator has always co-operated to the applicant herein as and when he is approached for any kind of support in this regard. In order to renew and transfer various licenses and permissions in his favor, the successful buyer is required to make the payment of applicable dues which are pertaining to a period after the date of sale certificate. Accordingly, the successful buyer is liable to bear all the expenses and costs which arises on or after the date of sale certificate i.e., 27.10.2021.

3.11. Therefore, it is clear that the auction buyer is not liable for any dues as stated to be claimed by various authorities which are related to a period prior to the date of sale certificate. The liquidator has considered all the claims submitted to him in response to the public announcement and have admitted such claims after verification. Those who have not submitted a claim to the liquidator cannot demand such claims from the auction purchaser. The lapse on the part of a person who failed to submit its claim to liquidator does not cast any liability on the auction purchaser.

x) The status of claim of various parties who are arrayed as respondent in the instant application and stated to have claimed dues from the auction buyer and who is the applicant herein is as follows:

No.	Name of Respondent	Status of claim
1	Commissioner, Maharashtra Excise Department	No claim submitted to the Resolution Professional or Liquidator.
2	Maharashtra State Electricity Distribution Corporation Limited	No claim submitted to the Resolution Professional or Liquidator. However, vide e-mail dated 17.03.2022 advance copy of an interlocutory application was served to the liquidator with prayer to allow it to submit claim to the liquidator. No directions received in this regard. A copy of said email is enclosed as "**Annexure R1/12**".
3	Maharashtra Sales Tax Department	The claim of Rs. 9,62,94,462 (Rupees nine crore sixty-two lakh ninety-four thousand four hundred sixty-two only) was submitted and same has been admitted by the liquidator. However, the lien was rejected as no supporting document claiming lien was enclosed with the claim application. Moreover, no lien can take place during moratorium period. A copy of letter for admission of claim as an unsecured creditor is enclosed herewith as "**Annexure R1/13**". It will not be out of place to mention that no appeal has been preferred by the department against the admission of claim as unsecured.

3.12. However, in case of claim have been submitted by the aforesaid respondents to the liquidator, they should have fallen under the category of operational creditor and shall be entitled to distribution only after the claim of secured financial creditor and others prior to them is satisfied in full. The amount, if any, demanded by the respondents from the successful buyer appears to be a deliberate attempt knowing that they will not be getting anything in accordance with the priority order under section 53 of the IB code.

4. Heard the Counsel and perused the material available on record.

4.1. In the case of *Paschimanchal Vidyut Vitran Nigam Ltd. v. HSA Traders*, *in Company Appeal (AT) (Insolvency) 527/2023 dated 05.12.2023*, the Hon'ble NCLAT Delhi Bench has held that the Suceessful Auction Purchaser (in Liquidation Process) is not liable to pay any arrears of electricity connection which are dues of Corporate Debtor. Further, in another decision in case of *Rashidhan Sales Pvt. Ltd. and another Vs. Damodar Valley Corporation and others*, *in WP No. 12683 of 2022 dated 17.01.2023* the Hon'ble Calcutta High Court held that when a property has been sold in an auction sale on 'as is where is' basis in liquidation under IBC, Auction purchaser is not liable to pay pre-CIRP outstanding dues of electricity connection before getting a new electricity connection.

4.2. These propositions of law are based on 'Clean Slate Principle' and mandates that an auction purchaser can not be fastened with the obligation to pay any dues in respect of properties, purchased in auction, for the period prior to the date when the auction sale is completed. It is trite law that all claims of Creditors, including statutory authorities, are to be dealt with in accordance with the provisions of Code upon commencement of Liquidation proceedings and are to be settled in accordance with the provisions contained in Section 53 of the Code. The claims, not filed by the Creditors extinguishes and the successor of the Corporate Debtor can not be called upon to pay dues arising out of such claims in case such dues remains still unpaid in terms of Section 53 of the Code.

4.3. The Code provides the manner in which a lien over the property of the Corporate Debtor held by any creditor can be exercised for recovery of dues. It is not in dispute that neither of Respondents, even if they can be said to have lien over the property which they didn't has followed the procedure contemplated in the Code in this relation. Hence, the lien of all creditors on the property, if any, stands vacated upon admission of claim. It is made clear that we are not dealing with the issue whether any of Respondent had statutory lien over the property of Corporate Debtor so as to entitle such creditor to acquire the status of secured creditor for distribution in terms of Section 53 of the Code because this issue is not for consideration before us in this Application.

4.4. In view of the foregoing discussion, we have no hesitation to direct Respondent No. 2 to refund the money collected towards the dues of Corporation pertaining to period prior to auction conclusion date within 30 days from the communication of this Order. Further, the Respondent No. 2, 3 & 4 are directed to release their attachments and transfer the licenses, electricity meters, and mutate the land pertaining to the Applicant's purchase in the name of Applicant, subject to payment of any fees as is applicable to such transfer and due adherence to the procedure in that respect. The Respondent No. 2, 3 & 4 shall also not proceed against the Applicant for any dues that may have arisen or payable pertaining to a period prior to the date on which the Applicant has acquired the Distillery plant along with the land and other fixtures pertaining to the said land including the right of way. It is clarified that such transfer or mutation or provision of new connection shall be withheld on account of non-payment of dues for the period prior to auction conclusion date.

5. In view of above, IA 1040 of 2023 is allowed and disposed of accordingly.

Sd/-	Sd/-
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)