

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

**I.A. 883 OF 2022**

**IN**

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

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

**Stressed Assets Stabilisation Fund**

**...APPLICANT**

**vs.**

**Ms. Rekha Kantilal Shah**

**...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: Adv. Amir Arsiwala

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

1. The above Interlocutory Application bearing I.A. No. 883 of 2022 is filed by **Stressed Assets Stabilisation Fund** (hereinafter referred to as the “**Applicant**”) seeking direction against Ms. Rekha Kantilal Shah (hereinafter referred to as the “**Respondent**”) under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) praying for following reliefs:

*“This Hon’ble Tribunal may be pleased to*

- i. To restrain the liquidator from selling the assets of the Corporate Debtor more particularly land parcels bearing Block Nos. 77 and 79 till the disposal of Interlocutory Application No. 1305 of 2020 and such other applications that the Liquidator may prefer in order to restore the original status of all land parcels;*
- ii. To Restrain the Liquidator from deletion of assets of the Corporate Debtor from the Liquidation estate and subsequent amendment of the asset memorandum; and*
- iii. To quash and set aside such deletion of assets of the Corporate Debtor from the Liquidation estate and subsequent amendment of the asset memorandum already done by the Liquidator.*
- iv. Pending the hearing and disposal of the present application stay the liquidation process till the disposal of Interlocutory Application No. 1305 of 2020 and all other such applications as may be preferred by the*

*Liquidator for restoring the original status of the land parcels;*

- v. To direct the Liquidator to take appropriate steps against the promoters / erstwhile management and all such other persons who were involved in conducting the business of the Corporate Debtor with an intent to defraud the creditors for recovery of losses caused to the Corporate Debtor and to restore the original status of the land parcels;*
- vi. Costs of this interlocutory application;*
- vii. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case."*

### **Brief Facts of the Case**

2. This application is preferred by the Applicant i.e. Stressed Assets Stabilisation Fund to restrain the Liquidator from deletion of all assets of the Corporate Debtor from the Liquidation estate and subsequent amendment of the asset memorandum and also to restrain the Liquidator from selling the assets of the Corporate Debtor i.e. land parcels bearing block Nos. 77 and 79 till the disposal of I.A.1305 of 2020.
3. The case of the Applicant is that IDBI had sanctioned a term loan of Rs. 7 Crores to the Corporate Debtor in December, 1998 by securing a first charge on the immovable properties of the Corporate Debtor situated at block No. 81 & 83 to 87 admeasuring in aggregate 21.68 bighas or thereabouts at Manglej Karjan Taluka, Sub-district

Baroda, Gujarat. The said loan was also secured by personal guarantee of S/Shri Janardhan Prasad Chaturvedi, Rajendra Prasad Chaturvedi, Sudhir Chaturvedi and Samir Chaturvedi and a Pledge of 15.33 lakh number of equity shares of the Corporate Debtor held by Shri Sudhir Chaturvedi, Smt. Kalpana Chaturvedi, Shri Samir Chaturvedi, Modi Exim Pvt. Ltd and Bansibat Finance & Investment Pvt. Ltd.

4. The Applicant being a Special Purpose Vehicle (SPV) was assigned the debt of IDBI vide Trust Deed dated 24.09.2004. The Applicant submits that various attempts were made by promoters of Corporate Debtor to settle the said debt. Under the settlement proposal, an amount of Rs. 2.18 Crores was paid to the Applicant by the Corporate Debtor but in view of the defaults committed by the Corporate Debtor, the settlement proposal came to be revoked. It further submits that in March 2016, the Corporate Debtor produced a legal search report conducted by one M/s Atul Srivastava inter-alia concluding that the land given as security to IDBI and thereafter, assigned to the Applicant did not have clear mortgageable title except one parcel of land. The Applicant also appointed an advocate for due diligence but no conclusive findings were obtained. Ultimately, the Applicant was constrained to file CP 2392 of 2019 under Section 7 for seeking initiation of CIRP of the Corporate Debtor.
5. The claim of the Applicant was admitted. The Committee of Creditors (CoC) was constituted. The Applicant as the CoC member having 100% voting share held the first meeting on 29.10.2019 wherein the Respondent/Liquidator informed that some of the blocks of immovable property of the Corporate Debtor were still having status of “agricultural land”. In the second CoC meeting held on

18.11.2019, a composite report dated 16.02.2016 issued by Mr. Atul Srivastava with respect to the title of the land was discussed. The perusal of this report makes it clear that out of 6 blocks of land, 4 blocks were already transferred to third parties for which there was no sale deed or transfer document on record. No steps for conversion of “agricultural land” to “non-agricultural” were taken either by the Corporate Debtor or the Applicant. The Respondent/Liquidator further informed the CoC members that after her visit to the factory premises of the Corporate Debtor in October 2019, she noticed a wall being constructed in front of the gate of factory premises. Respondent/Liquidator intimated that after taking visit of land at Survey No. 77, it was observed that there was earlier an access to the land from the highway directly which had been blocked by constructing a wall by neighboring factory (M/s Jord Engineering Group). The promoter of M/s Jord Engineering Group is the son-in-law of the director of the Corporate Debtor.

6. The case of the Applicant is that in the 5<sup>th</sup> CoC Meeting dated 29.02.2020, the Applicant dissented with 100% vote in not going in for title investigation of the said lands. Pursuant to the liquidation resolution passed by the CoC and allowed by the Hon’ble Tribunal on 04.03.2020, the Respondent/Liquidator called for a consultation with stakeholders on 08.02.2021 wherein the Respondent/Liquidator placed on record detailed block wise summary on key observations as per title clearance report obtained by her. On the basis of said report, it was concluded that only 3 blocks of land could be sold by the Liquidator based on record available. The Applicant took a clear stand that being a mortgagee of the land blocks of the Corporate Debtor, the Applicant was indemnified for losses as per the Deed of Indemnity given by the Corporate Debtor. Therefore, no costs relating to the said lands

such as penalty, Non-Agriculture premiums etc. should be borne by the Applicant.

7. In the first Stakeholders Consultation Committee Meeting held on 02.12.2021, the Liquidator informed the members as under:
  - a) Block Nos. 80 & 81 were in the name of Government of Gujarat on account of non-compliance under Section 63AA of ***Bombay Tenancy and Agricultural Land Act, 1948*** and Section 73AA of ***Bombay Land Revenue Code, 1879***. However, no steps whatsoever were ever taken by the promoters of the Corporate Debtor to retrieve the said lands.
  - b) With reference to Block No. 82, it was informed that the said land was restored to the original seller due to non-compliance of Section 73AA of ***Bombay Land Revenue Code, 1879***, which was further sold to one Mr. Arjun Singh Solanki.
8. The liquidator informed the committee members that the said 3 blocks of land deserved to be liquidated from the liquidation estate and amended asset memorandum deserved to be prepared. The Stakeholders Committee did not agree for deletion of 3 blocks of land from the liquidation estate for the reason that the Applicant had a valid mortgage on the same as well as a declaration of undertaking and a deed of indemnity for all the losses. Out of 6 blocks of land mortgaged to the Applicant, only 3 blocks were in the name of Corporate Debtor, 2 blocks were in the name of Government of Gujarat and 1 block was in the name of one Arjun Singh Solanki.

9. During the second Stakeholders Consultation Committee Meeting, the Respondent/Liquidator informed that the liquidation estate had been amended by deleting 3 blocks of land. The present status of 6 blocks belonging to Corporate Debtor is as under:-

<b>Sr. No.</b>	<b>Old Block No.</b>	<b>Revised Block No.</b>	<b>Current Status</b>
1.	81	77	In the name of company, however, Non-compliance issue of Section 63AA and subject to NA premium.
2.	83	79	In the name of company, however, Non-compliance issue of Section 63AA and subject to NA premium.
3.	84	80	Vide Regd sale deed dated 02.02.1999 Mr. Rajendra prasad Chaturvedi as constituted attorney sold the subject land to CD and name of CD was entered into revenue records vide Mutation Entry no. 1297/01 dated 19.04.2000.  CD failed to give intimation/notice to the collector regarding purchase land for bonafide industrial use

			<p>within stipulated period from the date of purchase.</p> <p>Also provisions of sections 43 and 63AA of the <b>Bombay Tenancy and Agricultural Lands Act 1948</b> were not complied within stipulated period, thus name of Government of Gujarat was entered in revenue records vide mutation entry no 1382 dated 01.01.2003.</p> <p>Stamp duty on said Sale Deed dated 02.02.1999 is partly paid.</p>
4.	85	81	<p>Land owner belonged to Tribal caste and land was declared as prohibited land under provision of Section 73AA of <b>Bombay Land Revenue Code, 1879</b> and entry to the effect was made in Revenue records vide Mutation Entry No 809/1 dated 16.09.1981 Vide Regd. Sale Deed dated 02.02.1999, Mr. Rajendraprasad Chaturvevi as Constituted Attorney sold the subject land to CD and name of CD was entered into Revenue Records vide Mutation Entry No</p>

		<p>1297/05 dated 19.04.2000. However, Prior permission for executing the Sale Deed, was not obtained from Competent Authority. Hence, mutation entry no 1297/05 dated 19.04.2000 as per revenue records was rejected for non-compliance of Sec 73AA of <b><i>Bombay Land Revenue Code 1879</i></b>. Further, stamp duty on sale deed dated 02.02.1999 is partly paid. Deputy Collector, Vadodara vide case 11/99 dated 17.04.2002 declared ownership of subject to be of Govt of Gujarat. Further, name of Govt of Gujarat was entered in Revenue Records vide Mutation Entry No. 1362 dated 30.07.2002.</p> <p>In addition, there is non-compliance of Sec 63 AA of <b><i>Bombay Tenancy and Agricultural Lands Act 1848</i></b> within the stipulated period and also commencement of bonafide industrial use of subject land and NA permission for use of subject land for industrial use is</p>
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			not obtained from Competent Authority.
5.	86	82	<p>The subject land was declared as Prohibited Land under provisions of See 73 AA of <b><i>Bombay Land Revenue Code 1879</i></b> as land owner was Tribal by caste. Vide Regd. Sale Deed dated 02.02.1999, Mr. Rajendraprasad Chaturvedi as Constituted Attorney sold the subject land to CD and name of CD was entered into Revenue Records vide mutation entry no 1297/4 dated 19.04.2000. However, prior permission of sale of said land was not obtained from Competent Authority before execution of sale deed in name of CD, therefore mutation entry No 1297/4 dated 19.04.2000 as per revenue records was rejected for non-compliance of See 73AA of <b><i>Bombay Land Revenue Code, 1879.</i></b></p> <p>Original land owner, tribal by caste, expired on 20.10.2004 and his name was deleted from</p>

			<p>Revenue Records vide mutation entry no 1508 dated 10.12.2006.</p> <p>Deputy Collector Karjan vide its order bearing No R.T.S./Appeal/01/2015 dated 06.02.2015, rejected the mutation entry No 809/4 dated 16.09.1981 declaring that the provision of Sec 73AA of <b><i>Bombay Land Revenue Code, 1979</i></b> were not applicable to the subject land. The entry to effect was made in Revenue Records vide Mutation Entry No 1997 dated 26.02.2015.</p> <p>Vide sale deed dated 09.04.2015 the subject land was sold by legal heirs of original land owner to one Shri Arjunsingh Solanki and his name was entered into the Revenue records vide mutation entry no 2005 dated 09.05.2015. Further, stamp duty on sale deed dated 02.02.1999 is partly paid.</p> <p>Plus, there is non-compliance of Sec 63 AA of <b><i>Bombay Tenancy and Agricultural Lands Act</i></b></p>
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			<b>1948</b> within the stipulated period also certificate for commencement of bonafide industrial use of subject land from competent Authority is not obtained and NA permission for use of subject land for industrial use is also not obtained.
6.	87	83	Unit of company has been constructed and has clear title with NA order. Collector Vadodara also issued permission u/s 63 AA of <b><i>Bombay Tenancy and Agricultural Lands Act 1948.</i></b> However, adjacent block owners encroached the access way for block no 83.

10. It is further contended by the Applicant that the Corporate Debtor has neither challenged the rejection of mutation entries nor the omission of its name from the revenue records till date. Rather no steps have been taken by the Corporate Debtor in order to regularize the sale transactions. The Corporate Debtor has instead permitted creation of third party rights on the said blocks of land. The land belonging to the Corporate Debtor does not have clear title or clear access on account of defaults on part of the promoters of Corporate Debtor who acted hand in glove and in connivance with several other persons to create third party rights on the

mortgaged blocks of lands belonging to the Corporate Debtor only with a view to defraud the creditors of the Corporate Debtor.

11. The case of the Applicant is that in addition to the defaults and 'commissions and omissions' on the part of the promoters of the Corporate Debtor, now the Respondent/Liquidator seems to be in a hurry to dispose of the assets of the Corporate Debtor. Hence, the present Application has been filed so as to safeguard the interest of the Applicant and to maximize the value of the assets of the Corporate Debtor.
12. Vehemently countering the argument advanced by the learned counsel for the Applicant on the issue of Respondent/Liquidator being in a hurry and not working as per the objectives of the IBC, it was submitted by the Learned counsel for the Respondent/Liquidator that the law does not permit the Respondent/Liquidator to delay the process of liquidation endlessly. The conduct of the Respondent/Liquidator is in the interest of the Corporate Debtor more particularly so as to maximize the value of the assets of the Corporate Debtor. Keeping that in view, the Liquidator has already preferred an IA before the Hon'ble Tribunal under Section 66 of the code against the promoters of the Corporate Debtor which is sub-judice and pending for adjudication. The Respondent/Liquidator emphasized that having been vested with a fiduciary duty, the Respondent/Liquidator being an officer of the Court is attempting to discharge her duties as enumerated under the Code, so as to protect and preserve the assets of the Corporate Debtor.
13. The Respondent/Liquidator submitted that the Applicant had been assigned the debt of the year 1998 by IDBI in the year 2004

whereas 7/12 extracts had changed the title in the year 2003 itself. There has been no effort on the part of the Applicant to either trace the original revenue records or visit the site so as to evaluate the entire project cost, investment made or loan disbursed to the Corporate Debtor. It is the Respondent/Liquidator who for the first time visited the premises and intimated the CoC/SCC about the present actual status of the land. The status of the land has been summarized in para 9 aforesaid. Except block No. 83, the rest of the blocks are subject to provision of Section 63AA of the **Gujarat Tenancy and Agricultural Lands Act, 1948**. This specifically bars the sale of land belonging to Schedule Tribe under proviso (d). Further, as per Section 73AA of the **Gujarat Land Revenue Code, 1879** the occupancy of a person belonging to Schedule Tribe shall not be transferred to any person without the previous sanction of the Collector. Thus, the sale of new blocks 81 & 82 was illegal. By following the procedure prescribed in the **Gujarat Land Revenue Code 1879**, block 81 was transferred to the Government of Gujarat on 30.07.2002 and Block No. 82 was transferred by the deceased tribal occupant to Mr. Arjun Singh Solanki on 09.05.2015. Thus, these blocks have been irreversibly alienated from the purported title of the Corporate Debtor. With respect to new block No. 80, it was transferred to Government of Gujarat due to non-compliance of the provisions of Section 43 and 63AA on 01.01.2023.

14. The Respondent/Liquidator further submitted that the Applicant failed to carry out due diligence which would have established that the sale of Blocks 81 & 82 was illegal and there were compliance issues in respect of block 80. Further, the original documents are lying in the Stamp Office which were traced by the Respondent/Liquidator and informed to the Applicant. The request

of paying the stamp duty, clearing the defect in the title of the land and submitting the same for Registration by the Liquidator was declined by the Applicant. The blocks proposed to be sold by the Respondent/Liquidator are Agricultural land and the cost of converting into NA for sale is prohibitive. The cost benefit advantage lies in favour of selling the same.

15. The Respondent/Liquidator further submitted that the provision of law may not grant the Applicant the liberty to get the title of the land changed after 18 years and thus it is in the best interest of the Corporate Debtor and also the Applicant for maximization of the value of the assets to go ahead with the sale of the land blocks which have clear title as on date. This is crucial as the Liquidation has to be completed by the Applicant by September, 2022.
16. The Respondent/Liquidator further submitted that the Applicant had initially consented to the sale of Block Nos. 77 & 79 at the meeting held on 02.12.2021 but changed its mind subsequently. Strangely, in the present case, the Applicant has never visited the property in the past 20 years despite the fact that the default commenced from the payment of first instalment way-back on 01.10.2000 by the Corporate Debtor. The Respondent/Liquidator further contended that the complacent conduct on the part of the Applicant could be due to accountability issues having surfaced within the organization of the Applicant. The projected attempt to maximizing the value of the assets being raised by the Applicant is in fact neither in the interest of the Applicant nor in the interest of the Corporate Debtor.
17. It is also contended by the Respondent/Liquidator that despite holding the guarantee, the Applicant has failed to initiate personal

insolvency proceedings against the promoters till date. The Respondent/Liquidator has also contended that the promoters instead of co-operating with the Respondent/Liquidator to maximise the value which in turn would have benefited them, by reducing the liability of their personal guarantee has been creating road blocks and intimidating the Respondent/Liquidator. The Respondent/Liquidator submitted that the Applicant may even now persuade the promoters to cooperate and address the non-compliance issues with respect to these blocks of land so as to maximize the value which can be done without stopping the liquidation process by the Applicant taking over the blocks under Section 37A, being the stakeholder entitled for 100% of the realization value from the blocks.

18. The Respondent/Liquidator submits that the access to block No. 79 is possible only through Block No. 77 and as such block Nos. 77 & 79 have to be sold together. The Corporate Debtor does not have title to Block Nos. 80, 81 & 82 which cannot accordingly be sold by the Respondent/Liquidator. Block No. 83 cannot be sold as there are easement right issues or it can be sold at mere 25% of the price as per the valuation report. It is also submitted by the Respondent/Liquidator that title investigation has revealed that there are gross lapses on the part of promoters and directors of Corporate Debtor and they have defrauded the Creditors which is punishable under Section 73 (b) of the Code.

Thus the following issues arise for consideration in the present case:

- a) “Whether the land belonging to third party can be made part of the Liquidation estate?”**

**b) “Whether the Liquidator is authorized to sell the assets of the Corporate Debtor in blocks?”**

**Findings:**

19. After appreciating the above stated peculiar facts and circumstances, we are of the considered opinion that the Respondent/liquidator is correct to the extent that he has to perform his duties, firstly, of closing the liquidation within the stipulated time period and, secondly, for ensuring that the actions taken are as per the law. The Powers and Duties of the Liquidator have been elaborated under Section 35 of the IBC, 2016. Clause (f) of Sub Section (1) of Section 35 states as under:

*“(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;”*

In addition, Sub-Section (2) of Section 35 lays down as under:

*“(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:*

***Provided that any such consultation shall not be binding on the liquidator:***

*Provided further that the records of any such consultation shall be made available to all other*

*stakeholders not so consulted, in a manner specified by the Board.”*

Therefore, it is evident that the Liquidator has been provided with ample powers not only to sell the land in parcels but also not to be bound by the consultation with the stakeholders.

In the present case, as is evident from the above stated detailed facts, there has been no attempt on the part of the Applicant to verify the actual position on the ground either by visiting the land or verifying the revenue records. The conduct of the Corporate Debtor right from the beginning seems to be fraudulent and malicious. The loan amount of Rs. 7 crores obtained from the original borrower, i.e. IDBI in the year 1998 was defaulted right from the first instalment itself. The Applicant having been assigned the debt of IDBI in the year 2004 also never bothered to reverify the actual position or the status of the land. Be that as it may, we have to appreciate the situation on the ground and also the ownership as per the revenue records. As is evident, Block No. 81 was transferred to the Government of Gujarat on 30.07.2002, Block No. 82 was transferred by the deceased tribal occupant to Mr. Arjun Singh Solanki on 09.05.2015 and Block No. 80 was transferred to Government of Gujarat due to non-compliance of the provisions of Section 43 and 63AA of the **Bombay Tenancy and Agricultural Lands Act 1948** on 01.01.2023. Therefore, the promoters of the Corporate Debtor are not the owners of the said three Blocks. These three Blocks not being in the ownership of the Corporate Debtor cannot be stated to be part of the liquidation estate. Section 36 of the IB Code 2016 categorically stipulates the scope and ambit of the liquidation estate. Sub-Section (4) of Section 36 is with respect to the assets which shall not be included in the liquidation estate

and shall not be used for recovery in the liquidation. Clause (a) of Section 36 (4) of IBC, 2016 states as under:-

*“(a) assets owned by a third party which are in possession of the corporate debtor, including—*  
*(i) assets held in trust for any third party;*  
*(ii) bailment contracts;*  
*(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;*  
*(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*  
*(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;”*

From the perusal of the above stated provision and on the appreciation of the facts of the present case, it is evident that the blocks i.e. Block No. 81 was transferred to the Government of Gujarat on 30.07.2002, Block No. 82 was transferred by the deceased tribal occupant to Mr. Arjun Singh Solanki on 09.05.2015 and block No. 80 was transferred to Government of Gujarat due to non-compliance of the provisions of Section 43 and 63AA of the ***Bombay Tenancy and Agricultural Lands Act 1948*** on 01.01.2023, are not under the ownership of the Corporate Debtor. On all these three Blocks, the third-party rights have been created. Thus, in view of Section 36(4)(a) these Blocks of Land cannot be included as part of the liquidation estate. Therefore, the *issue (a)* is decided in favour of the liquidator by holding that the land which does not belong to the Corporate Debtor cannot be made part of the liquidation estate.

20. Another contention advanced by the Applicant on the issue is that the Respondent/Liquidator is in a hurry to dispose of the assets of the Corporate Debtor and is not working as per the objective of the IBC.
21. As per the settled proposition of law also, the Liquidator is to work in the best interest so as to maximise the value of assets of the Corporate Debtor as held in case of **Swiss Ribbons Private Limited and Another v. Union of India and Others (2019) 4 SCC 17** in the following words :

*“27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the*

*resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.”*

And further in **Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others (2022) 1 SCC 401** it has been held that the object of the IBC is to ensure Resolution/liquidation in a time bound manner for maximization of value of assets in order to balance the interests of all the stakeholders.

22. Coming next to the Liquidation Regulations, the relevant portions of Regulations 8 and 31A are reproduced below for the sake of convenience: -

*“8. Consultation with stakeholders. (1) The stakeholders consulted under section 35(2) shall extend all assistance*

*and cooperation to the liquidator to complete the liquidation of the corporate debtor. (2) The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation, as specified in Form A of Schedule II.*

*xxx xxxx xxx*

*31A. Stakeholders' Consultation Committee. (1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on the matters relating to sale under regulation 32.*

*xxxx xxxx xxx*

*(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).*

*xxxx xxxx xxx*

*(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.*

*(8) The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.*

*(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.*

***(10) The advice of the consultation committee shall not be binding on the liquidator:*** *Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.”*

23. On a conjoint reading of the aforesaid provisions of the IBC and the Liquidation Regulations, it is evident that the Liquidator is authorized to sell the immovable and movable property of the Corporate Debtor in liquidation through a public auction or a private contract, either collectively, or in a piecemeal manner. The underlying object of the statute is to protect and preserve the assets of the Corporate Debtor in liquidation and proceed to sell them at the best possible price. The Liquidator is permitted to consult the stakeholders who are entitled to distribution of the sale proceeds. However, the proviso to Section 35 (2) of the IBC makes it clear that the opinion of the stakeholders would not be binding on the Liquidator. Regulation 8 of the Liquidation Regulations refers to the consultative process with the stakeholders, as specified in Section 35 (2) of the IBC and states that they shall extend all necessary assistance and cooperation to the Liquidator for completing the liquidation process. Regulation 31A has introduced a Stakeholders' Consultation Committee that may advise the Liquidator regarding sale of the assets of the Corporate Debtor and such committee must

be furnished all relevant information to provide such advice to the liquidator. **Though the advice offered is not binding on the Liquidator, he must give reason in writing for acting against such advice.**

24. Appreciating the above stated the provisions of law in the peculiar facts and circumstances of the present case, it is evident, firstly, that the Corporate Debtor from the beginning had the intention to defraud the Creditors as after taking loan in 1998 from IDBI, he defaulted from the very first instalment. After assignment of the debt of IDBI to the Applicant, the Applicant did not take any proactive steps either to verify the status/ownership of the land or to secure the assets after true and correct facts were brought to its attention. The connivance on the part of the promoters of Corporate Debtor is further established from the submission of the liquidator wherein it has been informed that the promoter of M/s Jord Engineering Group is the son-in-law of the promoter of the Corporate Debtor who is constructing a wall to block the access of the Respondent/liquidator on the land mortgaged with the Applicant by the Corporate Debtor. Strangely, the Applicant too instead of taking any steps to either get back the land or to get the status of the land converted from “agriculture” to “non-agriculture” is only resorting to the Deed of Indemnity knowing it fully well that when the Corporate Debtor is not the owner of the land, his indemnifying the Applicant with respect to the land belonging to the third party is going to be of no avail.
25. In the present case, the Respondent/Liquidator had addressed the issues with the Promoters in various meetings and an application for non-cooperation was pending which was disposed of when the liquidation order was passed by this Hon’ble Tribunal. From

perusal of the report of the Respondent/Liquidator, when she visited the said land, there was no problem, the wall was not constructed. The wall was erected by the son-in-law of the Corporate Debtor subsequently. The Promoters were creating road blocks and indirectly intimidating the Respondent/Liquidator rather than working together with the Respondent/Liquidator to maximise value which in turn would have benefitted the promoter by reducing the liability on their personal guarantees. The Applicant now ought to persuade the promoters to cooperate and address the non-compliance issues in respect of these blocks to maximise value. Hence, the contention of the Applicant that the Respondent/Liquidator is not working as per the objective of the IBC does not survive. In view of the above facts, the *issue (b)* is resolved. The Liquidator is authorized to sell the assets of the Corporate Debtor in Blocks.

26. Therefore, in view of the above stated facts, specific provisions of law and the law laid down by the Hon'ble Supreme Court. The Interlocutory Application Number I.A. 883 of 2022 is **dismissed**.

SD/-

**Sanjiv Dutt**  
**Member (Technical)**  
/Abhay/

SD/-

**Reeta Kohli**  
**Member (Judicial)**