

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.357 of 2023 in
CP(IB) No.294/07/HDB/2017

Between:

M/s Raghava Square Private Limited,
Successful Bidder of IVRCL Limited,
H.No.8-20603/1/27 & 28,
Krishnapuram Street, Road No.10,
Banjara Hills,
Hyderabad - 500 034.

.....Applicant

And

1. M/s IVRCL Limited,
Rep. by the Chairman of the
Supervisory Committee,
Mr Sutanu Sinha - Liquidator,
M-22/3RT, Vijayanagar Colony,
Hyderabad - 500 057.

....Respondent/Corporate Debtor

2. Mr. Sutanu Sinha,
Chairman of Supervisory Committee-
cum-Liquidator,
Mihir, 8-2-350/5/a/24/1B, Road 2,
Panchavati Colony, Banjara Hills,
Hyderabad - 500 034.

....Respondent/Liquidator

3. ICICI Bank,
ICICI Bank Towers, Financial District,
Plot No 12, Nanakramguda,
Gachibowli,
Hyderabad - 500 032.

4. Union Bank of India
(erstwhile Andhra Bank, Corporation Bank
& UBOI), 23, 4-5-1,
Koti Women's College Road,
Sultan Bazar, Kachiguda,
Hyderabad - 500 195.



5. IDBI Bank,
IDBI Towers, WTC Complex,
Cuffe Parade,
Mumbai – 400 005.
6. Canara Bank,
2nd Floor, T Subba Rami Reddy Complex,
1-7-1, SP Road,
Secunderabad.
7. State Bank of India
Stressed assets management branch
5-9-76, 2nd Floor, Prabhat Towers,
Opp – SBI Amaravathi LHO,
Chapel Road, Gunfoundry,
Hyderabad – 500 001.
8. IndusInd Bank,
Ashoka Janardhan Chambers,
1-10-72, Begumpet Road,
Old Patigadda, Patel Nagar,
Begumpet,
Hyderabad – 500 016.
9. International Asset Reconstruction Co (IARC),
A-506 & 508, 5th Floor, 215 Atrium,
Kanakia Spaces, Andheri Kurla Road,
Andheri East – 400 093.
10. Standard Chartered Bank,
4th Floor, Parinee Crescenzo,
BKC, Bandra,
East Mumbai.
11. Indian Overseas Bank,
Street Number 8, Viveka Nagar,
Chikkadpally, New Nallakunta,
Hyderabad – 500 020.
12. TATA Capital,
Tata Capital Financial Services Ltd,
Auto Plaza, Plot No.3-6,
Opp. Times of India, Road No.3,



Banjara Hills,
Hyderabad – 500 034.

13. Bank of India,
Ground Floor 28, SV Road,
Sahayog Society, Munshi Nagar,
Andheri West,
Mumbai – 400 058.
14. Emirates Islamic Bank Dubai
Dubai Healthcare City,
16th Executive Building,
2nd Floor, Po Box 6564,
Dubai.
15. Life Insurance Corporation of India,
Yogakshema, 2nd Floor,
East Wing, JB Marg,
Nariman Point,
Mumbai – 400 021.
16. Assets Care & Reconstruction Enterprises
Limited (ACRE),
502, C Wing, One BKC, G Block, BKC,
Mumbai.
17. Barclays Bank PLC,
B-6, Nirlon Knowledge Park,
Goregaon,
Mumbai – 400 063.
18. Axis Bank,
Axis House, 7th Floor,
C-2, Wadia International Centre,
Pandurang Budhkar Marg,
Worli,
Mumbai – 400 025.
19. Karur Vysya Bank,
H No 5-8-356 to 362, 3rd Floor,
Chirag Ali Lane, Abids,
Hyderabad – 500 001.



20. SREI Equipment Finance Limited (SREI),
2nd Floor, Stamford Park,
D No 8-2-269/4/B,
Road No.2, Banjara Hills,
Hyderabad – 500 034.
21. Exim Bank,
2nd Floor, Golden Edifice,
Near Khairatabad Circle,
Khairatabad,
Hyderabad – 500 004.
22. Punjab and Sind Bank,
1st Floor, Metro Estate,
Hollywood Footwear Building,
Main Road, Abids,
Hyderabad – 500 001.
23. Tamilnad Mercantile Bank Ltd (TMBL),
15-2-696, First Floor,
Siddiamber Bazar Road,
Siddiamber Bazar, Kishan Gunj,
Hyderabad – 500 095.
24. DBS Bank,
(The Lakshmi Vilas Bank Ltd),
DBS Bank, 2B & 2C, Aditya Trade Centre,
Beside Lane Mytrivanam, Ameerpet,
Hyderabad.
25. Scotia Bank,
Mumbai Branch : Mittal Tower,
B Wing, Ground Floor, Nariman Point,
Mumbai – 400 021.
26. HDFC Bank,
Ground Floor, Bank House,
Roxana Palladium, Road No.1,
Shyam Rao Nagar, Banjara Hills,
Hyderabad – 500 034.

21.

27. Bank of Baroda,
Orient House, Near Port Trust,
Ballard Estate,
Mumbai – 400 001.
28. Kotak Investment,
Kotak Mahindra Bank,
6th Floor, Plot No.C-27, Block-9,
Bandra Kurla Complex, Bandra,
Mumbai – 400 051.
29. IFCI Limited,
IFCI Tower,
61, Nehru Place,
New Delhi – 110 019.

....Respondents/
Members of Stakeholders
Consultation Committee

Date of order : 05.02.2025

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For Applicant	:	Mr G Bhupesh on behalf of Mr Amir Bavani
For Respondent Nos. 1 & 2	:	Mr Y Suryanarayana
For Respondent No. 3	:	Mr GP Yash Vardhan
For Respondent No. 4	:	Mr Avinash Alladi
For Respondent Nos. 5,7,9,12,19-22 & 24	:	Mr Srikanth Rathi
For Respondent Nos. 6 & 11	:	Ms P Sanjana
For Respondent No. 29	:	Mr Hritik Shekhar & Mr Kochar



Per : Sanjay Puri, Member (Technical)

ORDER

1. This Interlocutory Application has been filed by the Successful Bidder of the Corporate Debtor¹(CD), sale of which as a going concern to the Applicant was approved² by this Authority on 15.06.2022 for a consideration of Rs 1200 Crores. The Applicant had deposited Rs 50 crores as EMD and a timeline for payment of the remaining Rs 1150 crores was fixed in the order approving the sale of the CD as going concern.
2. The Applicant is also stated to have made part payment of Rs 100 Crores on 26.09.2022 towards the balance consideration of Rs 1150 crores. Remaining amount of Rs 1050 crores has not been paid till the passing of this order. Sale of the CD as a going concern, to the Applicant has remained inconclusive, and the CD continues to be under the control and management of the Liquidator.

The Application

3. The Application refers to a 'Business Plan' proposed by the Applicant as part of its bid to acquire the CD as going concern. According to the Applicant, the terms of the 'Business Plan' provided for "assets proposed to be taken over as part of the sale of the CD in liquidation as a going concern, and the bid offered, include the assets of Third-Party Guarantors/Securities and 100% subsidiaries/Joint Ventures/Associates of the CD, which have been exclusively charged to various lenders from whom the

¹ M/s IVRCL Limited (in liquidation): M/s IVRCL Ltd was admitted into CIRP on 23.02.2018 and later approved for Liquidation on 26.07.2019 read with the Corrigendum Order dated 31.07.2019.

² In MA No. 2 of 2022



CD availed financial assistance, and are covered under the admitted claims of Financial Creditors.”

4. It is asserted that the Applicant “framed the opinion to bid” based on the understanding that ‘all assets disclosed in the Virtual Data Room (VDR)’ would be included. They apparently opined that “all such assets as disclosed in VDR shall vest with the bidder and no additional consideration shall be paid for the same, regardless of whether they form part of the Assets/Liquidation Estate of the CD”³. (*emphasis provided*)
5. While the deliberations regarding the assets to be included in the sale of the CD in liquidation as a going concern were underway, the Applicant is stated to have learnt that the assets of third-party subsidiaries – believed by the Applicant to be part of the CD’s assets ‘regardless of whether they form part of the Assets/Liquidation Estate of the CD’ – were being sold by lenders who held them as security interests for loans extended to the CD.
6. It is submitted that “the Applicant had come to knowledge from reliable sources, that, the Lenders are making attempts to proceed against the Third party securities/assets, under SARFAESI Act 2002, against the assets which are forming part of assets covered under the Business Plan which are the assets to be taken over by the Applicant as successful bidder for acquisition of CD as a going concern under Liquidation and for which the bid amount offered by the Applicant includes for such third party securities/assets as the sole consideration.” Thus, according to the Applicant, “The assets of the subsidiaries/ associates/ joint ventures of the CD detailed under the Business Plan are given as security for the lending provided by the Lenders to the CD. While so, attempting to proceed

³ The details of assets considered in bidding process by the Applicant were provided in Annexure-1.1, 1.2 & 1.3 (Pages No 63 to 88 of the Business Plan)



against the assets of the said third parties, having approved the Business Plan, is clear violation of the terms of the Business Plan”.

7. Consequently, the Applicant has filed this application seeking the following reliefs:
- a. To declare the action of the Respondent Nos. 3 to 29 in attempting to alienate the assets of the third party 100% subsidiaries/joint ventures/associates of CD covered under the Business Plan, as illegal, unjust and arbitrary.
 - b. To pass necessary restraint orders directing the Respondent Nos.3 to 29 not to deal, in any manner, with any third party securities or assets of the 100% subsidiaries/joint ventures/associates of CD which are covered under the Business Plan.
 - c. To pass necessary orders directing the Respondent No.2 to take steps for the protection of assets covered under the Business Plan.
 - d. To direct Respondent No.2 to take steps for handover of peaceful possession of all the assets/properties covered under the Business Plan, as approved by this Tribunal to the Applicant.
8. The Applicant has referred to following paragraphs of the 'Business Plan' to demonstrate its intention in this regard, which according to them also found favour with the Liquidator and the SCC.
- Para No: 3.1.** We request the Hon'ble NCLT to direct the rights, title, and interest in whole or every part of assets including Land & Building(s) of the Corporate Debtor and it's subsidiaries / associates/Joint ventures to vest back to the Corporate Debtor and also to bidder, free from all security interest, encumbrance, claims and counter claims in accordance with Section 35(1)(f) r/w Section 35(1)(n) r/w Regulation 32. r/w Regulation 32A of the Liquidation Process Regulations, 2017. **(PAGE NO: 13 OF BUSINESS PLAN)**
- Para No. 3.5.7. e.** The Assets mentioned under Para Nos. 3.1, 3.2, 3.3, 3.4, 3.5 form part of the assets of Corporate Debtor and shall not be



considered as an exclusive list. Consequent to the due diligence report, the bidder framed an opinion on the above assets and believes that the same shall be a part of the assets of the Corporate Debtor. Subsequently, if there are any other assets of CD are discovered which are not forming part of assets as disclosed in Virtual Data Room, the same shall vests with the bidder and no additional consideration shall be paid for the same. However, if any of the assets, as mentioned above are not included in assets of corporate debtor, then the Bidder is not liable to pay the agreed consideration and if paid funds already deposited must be refunded immediately. **(PAGE NO: 22 OF BUSINESS PLAN)**

Para No. 3.5.7.g. All the rights, title, and interest in whole or every part of assets including Tangible, Intangible, Land & Building of the Corporate Debtor and it's subsidiaries /associates/joint ventures as mentioned under Pura No. 3.1, 3.2, 3.3, 3.4, 3.5, and including but not limited to the assets disclosed in Virtual Data Room or not, shall vests with the Corporate Debtor and also to bidder, free from all security interest, encumbrance, claims and counter claims in accordance with Section 35(1)(f) r/w-Section 35(1)(n) r/w Regulation 32 r/w Regulation 32A of the Liquidation Process Regulations, 2017. **(PAGE NO: 23 OF BUSINESS PLAN)**

Para No. 7.1.17. The Bidder seeks release of entire assets, guarantees, corporate guarantee given (against loans taken) by the Corporate Debtor to the lenders of the Corporate Debtor as well as the release of all assets, guarantees, corporate guarantee given (against loans taken) by the Corporate Debtor to the lenders of any third party including but not limited to the lenders of associate company, holding or subsidiary company or a company or firm or any other person in which any of the erstwhile promoters, shareholders, directors or relatives whether connected directly or indirectly in any manner whatsoever are interested or having significant influence, whether or not guarantee, corporate guarantee holder, lenders have submitted their claim or not before Liquidator and the same was admitted or not by the Liquidator. **(PAGE NO: 41 OF BUSINESS PLAN)**

Para No. 7.1.21. To restrict the guarantors who provided guarantees for and on behalf of Corporate Debtor (to secure the Debt availed by the Corporate Debtor) shall not be entitled to exercise any subordinate rights in respect of such guarantees. **(PAGE NO: 42 OF BUSINESS PLAN)**



Para No. 7.1.24. All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities, and all other forma of credit support provided by the Corporate Debtor prior to the Effective Date shall stand extinguished and discharged. **(PAGE NO: 43 OF BUSINESS PLAN)**

Para No. 7.1.37. To direct the rights, title, and interest in whole or every part of assets including Land & Building of the Corporate Debtor and it's subsidiaries, associates, joint ventures, and including but not limited to the assets disclosed in Virtual Data Room or not, shall vest with the Corporate Debtor and also to bidder, free from all security interest, encumbrance, claims and counter claims in accordance with Section 35(1)(f) r/w Section 35(1)(n) r/w Regulation 32 r/w Regulation 32A of the Liquidation Process Regulations, 2017. The bidder assumes ownership of all the assets and properties of the Corporate Debtor and it's subsidiaries, associates, joint ventures, whether or not the lenders have relinquished their charges explicitly. The bidder need not obtain any further approvals from any judicial authorities for the same. **(PAGE NO: 46 OF BUSINESS PLAN)**

Para No. 7.1.38. To direct the rights, title and interest in whole or every part of the assets of the Corporate Debtor, its subsidiaries, associates, joint ventures, movable of immovable whether are in possession /premise/ yards/confiscation of various State or Central Governments, Private or PSUs, financial or operational creditors whether such captive situation is contractual or legal or illegal or illegitimate or unauthorized shall be immediately released by such institutions /departments /individuals / organizations / authority immediately to the possession of Bidder. **(PAGE NO: 47 OF BUSINESS PLAN)**

Para No. 7.1.51. Liabilities claimed by secured financial creditors - Approval of the Scheme will be treated as specific order to the financial creditors that all the debts of the lenders be it due and pending on any account, gets fully and finally satisfied and extinguished. Upon the final payment of the offer as accepted in the Scheme there remains nothing to be recovered either from Corporate Debtor or from the Budder. The changes/liens/ mortgage securities created on the existing loans would stand transferred in favor of Bidder on final payment and any existing charge/ lien/ mortgage / security shall stand fully discharged on all kind of movable or immovable assets of the Corporate Debtor whether current or future in nature.

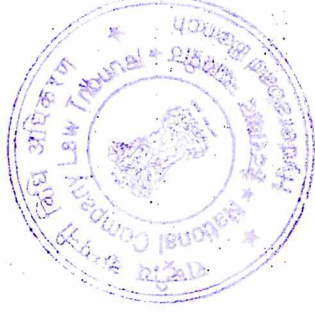


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Approval of the Scheme shall upgrade the account of the Corporate Debtor to Standard Category from NPA with Banks & Financial Institutions under CIBIL Mechanism. This will enable the applicant to revive the business of the corporate debtor afresh and such action would enable the applicant to take loans for upgradation of the plant and machinery, production facility, working capital requirements for the corporate debtor which will ensure the objective of scheme.

Approval of the Scheme will be treated as specific orders by NCLT to withdraw all the recovery proceedings against the corporate debtor under DRT, SARFAESI, Negotiable Instrument Act or any other law shall be immediately withdrawn by the secured financial creditors from the effective date of the Scheme. (PAGE NO: 49 & 50 OF BUSINESS PLAN)

9. According to the Applicant, based on these clauses of the Business Plan, it was "approved by the Stakeholders Consultation Committee that the rights, title, and interest in whole or every part of assets including Land & Building(s) of the Corporate Debtor and its subsidiaries/ associates/ Joint Ventures to vest back to the Corporate Debtor and also to Bidder, free from all security interest, encumbrance, claims and counter claims".
10. In essence, the Applicant, as the successful bidder, is asserting a claim over the assets of the subsidiaries, joint venture partners, and associates of the CD, which were pledged as security for loans taken by the CD from its lenders, regardless of whether they form part of the 'liquidation estate' of the CD. According to the Applicant, these assets were included in the 'Business Plan', which outlined a payment of Rs 1200 crores for the acquisition of the CD as a going concern, along with these assets, minus the liabilities claimed by the secured financial creditors. The Applicant further asserts that this 'Business Plan' was submitted to the Liquidator, who then presented it to this Authority for approval.



11. Concerning the approval granted by this Authority, the Applicant's position is that, in response to the application MA No. 2 of 2022, filed by the Liquidator, this Authority approved the 'Business Plan' by order dated 15.06.2022. Subsequently, by order dated 25.07.2022 in IA No. 656 of 2022, this Authority directed the parties to follow the Business Plan of the Applicant scrupulously. Referring to an additional order dated 02.08.2024, the Applicant asserts that, since the business aspect of the Business Plan was approved by the Authority, the Business Plan "has been accepted by the Liquidator and the Lenders, and approved by this Hon'ble Tribunal."

Counter Reply of the Liquidator (Respondent No. 2)

12. In his reply, the Liquidator has emphasized that the 'sale of the Corporate Debtor was on an as-is-where-is basis' and "it was sold as a going concern for Rs 1200 crores, which was the price offered by the successful bidder". He has clarified that neither he nor the SCC approved, accepted, or adopted any Business Plan submitted by the Successful Bidders. The stakeholders, according to the Liquidator, only accepted the sale price offered by the Successful Bidders and did not deliberate or vote on the Business Plan.

13. The Liquidator further contended that the Applicant is wrongly equating its submitted Business Plan with a resolution plan under the Corporate Insolvency Resolution Process (CIRP). Unlike resolution plans, which require approval by the Committee of Creditors (CoC) and the Adjudicating Authority, and must be followed by all stakeholders, the sale of a corporate debtor as a going concern in liquidation involves only the approval of the sale price by the Stakeholders' Consultation Committee (SCC). In such cases, no 'Business Plan' is adopted or enforced. Additionally, it



was emphasized that the Business Plan submitted by the Applicant, as the Successful Bidder, 'was not even a part of the Third E-Auction Process and therefore has no relevance.'

14. In response to the Applicant's repeated demands to 'hand over not only the Corporate Debtor and its assets but also the assets owned by the subsidiaries of the Corporate Debtor,' the Liquidator submitted that his authority is limited to the assets of the Corporate Debtor. This includes the shares held by the Corporate Debtor in its subsidiaries, but he has no authority to manage or transfer the assets owned by the subsidiaries themselves.
15. Countering the Applicant's claim that its decision to bid was based on the understanding that all assets disclosed in the Virtual Data Room (VDR) would be included, the Liquidator clarified that the details of the assets of the subsidiaries, joint ventures, and partnerships were disclosed in the VDR solely for completeness. The Applicant is entitled only to the Corporate Debtor's shareholding in these subsidiaries, joint ventures, and partnerships, and not their underlying assets.
16. Referring to the provisions of section 36 of the IBC, it was emphasized that assets not owned by the Corporate Debtor do not form part of the Liquidation Estate. Therefore, regardless of what the Business Plan may stipulate, the Applicant, as the Successful Bidder, is only entitled to the assets that form part of the Liquidation Estate of the Corporate Debtor, and no other assets or rights. The Applicant's claim over assets other than those owned by the Corporate Debtor was described as "absurd and devoid of any logic and common sense".



Counter Reply of the Lenders (Respondent Nos. 3 to 29)

17. In their counter-reply, all lenders have broadly supported the Liquidator's position, affirming that the Applicant, as the Successful Bidder, has rights only to assets included in the Liquidation Estate, including the shares of the Corporate Debtor's subsidiary companies. Assets owned by the subsidiaries or joint venture partners etc, which are subject to security charges with the respective lenders and do not form part of the Liquidation Estate, are excluded from the liquidation process. Therefore, these assets cannot be claimed by the Applicant, as the Successful Bidder of the Corporate Debtor in liquidation.
18. Additionally, all lenders have uniformly denied the Applicant's assertion that its Business Plan was approved by the members of the SCC. Furthermore, they contended that the reliefs sought by the Applicant are vague, as no specific third-party asset has been identified that the lenders are allegedly selling, nor has any such asset been clearly linked to the specific subsidiaries, joint ventures, or associates of the Corporate Debtor referenced in the Applicant's Business Plan.
19. Respondent No.4 has drawn our attention to an order⁴ of the Hon'ble NCLAT, where the same issue was deliberated upon in the same context for the same Corporate Debtor (CD). In IA No. 335 of 2020, this Authority had restrained Union Bank of India (Respondent No.4) from taking any coercive steps, such as the sale of properties mortgaged by the subsidiaries of the CD in favour of

⁴ Union Bank of India Vs. Siripuram Developers Pvt. Ltd: Order Dated 25/02/2021 in CA(AT)(I)-890/2020-NCLAT (2021) ibclaw.in 90 NCLAT



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UBI, until the completion of the liquidation proceedings of the CD.

20. However, the Hon'ble NCLAT ruled otherwise, after taking note of section 36(4)(d) of the IBC and the Minutes of Meetings of the lenders of the CD (IVRCL) under liquidation. The NCLAT held that ***“the assets of the subsidiaries are outside the purview of liquidation estate, and as such cannot for part of the liquidation estate”*** of the CD under liquidation. Consequently, the NCLAT set aside this Authority's order restraining UBI from selling properties owned by the subsidiaries, which were mortgaged as collateral to secure the financial debts of the CD.

21. Respondent No. 4 contended that the Applicant is 'trying to mislead' this Tribunal regarding its 'opinion' on the assets disclosed in the Virtual Data Room (VDR). It is asserted that, during various SCC meetings, the Applicant was explicitly informed that Respondent No. 4 would not be relinquishing the assets of third-party guarantors or securities exclusively charged to them. Additionally, Respondent No. 4 submitted that, in accordance with the NCLAT order dated 25.02.2021, the non-relinquished assets were put up for auction on multiple occasions before the Applicant submitted the 'Business Plan' in December 2021.

Findings & Decision

22. After having gone through the pleadings of the parties, including the written submissions and after hearing them at length, we now proceed to decide on the reliefs sought for by the Applicant in the present application. Since all the reliefs seek adherence to the 'Business Plan' of the Applicant in the ongoing Liquidation proceedings, it is necessary to examine that aspect at the outset.



The 'Business Plan'

23. The Applicant has argued emphatically that the Business Plan they submitted for the acquisition of the Corporate Debtor (CD) as a going concern, for which they offered Rs 1,200 crores, was not only accepted by the Liquidator and the SCC members but also approved by this Authority through its order dated 15.06.2022, and further reiterated for following scrupulously in the order dated 25.07.2022. It is thus contended before us that, since the Applicant had framed the opinion to bid for the CD based on the understanding that all assets of the CD, as disclosed in the Virtual Data Room (VDR)—including those owned by subsidiaries, joint ventures, and associates, which were secured against the CD's debts—would be included, **regardless of whether they formed part of the Assets/Liquidation Estate of the CD.** These assets were incorporated into the 'Business Plan', which they assert was also approved by this Authority.

24. However, we are of the view that the Applicant's position—that their bid of Rs 1,200 crores was based on the understanding that the assets of subsidiaries, joint ventures, and associates secured against the CD's debts would be included in the sale, and that this understanding was reflected in their submitted 'Business Plan'—is not grounded in law but rather stems from a flawed 'opinion' they had 'framed'. Under Section 36(4)(d) of the IBC, it is clearly provided that the assets of any subsidiary of the Corporate Debtor shall not be included in the liquidation estate assets and cannot be utilized for recovery in the liquidation process. Therefore, the Applicant's opinion, as reflected in their submitted 'Business Plan,' was flawed and contrary to the provisions of the law.



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Section 36(4)(d)⁵ vs Liquidation Regulation 21A⁶

25. During the arguments before us, reference was made to the proviso to Regulation 21A(1) of the Liquidation Regulations to argue that any security interest, if not communicated to the Liquidator within 30 days with a decision to either relinquish or otherwise deal with the same, shall be presumed to form part of the Liquidation Estate.⁷ It was contended that, in the case in hand, for lenders who failed

SECTION 36: LIQUIDATION ESTATE.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(d) assets of any Indian or foreign subsidiary of the corporate debtor;

REGULATION 21A. Presumption of security interest.

(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

(2) Where a secured creditor proceeds to realise its security interest, it shall pay -

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

Explanation. - It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.



to provide such communication, the assets of subsidiaries etc charged as security interests would automatically become part of the Liquidation Estate and therefore be available to the Applicant under the 'Business Plan.' This argument also does not hold merit.

26. As per Regulation 1(3)⁷ of the Liquidation Regulations, these apply specifically to the liquidation process under Chapter III of Part II⁸ of IBC. This part pertains solely to the insolvency and liquidation of the **Corporate Debtor**, and not to its subsidiaries, joint ventures, or associates. As such, any presumption under Regulation 21A of the Liquidation Regulations must be limited exclusively to the Corporate Debtor.

27. Moreover, conditions under Regulation 21A, which might bring a security interest into the liquidation estate, are primarily based on certain timelines. But, as endorsed by the Hon'ble Supreme Court in **Surendra Trading Co. v. Juggilal Kamalapat Jute Mills Co. Ltd**⁹

"It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed, the timeline is directory and not mandatory."

28. Consequently, a procedural regulation that is directory in nature and not mandatory cannot override the substantive law enshrined

REGULATION 1: SHORT TITLE AND COMMENCEMENT

(3) These Regulations shall apply to the liquidation process under Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

**PART II : INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS:
CHAPTER I : PRELIMINARY**

4 (1) This Part shall apply to matters relating to the insolvency and liquidation of **corporate debtors**...
⁹ Surendra Trading Co. v. Juggilal Kamalapat Jute Mills Co. Ltd 2017 SCC OnLine SC 1208 at page 155



in Section 36(4)(d) of the IBC. The Hon'ble Supreme Court, emphasized this principle in the case of **Saiyad M. Bakar El-Edroos**¹⁰ by holding, that:

A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

29. Thus, the ambulatory procedural requirements under liquidation regulations, cannot be construed to extend the scope of the liquidation estate to include assets of a subsidiary of the Corporate Debtor. These assets are explicitly excluded by the substantive provisions of the statute and cannot be brought within the liquidation estate through procedural interpretations.

Whether the 'Business Plan' was approved by NCLT?

30. The Applicant further argues that, since their 'Business Plan' was purportedly approved by this Authority, all assets of the subsidiaries, joint venture partners, and associates disclosed in the Virtual Data Room (VDR) should vest with the bidder, "regardless of whether the assets form part of the Assets/Liquidation Estate of the CD." This argument is seriously flawed.

31. As already stated, the assets that do not belong to the CD, or which are explicitly excluded from the liquidation estate under Section 36(4)(d) of IBC because they are assets of its subsidiaries, cannot

¹⁰ Saiyad Mohd. Bakar El-Edroos v. Abdulhabib Hasan Arab, (1998) 4 SCC 343



be transferred to the Applicant under the guise of the 'Business Plan.' Therefore, the Applicant's claim to such assets lacks legal foundation.

32. Additionally, contrary to the Applicant's claim, this Authority did not approve the 'Business Plan' in its orders dated 15.06.2022 or 25.07.2022. These orders were focused on approving the sale of the CD as a going concern and the associated payment schedule, rather than endorsing the specific terms outlined in the Business Plan including those related to the assets of subsidiaries, joint ventures, and associates.

Order dated 15.06.2022

The order of this Authority dated 15.06.2022 was for the approval of the sale of the CD as a going concern for a consideration of Rs 1200 Crores, and not for the approval of the 'Business Plan' proposed by the Successful Bidder, i.e., the Applicant. We addressed this aspect of the order dated 15.06.2022 in our order dated 02.08.2024 in IA No. 947 of 2023. In that order, after reviewing the stipulations made in the Applicant's 'Business Plan' in relation to the order dated 15.06.2022, we determined that the said order of 15.06.2022 **"made no reference to the Business Plan or its terms while recording directions to the Applicant and the Liquidator. The sole focus of this order was on establishing the payment schedule for the balance consideration of Rs 1150 Crores by the Applicant."** It was clear to us that the order dated 15.06.2022 did not approve the so-called 'Business Plan' presented by the Successful Bidder as part of their bid to acquire the CD as a going concern for Rs 1200 Crores."

Order dated 25.07.2022

Another order dated 25.07.2022 has been repeatedly proffered to claim approval by this Authority of the said 'Business Plan'. This issue was addressed in our order of 02.08.2024 in IA No.947, and it was held that **none** of the 59 reliefs and concessions claimed in the purported 'Business Plan' were deliberated upon, let alone approved, in the order dated July 25, 2022.

33. Therefore, neither the order of 15.06.2022, nor the order dated 25.07.2022 approved the so called 'Business Plan' of the Applicant. Contrary to the Applicant's claim, there was no direction in the order dated 25.07.2022 to hand over the assets of the subsidiaries, joint venture partners, or associates of the CD, as stipulated in the 'Business Plan'.

Reliefs Sought in the Application

34. Turning now to the specific reliefs sought by the Applicant, the first two are:

To declare the action of the Respondent Nos. 3 to 29 in attempting to alienate the assets of the third party 100% subsidiaries/joint ventures/associates of CD covered under the Business Plan, as illegal, unjust and arbitrary.

To pass necessary restraint orders directing the Respondent Nos.3 to 29 not to deal, in any manner, with any third-party securities or assets of the 100% subsidiaries/joint ventures/associates of CD which are covered under the Business Plan.

In the absence of any specific instance being cited regarding the actions taken by Respondents 3 to 29, these vague prayers cannot be addressed.

35. In any case, the answer to such prayers has already been provided



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by the Hon'ble NCLAT in their order¹¹ dated 25.02.2021 (where specific instances were cited), and which has been mentioned in the earlier part of this order. In an appeal against the order in IA No. 335/2020, where this Authority had restrained a lender of the CD from taking any coercive steps, such as the sale of properties mortgaged by the subsidiary companies in favour of the said lender, until the completion of the liquidation proceedings of the CD, the Hon'ble NCLAT, holding the securities as not forming part of the liquidation estate, set aside the order of this Authority.

36. Following the Hon'ble NCLAT order, and having also held that assets not owned by the CD and those belonging to its subsidiaries are not part of the liquidation estate of the CD, we too answer the above prayers in the negative.

37. The next prayer seeking directions to the Liquidator "to take steps for the protection of assets covered under the Business Plan" is also to be answered in negative, to the extent it pertains to the assets that are not part of the liquidation estate of the CD. The other prayer to direct the Liquidator

"to take steps for handover of peaceful possession of all the assets/properties covered under the Business Plan" is also declined, with respect to any asset that is not part of the liquidation estate of the CD.

The present IA is therefore dismissed.


(SANJAY PURI)
MEMBER (TECHNICAL)

VZ

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

प्रमाणित प्रति

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केस संख्या
CASE NUMBER 294/07/HDB/2017
दिनांक का तारीख
DATE OF JUDGEMENT 05/02/2025
प्रति तैयार किया गया तारीख
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