

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

IA(IBC)17/KOB/2023

IN

IBA/21/KOB/2019

(Under Regulation 45 (3)(a) of IBBI (Liquidation Process) Regulations, 2016)

In the matter of:

Mr. Jasin Jose, liquidator of Churakulam Tea Estate Pvt. Ltd., IBBI/IPA-001/IP-P00695/2017-2018/11225. Email ID: - jasinjoseponmattam@gmail.com;

... Applicant

In the matter of:

The South Indian Bank Limited;

Financial Creditor

-Versus-

Churakulam Tea Estates Private Limited.

Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

Parties/ Counsel present (through video conference):

For Applicant : M/s. A. V. Thomas Associates,
Advocates

Order reserved on: 02.02.2023

Order pronounced on: 24.02.2023

ORDER

The present application is filed by the Liquidator, in the matter of Churakulam Tea Estates Private Limited under Regulation 45 (3)(a) of IBBI (Liquidation Process) Regulations, 2016 seeking the following reliefs: -

- i. Close the Liquidation process of the company and accept this final report and Form H on record;*

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- ii. *To transfer the Corporate Debtor as a going concern to the Auction Purchaser, M/s Sreedhanya Construction Company represented by its Managing Partner Mr. Chandrababu Gangadharan.*
- iii. *To cancel the existing shares of the Corporate Debtor and allot fresh shares in the name of the successful auction purchaser or its nominees;*
- iv. *To allow the Liquidator/Corporate Debtor to pursue the pending appeal against the Income Tax Department against the demand notice issued.*
- v. *To allow the Liquidator/Corporate Debtor to retain the balance amount (undistributed amount) of Rs. 4,794,067.00/- available in the Liquidator's account as an interest bearing fixed deposit in order to pursue the appeal against the Income Tax Department and permit to distribute the same based on the outcome of the pending appeal.*
- vi. *To allow the reliefs sought by the Successful buyer M/s Sreedhanya Construction Company.*

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:

- i. The Adjudicating Authority, vide Order dated 30.06.2021 in IA(IBC)/68/KOB/2021 passed orders for Liquidation of Churakulam Tea Estates Private Limited /Corporate Debtor by appointing the Applicant herein as the Liquidator.
- ii. After completion of verification of claims and finalisation of list of admissible claims, Stakeholders Consultation Committee, (for short 'SCC') has been formed.
- iii. The Corporate Debtor is in the business of the Tea Estate. Currently, around 130 employees are working in the company and the company is a going concern. The company has a land parcel of 560 acres

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(approximately) (which consists of tea, coffee & cardamom plants; a building & Tea factory and other properties.

- iv. In the first Stakeholders Consultation Committee meeting, held on 13.09.2021 it was decided to sell the company as a going concern through E-Auction considering that the company is a Tea Estate having Approx. 130 employees on record and still functioning. Stakeholders Consultation Committee also decided to sell the company as a going concern to maximize its value. Regarding fixing the reserve price for auction, all the stakeholders unanimously suggested fixing the reserve price as the average liquidation value (obtained from the Valuation conducted during the CIRP period) as Rs.41.74 crore.
- v. The first E-Auction was held on 20.10.2021 and no bidders participated in the First E-Auction. Thereafter 6 E-Auctions were conducted but there were no bidders. Since, no bidders participated in the seventh e-auction, in the sixth Stakeholders' Consultation Committee held on 20.05.2022, the representative from South Indian Bank suggested a 10% reduction in the reserve price which was supported by the other stakeholders. The Liquidator has suggested reducing the Reserve price to 35 crore (from 37.566 crore) which is approximately a 6.39% reduction from the previous reserve price. Thereafter, Liquidator conducted the Eighth e-auction on 24.06.2022, which was successful. Sreedhanya Construction Company made a successful bid in the said e-auction. They have bid the company as a going concern for the reserve price of Rs. 35 crore and EMD of Rs. 3.5 Crore was remitted to the Liquidation account on 20.06.2022.
- vi. As per the decision taken in the Eighth Stakeholders Consultation Committee meeting, the Liquidator intimated the buyer- Sreedhanya Construction Company about the Stakeholders Committee decision that the cut-off period for taking over the assets and liabilities of the company

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will end on 13.08.2022. But Sreedhanya Construction Company gave a letter to the Liquidator and expressed their difficulties in taking over the responsibilities of the company in the middle of the month. They stated that they will take over the assets and liabilities and the entire responsibilities of the company from 01.09.2022 onwards and requested the Liquidator to be in charge of the entire Operations of the company till 31.08.2022.

- vii. The Applicant stated that the Balance available in the Liquidator's account before the realization of the entire sale proceeds was Rs. 8,49,002/-. The total amount in the Liquidation account after getting the uncalled capital from the shareholders and realization of the complete sale proceeds and for distribution was as follows: -

Sl. No.	Date	Description	Amount (In Rs.)
1		Balance amount in the Liquidation Account	8,49,002.00
2	20.06.2022	EMD (10% of Bid Value)	35,000,000.00
3	26.07.2022	First Remittance- 19 Crores	190,000,000.00
4	02.08.2022	Balance amount of Reserve Price- 12.50 crores	125,000,000.00
5	08.08.2022	Interest due after 30 days- @ 12% per annum for 12.50 crores	2,87,670.00
		Uncalled capital received from Shareholders	25,000.00
		Balance amount in the Liquidation Account for distribution	35,11,61,672.00

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- viii. The Liquidator distributed the sale proceeds to each class of creditors after deducting the Liquidator's fee proportionately. The liquidator issued a letter to all stakeholders regarding the disbursement of sale proceeds against the claim submitted by them, collecting acknowledgment from the stakeholders. The details of the distribution of the Liquidation sale proceeds are as follows: -

DISTRIBUTION OF LIQUIDATION PROCEEDS	
Particulars	Amount
Sale Proceeds Received from M/s. Sree Dhanya Construction Company.	35,02,87,670.00
Credit Balance in Liquidators account	8,49,002.00
Amount received from Shareholders as Unpaid Capital	25,000.00
TOTAL	35,11,61,672.00
Closure of Interim Finance	16,00,00,00.00
Payment of CIRP Cost	37,34,697.00
Liquidation Expenses	1,19,29,831.00
Liquidators Fee payable as per Reg 4 of IBBI (Liquidation Process Regulation) Regulations, 2016	65,97,212.00
Amount to be Distributed under Section 53 towards Creditors who submitted their claim	26,76,05,864.00

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Amount distributed under Section 53 towards shareholders so far	40,500,000.00
Balance in Liquidator's Account	47,94,067.84

- ix. It is stated that out of the proceeds distributed, 4 gratuity claimants have not collected their claim amount. Hence, the amount payable to these gratuity claimants has been deposited in the Corporate Liquidation Account in terms of Regulation 46 of the IBBI (Liquidation Process) Regulation, 2016.
- x. It is stated that the EPFO department filed an Application under Sec.60(5) of the IBC Code, 2016 against the Liquidator on 15.10.2022. On 02.12.2022 this Tribunal allowed the 1st relief in the IA(IBC)/321/KOB/2022 and directed the Liquidator to reimburse a sum of 7,71,312/- (which was deducted by the Liquidator towards the Liquidator fee under Section 53(3) of IBC, 2016) and the subsequent relief in the IA(IBC)/321/KOB/2022 was dismissed stating that EPFO department is not entitled to any amount towards the interest for the liquidation period.
- xi. On 27.09.2022, the Income Tax Department issued three demand notices to the Corporate Debtor demanding Rs.1,50,000/- for the period 2017-2018, Rs.5000/- for the period 2017-2018 & Rs.39,96,920/- for the period 2017-2018 payable by the Corporate Debtor to the department. As per the advice of the consultant Chartered Accountant Mr. C.A. Mathew Joseph and with the consent of the stakeholders it was decided to file an appeal and an appeal was filed on 27.12.2022 against the demand notice issued by the Income Tax Department. Since, the Appeal filed in the Income Tax Department against the demand notice issued is pending, Liquidator has retained an amount (undistributed amount to the Shareholders) of Rs.

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47,94,067.00/- available in the Liquidator's account. Hence, a prayer is made in this Application to permit for retaining the amount in an interest-bearing fixed deposit in order to pursue the appeal against the Income Tax Department and permit to distribute the amount based on the outcome of the pending appeal. As directed by this Tribunal on 12.01.2023 the Liquidator has produced the minutes of the 10th Stakeholders Consultation Committee held on 25.01.2023 in which he has produced an undertaking by the shareholders stating that: -

"We unconditionally undertakes and Authorize Mr. Rajesh Joseph representing the shareholders in Stakeholders Committee Meeting (SCC), (Along with new Management if requires) to pursue the said appeal filed by the liquidator, further, and to do all needful acts.

We unconditionally agree that the excess amount of Rs. 47,94,067/-remaining in the liquidation account can be retained in a separate bank account (preferably interest-bearing mode) which can be kept under the control of South Indian Bank the SCC member and distribution of the excess amount to the erstwhile shareholders can take place on the basis of the outcome of the appeal.

If the claims of the Income Tax Department is upheld by the competent Authority/Court, and if the amount of Rs. 47,94,067/- is found to be insufficient to meet the claim of the Income Tax Department further any penalty, interest arises, we are ready and willing to pay the balance amount, if any, in respect of the said claim."

- xii. The details of the assets as per Asset Memorandum and Final Sale Report are as under:-

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Sl. No.	Assets	Mode of Sale	Estimated Liquidation Value	Realisation Amount (Rs.)	Date of Transfer to Liquidation Account
(1)	(2)	(3)	(4)	(5)	(6)
1	Plant & Machinery	Going Concern	7,716,050/-	The company sold as a going concern for a total amount of 350,000,000/-	<ul style="list-style-type: none"> • On 20/06/2022 - EMD (10% of Bid value) • On 26-07-2022 – 190,000,000/- (First Remittance after Auction) • On 02/08/2022 – 125,000,000/- (Balance Amount of Reserve Price) • On 08/08/2022 – 287,670/- (Interest due after 30 days from the Auction date - @ 12% per annum for 12.50 crores)
2	Land & Building	Going Concern	383,357,500/-		
3	Financial Assets	Going Concern	26,326,108/-		

- xiii. a) Liquidation value of the liquidation estate: 417,399,658/-
- b) Amount realized from the sale of the liquidation estate: 350,000,000/-
- c) The amounts distributed to stakeholders as per Section 52 or 53 of the Code are as under:

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(Amount in Rs. lakh)						
Sl. No.	Stakeholders* under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Costs	19,779,369/-	19,779,369/-	19,779,369/-	100%	
2	(a): Liquidation Costs	18,527,043.16/-	18,527,043.16/-	18,527,043.16/-	100%	
3	(b)(i)	7,472,765/-	7,472,765/-	7,319,408/-	100%	Amount was distributed after deducting
						Liquidator's Fee net of Liquidation Cost as per Sec.53(3) of IBC, 2016
4	(b)(ii)	204,711,695.81/-	200,354,569/-	196,242,875/-	100%	Amount was distributed after deducting Liquidator's Fee net of Liquidation Cost as per Sec.53(3) of IBC, 2016
5	(c)					
6	(d)	2,654,645/-	2,654,645/-	2,600,166/-	100%	Amount was distributed after deducting Liquidator's Fee net of Liquidation Cost as per Sec.53(3) of IBC, 2016

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7	(e)(i)	EPFO India	39,462,400/-	37,584,463/-	36,813,151/-	100%	Amount was distributed after deducting Liquidator's Fee net of Liquidation Cost as per Sec.53(3) of IBC, 2016
		Govt of Kerala (Vandiperiyar Gramapanchayath)	820,952/-	653,547/-	640,135/-	100%	Amount was distributed after deducting Liquidator's Fee net of Liquidation Cost as per Sec.53(3) of IBC, 2016
8	(e) (ii)						
9	(f)	operational creditors (Other than Workmen and Employees and Government	24,882,892/-	24,882,892/-	23,990,128.07/-	100%	Amount was distributed after deducting Liquidator's Fee net of

	Dues)						Liquidation Cost as per Sec.53(3) of IBC, 2016
10	(g)						
11	(h)				40,500,000.00/-		
Total			318,311,762	311,909,293.00	346,412,275.00		

*If there are sub-categories in a category, please add rows for each sub-category.

- xiv. In the 10th SCC Meeting held on 25.01.2023, the Members have resolved to declare completion of the Liquidation Process of the Corporate Debtor, and the Compliance Certificate in Form-H for the closure of the Liquidation Process of the Corporate Debtor was submitted.

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3. We have heard the Liquidator and perused the application filed by the Liquidator. The Liquidator has filed the necessary documents and final report and Form-H along with this application. This IA is filed under Regulation 45 (3) (a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 praying the Adjudicating Authority to order for closure of the liquidation process of the Corporate Debtor Company as liquidation process is complete. The said provision reads as under: -

“Regulation 45 (3) (a): Final report prior to dissolution.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in form-H to the Adjudicating Authority for –

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern;

4. On-going through the facts aforementioned and the material placed along with this Application, it is evident that the assets of the Corporate Debtor were sold to the Successful Bidder Sreedhanya Construction Company. It is seen from Form-H that the amount of Rs.35,00,00,000/- and interest realized from the sale of Liquidation Estate was distributed among the stakeholders as per Section 52 or 53 of the Code, keeping aside an amount of Rs. 47,94,067/- with the Liquidator for the reasons stated in the earlier paragraphs. Further, by going through the Final Report, it is evident that the Liquidator has sold the Corporate Debtor as a going concern and as such it is a fit case for closure of the Liquidation process.
5. As a sequel to the above, we hereby order the closure of the Liquidation proceedings against the Corporate Debtor viz. Churakulam Tea Estate Private Limited from the date of this Order, in terms of Regulation 45 (3) of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, the Liquidator is permitted to transfer the Corporate Debtor as a

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going concern to Sreedhanya Construction Company is represented by its Managing Partner Mr. Chandrababu Gangadharan. Regarding the cancellation of shares of the Corporate Debtor and allotment of fresh shares in the name of Sreedhanya Construction Company is to be decided by the auction purchaser Sreedhanya Construction Company.

6. As per the unconditional undertaking of the shareholders as quoted above, Mr. Rajesh Joseph representing the shareholders in SCC along with the new management, is permitted to pursue the pending appeal before the Income Tax Department for which it is allowed to retain the amount of Rs. 47,94,067/- in an interest-bearing FD in the South Indian Bank under the control of the said Bank which is a Stakeholders Consultation Committee member for distribution to the shareholders.
7. In view of the undertaking filed by the shareholders as quoted in the aforesaid paragraph in case the claim of the Income Tax Department is upheld by the Competent Authority/ Court and if the amount of Rs. 47,94,067/- is found to be insufficient to meet the claim, they are ready and willing to pay the balance amount, the shareholders are directed to honour their undertaking in case of the claim of the Income Tax Department is upheld and any excess amount to be paid to Income Tax Department. However, in case the appeal is dismissed the South Indian Bank, under whose control the said Bank Account shall be there, shall distribute the amount kept with them with interest, among the shareholders immediately.
8. Consequently, the Liquidator stands relieved.
9. The Liquidator is directed to send a copy of this Order within 7 days from the date of pronouncement to the Registrar of Companies, Kerala and hand over all the books and files of the Corporate Debtor M/s. Churakulam Tea Estate Private Limited which is in possession of the Liquidator to the successful bidder.

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10. Accordingly, IA(IBC)/17/KOB/2023 IN IBA/21/KOB/2019 is allowed and stands disposed of.
11. Registry is directed to communicate this order to the respective parties through email.
12. Certified copy of the order be issued on request of the parties as per the procedure.
13. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.02.24 15:22:12 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.02.24 14:33:32 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 24th day of February, 2023.

Rajasree R. Nair.