

SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 07.12.2023, At 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	IA (IBC)/1517/2022 in CP (IB) No.198/9/HDB/2017
<b>NAME OF THE COMPANY</b>	Nawa Engineers Consultants Pvt Ltd
<b>NAME OF THE PETITIONER(S)</b>	Bay-Forge Pvt Ltd
<b>NAME OF THE RESPONDENT(S)</b>	Nawa Engineers Consultants Pvt Ltd
<b>UNDER SECTION</b>	9 of IBC

**ORDER**

**IA (IBC)/1517/2022**

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

Date:07.12.2023

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II**

**IA. No. 1517 of 2022  
In CP (IB) No.198/9/HDB/2017**

*[U/s 60(5) of the IBC, 2016, R/w Regulation 35(A) (11) of IBBI (Liquidation Process)  
Regulations, 2016 and Rule 11 of the NCLT Rules 2016]*

**In the matter of:**

**M/S. NAWA ENGINEERS CONSULTANTS PRIVATE LIMITED  
(Under Liquidation)**

**BETWEEN**

**M/s State Bank of India,**  
Stressed Assets Management Branch,  
Secunderabad Branch,  
5-9-76, 2<sup>nd</sup> & 3<sup>rd</sup> Floors, Prabhat Towers,  
Opp. SBI Amaravathi LHO, Chapel Road,  
Gunfoundry, Hyderabad-500 001.  
Email: [team6samb.sec@sbi.co.in](mailto:team6samb.sec@sbi.co.in)

**...Applicant**

**AND**

Mr. Kari Venkateswarlu,  
Liquidator for M/s Nawa Engineers &  
Consultants Private Limited  
Flat No.406, Everest Block,  
7-1-618, Maitrivanam,  
Hyderabad-500 038.  
Email: [karivenkateswarulu@gmail.com](mailto:karivenkateswarulu@gmail.com)

**...Respondent**

**Order Reserved on: 22.11.2023  
Order Pronounced on:07.12.2023**

**CORAM:**

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

**Counsel/Parties present:**

For the Applicant : Dr. K.V. Srinivas, Advocate  
For the Respondent : Mr. Naresh Kumar Sangem

**Per: Rajeev Bhardwaj, Member (Judicial)**

**ORDER**

1. The present application has been filed by M/s State Bank of India (hereinafter referred to as the applicant) seeking the following reliefs:
  - a. Replace the existing Liquidator i.e., Mr. Kari Venkateswarlu and appoint Mr. Madhusudan Rao Gonugunta, IBBI Reg No. IBBI/IPA-001/IP-P00181/2017-2018/10360 as the new Liquidator;
  - b. Impose an exemplary cost on the Liquidator for ill-will intention and contravention of rules and regulations of IBC.
2. The application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) filed by M/s. Bay-Forge Private Limited (hereinafter referred as “**Operational Creditor**”) was admitted on 22.01.2018 against M/s. Nawa Engineers and Consultants Private Limited (hereinafter referred as “**Corporate Debtor**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”).
  - 2.1 The Committee of Creditors (“**COC**”) in its 6<sup>th</sup> meeting on 21.06.2018 decided to liquidate the corporate debtor. As a result, the corporate debtor was placed under liquidation on 10.10.2018 and Mr. Venkateswarlu Kari was appointed as the Liquidator.
  - 2.2 The applicant is the only secured financial creditor of the corporate debtor holding 100% security on all the assets of the corporate debtor. The applicant had relinquished its security in favour of the liquidation estate in accordance with the provisions of the Section 52 of IBC, 2016.
  - 2.3 The liquidation value of the corporate debtor is Rs.10,55,10,420/- (Rupees Ten Crores Fifty Five Lakhs Ten Thousand Four Hundred and Twenty Only) and the liquidator has admitted the claim of the applicant at

Rs.23,62,37,466.76 (Rupees Twenty Three Crore Sixty Two Lakhs Sixty Seven Thousand Four Hundred and Sixty Six and Paise Seventy Six Only).

- 2.4 During February, 2019, the liquidator sold, realized and distributed an amount of Rs.3,01,60,026.56 (Rupees Three Crores One Lakh Sixty Thousand Twenty-Six and Paise Fifty-Six Only) to the applicant.
- 2.5 For the remaining assets of the corporate debtor, the liquidator conducted auction on 01.03.2019, but refused to confirm the bid of successful highest bidder of certain plant and machinery put up for auction and allegedly cancelled the bid arbitrarily.
- 2.6 The successful bidder i.e., M/s. Keshan Trading Corporation approached this Authority by filing IA Nos. 181, 334 & 335 / 2019 seeking suitable directions to the liquidator to confirm his bid.
- 2.7 This Authority vide order dated 09.09.2019 directed the liquidator to issue letter of award in respect of Lot Nos. 1 & 2 in favour of M/s. Keshan Trading Corporation and further directed the registry to send the documents relating to the allegations of bribe against the liquidator to the Insolvency and Bankruptcy Board of India (“**IBBI**”) for starting appropriate enquiry/action in the matter, if warranted so. Against the said order, the liquidator filed an appeal before the Hon’ble NCLAT and the same is still pending.
- 2.8 The Disciplinary Committee of the IBBI issued a show cause notice (“**SCN**”) to the liquidator for violation of Section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 read with regulation 33(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”), Clause 12 of Schedule I under Regulation 33(1) of the Liquidation Regulations, Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“**IP Regulations**”) and Clauses 1, 2, 3, 5, 9 and 14 of the Code of Conduct as specified in the First Schedule of the IP Regulations.

- 2.9 The IBBI on 24.05.2022 passed order observing that the liquidator should not have rejected the highest bid in the auction process and has also commented upon his act and conduct. The plea of the liquidator that the highest bid was not accepted because of certain reasons, was rejected and at the same time held that the delay in liquidation took place because of the liquidator. Finally, penalty equal to 25% of the fee was also imposed on the liquidator. He was directed to ***“strictly follow the provisions as contained in IBBI (Liquidation Process) (Second Amendment Regulations, 2021 notified vide Notification No. IBBI/2021-2022/GN/REG079, dated 30.09.2021.*”**
- 2.10 After the passing of the order by the IBBI, Liquidation Regulations were amended on 16.09.2022, wherein the liquidator was required to re-constitute the Stakeholders Consultation Committee (“SCC”). It is alleged that the liquidator made no attempt to re-constitute the Stakeholder’s Consultation Committee (“SCC”) despite the applicant sending an email dated 14.11.2022 and further the applicant was also kept in the dark about the liquidation process of the corporate debtor.
- 2.11 The secured financial creditors also asked the liquidator to call the meeting on 16.11.2022 but he failed to respond and accordingly the meeting was held without the liquidator. In the said meeting, it was decided to replace the liquidator with Mr. Madhusudan Rao Gonugunta, who has also given his consent in Form AA to act as liquidator in accordance with the provisions of Regulation 31A (11) of IBBI (Liquidation Process) Regulations, 2016.
3. In his Counter, the respondent has contested and contended the averments made in the application. The respondent has tried to justify the rejection of highest bid given by M/s. Keshan Trading Corporation on the ground that unless stocks/ machinery are sold, bid for Lot No. 1 and Lot No.2 cannot be accepted as these lots are for the land, building and shet. Moreover, Lot No.1

and Lot No.2 are situated adjacent to each other and accordingly both the properties should fetch same price, but there was huge difference between the bid price of both the lots.

- 3.1 Regarding the order passed by this Authority on 09.09.2019, it is submitted that the Respondent/Liquidator filed an appeal before the Hon'ble National Company Law Appellate Tribunal, which vide its order dated 12.12.2019, stayed the impugned order.
- 3.2 On the question of comments of the IBBI regarding the role of the liquidator, he has already approached the Hon'ble High Court of Telangana by filing writ petition number 28818 of 2022 and the same is still pending.
- 3.3 It is claimed that the Regulation 31A of the IBBI Liquidation Process is not applicable in the present case because this provision was inserted vide Notification No. IBBI/2019-20/GN/REG047 dated 25.07.2019, while the corporate debtor was admitted to liquidation on 10.10.2018, which is prior to insertion of this provision.
- 3.4 Besides, the liquidator has also taken the objections of suppression of material facts by the applicant another IA No.443/2019 seeking the same prayers is still pending and therefore there cannot be two applications for the same relief.
4. We have heard counsels for both the parties and have also gone through the entire record.
5. The prayer for removal of the liquidator arose because of his act and conduct in processing the auction dated 01.03.2019 of various assets including Lot No.1 and Lot No.2, for which the highest bid made by M/s. Keshan Trading Corporation was cancelled. This has resulted in multifarious litigations thereby delaying the liquidation of the corporate debtor. Against the rejection of highest bid, M/s. Keshan Trading Corporation filed IA Nos.181, 334 and 335 / 2019, wherein our predecessor vide order dated 09.09.2019

made scathing remarks about the manner etc in which the auction was conducted.

6. The allegations of the alleged bribe demanded by the liquidator also came to the notice of this Authority in its order dated 09.09.2019 and relevant para 15 (page no. 24 of the application) of the order is reproduced below:

“However, looking at the seriousness of the allegations raised against the liquidator *vis-a-vis* the conduct of the Liquidator, this Adjudicating Authority directs the registry to send a copy of the Rejoinder of the Applicant in IA No. 181 of 2019 and the certificate filed by the Applicant under Section 65(b) of the Evidence Act together with the pen-drive submitted by the Applicant, to the Insolvency and Bankruptcy Board of India) for initiating appropriate enquiry/action in the matter, if warranted so”.

7. The IBBI also took cognizance of the matter relating to the alleged bribe on the basis of complaint dated 10.03.2019 filed by one Mr. Vikash Kumar Keshan and the directions given by this Authority to the IBBI vide order dated 09.09.2019 and accordingly, show cause notice was issued to the liquidator.
8. The IBBI did not find any direct evidence of bribe against the liquidator, but observed negatively the way auction of Lot Nos 1 & 2 was conducted and this was found the main cause for delaying the liquidation process. For all this, the IBBI imposed a penalty of 25% of the liquidator’s fees and also made some disparaging remarks about the entire process conducted by the liquidator. The relevant paras of the finding which have impact on the acts and conduct of the liquidator are reproduced as below:

*“4.3.3. An auction is a process for sale of assets of the CD. The "assets" which are subjected to auction should be such 'assets' which are readily available to be sold. On the basis of submissions of Mr. Kari, I note that Lot no. 1 and 2, even if the price would have been acceptable, could not have been sold as there were some "crucial logistical issues". This entail that "Lot no. 1 and 2" should not have been subjected to auction sale at the first place. As per Clause 3 read with Clause 9 of schedule I (Mode of Sale) under regulation 33(1) of the Liquidations Regulations. a Liquidator is required to prepare the terms and conditions of sale in a transparent manner. No material has been brought on record to substantiate that the fact of such "crucial logistical issues" were highlighted by*

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*Mr. Kari to the participants in the auction process. If the sale of Lot no. 1 and 2 was dependent on certain conditions, same should have been brought in notice to the participants. Accordingly, if there were huge stocks lying on the land of Lot no. 1 & 2, Mr. Kari should not have put Lot no. 1 & 2 on auction without first disposing the said piles of stock (i.e. 300 tons of steel).*

4.3.4. *Further, Mr. Kari has submitted that he did not issue the LoA to KTC as there were better offers available for Lot No. 1 and 2. He has not denied the fact that KTC was the highest bidder for Lot No. 1 and 2. Both these submissions run counter to each other. Moreover, Mr. Kari is unable to substantiate the better offers available with him with any proof. Clause 11 of the Schedule 1 does not entitle the Liquidator to conduct multiple rounds of auctions at his absolute discretion. Rather, such multiple auctions are to be backed by reasons, i.e., (i) for maximization of realisation from the sale of assets and (ii) to promote the interests of the creditors. Mr. Kari has not brought any material on record to prove the existence of these requirements. The denial of LoA to KTC for Lot no. 1 and 2 by way just mentioning 'Not accepted' without ascribing reasons is against the spirit of a transparent auction sale under the Liquidation Regulations. Accordingly, the rejection of LoA for Lot no. 1 and 2 to KTC, even when it was the highest bidder as "Not accepted", is not a sufficient ground for rejection.*

4.4.3. *This conduct of Mr. Kari read with the above action of not granting letter of award raises doubt and is not in consonance with Section 208(2) (a) and 208(2) (e) of the Code read along with clause 1, 2, 3, 5, 9 and 14 of the Code of Conduct as specified in First Schedule as stated under regulation 7(2) (h) of IP Regulations”.*

9. In the face of the aforesaid background, Ld. Counsel for the applicant argued that there are reasonable grounds to remove the liquidator because of his actions encompassing allegations of bribe, observations made in orders dated 09.09.2019 of this Authority and dated 24.05.2022 of the IBBI. He has relied upon decisions in ***State Bank of India versus Dr. Kondapalli Venkat Srinivas, IA No.739 of 2023 in CP (IB) NO.166/7/HDB/2019 decided on 30.06.2023 and IDBI Bank Limited versus V. Venkata Sivakumar, IA/815/IB/2020 in CP/1307/IB/2018 decided on 01.07.2022.*** He has raised one more issue that filing of the appeal by the liquidator without taking into confidence the committee of creditors is also part of misconduct and in support of this contention, reliance has been placed on the decision of the Hon’ble Apex Court in the ***Regen Powertech Private Limited versus Giriraj***

***Enterprises & another, Civil Appeal Nos. 5985-6001/2023 decided on 25.09.2023.***

10. Ld. Counsel for the respondent has submitted that the question about the execution of the order dated 09.09.2019 in M/s. Keshan Trading Corporation versus Mr. Venkateswarlu Kari, and the remarks made by the IBBI regarding the conduct of the liquidation process are sub-judice and therefore no reliance can be placed on those decisions and accordingly there is no question of removing the liquidator. It is also submitted that there is no provision under the IBBI in this regard.
11. When the provisions of the IBC and the liquidation regulations are read together, it becomes clear that there is no provision for the removal of the liquidator. On the question of consultation or taking directions from the CoC/stakeholders there are only few provisions in the IBC i.e section 35(2) of IBC and Regulation 31(A) of the IBBI (Liquidation Process) Regulations 2016:

***Section 35(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.*

***Regulation 31A: Stakeholders' consultation committee.***

*31A. (1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-*

- (a) remuneration of professionals appointed under regulation 7;*
- (b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;*
- (c) fees of the liquidator;*
- (d) valuation under sub- regulation (2) of regulation 35;*

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*(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed.] Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.*

*(1A) The committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1).*

*(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:*

*Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;*

*Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote.*

*Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.*

*(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.*

*(4) If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.*

*(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents.]*

*(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).*

*(6) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other*

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*meetings, if he considers necessary, on a request received from one or more members of the consultation committee:*

*Provided that when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.*

*(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, 10[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 and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report].*

*(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :*

*Provided that where a liquidator is proposed to be replaced, he shall-*

*(a) continue to work till his replacement; and*

*(b) be suitably remunerated for work performed till his replacement.*

*Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall reconstitute the consultation committee as required under the said Regulations and provisions*

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*provided under amended Regulation 31A shall come into effect only after such constitution.*

*[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.]*

12. Both Section 35(2) and Regulation 31A are not of much importance because the latter shall be applicable to those liquidation processes which commenced after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019, while liquidation was started before the coming into force of the amendment and Section 35(2) only says about consultation with the stakeholders, though the advice tendered of the consultation stakeholder including COC is not binding on the liquidator.
13. Another fact which has bearing on the maintainability of the present application is the IA 443/2019, wherein same relief was prayed for. Both the IAs are about the removal of the liquidator, but the IA 443/2019 has already been disposed of by order dated 03.02.2023 and therefore, the contention of the respondent is without any basis.
14. Thus, the moot question still remains as to whether the liquidator can be removed when there is no specific provision in the IBC. If the contention of the learned counsel of the respondent is to be accepted that liquidator cannot be removed in the absence of any provision, there would be anarchy as the liquidator will be able to do anything whatever he wants, whether it is in the interest of the stakeholders or not. This is also not the intention of law which can be explained from this dictum that power tends to corrupt and absolutely power corrupts absolutely.

15. When the IBC is silent, we may refer to Section 16 of the General Clauses Act, 1897 which states as follows:

*16. Power to appoint to include power to suspend or dismiss- Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.*

16. Hence, when this Authority has power to appoint a liquidator, it has also implied authority to dismiss or remove him. This is also the ratio of decision in *IDBI Bank Limited versus Shri. Versus Venkata Sivakumar* supra.
17. Similar to the absence of specific provision about the dismissal or removal of the liquidator in IBC, there is also no provision as on what ground (s) the liquidator can be removed. Here, we may profitably refer to Section 276 of the Companies Act, 2013 which contemplates such situation:

*276. Removal and replacement of liquidator.- (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:-*

- (a) misconduct;*
- (b) fraud or misfeasance;*
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;*
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;*
- (e) conflict of Interest or lack of independence during the term of his appointment that would justify removal.*

*(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.*

*(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.*

*(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.*

18. Thus, under the Companies Act, the liquidator can be moved under the following grounds:

- (a) misconduct;
- (b) fraud or misfeasance;
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
- (e) conflict of Interest or lack of independence during the term of his appointment that would justify removal.

19. The grounds as detailed above have direct link with the functioning of the liquidator and if he treads the path which clash with the interest of the stakeholders or shock the conscience of the common man, he can be removed. On the same analogy, the liquidator can also be removed under the IBC on any of the above grounds. The Hon'ble NCLAT in ***Dr. K.V. Srinivas, Resolution Professional of M/s. Sainath Estates Private Limited (AT) (CH) (INS) No.319/2022*** even went to the extent to say that apart from the grounds mentioned for change of Liquidator under the Companies Act, change can be done on grounds other than those mentioned under Section 34(4) of the I & B Code, 2016.

20. Now the question arises whether the acts and conduct of the liquidator are sufficient to remove him.

21. The competence of the liquidator to reject the bid has been explained by the Hon'ble Apex court in ***State of Jharkhand and others versus Cwe-Soma Consortium (2016) 14 SCC 172*** and ***R.K. Industries (UNIT-II) LLP versus***

***H.R. Commercials Private Limited and others, Civil Appeal Nos. 7722 and 7731 of 2021, decided On: 26.08.2022.*** Without commenting upon whether the Liquidator has rightly or wrongly rejected the bid given by M/s. Keshan Trading Corporation in view of the stay order dated 12.12.2019 granted by Hon'ble NCLAT against the impugned order dated 09.09.2019 in M/s. Keshan Trading Corporation case supra and filing of writ petition No.28818/2022 titled Mr. Venkateswarlu Kari versus IBBI challenging the comments of the IBIBI against the liquidator in the order dated 24.05.2022, it is to be determined whether the material on record is sufficient to remove the liquidator.

22. The liquidator is the appointee of this Authority. He is supposed to act as a neutral umpire vis-a-vis various stakeholders in the game. Therefore, it was either for the COC/SEC or M/s. Keshan Trading Corporation to challenge the impugned order dated 09.09.2019 and instead of this, the liquidator has challenged the decision before the Hon'ble NCLAT. Apart from this, he has also knocked the doors of the Hon'ble High Court of Telangana against the order dated 24.05.2022 of the IBBI. The Hon'ble Apex Court in ***Regen Powertech Private Limited versus Giriraj Enterprises & another, Civil Appeal Nos. 5985-6001/2023 decided on 25.09.2023*** held that in such circumstances, it is for the CoC etc. but not the Resolution Professional, to take appropriate proceedings or file an appeal and the Resolution Professional should have maintained a neutral stand.
23. The liquidation process has delayed because of the litigation initiated by the liquidator, otherwise the entire process would have come to an end 3 years back and there is no chance of litigation coming to an end in near future if the present situation continues.
24. There are no two opinions that the liquidator actions are to be under the parental supervision of the Adjudicating Authority. The liquidator has not

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unfettered powers to discharge his duties but he is required to function in a reasonable and prudent manner.

25. The relationship between the liquidator and the Adjudicating Authority is sort of fiduciary. Similarly, the liquidator has also to maintain highest regard to the principles of integrity and honesty in dealing with all the stakeholders.
26. When we analyse the related facts with the object of the IBC to maximise the value and avoid delay, we think that the liquidator is lacking in his approach and prima facie we can say that his actions fall under clauses (a) and (c) and therefore, it is better to appoint some other liquidator.
27. In view of our observations/discussions as above, we can say that the act and conduct of the liquidator falls within the clauses (a) and (c) as mentioned above and as a result, the application is allowed. Accordingly, prayer No.1 is granted.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

**Apoorva**