

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/845(CHE)2022

IN

IBA/759/2019

*(filed under Section 238, 60(5) & 32A of the Insolvency & Bankruptcy
Code, 2016)*

*In the matter of **M/s. FLORAM SHOES (INDIA) PRIVATE LIMITED***

Sri. Amier Hamsa Ali Abbas Rowther,
Liquidator of M/s. Floram Shoes (India) Private Limited,
R094, SBIOA Unity Enclave,
Mambakkam Village,
Near Sivan Temple,
Mambakkam P.O.,
Chennai-600 127

... Applicant

-Vs-

The Sub Registrar,
Pallikonda Sub Registrar Office,
Pallikonda P.O.,
Vellore-635 809

...Respondent

Along with

IVN.P(IBC)2/(CHE)/2023

IN

IA(IBC)/845(CHE)2022


IN

IBA/759/2019

BBK Leathers Private Limited,
Represented by its Director,
Plot No. 41, SIPCOT Industrial Estate,
Ranipet-632 403

...Intervenor/Proposed 2nd Respondent

-Vs-



Sri. Amier Hamsa Ali Abbas Rowther,
Liquidator of M/s. Floram Shoes (India) Private Limited,
R094, SBIOA Unity Enclave,
Mambakkam Village, Near Sivan Temple,
Mambakkam P.O.,
Chennai-600 127

... 1st Respondent/Applicant

The Sub Registrar,
Pallikonda Sub Registrar Office,
Pallikonda P.O.,
Vellore District-635 809

2nd Respondent/Respondent

Order Pronounced on **8th August, 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/845(CHE)/2022 & IVN.P(IBC)/2(CHE)2023

For Applicant : Ms. Jayanthi K. Shah, Advocate
Ms. J. Sivaranjani, Advocate

For Respondent: Mr. B. Vijay, Addl. Government Pleader
Mr. G. Dinesh Kumar, Advocate

IVN.P(IBC)/2(CHE)2023

For Applicant : Mr. P.S. Brabu, Advocate
Mr.B. Logeshwaran, Advocate
Mr. B. Vinith, Advocate

COMMON ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This IA(IBC)/845(CHE)2022 has been filed under Sections
238, 60(5) & 32A(2) of the insolvency and Bankruptcy Code, 2016

("IBC") by the Liquidator/Applicant of **M/s. Floram Shoes (India) Private Limited** seeking the following reliefs:

- 1. Hon'ble NCLT may be pleased to direct the Respondent to raise the attachments on schedule mentioned liquidation assets of the corporate debtor and register the same in favour of the successful bidder M/s. BBK Leathers Private Limited.*
- 2. Hon'ble NCLT may please grant the Applicant such further relief, which the Hon'ble Tribunal may deem fit and proper in the circumstances of this case in the interest of the Applicant.*

2. Briefly the facts are that on an application under Section 9 of IBC filed by Sri. G. Pandian ("Operational Creditor"), this Tribunal vide an order dated 01.08.2019 ordered for the commencement of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor M/s. Floram Shoes (India) Private Limited. Sri. Amier Hamsa Ali Abbas Rowther was appointed as Interim Resolution Professional. He made the public announcement in Form-A on 07.08.2019 and invited the claims. The workmen and employees among other creditors filed their claims in Form-E on 21.08.2019. The Applicant was appointed as Resolution Professional vide order dated 05.11.2019. He collated the claims of the Financial and Operational Creditors and constituted a Committee of Creditors ("COC"). He also admitted the claim of the employees of the Corporate Debtor along with other claims. The CoC in the meeting held on 19.11.2019, approved the Information Memorandum.

3. Based on the Expression of Interest ("EOI"), one Sri. Sankarathanu Pillai Meghanathan proposed the Resolution Plan. The CoC suggested the Resolution Applicant to submit the Resolution Plan along with Earnest Money Deposit ("EMD")/Bank Guarantee ("BG") of Rs.10 Lakhs. Sri. Sankaranthu Pillai Meghanathan neither submitted the Resolution Plan nor deposited the EMD/BG. There were no operations in the Company for the last two years. In the 5th CoC meeting held on 23.01.2020, it was resolved to liquidate the Corporate Debtor which resolution was approved by 100% voting. This Tribunal vide an order dated 27.01.2021 ordered for liquidation of the Corporate Debtor. Applicant was appointed as the Liquidator. He made the public announcement on 13.02.2021 in respect of the liquidation of the Corporate Debtor and invited claims. He constituted a Stakeholders Consultation Committee ("SCC") on 05.04.2021. All the workmen as mentioned above filed their claims in Form-F which the Liquidator admitted. He prepared the Preliminary Report & Asset Memorandum, List of Stakeholders, their claims and submitted report to the Tribunal. The sole Secured Financial Creditor, State Bank of India relinquished its security interest on the land and the factory building of the Corporate Debtor located at Ambur, Vellore District to the liquidation estate in Form-C of Schedule-II. The Liquidator got the valuation carried out. He issued e-auction sale notice on 14.06.2021 however, e-auction

failed on 16.07.2021 without getting any successful bid. He made the public announcement for e-auction sale of the Corporate Debtor as a going-concern as well as assets sale in the newspapers on 06.02.2022 fixing a reserve price of Rs.8.55 Crores (Rupees Eight Crores Fifty Five Lakhs only). Only one Company viz., BBK Leathers Private Limited submitted bid documents and deposited 10% of the reserve price as EMD. On the bid auction date of 23.02.2022, it submitted its bid for Rs.8.56 Crores (Rupees Eight Crores Fifty Five Lakhs only). It was adjudged as the Successful Bidder on 23.02.2022. It accepted the Letter of Intent ("LOI") issued on 23.02.2022 confirming the terms and conditions of the e-bid process. The successful bidder paid the balance sale consideration on 21.05.2022 along with interest @ 12% per annum.

4. It is stated that since the original sale deeds were with DRT, Chennai, application was filed by State Bank of India for releasing the documents which the DRT released. The Applicant handed over the sale certificate and original title documents to the successful bidder (BBK Leathers Private Limited) who initiated the registration process.

5. It is stated that during the process, it came to the notice of the successful bidder that there were 325 attachments prior to the insolvency commencement date of the Corporate Debtor on the

schedule mentioned property for the cases filed by the workmen before the Principal Labour Court, Vellore (details mentioned in Annexure-5 i.e. Encumbrance Certificate obtained by the Liquidator for the liquidation assets). It is stated that the attachments were ordered by the Principal Labour Court, Vellore on the applications filed by few workers of the Corporate Debtor and also by the workmen/employees of the other entities other than the Corporate Debtor but within the same management. It is stated that the workers of the Corporate Debtor whose names are reflecting in the Encumbrance Certificate, had also submitted their claims in Form-F to the Liquidator which were admitted by the Liquidator.

6. It is stated that as per Section 32A(2) of IBC, the assets and properties of the Corporate Debtor are free of liability and no action can be taken on the assets/properties of the Corporate Debtor for which protection is available to the successful bidder and no action including attachment can be taken against the property of the Corporate Debtor in relation to a prior offences. It is stated that the Liquidator had also intimated to the workmen, about his decision of acceptance/rejection of claims under Section 40(2) of IBC vide letters dated 26.04.2021 and 07.11.2021. It is alleged that the workmen had submitted their claims to the Liquidator without enclosing any such order of the Principal Labour Court, Vellore qua attachment of the property of the Corporate

Debtor. It is stated that since the full amount has been realized from the successful bidder, the distribution process is underway towards the accepted claim to the workers of the Corporate Debtor. Reference is made of Section 238 of IBC which provides that *"the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law"*. It is stated that Section 238 has an overriding effect over the other provisions that conflicts with the registration. It is stated that because of the attachment orders, the Liquidator is unable to complete the liquidation process of the Corporate Debtor and therefore this application has been filed seeking directions against the Respondent, the Sub-Registrar, Pallikonda to raise the attachment on the schedule mentioned liquidation property and register the same in favour of the successful bidder. It is stated that the property comprises of a factory land admeasuring 6.52 acres and building thereon in Survey Nos. 571/2, 572, 580/2A and 580/2C at Agaramcherry Village, Ambur Taluk, Vellore District, Tamil Nadu-635 809.

7. On the directions of this Tribunal vide an order dated 01.09.2022, the Applicant filed the translated English version of the Encumbrance Certificate which were earlier filed in Tamil version with the application. Notice to the Sub-Registrar,

Pallikonda, Vellore District was directed vide an order dated 21.09.2022.

8. The Respondent/Sub-Registrar filed the reply vide S.R.No.773 dated 17.02.2023 stating that the Principal Labour Court, Vellore has attached the properties in Agaramcherry Village bearing Survey Nos.571/2, 572, 580/2A, 580/2C in several EP based on the Labour Court order and on that basis, he made entries in the Encumbrance Certificate. He filed the court attachment order and the Encumbrance Certificate.

9. The Liquidator was directed to file the Encumbrance Certificate obtained prior to the commencement of the auction proceedings. The Liquidator was also directed to give the details of survey numbers of the property of the Corporate Debtor in respect of which, attachment has been sought to be released along with the names of the workers whose claims have been settled during the liquidation process under waterfall mechanism along with the details of payments already made to the workers.

10. The Liquidator filed the Additional Affidavit vide S.R.No. 2769 dated 06.07.2023 giving the details of the schedule property admeasuring 6.52 acres along with the translated copy of the Encumbrance Certificate which was filed vide S.R.No.5275 dated 12.09.2022 reproduced as below:

Schedule of the property of the Corporate Debtor	
Survey No.571/2	2.21 Acres
Survey No.580/2A	0.07 Acres
Survey No.580/2C	2.87 Acres
Survey No.572	1.37 Acres
Total Extent:	6.52 Acres

11. It is stated that during the registration process, it came to the notice that there were in fact 330 entries amongst which, 325 attachments were on the assets of the Corporate Debtor dating back to the year 2018 (as per the EC, there were 332 entries). It is stated that the said attachments were mainly by way of the orders of the Principal Labour Court, Vellore. Only 61 attachments pertain to the employees of the Corporate Debtor and the very same employees have submitted their proof of claim in Form-F to the Liquidator which have been admitted and paid as per Section 53 of the Code. Apart from 61 attachments made in favour of the employees of the Corporate Debtor, remaining attachments on the assets of the Corporate Debtor have been based on the Labour Court orders with respect to the Corporate Debtor's group companies being 'United Shoe Corporation India' and 'United Designs Studio'.

12. During the proceedings on 06.07.2023, it was submitted that in all there were 325 employees (including some of the employees

of the group companies) as per the list. Dues of 61 employees belonging to the Corporate Debtor have been paid. There are group companies of the Corporate Debtor where there were about 264 employees who had also approached the Labour Court, Vellore and obtained attachment on the lands which was exclusively owned by the Corporate Debtor.

13. On the observations made in the said order regarding the details of the attached property, the Respondent made the rectification in the Encumbrance Certificate report.

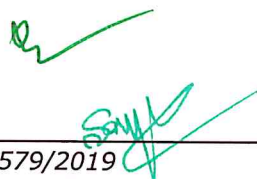
14. The Respondent was also directed to verify if any employee who has obtained attachment on the land belonging to the Corporate Debtor has been left out to be paid. The Respondent in response submitted a list stating that except the list given there is no attachment in respect of the land in question, qua the employees of the Corporate Debtor.

15. We have heard Ld. Counsels for the parties and perused the records of the case.

16. It is not in dispute that the CIRP was initiated against the Corporate Debtor i.e. M/s. Floram Shoes (India) Private Limited. The claims were invited through the public announcement. The workmen and employees of the Corporate Debtors among other creditors filed their claims in Form-E on 21.08.2019. Since no

Resolution Plan came, this Tribunal passed an order for the liquidation of the Corporate Debtor. The Liquidator again invited claims from the stakeholders where all the workmen as per details mentioned in Annexure-2 filed their claims in Form-F and their claims were admitted by the Liquidator as Annexure-A4. In all, there were 61 claims of the workmen which were collated and included in the list of claims filed by the stakeholders. The sole Financial Creditor i.e. State Bank of India relinquished its security interest on the land and factory building of the Corporate Debtor to the liquidation estate in Form-C of the Schedule-II which liquidation estate was e-auctioned as a going-concern against the bid amount of Rs. 8.56 Crores submitted by the successful bidder i.e. M/s. BBK Leather Private Limited. It paid the full amount along with the interest and the original documents were released to the successful bidder. It was only during registration, it was found that there were 325 attachments prior to insolvency commencement date of the Corporate Debtor on the schedule mentioned property for the cases filed by the workmen before the Principal Labour Court, Vellore.

17. On a further verification, it was found that there were only 61 employees who were connected with the Corporate Debtor and the other employees were of the group companies of the Corporate



Debtor viz., 'United Shoe Corporation India' and 'United Designs Studio'.

18. Record shows that the schedule property was purchased by the Corporate Debtor in the year 1987 bearing Survey No.571/2(2.21 acres), 580/2A(0.07 acres), 580/2C(2.87 acres) and 572(1.37 acres) total admeasuring 6.52 acres. The property does not belong to the group companies of the Corporate Debtor. All these attachments were prior to the commencement of the CIRP against the Corporate Debtor which were mainly by the orders of the Principal Labour Court, Vellore.

19. Admittedly, the other employees/workmen also obtained attachments by the orders of Principal Labour Court, Vellore in respect of the assets/properties of the Corporate Debtor being the employees of the group companies of the Corporate Debtor but it is well settled law that attachment on the properties of the Corporate Debtor can only be made in respect of the claims of the workmen of the Corporate Debtor not for the claims of the workmen of the group companies of the Corporate Debtor. As per Section 32A of IBC, the liability of the Corporate Debtor for an offence committed prior to CIRP shall cease and the Corporate Debtor shall not be prosecuted for such an offence from the date the Resolution Plan has been approved by the Adjudicating Authority. No action shall be taken against the property of the

Corporate Debtor in relation to any offence committed prior to the commencement of the CIRP of the Corporate Debtor where such property is covered under the Resolution Plan approved by the Adjudicating Authority. Any action against the property of the Corporate Debtor in relation to an offence shall include the attachment, cease, retention or confiscation of such property under such law as may be applicable to the Corporate Debtor.

20. In the instant case, the attachment orders are prior to the commencement of the CIRP. So, by virtue of Section 32A of IBC, no action can be taken against the property of the Corporate Debtor which property is covered under the Resolution Plan/liquidation assets of the Corporate Debtor. As is seen from the record and the report of the Liquidator that the Liquidator has made the payments under Section 53 of the Code under waterfall mechanism against the claims of 61 workmen/employees of the Corporate Debtor after collating their claims. Thus, the successful bidder/buyer of the liquidation estate through the e-auction sale of the liquidation assets of the Corporate Debtor is entitled to protection of the liquidation assets bought by the successful bidder and no action including attachment lies against the property of the Corporate Debtor in relation to the prior offence. Section 238 of IBC also provides that the provisions under IBC shall have

overriding effect on any other provisions or clauses in their debt conflict with the IBC.

21. Since in the present case, all the claims of the workmen of the Corporate Debtor who had obtained attachments by the order of the Principal Labour Court, Vellore have been paid and satisfied by the Liquidator and the workmen in the group companies of the Corporate Debtor have no relations with the property of the Corporate Debtor, and further their attachments are prior to the commencement of CIRP against the Corporate Debtor, against which, no action can be taken by virtue of Section 32A of IBC which has overriding effect by virtue of Section 238 of IBC, we direct the Respondent to raise the attachments on the schedule mentioned liquidation assets of the Corporate Debtor and register the same in favour of the successful bidder M/s. BBK Leathers Private Limited. In terms of aforesaid discussions, IA(IBC)/845(CHE)2022 is **disposed off**.

22. M/s. BBK LEATHERS private Limited has also filed an application bearing No. IVN.P(IBC)/2(CHE)2022 under Section 60(5)(C) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking impleadment as 2nd Respondent in IA(IBC)845(CHE)2022 in IBA/579/2019. Since IA(IBC)845(CHE)2022 has been disposed off directing Respondent No.1 i.e. The Sub-Registrar, Pallikonda Sub Registrar Office, Pallikonda P.O., Vellore District to raise the

attachments on the schedule mentioned liquidation assets of the Corporate Debtor which have been purchased by M/s. BBK Leathers Private Limited in e-auction and to register the schedule land in favour of M/s. BBK Leathers Private Limited, nothing survives in the application and accordingly IVN.P(IBC)/2(CHE)2023 is **disposed off**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)