

Order Pronounced on: 28.04.2022

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This IA has been filed by the suspended director, Mr Yogendra Soni, of M/s G P Cottfab Pvt. Ltd. ('Corporate Debtor') under Section 60 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') and Regulations 12(3) and 34 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') seeking directions to the Liquidator to maintain *status quo* of E-auction as conducted by him.
2. The Adjudicating Authority *vide* Order dated 12.09.2019 admitted the application under Section 9 of the IBC, filed by the M/s Sona Processors (India) Limited ('Operational Creditor') against the Corporate Debtor in the matter mentioned above. Since no Resolution Plan was received by the Resolution Professional, the Committee of Creditors ('CoC') in the fifth meeting conducted on 29.02.2020 unanimously resolved to liquidate the Corporate Debtor. Subsequently, *vide* Order dated 02.03.2021, the Corporate Director was directed to be liquidated.
3. The Applicant has moved the present application on the following set of facts:
 - a. That the suspended director could not appear before the Adjudicating Authority because notices were served not upon him in a legitimate manner as he was not living in Bhilwara.

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- b. Punjab National Bank ('PNB') had entirely taken physical possession of all the properties in the absence of the Applicant, and related documents were seized by CBI; therefore, this application is filed in a personal capacity.
- c. PNB officials were involved in parting with some pieces of machinery after the possession exercised by the bank; in this regard, the Applicant has filed SB Criminal Misc. Petition 3303/2021 in the Hon'ble Rajasthan High Court.
- d. The Liquidator had fixed a lower reserve price to auction the properties at a throw-away price without applying mind and overlooking the Code because neither the lawful valuation of two registered valuer was obtained nor the proper paper publication was done.
- e. As per Regulation 35 of the Liquidation Regulations, the Liquidator has to appoint at least two registered valuers to value the assets. Further, he shall consider the value of the assets as an average estimate received by the valuers. However, the same was not done in the present case.
- f. As per Regulation 12(3) of the Liquidation Regulations, there is a mandatory provision for publication, one in English Newspaper and one in regional language Newspaper with wide circulations at the location of the Registered Office and Principal Office, if any, of the Corporate Debtor and any other location where in the opinion of the Liquidator, the Corporate Debtor conduct material business operations.

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- g. The Liquidator had published the e-auction process on 10.08.2021 in the two Newspapers, namely, Business Standard (Delhi Edition) and Jaltedeeep (Jodhpur Edition). Neither the Applicant lives nor works, either in Jodhpur or Delhi.
- h. Given due to non-submission of EOI amount in the preceding round of auction, till 09.08.2021, the stakeholders committee decided in its meeting dated 16.08.2021 that the initial reserve price for Plant & Machinery be reduced by 25% and by 10% in case of Land & Building. Accordingly, a second notice for e-auction of Land & Building and Plant & Machinery was issued. (Annexure 4)
- i. However, the impugned e-auction sale notice dated 19.08.2021 was published in a single newspaper, i.e., Jaltedeeep (Jodhpur Edition), with the reserve price being 279 Lakhs for Land & Building and 76 Lakhs for Plant & Machinery. (Annexure 3)
- j. In Lachhman Dass v. Jagat Ram & Ors., (2007) 10 SCC 448 the Hon'ble Supreme Court held that a right to hold property is a constitutional and human right. As such, a person cannot be deprived of his property except in accordance with the provision of the statute.
4. The Applicant, for the purposes of the valuation of the assets, placed his reliance on the following:

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- a. The report dated 26.03.2019 obtained by him of the Registered Valuer Er. Vishal Vijavaryia (Regd Valuer F 14044), for Land & Building; valuing then Realizable Market Value at Rs. 11,33,62,200/-. (Annexure 6)
 - b. The report of Mr Ramnaresh Vijayvargiya (License No. 73051) dated 26.03.2019, for Plant & Machinery; valuing then Realizable Market Value at Rs. 11,31,82,650/-. (Annexure 6)
 - c. The renewal letter of term loan from Dena Bank (*now Bank of Baroda*) wherein the valuation of the equitable mortgaged properties (Land & Building) as of 19.01.2017 was 475 Lakhs. (Annexure 7)
5. The Liquidator had submitted the following:
- a. The Applicant was aware of the application filing, and reference is invited to the WhatsApp chat which has taken place between the Applicant's son, Mr Mihir Soni, and the erstwhile Resolution Professional, Ms Sarita Duck. It is clear from the WhatsApp chat that the Applicant was aware of the filing of the application by the erstwhile Resolution Professional and was having access to the email accounts, namely mihir.soni49@gmail.com and the gpcottfab@gmail.com. (Annexure R -1)
 - b. The Applicant is a suspended Director of the Corporate Debtor and therefore can only file the application in its individual capacity and not on behalf of the Corporate Debtor.

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- c. The auction of the assets of the Corporate Debtor is as per the mandate of the IBC and based on the valuation submitted by the registered valuer as the erstwhile Resolution Professional ('RP') has taken the services of the registered valuers in compliance with the provisions of Regulation 16 of CIRP Regulations for determination of fair value and liquidation value of the Corporate Debtor following Regulation 35 of CIRP Regulations.
- d. The Resolution Professional had appointed the following valuers, registered with the Insolvency and Bankruptcy Board of India, for conducting the valuation, as under the Liquidation Regulations, 2016, the Liquidator is only supposed to rely upon the valuation done by valuer registered with IBBI, which is annexed at Annexure R-2:

Sr. No.	Name of the valuer	The asset of the Corporate Debtor	Date of the Valuation Report
1.	R.K. Patel	Plant and Machinery	03.02.2020
2.	Vishal Shah	Plant and Machinery	12.02.2020
3.	R.K. Patel	Land & Building	17.02.2020
4.	Shah Parth	Land & Building	27.02.2020
5.	Shweta Agarwal	Financial Assets (excluding inventories)	27.01.2020
6.	Mohit Sagar	Financial Assets	27.01.2020

- e. The suspended director had to attend each and every meeting of the stakeholders' committee. For the reasons best known to him, the Applicant chose not to attend the same and filed the present frivolous application only to delay the liquidation proceedings.

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- f. As per Regulation 35 of the Liquidation Regulations, where the valuation has been conducted under Regulation 35 of CIRP Regulations, it is obligatory upon the Liquidator to consider the average of the estimates of the value arrived under the aforesaid provision for valuation under the Liquidation Regulations. Since the erstwhile RP has already appointed and obtained valuation reports from the registered valuers, the Liquidator was not required to obtain a fresh valuation report from the new valuers.
- g. As per Regulation 33 of the Liquidation Regulations, the Liquidator is required to conduct the auction in a manner specified under Schedule-I. The only requirement of the law is the circulation of the newspapers at the location of the registered office and principal office, if any, of the Corporate Debtor, and there is no requirement that the aforesaid newspapers ought to have been published from the locality where the registered office of the Corporate Debtor is situated.
- h. The publication in English as well as in regional newspapers have been made every time for a public announcement about the auction, and publication made is given in Annexure R -3:

Sr. No.	Name of Newspaper	Date of Public Announcement	Property to be auctioned
1.	Business Standard English (New Delhi Edition)	20.07.2021	(a) Industrial Building, (b) Land & Plant & Machinery
2.	Jalte Deep Hindi (Jodhpur Edition)	20.07.2021	(a) Industrial Building, (b) Land & Plant &

			Machinery
3.	Business Standard English (New Delhi Edition)	19.08.2021	(a) Industrial Building, (b) Land & Plant & Machinery
4.	Jalte Deep Hindi (Jodhpur Edition)	19.08.2021	(a) Industrial Building, (b) Land & Plant & Machinery
5.	Business Standard English (New Delhi Edition)	18.09.2021	Industrial Land & Building
6.	Jalte Deep Hindi (Jodhpur Edition)	18.09.2021	Industrial Land & Building

- i. In their meeting held on 13.07.2021, the stakeholders have agreed for publication to be made in the aforesaid two newspapers. Similarly, in the stakeholders meeting held on 16.08.2021, the Liquidator was advised to publish the auction notice in the two newspapers like the last notice of e-auction. Further, in the stakeholders meeting held on 07.09.2021, the stakeholders again advised the Liquidator to publish the e-auction notice in the aforesaid two newspapers only, and the same are collectively marked as Annexure R – 4.
- j. In the e-auction of the plant & machinery, as many as 16 bidders participated in the bidding process. The Liquidator set the reserved price at Rs. 76,00,000/- and the property was auctioned for Rs. 1,21,00,000/-. As per the information document for the e-auction process, the bidder was required to deposit Rs. 10,00,000/- as Earnest Money Deposit, and after the

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successful auction, the successful bidder was required to deposit the balance amount within 90 days from the auction date.

- k. The auction of plant & machinery was conducted on 02.09.2021, and an intimation to the successful bidder by the Liquidator was made on 04.09.2021, and a Letter of Intent was issued to the successful bidder on 07.09.2021 and is marked as Annexure R-5. As per the information document, the balance amount would need to be deposited by the successful bidder on or before 04.12.2021.
6. We observe from the records available, submissions made and evidence lead before us that it can not be said that the act of the Liquidator resulted in any prejudice or violation of principles of natural justice. Moreover, the action undertaken by the Liquidator was duly following process of law.
7. We find that the Applicant was aware of the proceedings before the Adjudicating Authority, and the notices were duly served upon him as a bare perusal of WhatsApp Chats, and Proof of Service attached at Annexure R – 1, shows that the Applicant was aware of the proceedings. The valuation report of the Plant & Machinery shows that the valuer has considered every item available at the site, and the description of the same has been mentioned at Point No. 4 of the Report submitted by Mr R.K. Patel and Annexure-A of the report submitted by Mr Vishal Shah. The aforesaid valuation reports provide that the loom machines are the only skeleton and have no functional mechanical parts, but only outer metal

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bodies. Some of the loom machines, even though they are intact, exist in scrap condition, and the machines do not contain a tag of the manufacturing year. The said machines were manufactured from 1991 to 1998 by different suppliers; moreover, the assets are not maintained in proper condition.

8. The valuation report by Er. Vishal Vijavaryia, appointed by the Applicant dated 26.03.2019, valued the market value of the land & building at Rs. 11,33,62,200/-, whereas the market value of the land and building by Mr Shah Parth, the first Registered Valuer appointed by the erstwhile Resolution Professional, at Rs. 4,85,26,643/- and liquidation value at Rs. 2,91,15,986/-.
9. Similarly, the land & building market value by Mr R.K. Patel, the second Registered Valuer appointed by the erstwhile Resolution Professional, has been assessed at Rs. 4,56,35,670/- and liquidation value at 3,30,26,219/-. The valuer of the Applicant has assessed the land value at Rs. 5,40,62,200/-, even though the land value as per the DLC rates has been Rs 1,62,87,859/-. Correspondingly, the depreciated value of the building has been exaggerated to Rs. 7,55,87,859/-.
10. The valuation reports by the Applicant's valuer seem exaggerated as it is based on outdated assumptions with no transparent methodology for arriving at such figures. The valuation reports submitted by the Applicant show that the plant & machinery were purchased in 2015, and the valuer, even though assessing the value of the plant and machinery after four years, has only considered a depreciation of 25%.

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11. Further, the financial valuation of the Corporate Debtor's assets was perhaps done to obtain enhanced credit facility limits from the financial institution(s) prior to the commencement of CIRP. The Applicant's valuation report does not help his cause as the valuation report does not consider the current potential of the Corporate Debtor concerning that the present valuation of the assets in today's commercial market is full of volatility.
12. Therefore, the valuation of the plant and machinery as given as per the valuer appointed by the Applicant is not justified, and it appears that to seek enhancement in the Cash Credit Facility from the Punjab National Bank, the Applicant has taken a stretched valuation, which in the instant case is not applicable and cannot be relied upon.
13. Further, it is not necessary under Regulation 12(3) of the Liquidation Regulations that the public announcement should be published or has to originate from the place where the registered office of the Corporate Debtor is situated. The public announcement can be undertaken in any English and regional language newspaper with the condition that such newspaper will have wide circulation at the location of the registered office of the Corporate Debtor. In the present case, during submissions, the Liquidator was able to satisfy us with the compliance of Regulation 12(3) of the Liquidation Regulations.
14. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties, and upon the appreciation of the

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documents placed on record to substantiate the application, this Adjudicating Authority **dismisses** the present application as the Applicant has not been able to show as to how the auction conducted by the Liquidator does not comply with the mandatory provisions of Liquidation Regulations, 2016. Therefore, there is no force in the contention of the Applicant.

Accordingly, IA No. 315/JPR/2021 stands disposed of.

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DEEP CHANDRA JOSHI
JUDICIAL MEMBER

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RAGHU NAYYAR
TECHNICAL MEMBER