

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT II)  
KOLKATA**

**I.A. (IB) No. 1197/KB/2022**

**And**

**I.A. (IB) No. 177/KB/2023**

**In**

**C.P. (IB) No. 676/KB/2018**

*A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016.*

*In the matter of:*

Sri Aranath Logistics Limited

... Corporate Applicant

And

**I.A. (IB) No. 1197/KB/2022**

An application under sub section (5) of section 60 read with clauses (f) and (n) of sub-section (1) of section 35 of the Insolvency and Bankruptcy Code, 2016 read with sub-regulation (e) of regulation 32 and regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

*In the matter of:*

Soumitra Lahiri, Liquidator of Sri Aranath Logistics Limited

... Applicant

And

**I.A. (IB) No. 177/KB/2023**

An application under sub section (5) of section 60 read with clauses (f) and (n) of sub-section (1) of section 35 of the Insolvency and Bankruptcy Code, 2016 read with sub-regulation (e) of regulation 32 and regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

*In the matter of:*

Soumitra Lahiri, Liquidator of Sri Aranath Logistics Limited

... Applicant

**Order pronounced on: 04 August 2023**

***Coram:***

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

***Appearances (via video conferencing/physical hearing):***

For the Liquidator :1. Mr. Vikram Wadehra, Advocate

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	2. Mr. Soumitra Lahiri, Liquidator
For the Successful Bidder	: 1. Ms. Arundhati Barman Roy, Advocate 2. Ms. Shreya Choudhary, Advocate
For the Suspended Board	: 1. Mr. D.N. Sharma, Advocate 2. Mr. Supriya Saha, Advocate

**COMMON ORDER**

*Per Balraj Joshi, Member (Technical)*

1. This court convened *via* hybrid mode.
2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'**) on 08 November 2019 by this Adjudicating Authority and Mr. Hanuman Mal Choraria was appointed as the Interim Resolution Professional. Mr. Soumitra Lahiri, the Applicant herein was appointed as Resolution Professional *vide* order dated 20 September 2020.
3. An order dated 22 September 2021 was passed initiating the commencement of liquidation process of the Corporate Debtor and Mr. Soumitra Lahiri, the Applicant was appointed as the Liquidator.

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4. The Interlocutory Applications have been filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) by Mr Soumitra Lahiri, Liquidator of Sri Aranath Logistics Limited (**'Applicant'**).
5. I.A. (IB) No. 1197/KB/2022 has been filed seeking the following reliefs:
  - a. *Pass an order approving sale of the Liquidation estate of Sri Aranath Logistics Limited in Liquidation on "AS IS, WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" as a Going concern as defined in sub regulation (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
  - b. *Pass an order permitting the successful purchaser, Udgam Commercial Limited, to take over the Liquidation estate of the Corporate Debtor as*

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*a clean state without being burdened with any pre-liquidation liabilities of the corporate debtor;*

- c. Pass an order that the Successful Bidder has assumed that upon approval of this sale as a Going Concern by the NCLT all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor.*
- d. Pass an order that the successful purchaser shall stand discharged from pre-liquidation claims and on and from the approval of the sale of the liquidation estate, as Going Concern, by the Hon'ble Adjudicating Authority, all claims which are not a part of E-Auction Process memorandum shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the E Auction Process Memorandum.*
- e. Pass an order that upon approval of this Going Concern sale by Hon'ble Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to*

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*have been written off in full and permanently extinguished and the Corporate Debtor or the Successful Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority.*

- f. Pass an order that all contracts between the Corporate Debtor and related parties (as defined in Section 5(24) of the Code shall stand terminated with effect from the Completion Date unless otherwise notified by the Successful Bidder by the Completion Date, and the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to, any claims, penalty, damages (liquidated or otherwise), arbitration claims, claims for specific performance or claims for interim relief.*
  - g. To Pass an order that all financial obligations under any contract to which the Corporate Debtor is a party, relating to a period prior to the Liquidation commencement date, if not provided for under this E Auction Process Memorandum, shall stand extinguished.*
  - h. To pass an order that all matters requiring any shareholder approval or approval of the Board for implementation of the Going Concern Sale shall be deemed to be granted. However, all filing- related compliances shall be completed and no waiver can be granted in this regard.*
  - i. Pass an order for distribution of sale proceeds in conformity with the waterfall mechanism laid down in section 53 of the Insolvency and Bankruptcy Code, 2016.*
  - j. Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*
6. I.A. (IB) No. 177/BK/2023 has been filed seeking the following reliefs:
- a. Pass an order under clause (n) of sub section (1) of section 35 of the Insolvency and Bankruptcy Code, 2016 read with clause (a) sub regulation (3) of regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 stating that since the corporate debtor has been sold as a Going Concern and the Applicant*

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*has submitted the final report along with the compliance certificate in Form H the closure of the liquidation process of the corporate debtor is allowed without dissolution of the corporate debtor*

*b. Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*

**7. Submissions of the learned Counsel appearing on behalf of the Applicant**

7.1. In accordance with regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Regulations**"), the Liquidator issued Public Announcement in Form B on 29 October 2021 in *Business Standard* (English) and *Aajkal* (Bengali).

7.2. The Applicant received various claims from the stakeholders and formed the Stakeholders Consultation Committee ("SCC") with two Financial Creditors viz. CFM Asset Reconstruction Private Limited and Unity Small Finance Bank Limited.

7.3. The learned Counsel submitted that initially the secured Financial Creditors were not desirous of relinquishing security interest in the liquidation estate of the Corporate Debtor, however, on 17 May 2022<sup>1</sup> and 18 May 2022<sup>2</sup>, Unity Small Finance Bank Limited and CFM Asset Reconstruction Private Limited respectively, informed the Liquidator that it was unequivocally relinquishing security interest in the Liquidation estate of the Corporate Debtor.

7.4. In compliance of section 35 of the Code read with regulations 32, 32A and 33 of the Liquidation Regulations, the Liquidator issued a e-auction notice dated 19 August 2022 in two newspapers, viz., *Business Standard* [English] and *Aajkal* [Bengali] for sale of Sri Aranath Logistics Limited on "AS IS, WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS"<sup>3</sup>.

7.5. Two intending bidders viz. Udgam Commercial Limited and PNR Exim Private Limited deposited the EMD and participated in the e-auction. The e-

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<sup>1</sup> Annexure 6 at Page 57 in I.A. (IB) No. 177/KB/2023

<sup>2</sup> Annexure 6 at Page 58 in I.A. (IB) No. 177/KB/2023

<sup>3</sup> Annexure 16 at Pp. 91-92 in I.A. (IB) No. 1197/KB/2022

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- auction was held on 05 September 2022. Udgam Commercial Limited having CIN: U51909WB1996PLC077433 emerged as the highest bidder for Rs.12,51,00,000/- (Rupees Twelve Crore Fifty-One Lakh only) under Option-1 being bid to purchase the Liquidation Estate of Sri Aranath Logistics Limited on “AS IS, WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS”<sup>4</sup>.
- 7.6. The e-auction of the liquidation estate of Sri Aranath Logistics Limited was unanimously approved by the Stakeholders Consultation Committee in the Eight meeting of the Stakeholders Consultation Committee held on 12 September 2022.
- 7.7. Udgam Commercial Limited submitted a bank draft of Rs.50,00,000/- (Rupees Fifty Lakh only) to the Liquidator on 03 September 2022 towards Earnest Money Deposit.
- 7.8. The Letter of Intent executed by Udgam Commercial Limited was submitted to the Liquidator.
- 7.9. The entire sale consideration of Rs.12,51,00,000/- (Rupees Twelve Crore Fifty- One Lakh only) along with interest of Rs.24,97,545.21 (Rupees Twenty Four Lakh Ninety Seven Thousand Five Hundred Forty Five and Twenty One Paise) was paid by the Successful Bidder between 05 December 2022 to 16 December 2022.
- 7.10. On receipt of the entire sale consideration of Rs.12,51,00,000/- (Rupees Twelve Crore Fifty- One Lakh only) along with interest of Rs.24,97,545.21 (Rupees Twenty Four Lakh Ninety Seven Thousand Five Hundred Forty Five and Twenty One Paise), the Liquidator has distributed the amount amongst the Stakeholders as per section 53 of the Code.
- 7.11. The Liquidator issued a Certificate of Sale<sup>5</sup> on 22 December 2022 to the Successful Bidder.
- 7.12. The Liquidator has submitted his Final Report as per regulation 45 of the Liquidation Process Regulations and Form H<sup>6</sup>, *i.e.*, Compliance Certificate under regulation 45(3) of the Liquidation Process Regulations.

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<sup>4</sup> Annexure 19 at Pp. 142-143 in I.A. (IB) No. 1197/KB/2022

<sup>5</sup> Annexure 8 at Pp. 61-67 in I.A. (IB) No. 177/KB/2023

<sup>6</sup> Annexure 12 at Pp. 76-82 in I.A. (IB) No. 177/KB/2023

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7.13. The learned Counsel submitted that the successful bidder is entitled to the Liquidation estate of SRI Aranath Logistics Limited with a clean slate without being burdened with any pre-CIRP liabilities of the Corporate Debtor. In support of the above, he placed reliance on the following judgments:

- a. **Kashvi Power & Steel Private Limited and Anr. V. West Bengal State Electricity Distribution Company Limited & Ors., W.P. A. No. 6327 of 2022**, (para 63) passed by the Hon'ble High Court.
- b. **Haryana State Industrial And Infrastructure Development Corporation Limited v. AAR AAR Technoplast Private Limited & Anr., Company Appeal (AT) (Ins.) No. 606 of 2021**;
- c. **Arun Kumar Jagatramka v. Jindal Steel and Power Limited & Anr., Civil Appeal No. 9664 of 2019** (para 67)

7.14. The learned Counsel in I.A. (IB) No. 1197/KB/2022 seeks approval of this Adjudicating Authority for sale of the Liquidation estate of Sri Aranath Logistics Limited on "AS IS, WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" as a going concern as defined in regulation 32(e) of the Liquidation Regulations through open e-auction and other applicable regulations and entitle the Successful Highest Bidder to take over/ purchase the Liquidation estate of Sri Aranath Logistics Limited with a clean slate without being burdened with any pre-CIRP liabilities of the Corporate Debtor.

7.15. The learned Counsel in I.A. (IB) No. 177/KB/2023 seeks for closure of liquidation process of the Corporate Debtor.

***Analysis and Findings***

8. We have heard the Ld. Counsel appearing on behalf of the Applicant and perused the records.
9. Whereas some of the prayers made in I.A. (IB) No. 1197/KB/2022 come within the purview of the Code and the Companies Act 2013. While many others fall under the power and jurisdiction of different government authorities/departments, prayer (c) and part prayer (e) in I.A. (IB) No.

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- 1197/KB/2022 that pertains to other governmental authorities/departments shall be dealt with by the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government. Its ordered that the competent authorities including the Appellate authorities may consider the prayer (c) part prayer (e) keeping in view the spirit of the code (IBC 2016) in I.A. (IB) No. 1197/KB/2022.
10. Since, this is a 'Going concern sale' , the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, with all necessary forms along with filing fees etc. upon receipt of such application such authority shall o consider granting the same keeping in mind the objectives of the Code which is concerned with resolving of the insolvency of the Corporate Debtor.
11. With respect to prayer (b) of IA 1197, the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*<sup>7</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

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<sup>7</sup>2021 SCC OnLine SC 313 decided on 13.04.2021.

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12. The Liquidator has already effected the sale and has distributed the sale proceeds, hence prayer (a) & (i) in I.A. (IB) No. 1197/KB/2022 are infructuous.
13. In view of the above facts and circumstances, we allow the closure of the Liquidation Process of the Corporate Debtor as sought for in I.A. (IB) No. 177/KB/2023.
14. The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances.
15. ***IA (IB) No.1197/KB/2022, I.A. (IB) No. 177/KB/2023 and CP (IB) No. 676/KB/2023 shall stand disposed of accordingly.***
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

The order is pronounced on the 04<sup>th</sup> day of August, 2023.

GGRB\_LRA