IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH COURT-III

I.A. 4358/2023

In

C.P. No. (IB) 4324/MB/C-III/2018

Under Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Mr. Ravi Bagri)
Liquidator of Sahyadri Agro)
Industries & Foods Private Limited)
Having address at:)
Octacrest Complex, Wing E,)
Flat No.1401, Lokhandwala Township,)
Kandivali East, Maharashtra – 400101.) **... Applicant/Liquidator**

IN THE MATTER OF

Bank of India **...Financial Creditor**

Vs

Sahyadri Agro Industries and Foods Private Limited **...Corporate Debtor**

Order pronounced on: 28.02.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)

Appearances:

For the Applicant: Adv. Amey Hadwale a/w. Adv. Geeta Lundwani; Ravi Bagri – Liquidator Sahyadri Agro

For the Successful Bidder: PCS Lovkesh Batra

For Corporate Debtor: Mr. Jagdish R. Ladda

<u>PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)</u>

1. The present I.A. has been filed by Mr. Ravi Bagri, the Liquidator of Sahyadri Agro Industries & Foods Private Limited (**"Corporate Debtor"**) as per Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**"Liquidation Regulations"**) seeking the following reliefs:

   a. *To pass an order for closure of the liquidation process of the corporate debtor sold as a going concern in terms of Regulation 45(3)(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
   b. *To discharge the Liquidator from acting as liquidator of the corporate debtor;*
   c. *For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

<u>Brief Facts</u>

2. The Corporate Debtor, Sahyadri Agro Industries and Foods Pvt. Ltd. was incorporated on 19.02.2013 under the provisions of the Companies Act, 2013, bearing CIN – U15490PN2013PC146319 AND Registration Number – 146319 (ROC Pune). Its registered office is at Gate Number 188, Sr. No. 14,12,16,24, KG Road, Taluka – Akole, Ahmednagar, Maharashtra - 422601.

3. The Corporate Debtor is into the Fast Moving Consumer Goods (FMCG) Sector, supplying and trading of packaged food products. The Plant had the capacity to produce 15 tons of Potato chips and 8 tons of Namkeen/snacks per day. The Corporate Debtor faced working capital shortage since 2016, after which the downfall of the company started. The Loan account with Bank of India became NPA in 2017. Due to default in repayment, the factory premises of the Corporate Debtor were taken under possession by Bank of India and since then the operations of the Corporate Debtor came to a standstill.

Commencement of CIRP

4. The C.P.(IB)4324/2018 was filed by the Financial Creditor, Bank of India to initiate Corporate Insolvency Resolution Process (**"CIRP"**) against the Corporate Debtor. This Tribunal, vide its order dated 21.01.2019 initiated CIRP against the Corporate Debtor and Mr. Ankur Kumar was appointed as the Interim Resolution Professional ("**IRP**"). The 1st Committee of Creditors ("**CoC**") Meeting was held on 21.02.2019 wherein, Mr. Ankur Kumar was appointed as the Resolution Process (**"RP"**). As per the procedural steps of CIRP, pursuant to the publication of fresh Form G on 31.07.2019, two fresh Expression of Interest ("EoI") were received. In the 13th CoC Meeting held on 19.11.2019, it was decided to grant time to the Prospective Resolution Applicants (PRAs) to provide the requisite information, however, no information/documents were received from the Resolution Applicants.

5. In the 15th CoC Meeting held on 21.12.2019, it came to light that there was no chance of reviving the Corporate Debtor, therefore, the following resolution was passed and approved by 85.57% voting rights to liquidate the Corporate Debtor: -

> *"Resolved that in the absence of the approval of the Resolution Plan due to lack of requisite information from the Resolution Applicant*

and as the maximum period of 330 days of CIR process is over, committee be and hereby recommends the liquidation of Sahyadri Agro Industries and Food Private Limited, the Corporate Debtor under Section 33 of Insolvency & Bankruptcy Code, 2016 subject to approval of Hon'ble National Company Law Tribunal, Mumbai."

Initiation of the Liquidation Process

6. Pursuant to the decision of the CoC, the Tribunal allowed the initiation of liquidation of the Corporate Debtor as per Section 33 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) vide its Order dated 15.12.2020 and the RP, Mr. Ankur Kumar was appointed as the Liquidator. Pursuant to the Liquidation Order dated 15.12.2020, the Liquidator published a Public Announcement in Form B dated 13.01.2021 to invite claims from the Stakeholders of the Corporate Debtor in the following newspapers: -

Newspaper	**Language**
Financial Express	English
Navrashtra (Mumbai Edition)	Marathi
Lok Satta (Ahmednagar Edition)	Marathi

7. As per the Public Announcement, the last date to submit claim was 11.02.2021.

8. The Financial Creditor filed an application bearing No. 1929 of 2020 to replace Mr. Ankur Kumar as the Liquidator of the Corporate Debtor. This Tribunal vide order dated 29.01.2021 replaced Mr. Ankur Kumar and appointed Mr. Ravi Bagri ("Applicant") as the Liquidator of the Corporate Debtor.

9. The Applicant issued a corrigendum in Form B on 12.02.2021 in the following newspapers to inform the Creditors of the Corporate Debtor regarding the replacement of the Liquidator.

Newspaper	Language
Business Standard (Ahmednagar Edition)	English
Times of India (Nashik Edition)	English
Pudhari (Ahmednagar, Nashik, Mumbai Edition)	Marathi

10. The last date of submission of claims was extended to 18.02.2021. After verifying the claims received from the Creditors, the Applicant filed a list of Stakeholders, in compliance with Regulation 31(2) of the Liquidation Regulations.

List of Stakeholders

11. The list of stakeholders of the Corporate Debtor and their admitted claims are reproduced in the following tabular form: -

Sr. No.	Stakeholders	No.	Claim Admitted (in Rs.)
1.	Secured Financial Creditors	2	34,95,99,057/-
2.	Unsecured Financial Creditors	6	1,28,07,000/-
3.	Employees	7	12,13,791/-
4.	Government Dues	2	8,92,261/-
5.	Operational Creditors	5	17,28,207/-
6.	Workmen	-	-
Total			36,62,40,316/-

Assets of the Corporate Debtor

12. As per the Final Liquidator Report dated 05.09.2023, the assets of the Corporate Debtor include the Land and Building structure located at Gate No. 185, Sr. No. 14,12,16,24, K.G. Road, Taluka – Akole, Ahmednagar, Maharashtra – 4220601, including Plant and Machinery aggregating to Rs.15,18,37,229.75.

13. As per Regulation 13 of the Liquidation Regulations, the Applicant filed the Preliminary Report dated 29.03.2021. Pursuant to Regulation 34 of

the Liquidation Regulations, the Applicant had submitted Asset Memorandum and as per Regulation 35 of the Liquidation Regulations, the Applicant appointed the following valuers: Mr. V. Kartikeyan, CA Prashant Jain, Mr. Manoj Sharma, CA Dr. Shyam Sudar Premanand Das and Mr. Prabhakaran to conduct and prepare Valuation Reports of the Corporate Debtor. As per the Valuation Reports submitted by the valuers, the Average Fair Value of the assets of the Corporate Debtor was Rs. 9,96,84,668.50 and the Average Liquidation Value of the Corporate Debtor summed up to Rs. 6,46,30,668.50. A summary of valuation reports of the Corporate Debtor is reproduced below: -

(INR)

Sr. No.	Particulars	Fair Value	Liquidation Value
1.	<u>For Land & Building</u>		
	Mr. Manoj Sharma	4,43,09,000	3,21,32,000
	Prabhakaran	4,98,08,000	3,29,67,000
	Average (A)	**4,70,58,500**	**3,25,49,500**
2.	<u>For Plant & machinery</u>		
	V Karthikeyan	5,03,41,000	3,02,05,000
	Prabhakaran	5,23,85,000	3,14,31,000
	Average (B)	**5,13,63,000**	**3,08,18,000**
3.	<u>Securities & Financial Assets</u>		
	Prashant Jain	12,73,654	12,73,654
	Shaysundar Premanand Das	12,52,683	12,52,683
	Average (C)	**12,63,168**	**12,63,168**
	Average (A+B+C)	**9,96,84,668**	**6,46,30,668**

<u>Sale of Corporate Debtor as a going concern</u>

14. In the 1st Stakeholder Consultation Committee ("SCC") meeting which was held on 09.04.2021, the Applicant apprised the stakeholders about the appointment of Valuers to determine the Realisable Value/Liquidation Value of the Assets/Business.

15. In the 2nd SCC Meeting held on 09.06.2021, the Applicant reproduced the draft of Public Notice for E-auction of the Assets of the Corporate Debtor along with the liquidation cost incurred until that date. The Applicant published the Public Notice on 15.06.2021 for E-auction of Corporate Debtor's Assets and scheduling the auction 30.06.2021. The 1st E-auction failed as the Applicant did not receive any Earnest Money Deposit (EMD) from any Bidder.

16. In the 3rd SCC Meeting held on 20.10.2021, the Applicant apprised the stakeholders, about receiving interest from several investors who were ready to acquire the Corporate Debtor as a going concern. The Applicant further submitted that, selling the assets on a piecemeal basis through public auction may not fetch maximum value to the Creditors of the Corporate Debtor and that the Applicant had also approached the various business groups engaged in food industries for investing in the acquisition of the Corporate Debtor as a going concern, pursuant to this discussion the members requested the 2nd E-auction to sell the Corporate Debtor as a going concern.

17. The period of liquidation process expired on 15.12.2021 and the Applicant sought an extension for further 1 year, vide I.A. 2926 of 2021 with effect from 15.12.2021 so that the Applicant could further continue to sell the Corporate Debtor as a going concern. The Tribunal approved the extension of 6 months for completing the liquidation process commencing from 07.03.2022.

18. In the 4th SCC Meeting was held on 01.02.2022, the Applicant apprised the stakeholders, that a new investor, interested to acquire the Corporate

Debtor as a going concern wished to visit the factory to perform due diligence. The Applicant briefed that the investors needed more clarity in terms of tax break, as the Plant had been shut for more than 3 years. Therefore, the Applicant noted that once the investors show interest, the auction process shall start.

19. In the 5th SCC Meeting held on 08.07.2022 at Bank of India, Mumbai – 400032., the Applicant apprised the stakeholders about the extension allowed by the Tribunal, therefore, it was suggested by the Applicant that the sale of Corporate Debtor as a going concern shall be conducted within the stated time limit or the Applicant will have to sell the assets in piecemeal basis. The 3rd e-auction for the sale of the assets of the Corporate Debtor as going concern was conducted on 01.07.2022 after which one Expression of Interest (EoI) was received however, due to non-submission of EMD amount, the auction process failed. The Applicant proposed the next available option of Private Sale due to multiple failed attempts of e-auction. After discussions, it was mutually decided that one more e-auction shall be held for the sale of Corporate Debtor as a going concern, 5% below the Current Reserve Price.

20. Pursuant to the 5th SCC meeting, the Applicant published a Public Notice on 02.09.2022 for the 4th e-auction of the Assets of the Corporate Debtor as a going concern on 03.09.2022. The auction was conducted and Mr. Jagdish Ladda was declared as the Successful Bidder who deposited Earnest Money Deposit ("EMD") of Rs.57,00,000/-. Consequently, a Letter of Intent dated 07.09.2022 was issued to the successful bidder, Mr. Jagdish Ladda. The Aggregate Sale Consideration of Rs.5,75,00,000/- (including interest at 12% amounting to Rs.30,34,633/-) was paid by Mr. Jagdish Ladda to the Liquidator for the purchase of the Corporate Debtor as a Going Concern

21. The Applicant submitted that the matter was listed on 07.09.2022 before this Tribunal, wherein the Applicant stated that the Corporate Debtor is

being sold as a Going Concern and that the Applicant had received the EMD but the remaining sale consideration was yet to be received. Therefore, the Applicant filed an application IA No. 2831 of 2022, seeking further extension of 6 months with effect from 07.09.2022 to conclude the sale of the Corporate Debtor as a going concern, pursuant to which the Tribunal granted the required extension.

22. After receiving the rest of the sale consideration from Mr. Jagdish Ladda, the Applicant issued a Sale Certificate dated 25.04.2023.

23. The Para 12 of the Sale Certificate dated 25.04.2023 has been reproduced below: -

> *"12. While the sale of the Corporate Debtor has been undertaken as a Going Concern and therefore, the Ownership, Management and Control of the Corporate Debtor has been transferred to the Purchaser, and all the Movable and Immovable Assets of the Corporate Debtor is considered to have been handed over on "As is where is basis", "Whatever there is basis" and "No Recourse" basis to the Purchaser, with the issuance of this Sale Certificate."*

24. It was submitted that the amount realized through the liquidation process of Rs. 6,05,34,633/- was distributed among the stakeholders in accordance with the waterfall mechanism mentioned under Section 53 of the Code and is provided in the table below:

Sr. No.	**Stakeholders under section 53**	**Amount Claimed**	**Amount Admitted**	**Amount Distributed**	**Amount Distributed to the Amount claimed(%)**
1	(a)CIRP Costs	89,38,188	89,38,188	89,38,188	100%
2	(a)Liquidation Costs	65,19,167	65,19,167	65,19,167	100%
3	(b)(i)Workmen Dues	-NA-	-NA-	-NA-	-NA-

4	(b)(ii) Secured Creditors	35,04,70,782	34,95,99,057	4,41,84,869	13%
5	(c)wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date	47,93,558	12,13,791	-	-
6	(d) Financial debts owed to unsecured creditors	3,21,65,141	1,28,07,000	-	
7	(e)(i) any amount due to the Central Government and the State Government of the period of two years preceding the Liquidation Commencement Date	1,31,33,086	8,92,261	*8,92,261	100%
8	(f)any remaining debts and dues	44,72,109	17,28,207	-	-
Total		**42,04,92,031**	**38,16,97,671**	**6,05,34,485**	**-**

***Remarks:** Employee ESIC dues must be paid in full, as they are not part of the liquidation estate. [Sec 36(4)(iii)]

25. During the course of the hearing on 12.12.2024, this Bench raised certain queries relating to payments to the employees. The daily order dated 12.12.2024 is reproduced below: -

> *"1. Perusal of the pleadings show that there are claims of unsecured employees is to the tune of Rs. 12,13,791. However, in the distribution table there is no amount allotted to the employees.*
>
> *2. Petitioner is directed to explain the same by way of Additional Affidavit."*

26. Consequently, the Applicant filed an Additional Affidavit. In response to the query, the liquidator submits that in response to the Public announcement, the liquidator received claims from the employees for the period from 01.04.2017 to 31.05.2018 totalling to Rs.47,93,558/- and admitted the claims to the extent of Rs.12,13,791/-.

27. It was further submitted that no workmen claims were received or appearing in the books of accounts of the Corporate Debtor.

28. The Liquidator further stated that "*…under Section 53 of the Insolvency and Bankruptcy Code (IBC), the proceeds from the sale of liquidation assets must be distributed in the specified order of priority. According to subsection 53(1)(b) the claims of secured financial creditors take precedence over the claims of employees as outlined in subsection 53(1)(c). In the present case, as indicated in the distribution table, the sale proceeds were insufficient to satisfy the claims of the secured financial creditors, consequently, no amounts were paid to the employees.*"

29. It is observed from the table showing amounts of distribution to Stakeholders, that Employees ESI dues amounting to Rs.8,92,261/- is being paid in full treating this amount, as not being part of the Liquidation estate under section 36(4)(iii).

30. Thus, it can be seen that total amount of sale consideration being Rs.6,05,34,485/- has been first utilised for ESI dues of Rs.8,92,261/-, then for CIRP and Liquidation Cost as per Section 53(1)(a). After providing for payment of CIRP cost of Rs.89,38,188/- and Liquidation Cost of Rs.65,19,167/-, an amount of Rs.4,41,84,869/- was left which has been utilised to pay to the Secured Financial Creditors under Section 53(1)(b)(ii).

Filing of Necessary Reports

31. The Liquidator had filed the Preliminary Report and Asset Memorandum as per Regulation 13 and 34 of the Liquidation Regulations.

32. The Valuation Reports were placed on record by way of an Additional Affidavit dated 06.05.2024.

33. The Applicant submitted a Final Liquidator Report dated 05.09.2023 and a compliance certificate in Form H dated 05.09.2023 as per Regulation 45(3)(a) of the Liquidation Regulations. The Applicant also submitted the Receipt and Payment Account along with the Auditors' Report of the Corporate Debtor for the period ending on 05.09.2023 in addition with bank statements for the relevant period.

Completion of Liquidation Process of the Corporate Debtor

34. The Liquidator had opened a 'Sahyadri Agro Industries and Foods Private Limited – In Liquidation' bearing Account No.017620110000478. It was confirmed by the Liquidator in the 'Receipts and Payments' for the period ended 05.09.2023 that there is no Cash in Hand, Cash Receipts or Cash Payments in the Liquidation Account. We also note that the Cash at Bank amounting to Rs.3,48,700/- lying in the Liquidation Account was distributed towards the unpaid CIRP and Liquidation Cost.

35. It has also been submitted that no PUFE transactions were determined by the Liquidator.

36. At this juncture, it is relevant to quote Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016:

> ***"45. Final report prior to dissolution.***
>
> *(1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated;*

(2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

(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; or

(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).”

37. From the perusal of the Application along with the Final Report and the Compliance Certificate filed in Form H by the Liquidator, it is seen that the Corporate Debtor has been successfully sold as a going concern and the sale proceeds have been distributed as per the waterfall mechanism under Section 53 of the Code. In view thereof, we are inclined to allow the present application under Regulation 45(3)(a) of the Liquidation Regulations, 2016.

38. Accordingly, we hereby order closure of liquidation proceedings of the Corporate Debtor i.e. **Sahyadri Agro Industries & Foods Private Limited** with the following directions: -

a. Liquidation proceedings of the Corporate Debtor stands closed from the date of this order.

b. The Liquidator, Mr. Ravi Bagri, is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.

c. The Liquidator and the Registry are directed to forward a copy of this Order to Registrar of Companies having jurisdiction over the Corporate Debtor and also to the IBBI, within 7 (seven) days from the date of uploading of this order.

39. We are informed that an I.A. No. 2814 of 2018 filed by the Successful Bidder, Mr. Jagdish Ladda under Section 60(5) of the Code read with Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 seeking reliefs, concessions & obtaining control of the Corporate Debtor i.e. Sahyadri Agro Industries & Foods Private Limited is pending before this Bench, hence the C.P. No. 4324 of 2018 cannot be closed at this juncture.

40. In the result, **IA No. 4358 of 2023** is hereby **allowed** and **disposed of.**

Sd/-	**Sd/-**
CHARANJEET SINGH GULATI **(MEMBER TECHNICAL)**	**LAKSHMI GURUNG** **(MEMBER JUDICIAL)**

Vaishnavi, LRA