



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/307/KOB/2024

IN

MA/07/KOB/2019

IN

IBA/258/CB/2019

(Under Section 60(5) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016).

In the matter of:

Excel Glasses Limited.

Memo of Parties:

Mr. Ravindra Chaturvedi, Liquidator of Excel Glasses Limited. Address at BKC Centre, 31-E, Laxmi Industrial Estate, New Link Road, Andheri (W), Mumbai- 400 053.

... Applicant.

In the original matter of: -

M/s. Boon Investment and Trading Company Private Limited.

... Financial Creditor.

-Vs-

M/s. Excel Glasses Limited.

... Corporate Debtor.

Order delivered on: 14.08.2024

Coram:

Hon'ble Member (Judicial) : TMT. Justice T Krishna Valli.

Hon'ble Member (Technical) : Shri. Ravichandran Ramasamy.

Appearances:

For the Applicant : Mr. Akhil Suresh

ORDER

Per: Coram

1. The application has been filed under Section 60(5) of IBC,2016 read with Rule 11 of the NCLT Rules, 2016 by the Liquidator in the matter of Excel Glasses Limited, seeking the following relief: -
 - To consider granting permission to the applicant herein for the sale of the Corporate Debtor as a going concern in terms of Regulation 32A of Liquidation Process Regulations, 2016 as per the E-Auction process Memorandum approved by the SCC.
2. The NCLT Chennai Bench vide order dated 26.03.2019 in IBA/258/CB/2019 admitted the Insolvency Resolution Process of the Corporate Debtor. During the CIRP process, the Committee of Creditors of the Corporate Debtor discussed and decided that since no resolution plan had been received, the way forward for the Corporate Debtor is liquidation. Accordingly, during the 4th CoC meeting dated 21st August 2019, the members of the CoC unanimously agreed and resolved to liquidate the Corporate Debtor with 100% voting.
3. Consequently, an application was filed before this Tribunal, under Section 33 (1) (a) of the Code seeking necessary directions of liquidation of the Corporate Debtor. Accordingly, this Tribunal vide its Order dated 21.10.2019 ordered for Liquidation of the Corporate

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Debtor and had consequently appointed this Applicant as the liquidator of the Corporate Debtor.

4. It is stated the public announcement in Form B under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 was published in Business Standard Newspaper of Kochi edition on October 24, 2019, and Mangalam Daily Newspaper of Kerala edition on October 24, 2019. The said public announcement was also uploaded on the website of the IBBI.
5. It is stated that per the aforesaid public announcement, the Applicant received several claims from the employees/workmen of the Corporate Debtor amongst other creditors of the Corporate Debtor. It is stated that the Applicant examined and processed all the claims received from the employees along with all other creditors by law and in clear compliance with the Code.
6. It is further stated that the Corporate Debtor had 6 Blocks of Assets that were available for liquidation as follows: -

Name of Successful Bidder/Buyer	Date of Successful Auction	Assets Block No.	Description of Assets	Liquidation Value	Reserve Price (in lakhs)	Successful Bid price (in lakhs)
Rajeswari Glassware's	30.09.202	Block No.5	Stock and inventory	335	335	335
Alok Glass Works	16.12.2021	Block No.4	Plant and Machinery	1112	1295	1297
SPAHJ India Trading	24.03.2022	Block No.1	Building structures	172	300	431

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Private Limited			on factory land			
Cochin Rubbers Pvt. Ltd.	18.02.2023 (sale is in process)	Block No. 1	Factory land	5874.96	7200	7210
Abad Fisheries Pvt. Ltd.	31.05.2023 (sale is in process)	Block No. 1	A plot of land opposite to KSIDC Industrial Growth Centre	194.98	106	106
Rakesh Kumar Gaur	19.06.2024 (sale is in process)	Block No. 1	A plot of land opposite the Infocity campus	190.29	92.70	92.70

7. It is stated that the sale of all blocks of assets has been completed except the sale is in process for one asset block for which a successful bid has been received in the 22nd auction held on 19.06.2024. The entire blocks of assets of the Corporate Debtor have been successfully sold by the liquidator and all that is left is to complete the registration process for the immovable properties sold via e-auction and the last block as mentioned above.
8. It is stated that after obtaining permission from this Tribunal, the Applicant has proceeded with the distribution of proceeds of the sale

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of assets, whereby the admitted claims of secured financial creditors, namely KSIDC and KFC, and of Workmen and employees have been settled in full and admitted claims of unsecured financial creditors have been settled to the extent of about 39%.

9. It is stated that in the process of completion of the CIRP, the Applicant has received interest from over 10 interested parties expressing their willingness to purchase the Corporate Debtor as a going concern without tangible assets. This is preliminary since the Corporate Debtor is a BSE-listed company and is considered to have value. However, the offers that were put forth for the same were vague and insubstantial ranging from 10 Lakhs to 50 Lakhs. The Applicant thereafter appointed two IBBI registered valuers to determine a realizable value for the present company.
10. It is further stated that the members of SCC unanimously agreed to keep the reserve price at Rs. 50 lakhs for the sale of Corporate Debtor as a going concern.

FINDINGS: -

11. We have heard the learned counsel for the Resolution Professional Mr. Akhil Suresh, and perused the materials available on record. The crux of the status of the Corporate Debtor is that the Corporate Debtor was ordered into Liquidation vide order dated 21.10.2019, and thereafter, a substantial amount of assets of the Corporate Debtor were sold after the commencement of the Liquidation of the Corporate Debtor, the same is tabulated under para 6 above.

12. It is observed that, the 90 days specified for sale as a going concern under Regulation 32A has already expired and that the Liquidator has already sold a few assets of the Corporate Debtor.
13. On hearing the learned counsel for the Applicant and with an appreciation of the documents produced, the following issues are framed: -
- i. Is this Interlocutory Application maintainable after the expiry of 90 days of liquidation of the Corporate Debtor?
 - ii. Can the residual assets of the Corporate Debtor be sold on a going concern basis under Regulation 32A of the Liquidation Process Regulations, 2016?
14. In the circumstances mentioned above, we have gone through the settled law decided by the NCLT Hyderabad Bench in ***SREI Equipment Finance Ltd v Viswa Infrastructures and Services Pvt Ltd***, (IA No 995/2020), wherein, the bench has observed as follows:
- “3. In the present case, the Applicant could not sell the assets as going concern within 90 days from the liquidation commencement date owing to the fact that security interest from eight secured lenders were relinquished only in the month of December 2019 which is a prerequisite for selling the assets under Regulation 32 (a) to (f) of Liquidation Process Regulations. As such the Liquidator is seeking appropriate directions of this Tribunal for selling the Corporate Debtor as a going concern.*
- 5. The Hon'ble NCLAT, in the matter of Binani Industries Limited Vs. Bank of Baroda & Anr., clarified the objectives of the Code as under:*

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"The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor'" and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests".

6. The object of the Code is not for liquidation but for resolution. *In the instant case, Section 60(5)(c) empowers the Adjudicating Authority to grant necessary reliefs even during liquidation*

15. Taking into consideration the facts and circumstances of the instant case along with Regulation 32 read with 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 it is clear that the Liquidator should have made all such endeavours to first sell the assets of the Corporate Debtor under Regulation 32(e) or (f) as such exclusively only at the first auction. However, perusing the instant application, it is seen that the Liquidator has sold a few properties and is now pursuing the present application for sale as a going concern. The case above law is persuasive because those are from a similar bench of the National Company Law Tribunal and hence, the same is not binding on this Adjudicating Authority. Therefore, we are of the considered opinion that this application is maintainable.
16. **Issue no. ii:** - To answer this issue we look at the meaning of the word *going concern* under IBC. We find that the word going concern is not defined in IBC/ the Liquidation Regulations. However we rely on the Note of the Insolvency and Bankruptcy Board of India according to one round table of the Insolvency and Bankruptcy

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Board of India held with stakeholders on 21.05.2018, wherein the word going concern is described as

“Going Concern means all the assets, tangibles or intangibles and resources needed to continue to operate independently a business activity which may be whole or a part of the business of the corporate debtor without values being assigned to the individual asset or resource.”

17. On perusal of the above and further reliance placed on Regulations 32 and 32A of the Liquidation Process Regulations, 2016, the present Corporate Debtor, bereft of assets and dismissed of employees, would not serve the interest of the Corporate Debtor to be sold as a going concern.
18. The sale as a going concern provided in extant regulation means that the Corporate Debtor could be put into operation with all the essential resources available for it to carry on the business activity. Accounting Standard 1 clarifies “The enterprise is normally viewed as a going concern that is as continuing operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidating or curtailing materially the scale of the operation”. In the instant case, the Corporate Debtor is under liquidation proceedings and all the key assets of the business has been sold already. The nothing left for the Corporate Debtor to carry out the business and selling the skeleton of the Corporate Debtor. Being a listed entity would lead to misuse of the Corporate Debtor

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and therefore the appropriate cause of action will thus be auctioning the sale of the asset on an individual basis and subsequently dissolution. Therefore, we are of the view that this application **IA(IBC)/307/KOB/2024 is to be dismissed.**

19. Let the certified copy of the order be issued upon compliance with requisite formalities.
20. File be consigned to records.

Sd/-
RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd/-
T KRISHNA VALLI
(MEMBER JUDICIAL)

Dated this the 14th day of August, 2024.

Rajasree R. Nair/LRA.