

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court– I)  
KOLKATA**

I.A. No. (I.B.C) 1321/KB/2022

In

C.P. (IB)935/KB/2018

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016, read with rule 11 of the National Company Law Tribunal Rules, 2016*

*In the matter of:*

**State Bank of India**

..... *Financial Creditor*

*-versus-*

**Johal & Company**

..... *Corporate Debtor*

*And*

**Johal & Company**

..... *Applicant*

*-versus-*

**State Bank of India**

..... *Respondent*

**Date of Pronouncement of the order: 2<sup>nd</sup> January, 2023**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

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

**For the Financial Creditor/Respondent:**

Ms. Urmila Chakraborty, Adv.

Mr. Debashish Chakraborti, Adv.

Mr. Snehasish Chakraborty, Adv.

For the Corporate Debtor/ Applicant:

Mr. Joy Saha, Sr. Adv.

Mr. D. Basu Roy, Adv.

For State Bank of Inida:

Mr. Sridip Banerjee, AGM, SBI

## **ORDER**

***Balraj Joshi, Member (Technical):***

1. This Court convened through hybrid mode.
2. This is an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **Johal & Company**, hereinafter referred to as “*Applicant*” seeking the following reliefs:
  - a. *To record that the account of the petitioner has been initiated by the respondent/financial creditor for ARC sale and for which the reserve price for the ARC sale has been approved by appropriate authority;*
  - b. *To defer the final adjudication of CP(IB)935/(KB) 2018 for the period of two months and it is expected that within that period the said sale will be finalized by receiving the payments to discharge the liabilities of the respondent/financial creditor in the account of as against the petitioner/ corporate debtor;*
  - c. *Ad-interim order of prayer (a) and (b) above;*
  - d. *Such further order, direction and/or directions be passed as this Adjudicating Authority may deem fit and proper.*

**3. Submissions on behalf of the Applicant:**

- 3.1 The applicant has submitted that after the petition being C.P. (IB)935/KB/2018 was partly heard by this Adjudicating Authority, the applicant/Corporate Debtor approached the respondent/Financial Creditor for an OTS by way of assignment of the account of the applicant/Corporate Debtor to an asset restructuring company (ARC) namely Phoenix ARC Pvt. Ltd. The said ARC, on August 18, 2022,

gave an indicative bid for assignment of the accounts namely Madan Wine Stores Pvt. Ltd., Johal & Company (Wine Sales) Pvt. Ltd. and Jogvick Manufacturing & Trading Pvt. Ltd. for total consideration amount of ₹45,00,00,000/-. Copy of the indicative bid of ARC to the DGM, SAMBI, SBI dated August, 18, 2022 is annexed to the application and marked with Letter - "A".

3.2 The Applicant has further submitted that the respondent/Financial Creditor, on October 26, 2022, sent a mail to the Advocate of the respondent/financial creditor, intimating that all the above-mentioned accounts have been initiated for ARC sale and reserve price for the ARC Sale has been approved by the appropriate authority. The respondent/Financial Creditor sent a copy of the said mail to the representative of the ARC as well. The SOP of ARC sale was attached with the said mail. A copy of the mail of the financial creditor dated October, 26, 2022 of CLOV, SAMB Kolkata is annexed hereto and marked with Letter - "B".

3.3 It has further been submitted that there are excellence chances and every possibility to approve the ARC sale by the appropriate authority of the respondent/financial creditor and as such the hearing of the CP(IB)935/(KB) 2018 be deferred for the period of two months and it is expected that within that time the ARC sale will be finalized and payments to be made to the respondent/financial creditor to discharge the liabilities as in the account of the petitioner/corporate debtor.

#### **4 Analysis and Findings:**

4.1 Heard the Ld. Sr. Counsel on behalf of the Applicant and the Ld. Counsel on behalf of the Respondent and perused the record.

4.2 It is noted that in a previous hearing of the matter dated 28<sup>th</sup> October 2022, the senior officer of the Financial Creditor was instructed to file a reply affidavit to the instant interlocutory application.

4.3 Upon perusal of the said reply affidavit filed on behalf of the Financial Creditor, it is noted that the Financial Creditor has submitted therein that the ARC sale route is the most viable option for resolution of the said account.

4.4 Be that as it may, this Adjudicating Authority is not required to wait for the outcome of the assignment process between the Financial Creditor, the ARC and the Corporate Debtor. this Adjudicating Authority also cannot ignore the fact that this matter is pending since 2018. As such, the interlocutory application being **IA (I.B.C.) No. 1321/KB/2022** is *rejected*.

4.5 Post the main company petition for final hearing on **8.02.2023**. It is also made clear that if on said date, the matter is not argued by the Financial Creditor, appropriate orders will be passed.

4.6 Certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on 2<sup>nd</sup> of January, 2023