

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

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**IA No.68/ALD/2024 IN CP (IB) No.133/ALD/2017**

*In the matter of*

*An application filed under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016*

**IN THE MATTER OF:**

Shree Krishna Recycling India Private Limited  
Gali No.2, Bhupendra Puri,  
Modinagar 201204

.....Applicant

**VERSUS**

Mr. Sanjay Gupta  
Liquidator, Shamken Multifab Limited  
E-10A, Kailash Colony, New Delhi-110048

..... Respondent

**AND IN THE MATTER OF:**

Asset Reconstruction Company (India) Limited

.....Financial Creditor

**VERSUS**

Shamken Multifab Limited ..... Corporate Debtor

Order pronounced on 2<sup>nd</sup> February, 2024

***Coram:***

Mr. Praveen Gupta. : Member (Judicial)  
Mr. Ashish Verma : Member (Technical)

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**Appearances:**

Sh. Virender Ganda, Sr. Adv. : For the Applicant in IA No.68/2024  
Assisted by Sh. Vishal Ganda,  
Sh. Ayandeb Mitra &  
Sh. Ashraf Belal, Advs.

Sh. Amar Vivek alongwith : For the Respondent/Liquidator Sh.  
Sh. Anoop Kumar Sharma Sanjay Gupta present in person IA  
& Sh. Abhinav Tyagi, Advs. No.68/2024

**ORDER**

1. This application has been filed by M/s Shree Krishna Recycling India Private Limited i.e. the Successful Bidder (hereinafter referred as the “**applicant**”) seeking the following prayer:

- i. *Allow the present Application;*
- ii. *To allow sale of assets on slump sale basis as per Regulation 32(b) of the Liquidation Process based on the following reasons:*
  - (a) *Obsolescence of plant and machinery due to outdated technology.*
  - (b) *Unavailability of essential parts of machinery, rendering the plant non-operational.*
  - (c) *Operations have been shut for 6 years and there are no workers left in the company, due to being unable to run the plant and cannot maintain the status of the going concern.*
  - (d) *A portion of the constructed building on corporate debtor’s premises is situated on the land of a third party which is alien to the present transaction (Khasra No. 319) and Government Land (Khasra No. 317), which is not part of the liquidation estate. So the applicant may have to dismantle, shift the machinery and breakdown the existing factory of the corporate debtor. Thereby, defeating the purpose of sale as going concern basis.*

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- iii. *To allow an extension of the period to pay the balance sale consideration beyond ninety (90) days as specified in the letter of Intent (LOI) served by the Respondent/Liquidator, as the undertaking given by the Applicant as aforesaid.*
- iv. *To exclude the period for the calculation of interest i.e. 12% in terms of Clause I (12) of Schedule I of the Liquidation Regulation Process, 2016 from the date of filing of this application till its adjudication, due to difficulties faced by the Applicant.*
- v. *Pass any such order(s) as this Hon'ble Tribunal may deem fit in the interest of justice.*

- 2.** It has been averred in the application that the applicant in pursuance of the sale notice dated 26<sup>th</sup> September, 2023 published by the Liquidator for sale of the assets of the Corporate Debtor as a going concern, made offer for bidding.
- 3.** It is stated that initially an application U/s 7 of the Code was initiated by the Financial Creditor against the Corporate Debtor and on admission of the application filed U/s 7 of the Code, the CIRP was initiated on 29.05.2018. Eventually, as per the decision of the COC taken in its 11<sup>th</sup> meeting, it was resolved to file an application U/s 33 of the Code for initiating the liquidation process and accordingly, vide order dated 1<sup>st</sup> June, 2023 passed by this Adjudicating Authority, liquidation process was ordered to be initiated.

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4. In view of the fact that the Form G initially published for inviting the expression of interest did not ultimately materialize in acceptance of any Resolution Plan by the COC, though three expression of interest were received out of which two were withdrawn and the third party also did not provide the requisite EMD, as a result thereof, the Resolution Plan was not put up before the COC for its consideration. While directing initiation of the liquidation process in terms of our order dated 1<sup>st</sup> June, 2023 vide para no.12(d), it was observed by us that Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32 (e)(f) of IBBI Liquidation Process Regulation, 2016.
  
5. It is stated in the application that as a result thereof, the Liquidator published the sale notice dated 26<sup>th</sup> September, 2023 for sale of the Corporate Debtor as a going concern and the applicant became the Successful H1 Bidder and accordingly, a Letter of Intent dated 28<sup>th</sup> October, 2023 (hereinafter referred as “LoI”) was issued calling upon the

applicant to deposit the sale consideration as per the stipulated date mentioned in the LoI.

6. After receipt of the LoI, the applicant deposited an amount of Rs.27,20,000,00/- on various dates and including the initial amount paid towards EMD, the total amount deposited by the applicant stood as Rs.29,36,000,00/- and the only balance consideration of Rs.7,20,000,00/- remained due and payable by the applicant without interest after the expiry of 30 days and thereafter with interest for a period of 60 days at the rate of 12% interest which expired on 26<sup>th</sup> January, 2024.
7. The present application however, now has been moved for treating the present sale as a going concern to be as a sale under slump sale basis in view of the certain eventualities/difficulties faced by the Successful Bidder/Applicant. The grounds for the application have been inter alia, enumerated in para no.16 & 17 as under: -

*16. That it is of pertinence to state herein that as per the E-auction process information document bearing document No. EAUCTION /DOC/GC/2023/1 dated 25.09.2023, even though the Corporate Debtor was contemplated to be sold as a going concern, the financial status of the Corporate Debtor indicates as follows:*

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- a. *Corporate Debtor has not been operational since 2006.*
- b. *The machineries available at the factory of the Corporate Debtor are outdated, based on obsolete technologies and presently has no market value.*
- c. *Several machineries of the corporate debtor have broken down and not in the repairable condition.*
- d. *There are no workers left in the corporate debtor.*
- e. *The factory of the Corporate Debtor has been built on land encompassing Khasra numbers 316, 317, 318, and 319 in Village Kotvan, Tehsil Chatta, Mathura, Uttar Pradesh 281401. However, the Debtor only owns land parcel numbers 31 and 318. This is discrepancy likely triggers a dispute over the factory portion constructed on numbers 317 and 319 at Village Kotvan, Tehsil Chatta, Mathura, Uttar Pradesh-281401.*

*Apart from the above factory, Corporate Debtor has the following assets:*

- i. *B-7 and B-8 UPSIDC, Kosi Kalan, District Mathura, Uttar Pradesh.*
  - ii. *E-29,30,31,32 at UPSIDC, Kosi Kalan, District Mathura, Uttar Pradesh*
  - iii. *Land at Old Survey no. 909, New Survey No. 1834, Mouje Indrad, Taluka-Kadi, District Mehsana.*
17. *Moreover, after perusal of the financial statement of the Corporate Debtor, it is revealed that the Corporate Debtor has ownership of certain land parcels and a factory. That it is highly germane to state that there is no operational revenue of the Corporate Debtor.*

8. It is further averred in para no.19, 23, 24 & 25 of the application which is reproduced as under: -

19. *Consequently, since the assets of the Corporate Debtor are alone being sold, it is neither practical nor financially viable to sale the Corporate Debtor as a going concern. As discussed with the liquidator in detail, and thereby the Applicant has agreed to pay*

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*the stamp duty, as may be applicable on the sale of assets in terms of Regulation 32(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as “slump sale” instead of “Sale as going concern”.*

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23. *That it is of pertinence to state herein that since the Applicant deposited Rs. 29.36 Crore, against the total sale consideration of the Corporate Debtor on or before 28.11.2023. That as per Clause I (12) of schedule I of the Liquidation Process Regulation, wherein the highest bidder shall be invited to provide the balance consideration within ninety (90) days of the date of such demand, which is expired on 26.1.2024- “provided that payments made after thirty (30) days shall attract interest at the rate of 12% p.a. Provided further that the sale shall be cancelled if the payment is not received within thirty days.*
24. *That in terms of Clause I (12) of Schedule I of the Liquidation Process Regulations 2016, an interest of 12% shall be levied if the payment is not made within 30 days and up to 90 days from the date of sale.*
25. *That in the instant case the remaining payment of Rs. 7,20,00,000/- (Rupees Seven Crore Twenty Lakh Only/- is due and payable and an interest of 12% is applicable. However, the Applicant herein humble requests that the said interest not be levied on the due and payable amount. The applicant undertakes to make the balance payment within three (3) working days of the approval by the Hon’ble Adjudicating Authority.*

9. Based upon aforesaid grounds raised in the application, the applicant thus, has sought that the present sale of the assets be considered as a slump sale basis instead of sale as a going concern and therefore, further prayer has also been made seeking time for deposit of the remaining amount of

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Rs.7,20,000,00/- over and above the actual amount already paid to the extent of Rs.29,36,000,00/-.

- 10.** This application came up for hearing on 25<sup>th</sup> January, 2024 before this Adjudicating Authority when the notice was issued to the Liquidator for filing reply. Vide this order of 25<sup>th</sup> January, 2024, the time for deposit of the money by the applicant was also extended till the next date of hearing.
- 11.** This matter further came up for hearing on 30<sup>th</sup> January, 2024, whereby the Liquidator stated that the SCC meeting took place on 29<sup>th</sup> January, 2024, whereby the Resolution was passed with 67.91% of voting in favour of the request made by the Successful Auction Bidder for considering his request as prayed for in the present application.
- 12.** It was further observed that meanwhile, the time for deposit of the remaining amount to be paid by the Successful Auction Bidder is extended till the next date of hearing.
- 13.** The Liquidator has filed a reply vide Diary No.252 dated 29<sup>th</sup> January, 2024, wherein the Liquidator inter alia submitted as under: -

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5. That, a bidding was conducted by the Respondent, pursuant to which the Applicant's bid of Rs. 38.72 Crores was found to be the highest and was accordingly issued a Letter of Intent dated 28.10.2023. It is pertinent to mention that through the efforts of the Liquidator/ Respondent; the assets of the Corporate Debtor have been maximized which is evidenced from the Applicant's offer which being 79% higher than the reserve price of Rs. 21.62.
6. That, it is humbly submitted that the Applicant has till date deposited a sum of Rs. 29.36 Crores and from the perusal of the application, it is understood that the Applicant is willing to pay the balance sum of Rs. 9.36 Crores.
7. That, the Applicant has highlighted certain pertinent issues in respect of the assets and condition of the Corporate Debtor, which renders the purchase of the Corporate Debtor as a going concern untenable. Accordingly, the Applicant vide the present application seeks permission/ direction to purchase the Corporate Debtor on a slump sale basis as per Regulation 32(b) of the IBBI (Liquidation Process) Regulations, 2016.
8. That, the Applicant has further undertaken in the Application to bear the stamp duty as may be applicable for the purchase of the Corporate Debtor on a slump sale basis, over and above the sum of Rs. 38.72 Crores as had been provided for in its bid.
9. That, in view of the aforesaid it is humbly submitted that the relief sought by the Applicant, to purchase the Corporate Debtor on a slump sale base does not and will not prejudice the entitlement of the creditors of the Corporate Debtor or any other person. In fact, it might result in gains for the state exchequers from imposition of the stamp duty.
10. That, on the other hand, if the present application is not allowed, it will embroil the parties into protracted litigation and as a result the liquidation would not be completed in a time bound manner, resulting in defeating the objective of the IBC.

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14. Further vide Diary No.278 dated 31<sup>st</sup> January, 2024, the Liquidator has also placed on record the Resolution passed by the SCC which is worth noticing as under: -

***“RESOLVED THAT*** the conversion of sale of the Corporate Debtor as a going concern to sale on slump sale basis be allowed subject to approval of NCLT.

***FURTHER RESOLVED THAT*** no relief on 12% interest, as applicable under clause 12 of Schedule 1 of Mode of Sale under IBBI (Liquidation Process) Regulation, 2016, may be granted to the successful buyer on account of the payment being made after 30 days after the issuance of letter of intent dated 28<sup>th</sup> October, 2023

***FURTHER RESOLVED THAT*** the consent is granted subject to the payment of entire balance amount being paid within three days from the date of approval of NCLT.

***FURTHER RESOLVED THAT*** the buyer will bear all expenses on conversion of the sale of the Corporate Debtor as a going concern to sale on slump sale basis such as Stamp Duty, registration expenses and travel expenses of liquidator.”

15. The SCC vide its Resolution No.1 resolved in favour of the request of the applicant by a voting of 67.91% as tabled at from page no.18 to 20 of the application which is as under: -

**Accordingly, following stakeholders present in the meeting voted in the favor of the above agenda:**

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<b>S. NO</b>	<b>Name of the stakeholders</b>	<b>Total Share</b>	<b>Voted as</b>
1	ARCIL	44.96%	We are agreeable subject to NCLT order
2	Administrator of Specified Undertaking of Unit Trust of India (SUUTI)	0.37%	We are agreeable subject to NCLT order
	UTI Trustee Company Private Limited	0.23%	We are agreeable subject to NCLT order
3	Life Insurance Corporation of India	1.55%	We are agreeable subject to NCLT order
4	SICOM Limited	3.82%	We are agreeable subject to NCLT order
5	Stressed Assets Stabilization Fund (SASF)	16.98%	We are agreeable subject to NCLT order
	<b>Total</b>	<b>67.91%</b>	

A detailed voting result is mentioned as follows in the chart box of the SCC meeting:

<b>E-Voting – 4<sup>th</sup> SCC meeting</b>					
<b>S. No</b>	<b>Name of the stakeholders</b>	<b>Total Share</b>	<b>Present and voted Physically (Approved)</b>	<b>Present but Not voted in the meeting</b>	<b>Not Present Today</b>
1.	ARCIL	44.96%	44.96%		

2.	Administrator of Specified Undertaking of Unit Trust of India (SUUTI)	0.37%	0.37%		
	UTI Trustee Company Private Limited	0.23%	0.23%		
3.	Bank of Baroda (amalgamated with Dena Bank and Vijaya Bank on 01.04.2019)*	4.70%		4.70%	
4.	Life Insurance Corporate of India	1.55%	1.55%		
5.	Axis Bank Limited	2.76%			2.76%
6.	IDBI Bank Limited	3.34%			3.34%
7.	UCO Bank	5.10%		5.10%	
8.	LIC Mutual Fund Asset Management Limited	0.76%			0.76%
9.	SICOM Limited	3.82%	3.82%		
10.	Dhanlaxmi Bank	0.30%		0.30%	

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11.	PICUP	6.68%			6.68%
12.	IFCI Limited	1.93%		1.93%	
13.	General Insurance Company of India	0.50%			0.50%
14.	Gujarat Industrial Investment Corporation Limited	1.02%			1.02%
15.	Kotak Mahindra Prime Limited	0.00%			0.00%
16.	Union Bank of India erstwhile Corporation Bank	0.86%			0.86%
17.	Stressed Assets Stabilization Fund (SASF)	16.98%	16.98%		
18.	Federal Bank	1.31%			1.31%
19.	State Bank of India	0.08%			0.08%
20.	Pintail Reality Developers Pvt. Ltd	2.72%			2.72%
21.	Workers and Employees	0.02%			0.02%
	<b>Total Voting</b>	<b>100.00%</b>	<b>67.91%</b>	<b>12.03%</b>	<b>20.06%</b>

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	<b>Total Voting done</b>		<b>79.94%</b>	
	<b>Percentage (%) required i.e., 66% of the total votes</b>		<b>52.76%</b>	
<b>APPROVED</b>				

- 16.** We have perused the application and the prayers sought therein for consideration of the request of the applicant for the sale of the assets of the Corporate Debtor to be treated as on slump sale basis instead of the sale as a going concern.
- 17.** The grounds as narrated in the application in support of the aforesaid prayer warrant consideration more particularly in view of the fact that the fragmented portion of the assets of the Corporate Debtor in terms of its land and building as the debtor is stated to be only the owner for the land parcel comprising Khasra No.316 and 318, whereas the factory of the Corporate Debtor has been built on the land comprising Khasra No.316 to 319. Moreover, several machineries of the Corporate Debtor seem to have broken down and are not in reparable conditions. We also notice that the Liquidator on the basis of the recommendations of the SCC as well as in the

reply has observed that a substantial amount of Rs.29,36,000,00/- has already been deposited and only the balance amount which is remaining is liable to be deposited.

**18.** Further the issues raised by the applicant in its application would render the purchase of the Corporate Debtor as a going concern untenable. The Liquidator, therefore, has observed in its reply that the request of the applicant to consider the present sale of the assets as on slump sale basis would not prejudice the entitlement of the creditors of the Corporate Debtor or any other person. It is also stated that the applicant has under taken to bear the requisite stamp duty as may be applicable for the purchase of the Corporate Debtor on slump sale basis over and above the total amount which has been provided in the bid submitted by the applicant.

**19.** We also noticed that the SCC has also resolved and granted its consent for considering the sale of the assets as on slump sale basis subject to the payment of the entire balance amount within three days from the date of approval by this Adjudicating Authority.

**20.** We, therefore, consider the request made in the application as being bona fide based upon the Resolution duly passed by the SCC which comprises of the Life Insurance Corporation of India, ARCIL, Stressed Assets Stabilization Fund and UTI Trustee Company Private Limited amongst others. Some of the Members of the Stake Holder Committee however, either were not present or were present but did not vote in the meeting.

**21.** We, therefore, pass the following order, which as under: -

- (1).** The sale of the assets of the Corporate Debtor would be deemed to be on slump sale basis instead of the sale as a going concern.
- (2).** The remaining/ balance amount to be paid by the applicant, shall be paid within a period of three days from the date of passing of this order.
- (3).** The applicant shall bear all expenses on conversion of sale of the Corporate Debtor as a going concern to sale on slump sale basis such as stamp duty, registration expenses and travel expenses of the Liquidator.

**22.** Since, by our interim orders dated 25<sup>th</sup> January, 2024 and 30<sup>th</sup> January, 2024 as well as the order dated 1<sup>st</sup> February, 2024, the time period for deposit of the remaining amount to be paid by the applicant/ Successful Auction Bidder has been extended, therefore, we order that the remaining amount be paid within a period of three days from the date of passing of this order and would not attract any further interest, as the last date of deposit of the remaining amount (90 days from the issuance of the LoI) would be deemed to be 3 days after the date of passing of the present order.

**23.** The above IA No.68 of 2024 is thus disposed off in terms of the above directions.

**24.** Ordered accordingly.

-Sd/-

**(Ashish Verma)**  
**Member (Technical)**

-Sd/-

**(Praveen Gupta)**  
**Member (Judicial)**

**Date: 2<sup>nd</sup> February, 2024**

*Avaneesh Kumar Singh*  
(Stenographer)