

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-VI**

**IA No. 2961/ 2023**

**IN**

**Company Petition No. (IB)-117/PB/2019**

**IN THE MATTER OF:**

PUNJAB NATIONAL BANK

**... FINANCIAL CREDITOR**

**VERSUS**

M/S. BETA INFRATECH PRIVATE LIMITED

**... CORPORATE DEBTOR**

**AND IN THE MATTER OF:**

MR. TSN RAJA (SIVANAGARAJA TADUVAI)

LIQUIDATOR OF

M/s. BETA INFRATECH PRIVATE LIMITED

**... APPLICANT/LIQUIDATOR**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER**

**(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Applicant: - :Mr. TSN Raja, Liquidator**

**ORDER**

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Delivered on: 21.12.2023**

1. The instant application has been filed by the Liquidator of M/s Beta Infratech Private Limited ('Corporate Debtor') under regulation 33 of IBBI Liquidation Process Regulations, 2016 read

with Section 60(5) of the Insolvency and Bankruptcy Code, 2016, inter alia, seeking the following relief(s):-

- 1) *Allow the present Application*
- 2) *To pass an order not to charge interest for payments received beyond 30 days up to 90 days as requested by the purchaser and as recommended by the SCC.*
- 3) *To pass an order excluding the time lost in non-repetition of the auction notice or repeating the auction notice without changing the Reserve Price from the Liquidation period for the purpose of calculating the remuneration payable to the Liquidator.*
- 4) *To pass any other order(s) as this Hon'ble Tribunal may deem fit in view of the facts and circumstances of the present case.*

2. Briefly stated the facts of the present case, as averred by the applicant are as under: -

- I. That this Adjudicating Authority vide order dated 24.07.2020 had ordered liquidation against M/s. Beta Infratech Private Limited and the applicant was appointed as the Liquidator of the Corporate Debtor.
- II. The Applicant on taking the charge as Liquidator of the Corporate Debtor had performed his duties as per the provisions of the Code, 2016.
- III. That the Corporate Debtor is a Gas Based power plant located at Kashipur, Uttarakhand. The Government of India banned usage of domestic gas for power generation. Thus, the only option left with the applicant is either to melt the metal by scrapping the machines or sell it to overseas investors from the Gas rich nations, who intend to relocate outside India.

- IV. That due to travel restrictions imposed during COVID pandemic, prospective investors both within India and overseas investors had difficulty in reaching the plant and site and take an appropriate decision.
- V. The issue was brought to the notice of this Adjudicating Authority vide IA 4101/(PB)/2020 and IA 4434/(PB)/2021 and this Adjudicating Authority allowed the exclusion of about one year in counting from the Liquidation period.
- VI. The Liquidator made sincere efforts to place the assets of the CD on Global Market and continued the same despite several oddities. Various responses were received from various countries almost from every continent
- VII. That investors, contractors of various countries were invited to interact with the SCC, who informed the committee that the price of Rs 202 crore of the assets of the CD is fair and reasonable but the market post covid is yet to revive and the entire world is hesitant to expand their business plans.
- VIII. Based on this opinion the SCC, only four different advertisements were released and the latest advertisement was repeated on 27<sup>th</sup> Feb 2023.
- IX. Mr. Praveen Pai of M/S Solen Renewable Energy DMCC UAE, approached the Liquidator with a proposal to acquire the Plant and Machinery of the CD.
- X. That as per Regulation 32 and 33 of IBBI Liquidation Process Regulations, 2016 read with Schedule I, the Liquidator is required to:
  - a. Issue public notice of an auction within 45 days from the commencement of the Liquidation process
  - b. Repeat the auction process every 15 days in case of a failed auction.

- c. The Liquidator is required to invite the highest bidder to provide balance sale consideration within 90 days from the date of such demand or confirmation of sale.
  - d. The regulation further reads that payments made after 30 days shall attract interest @ 12% per annum.
  - e. Attention also is invited to the Regulation 33 (2)(c) as per which in case of a failed auction, if an offer is received which is higher than the Reserve Price of a failed auction the assets may be sold by means of a private sale.
- XI. The Prospective Buyer M/s Solen Energy, made two requests, the details being:
- a) They are willing to remit the entire sale consideration within 90 days as stipulated under the code. However, requested not to charge interest for the payment to be made beyond 30 days as stipulated under the code.
  - b) The SCC clarified that neither the liquidator nor the SCC has the power to waive interest chargeable. However, they advised the Liquidator to escalate the request of the Purchaser to the Adjudicating Authority for its consideration and direction.
  - c) The Purchaser also requested one year time to dismantle the Plant and Machinery and shift from the site.
- XII. As per Regulation 4 of Liquidation Process Regulation, the Liquidator is eligible for remuneration at "The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

XIII. The COC reached out to the applicant and proposed to appoint him as Liquidator of the CD. It was decided to appoint the applicant at a discounted remuneration of 50%. Details of the same are as under: -

Sir,  
In continuation to my Expression of Interest to act Liquidator (EOI) and based on the telephonic talk held, I am prepared to act as Liquidator, at a negotiated price, which works out almost at 50% of Remuneration Table (4a of Liquidation Process Regulations), which is :

Sale (exp)	Rs. crore					
	First 6 months		Next 6 months		Beyond 12 months	
	As per table	As quoted	As per table	As quoted	As per table	As quoted
100+	3.12	1.60	2.34	1.10	1.20	0.80
50+	2.55	1.00	1.92	0.75	0.97	0.60
<50	Flat 2%					0.60

XIV. The SCC went on advising the Liquidator not to repeat the advertisement or repeat the advertisement keeping the Reserve Price as it was in failed public auction notices.

XV. However, in the process, the Liquidator is at loss as the period is falling beyond one year and the remuneration of Liquidator gets reduced telescopically to about 37%.

XVI. The applicant Liquidator placed the issue before the SCC in its meeting held on 9<sup>th</sup> May 2023. The SCC after deliberations, sought time to call for meeting internally discuss and communicate their decision. The meeting was adjourned to 15<sup>th</sup> May 2023. The members on persuasion discussed among themselves and after deliberations advised the Liquidator to file an application and seek a direction as the issue is unique and the realisation certainly is to their satisfaction. They further added that since the Liquidator is being advised to seek direction on the interest waiver, at the

request of the purchaser, this request may also be clubbed in the same application.

XVII. The request of the applicant is to exclude the time lost in not repeating the advertisements or repeating the advertisement at the same Reserve Price without any reduction, in line with the exclusions granted by this Adjudicating Authority due to COVID pandemic.

3. We have heard the submissions made by counsel for the Applicant and have gone through the documents on record.
4. With respect to prayer (2) the application, the counsel for the applicant appeared before this Adjudicating Authority on 25.09.2023 and submitted that they are not pressing prayer no 2 of the application. Relevant extract of the aforesaid order is reproduced as under: -

*Heard the Ld. Counsel for the Applicant. Ld. Counsel on behalf of the Applicant is not pressing prayer no.2 which is to allow 'not charging interest for payments as requested by the Purchaser and as recommended by the SCC.' Ld. Counsel on behalf of the Purchaser is also not pressing for the said prayer. In respect of other prayers, arguments have concluded. Parties are directed to file their written submissions within a week.*

5. In this matter, vide IA 3049/2023, this Adjudicating Authority passed an order dated 31.10.2023, the relevant extract of order dated 31.10.2023 of this Adjudicating Authority is reproduced as under: -

*11. In view of the above facts and circumstances, this being a case of private sale, we direct the Liquidator*

*and SCC to reconsider the matter between both the parties to meet the objective of the Code and maximization of value.*

*12. Accordingly, IA 3049/2023 stands disposed off in terms of the above order.*

In light of the order dated 31.10.2023 and submission of the Counsel before this Adjudicating Authority on 25.09.2023, the prayer (2) of the Application has become infructuous.

6. As per regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the fee of the liquidator may be decided by the Committee of Creditors, in consultation with the resolution professional, while approving a resolution plan under section 30 of the Code or deciding to liquidate the corporate debtor under section 33 of the Code. In the present case, the CoC, at the time of considering the applicant for the Liquidator of CD decided at a particular fee and accordingly the applicant was appointed as Liquidator in the matter. The prayer of the applicant is to exclude the time lost in the auction notice for the purpose of calculating the remuneration payable to the Liquidator. There is no provision in the IB Code and regulations made thereunder which provides for exclusion of period just for the purpose of calculating the remuneration of Liquidator. The decision of fees payable to Liquidator is purely a commercial decision of CoC and SCC.
7. In view of the above, I.A./2961/2023 stands dismissed. Let a copy of this order be served to the parties concerned.

**SD/-**

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

**SD/-**

**(MAHENDRA KHANDELWAL)  
MEMBER (JUDICIAL)**