

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH- II, CHENNAI**

IA/(IBC)1509(CHE)/2023

In

CP/357(IB)/2018

*(filed under Section 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process)
Regulations, 2016, read with Rule 11 of National Company Law Tribunal Rules, 2016.)*

*In the matter of **Noni-Biotech Private Limited***

MR. J. KARTHIGA

Liquidator of *Noni Bio-Tech Private Limited*

Sri Nivas, Old No. 1052, New No.1,
41st Street, Korattur, Chennai – 600 080

...Applicant/Liquidator

In the matter of

M/s. Glocaledge Consultants Private Limited

... Operational Creditor

-Versus-

M/s. Noni Bio-Tech Private Limited

... Corporate Debtor

Order Pronounced on **02nd February, 2024**

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

For Applicant

: Mr. Avinash Krishnan Ravi, Advocate

ORDER

1. Under consideration is an Application filed under Regulation 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Rule 11 of the National

Company Law Tribunal Rules, 2016 by the Liquidator of M/s. Noni-Biotech Private Limited seeking reliefs as follows,

- a. *Permit the Applicant herein to bring the Corporate Debtor for sale on a going concern basis; and*
- b. *Pass such other order or orders as this Hon'ble Tribunal may deem fit.*

2. The Learned Counsel for the Applicant submitted that M/s. Noni-Biotech Private Limited is a Company registered under Companies Act, 1956, (previously, having the name Web Fund Foundation Pvt Ltd hereinafter referred to as the "Corporate Debtor"). It is submitted that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 24.09.2019 passed by this Adjudicating Authority and thereafter, the Corporate Debtor was admitted into liquidation, vide order dated 28.02.2020.
3. The Learned Counsel for the Applicant submitted that upon admission into liquidation, the Applicant herein, in due compliance of her duties, brought various assets of the Corporate Debtor for sale. Accordingly, the Applicant herein submits that she has sold the following assets of the Corporate Debtor on various dates at the values set out as hereunder:

<i>S.No.</i>	<i>Description of Asset</i>	<i>Date of Sale</i>	<i>Value (INR)</i>
1.	Plant & Machinery, Other movable assets situated at Salavakkam Village, Palliagaram, Maduranthakam	30-01-2021	36,65,500/-

	Taluk, Kanchipuram District		
2.	Residential Flat, Flat No.402, Mantri Synergy Apartments, Padur, Thiruporur Taluk, Kanchipuram District	30-01-2021	36,52,500/-
3.	Land situated at No. 12, Palliagaram Village, Maduranthakam Taluk, Kanchipuram District comprised in S.Nos. 1 & 4 admeasuring and total extent of 15.98 Acres & Land & Building Situated at No. 116, Kilakkadi Village, Uthiramerur Taluk, Kanchipuram District measuring an extend of 2Acres.	Through Private Sale vide Hon'ble NCLT Order dated 15-03-2022	6,09,30,000/-

4. The Learned Counsel for the Applicant submitted that although substantial portion of assets have been sold, in respect of certain other assets of the Corporate Debtor, the very title to the Corporate Debtor is defective, and as a result of which, such assets remain unsold. In this regard, the Applicant herein submits that she has identified the following three assets as assets over which, the title to the corporate debtor is defective:

- a. *Property at Patwari Halka No. 27, Survey Number 186/1, Ghosi Keda Village, MHOW Tehsil, Indore District - Vacant Land to extent of 2.836 Hectares*
- b. *Property at Sarola Somvanshi, Pune - Dry land 1.77 Hectares*

c. Agricultural land parcels at Sivandhipatti (extent unclear)

5. The Learned Counsel for the Applicant submitted that in respect of the above said lands, though valuation reports have been commissioned, it is seen that the valuations are arrived at, subject to title verification. It is further submitted that despite her best efforts to verify the title, the Applicant herein is unable to verify the same as the lands are situated at various places across India, where the documents are in regional languages and more importantly, a clear flow of title and mutation/ revenue records are not easily accessible despite best efforts. It is submitted that those documents received from the promoters and retrieved from various sources, do not establish an unequivocal title in the name of the corporate debtor. It is also submitted that, the Applicant is unable to obtain relevant revenue records, to show that these assets were owned and enjoyed by the corporate debtor, despite engaging services of a local lawyer to verify the same. It is further submitted that these assets are shown as the assets of the corporate debtor in some documents to establish a semblance of a right to the corporate debtor in respect of these assets, which is also confirmed by the fact that the corporate debtor has shown these assets as its property in its balance sheet. Accordingly, the Applicant herein submits that in terms of section 36(3)(a) of the Insolvency & Bankruptcy Code, 2016, these assets form part of the liquidation estate of the Corporate Debtor.

6. The Learned Counsel for the Applicant submitted that owing to the fact that the title to these "assets" are not clear and that the "right" and "basis" for the liquidator to bring these "assets" on a standalone basis is doubtful. The Applicant herein, taking into consideration the condition of the Corporate Debtor has come up with the possibility of transferring the rights in respect of these lands on "as is where is", "as is what is" and "whatever, there is" basis to a person, who is interested in purchasing the said assets for a total sum of Rs. 60 lakh. It is further submitted that, the same was also considered by the Stakeholders Consultation Committee Meeting (hereinafter referred to as "SCC Meeting") in its 13th SCC Meeting held on 18.04.2023, wherein, the SCC, vide a unanimous resolution, resolved to sell the above mentioned assets on "as is where is", "as is what is" and "whatever there is" basis. The Resolution passed during the 13th SCC Meeting is as follows,

"Resolved that the SCC hereby consents for the sale of CD as a going concern on "as is where is and whatever there is basis" without liabilities and the Liquidator is authorised to approach the Hon'ble NCLT to file suitable applications."

7. The Learned Counsel for the Applicant submitted that, the Applicant as well as the SCC has considered the possibility of sale as a going concern for the following threefold reasons, namely:

- i. a sale on a going concern basis would entail the transfer of the entire entity of the corporate debtor to the third party, thereby transferring the rights that exist with the corporate debtor as an entity to such third party on as is where is, as is what is and whatever there is basis;*

- ii. *the same being a change in ownership of shares in the corporate debtor, as against a change in ownership in the property per se, would not attract stamp duty towards conveyance; and*
- iii. *the same would also prevent any issues being raised at the time of registration by the concerned authorities, citing doubts over the title of the Corporate Debtor.*

8. The Learned Counsel for the Applicant submitted that, in view of the above advantages, the Applicant herein is constrained to seek permission for sale as a going concern basis, despite the lapse of 90-days from the liquidation commencement date. The Applicant herein submits that the said 90- day period, prescribed under Regulation 32A(4) of the Liquidation Process Regulations has been held to be directory and not mandatory. For which reliance is placed upon the order passed by the National Company Law Tribunal, 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: “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.*

9. Further reliance is also placed on the order passed by, the NCLT, Hyderabad Bench in *Re: Kumar Rajan, Liquidator of Athena Chhattisgarh Power Ltd*, IA No. 160/2022, wherein it is observed as follows:

“4. It is pertinent herein to note that the Regulation 32A is only directory in nature and sub-Regulation (1) of Regulation 32A directs that if either the CoC recommends or the Liquidator is of the opinion that sale under clauses (e) or (f) of Regulation 32 shall maximize the value of the Corporate Debtor, he shall endeavor to first sell under the said clauses. But if the Liquidator is unable to sell the Corporate Debtor under clauses (e) or (f) of Regulation 32, within those 90 days, he shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32.

5. In the instant case, this Adjudicating Authority had already granted exclusion of 90 days earlier for the same purpose, but the Liquidator has not been able to complete the sale under clauses (e) or (f) of Regulation 32, owing to reasons stated in the instant Application. Therefore, this Application filed by the Liquidator seeking another exclusion of a further period of 90 days for selling the Corporate Debtor as a going concern, is without any basis for such exclusion other than the fact that the date of e-auction is falling beyond the 90 days period as allowed earlier. However, since the Liquidator has stated that he already has auction bids at hand to sell the Corporate Debtor as a going concern, it is presumed that he will be able to complete the process efficiently within next 30 days reckoned from the date of this order. This order is given only to enable the liquidator to complete the process of sale of Corporate Debtor as a going concern in view of the object of the Code i.e., value maximization of the asset of the Corporate Debtor. If he fails to complete the sale as envisaged under clause (e) or (f) of Regulation 32, within the time so allowed, he shall take recourse to sell the assets

*of the Corporate Debtor under Clause (a) to (d) of the Regulation
32."*

10. Heard the Counsel for the Applicant, perused the documents on record.
11. The crux of the status of the Corporate Debtor is that, the Corporate Debtor was ordered into Liquidation vide order dated 28.02.2020 and thereafter, substantial amount of assets of the Corporate Debtor were sold after commencement of the Liquidation of the Corporate Debtor, the same is tabulated under para 3 above. Learned Counsel for the Applicant submitted that the rationale for seeking the sale as a going concern basis inter alia (i) would entail the transfer of the entire entity of the corporate debtor to the third party, thereby transferring the rights that exist with the corporate debtor as an entity to such third party on as is where is, as is what is and whatever there is basis; (ii) the same being a change in ownership of shares in the corporate debtor, as against a change in ownership in the property per se, would not attract stamp duty towards conveyance; and (iii) the same would also prevent any issues being raised at the time of registration by the concerned authorities, citing doubts over the title of the Corporate Debtor.
12. It is seen that the sale of the identified assets of the Corporate Debtor as mentioned under para 4 above is sought to be made as "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis" for a total sum of Rs. 60 lakh

considering the fact that the title of those properties are not clear and the Applicant despite efforts made is unable to obtain revenue records to show that those assets have been owned and enjoyed by the Corporate Debtor.

13. It is observed that, the 90 days period specified for sale as a going concern under Regulation 32A is already expired and that the Liquidator has already sold few assets of the Corporate Debtor and now seeks sale as a going concern in “as is where is basis” mentioning that there is a prospective purchaser offering Rs. 60 for the above mentioned properties of the Corporate Debtor, the same is not in consonance with the Liquidation regulations, 2016.

14. 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 endeavour to *first* sell the assets of the Corporate Debtor under Regulation 32(e) or (f) as such exclusively only at the *first auction*. However, on perusal of the instant application it is seen that the Liquidator has sold few properties by way of auction and private sale already and is now pursuing the present application for sale as a going concern. The reliances placed by the Learned Counsel for the Applicant is persuasive in nature, considering the fact that those are from similar benches of National Company Law Tribunal and hence, the same is not binding on this Adjudicating Authority.

15. As a consequence of the above discussions and on perusal of the pleadings and submissions made by the Learned Counsel for the applicant we deem it fit to direct the Applicant to consider the sale by way of auction and then move to the next mode of sale keeping in view the extent of the properties involved and the value quoted by the prospective buyer.

16. Therefore, we deem it fit to direct the Applicant to first exercise the auction mode of sale for the benefit of the Corporate Debtor and its stakeholders which might maximise the value of the assets of the Corporate Debtor. In the event of failure of the same, the Applicant is vested with liberty to opt for private sale subject to Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016.

17. Accordingly, *IA(IBC)/1509(CHE)/2023* in CP/357/(IB)/2018 is *disposed of* with the above directions.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)