

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.46/2022
in
CP (IB) No.340/Chd/Pb/2018
(admitted)**

In the matter of:

Punjab Basmati Rice Ltd.

....Corporate Debtor

And in the matter of:-

IA No.46/2022

Under Section 60(5) of the IBC, 2016

Kulwinder Singh Makhni, Suspended Director
of M/s Punjab Basmati Rice Ltd.

...Applicant

Vs.

Mr. Sanjay Kumar Aggarwal, Liquidator of
M/s Punjab Basmati Rice Ltd.

...Respondent

Order delivered on: 08.07.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing:

For the Applicant : Ms. Jyoti Sareen, Advocate

For the Respondent/Liquidator : 1. Mr. Abhishek Anand, Advocate
2. Mr. Viren Sharma, Advocate
3. Mr. Sanjay Kumar Aggarwal, Liquidator in person

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.46/2022

This is an application filed under Section 60(5) of the IBC, 2016. In the present application, Kulwinder Singh Makhni, Suspended Director of M/s

Punjab Basmati Rice Ltd. is the applicant, and Mr. Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Ltd., is the respondent.

2. In the present application, the applicant prays that the Liquidator may be directed to supply the copy of valuation reports submitted by respondent/Liquidator in pursuance of order dated 09.11.2021 passed by Hon'ble Adjudicating Authority in IA No.550/2021 to the applicant being a member of SCC, in accordance with Regulation 31A of LP Regulations.

3. The brief, the facts as outlined in the application are that the Applicant has filed an IA No.471/2021 challenging the mode and manner of the sale in the e-auction sale notice dated 13.08.2021 issued by the Liquidator. The main objection of the Applicant is that the assets of the corporate debtor are highly undervalued, and the Applicant sought direction to get a fresh valuation of the assets of the corporate debtor from the appointed valuers as encroachment has been removed from the property. Thereafter, IA No.550/2021 has been filed by the Applicant seeking a stay of the e-auction of sale notice dated 23.10.2021, wherein the reserved price of the assets of the corporate debtor is fixed at Rs.23.25 Crores, including plant and machinery at Rs.11.50 Crores and all land and building at Rs.11.75 Crores. This Adjudicating Authority by order dated 09.11.2021 directed the Liquidator to conduct a fresh valuation of the complete land and building and deferred the e-auction, which was fixed for 10.11.2021. When the matter was heard on 06.12.2021, the respondent submitted that a compliance report had been filed by Diary No.00222/2015 dated 29.11.2021 in pursuance of the order dated 09.11.2021. However, the Applicant has not been supplied a copy of the valuation report conducted by the Liquidator from the two appointed valuers.

3.1 It is submitted that the Applicant is a member of the Stakeholders Consultation Committee (SCC) and is entitled to a copy of valuation reports got conducted by Liquidator from two appointed valuers under the provisions of Regulation 31A(1) and 31A(5) of the IBBI (Liquidation Process) Regulations, 2016. Before proceeding further with e-auction, it is mandatory for the Liquidator to supply a copy of fresh valuation reports to the ex-Director (applicant) and other members of SCC.

4. The Respondent/Liquidator, in his reply filed by Diary No.00602/01 dated 09.02.2022, has stated that there is no provision in the Code to challenge the decision of the Liquidator on valuations conducted during the CIRP period in terms of Regulation 35 of Liquidation Process Regulations. The Applicant has no locus standi to challenge the reserve price fixed for the sale of assets of the corporate debtor or to seek copies of the valuation reports. The purpose of valuation reports is not Res-Integra and has been settled by the Hon'ble Supreme Court. The Law is settled that valuation being a question of fact cannot be challenged. Answering respondent is conducting the liquidation process in accordance with provisions of the Code and underlying Regulations. It is further stated that the applicant participated in the Stakeholders Consultation Committee and cannot question the fixation of reserve price subsequently and that the time is of the essence of the Code.

5. Subsequently, the Applicant has filed written submission by Diary No.01048/3 dated 30.05.2022, reiterating that non-disclosure of valuation reports to the applicant being SCC member and other members of SCC is violative of Regulation 31-A(1) and 31-A(5) of Liquidation Process Regulations. It is further stated that Regulation 31-A(5) of Liquidation Process

Regulations clearly mandate that the Stakeholders' Consultation Committee shall have access to all the relevant records and information as may be required to provide advice to the Liquidator under Regulation 31-A(1) on the matters relating to sale under Regulation 32, including mode and manner of sale and fixing of reserve price etc. Reliance has been placed on the decisions in the following cases:-

1. The Hon'ble Supreme Court in the case of ***Vijay Kumar Jain Versus Standard Chartered Bank & Ors. cited at 2019(2) Scale Page 352/2019 AIR (SC) 2477*** in para 12.
2. NCLT, Ahmedabad Bench in case of ***Hemant Shantilal Shah and Anr. Vs. Care Office Ltd. through Resolution Professional Vikas Jain and Ors. cited at (2022) ibclaw.in 316*** NCLT decided on 31.03.2022.
3. The Hon'ble Supreme Court in the case of ***MSR Leathers Versus S Palaniapp Anr. cited at 22103 (1) SCC*** Page 177 (para 29).

6. Similarly, the Respondent/Liquidator has filed written submission by Diary No.00851/2 dated 27.05.2022, inter alia placing reliance on the decisions in the following cases:-

1. The Hon'ble NCLT Delhi vide order dated 26.08.2019 in the matter of ***Oriental Bank of Commerce V. Shekhar Resorts Limited in C.A. 260-261/2016 in C.P. (IB) No.22 of 2018.***
2. The Hon'ble Supreme Court in the matter of ***Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. on 22.01.2020.***

3. The Hon'ble Supreme Court in the matter of ***State Bank of India Vs. Accord Life Spec Private Limited through director & Ors. vide judgement dated 28.02.2020.***
4. The Hon'ble Supreme Court in the matter of ***Duncans Industries Limited Vs. State of U.P. & Ors. (AIR 2000 SC 355).***
5. Order dated 09.12.2020 passed by this Adjudicating Authority in the matter of ***Satnam Agri Products Limited in I.A. 389/2020 in CP (IB) No.124/Chd/Pb/2018*** wherein it has been held that the ex-director cannot question the fixation of the reserve price.
7. The learned counsels for the Applicant and respondent-Liquidator have also filed short submissions by Diary No.0060/3 dated 23.06.2022 and Diary No.00060/4 dated 23.06.2022 respectively, citing the Regulations and judicial decisions relied upon. Both the parties have mostly repeated the contentions mentioned in their earlier written submissions.
8. We have gone through the arguments along with the submissions filed by all the parties and have perused the records carefully.
9. In the present application, the issue for adjudication before this Bench is whether the Liquidator is mandated under the Code to share a copy of the valuation report with the Applicant being an ex-director, shareholder, guarantor of the corporate debtor and member of stakeholders' consultation committee.
10. In this context, the relevant Regulation of IBBI (Liquidation Process) Regulations, as amended on 30.09.2021, are extracted below:-

"Regulation 31-A Stakeholders' Consultation Committee (as amended up to 30.09.2021):

The Liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the

list of stakeholders prepared under regulation 31, to advise him on the matters relating to -

(a) xxx xxx xxx xxx

(b) Sale under regulation 32, including the manner of sale, pre-bid qualification, reserve price, amount of earnest money deposit, and marketing strategy.

Provided that the decision(s) taken by the Liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting."

.....XX...XX.....XX.....XX...

5. Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the Liquidator under sub-regulation (1)

6. xxx xxx xxx xxx (emphasis supplied)

10.1 It is apparent from the above extracts from the Regulations that the Member of Stakeholders' Consultation Committee(SCC) shall have access to all relevant records and information as may be required to provide advice to Liquidator on matters relating to the sale, fixing of reserve price etc. For advising on matters of sale and fixing the reserve price of assets of the corporate debtor, the critical record is their valuation reports. It is not easy to contemplate how without any access to valuation reports, the SCC Member can effectively advise the Liquidator on matters of sale as envisaged under Section 31-A(1). Denying the member of the SCC access to the valuation reports and other relevant documents will only defeat the very object for which the provisions have been framed. In this context, a reference is made to the decision of the Hon'ble Supreme Court in the case of **MSR Leathers (Supra)**, wherein it was held that "*one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to*

*an interpretation which defeats such object. This Court has, in a long line of decisions, recognised purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. In this decision, the Hon'ble Apex Court also referred to its decision in the case of **New India Sugar Mills Ltd. Vs. CST** (AIR) p. 1213, para 8) wherein the Court observed as under:*

"8.....It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature. If an expression is susceptible of a narrow or technical meaning, as well as popular meaning, the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid."

10.2 We are also aware of the decision of our Coordinate Bench of NCLT, Ahmedabad Bench, in the case of **Hemant Shantilal Shah (Supra)**, which made the following observations:-

"In the present case it is the valuation report which is in question. Whether it can be shared by Resolution Professional with ex-directors, specially when the ex-management alleges and apprehends that properties of the corporate debtor are being valued and offered at throw away price. In our view, the ex-management is the appropriate concerned party to comment on the valuation of properties of corporate debtor. The corporate debtor is the body of Ex-management and they were in control and handling the same till CIRP initiation. It would be prejudicial if they are not even allowed to view the valuation and point out the shortfalls in valuation if any.

The intent of the Code being maximization of value while insolvency resolution process, all concerned should be given access to the document which will be crucial for deciding the worth of the corporate debtor which is intended to be given new lease of life. There is no specific provision to not to share a copy of valuation report with ex-directors, we hold that in the interest of Justice, the copy of valuation report needs to be supplied to ex-directors, as already directed the Predecessor Bench."

10.3 This Bench also observes that the decisions mentioned in para 6 above relied upon by the respondent, do not advance his case as the facts involved in these cases are entirely different from the facts of the present

case. The decision in the case of ***Oriental Bank of Commerce (Supra)***, deals with the CIRP process in which the non-cooperative suspended Board was held to be acting in a malafide manner and liquidation process was not involved.. Furthermore, there was no occasion for NCLAT to deal with the interpretation of Regulation 31-A of LP Regulations, 2016 in this order. Similarly, the issue involved in the ***Maharashtra Seamless Limited (Supra)*** is whether the resolution plan value has to meet the liquidation value and whether the commercial wisdom of CoC during CIRP can be interfered with by the Adjudicating Authority. In the case of ***Duncans Industries Limited (Supra)***, the issue of challenge of valuation arrived at for the purpose of stamp duty was before the writ court. Lastly, ***Satnam Agri Products Limited (Supra)*** does not directly deal with the issue of sharing of valuation reports with the Members of Stakeholders' Consultation Committee.

11. In view of the above discussions, this Bench holds that to enable a Member of Stakeholders' Consultation Committee to meet the mandate under Regulations 31-A(1) and as laid down in 31-A(5), the copy of the valuation report needs to be shared with the applicant i.e. Member of Stakeholders' Consultation Committee, as the same would be crucial in determining the reserve price of the asset of the corporate debtor. Regarding confidentiality of the document, the Liquidator can take an undertaking from the applicant to maintain the same as per his powers under Regulation 7(2)(h) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with paragraph 21 of First Schedule thereto. This could be in the form of a non-disclosure agreement in which Liquidator could be indemnified in case information was not kept strictly confidential.

12. Consequently, IA No.46/2022 is allowed and accordingly stands disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 08, 2022

AV