

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**IA(IBC) (Dis.)/03(PB)/2024 And IA(I.B.C.)/922(PB)/2024
IN
Company Petition No. (IB) - 76(PB)/2018**

(Under Section 54 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

IN THE MATTER OF:

Oriental Bank of Commerce

... Financial Creditor

Vs.

Pellet Energy Systems Private Limited

.... Corporate Debtor

AND IN THE MATTER OF:

**Ms. Reshma Mittal
Liquidator of Corporate Debtor**

.... Applicant

ORDER PRONOUNCED ON: 03.07.2024

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant/ : Ms. Reshma Mittal, Liquidator in person
Liquidator

ORDER

IA(IBC) (Dis.)/03(PB)/2024 AND IA(I.B.C.)/922(PB)/2024

1. IA(I.B.C.) (Dis.)/03(PB)/2024 is an application for dissolution of Corporate Debtor M/s Pellet Energy Systems Private Limited, filed by the Liquidator

under Section 54 of the Insolvency and Bankruptcy Code, 2016 (**IBC / Code**) read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**).

Prayer sought in the Application is as follows:

- a) This Hon'ble Adjudicating Authority may be pleased to order for the closure of liquidation proceedings of M/s Pellet Energy Systems Private Limited, the Corporate Debtor;*
- b) Direct the Registrar of Companies (ROC) to record the closure of liquidation process of corporate debtor.*
- c) Discharge the Applicant/Liquidator from the liquidation proceedings.*

2. IA (I.B.C)/922(PB)/2024 is final progress report filed by the Liquidator for the quarter (period starting from 1st January 2024 to 20.02.2024) as per regulation 15(1)(a) of the Liquidation Process Regulations 2016. It is observed that this final report is also included in Annexure-11 (page no. 84 to 141) of IA(I.B.C.) (Dis.)/03(PB)/2024.

3. Brief Facts of the case are as follows:

- 3.1 This Adjudicating Authority vide order dated 20.07.2018 (**Admission Order**) admitted the petition being CP(IB)-76-(PB)/2018 filed by Oriental Bank of Commerce (now merged with Punjab National Bank) and appointed Ms. Reshma Mittal as the Interim Resolution Professional (**IRP**) for the Corporate Debtor. The above-named IRP was confirmed as Resolution Professional (**RP**) in the first meeting of Committee of Creditors (**COC**) held on 17.08.2018.
- 3.2 Pursuant to publication of Form G dated 01.10.2018, two prospective Resolution Applicants namely, 1) M/s Abellon Clean Energy Limited (M/s Abellon) and 2) Patanjali Ayurveda Limited (M/s Patanjali) submitted their Expression of Interest (EoI).
- 3.3 M/s Abellon jointly with Mr. Bharat Sharma (Joint Resolution Applicant) submitted revised / final Resolution Plan dated 20.09.2019 for the Corporate Debtor and the same was approved by

CoC in its 13th CoC meeting held on 20.09.2019, with majority vote of 85.75% in favor.

- 3.4 This Adjudicating Authority approved the joint Resolution Plan vide order dated 27.08.2020.
- 3.5 Due to non-implementation of the Resolution Plan of M/s Abellon and Mr. Bharat Sharma, this Adjudicating Authority vide order dated 01.07.2021 has recorded that the Plan in terms of approval order dated 27.08.2020 has not been implemented even though one-year period is already over and thus set aside the approved Resolution Plan in view of efflux of time. Vide the same order, this Adjudicating Authority further directed forfeiture of EMD deposited by Successful Resolution Applicants and that any other viable plan if submitted may will be heard.
- 3.6 We also note that in the meanwhile, Ex-Director, Mr. Bharat Sharma in view of liberty given by this Adjudicating Authority vide order dated 01.07.2021 had submitted a Resolution Plan to the Resolution Professional vide email dated 23.10.2021 with the request for it to be placed before COC for consideration. The Plan having not been considered, Mr. Bharat Sharma filed an Application being IA-1151/2022 pleading that the Applicant Bharat Sharma, with the prayer that directions be issued to RP to convene COC and place Resolution Plan of Bharat Sharma before COC to consider.
- 3.7 Vide order dated 26.08.2022, this Adjudicating Authority allowed Liquidation Application being IA-2479/2021 filed under section 33(3) of the Code and Ms Reshma Mittal was appointed as the Liquidator. Vide the same order, this Adjudicating Authority disposed of IA-1151/2022 and only allowed Mr. Bharat Sharma to participate in Liquidation proceedings.
- 3.8 Liquidator made public announcement in prescribed Form B dated 01.09.2022 as per Regulation 12 of Liquidation Process Regulations inviting claims from all stakeholders with proof of claim.
- 3.9 Pursuant to Regulation 15(1)(a) of the Liquidation Regulation, total 5 progress reports dated 07.10.2022, 14.01.2023, 15.04.2023,

08.07.2023 and 07.10.2023 have been submitted for every quarter post commencement of Liquidation.

- 3.10 In the meanwhile, in an appeal preferred by Mr. Bharat Sharma against order dated 26.08.2022 of this Adjudicating Authority, the Hon'ble NCLAT vide its order dated 31.10.2022 had also given a liberty to Appellant i.e., Mr. Bharat Sharma to submit a scheme of Compromise / Arrangement as contemplated under section 230 of the Companies Act within 30 days from the date of order and to complete the entire process within 3 months. Hon'ble NCLAT further directed Liquidator to defer the e-auction scheduled on 10.11.2022 until conclusion of compromise and arrangement process as proposed by Mr. Bharat Sharma.
- 3.11 However, Ex-director, Mr. Bharat Sharma failed to submit the compromise proposal to the secured financial Creditors by 31.01.2023. In view thereof, the Liquidator vide IA-1146/2023 sought exclusion of period of 3 months, from 31.10.2022 to 31.01.2023 from liquidation timeline and the same was allowed by this Adjudicating Authority vide order dated 17.05.2023.
- 3.12 Pursuant to Regulation 30 of the Liquidation Regulations, the Liquidator filed list of Stakeholders on 08.11.2022 enlisting 92 creditors. Further pursuant to Regulation 13 and 34 of the Liquidation Regulation, the Liquidator filed 'Preliminary Report' and 'Asset Memorandum' respectively on 08.11.2022.
- 3.13 Liquidator has submitted that the Corporate Debtor has been sold as a going concern vide sale certificate to M/s Krishna Constellation Pvt Ltd, who was declared as successful bidder after 100 rounds of bidding which fetched the value of 40% above the reserved price (fixed at INR 19.50 crores) i.e., INR 27.05 crores. The successful bidder has deposited entire amount and entire proceeds have been distributed as per waterfall mechanism specified under section 53 of the Code.
- 3.14 Pursuant to Regulation 41 of the Liquidation Regulations, the Liquidator opened a separate bank account in the name of

Corporate Debtor i.e. “Pellet Energy Systems Pvt. Ltd.’ - In Liquidation” having Account number 6546939514 as per regulation 41 of the Liquidation Regulation with Kotak Mahindra Bank, Ghaziabad Branch. The account has been closed on 19.02.2024.

- 3.15 The Liquidator filed Final Report and account of Liquidation vide IA(I.B.C.)/922/(PB)/2024 with this Adjudicating Authority on 20.02.2024. We observe here that the Applicant has filed the aforesaid report under Regulation 15(1)(a) of the Liquidation Process Resolutions 2016, which is incorrect. The Final Report ought to have been filed under Regulation 45(3) of the Liquidation Process Regulations, which reads as:

The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –
(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or
(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).

Whereas, Regulation 15 only provides for progress reports. Be that as it may, we observe that this Final report has been made a part of Application for closure of Liquidation i.e., IA(IBC)-03(PB)/2024 as Annexure-11.

- 3.16 Compliance Certificate in Form H has been annexed with this Application for closure of Liquidation Proceedings as Annexure - 15.
- 3.17 Further it is noteworthy to mention that as per submissions made by Liquidator there are avoidance Applications pending under section 43 and 66. The Liquidator in this respect relies upon Regulation 44A to submit that the application accompanied by the final report under Regulation 45 shall expound the strategy for pursuing proceedings concerning avoidance transactions as per Chapter III or fraudulent or wrongful trading in accordance with Chapter VI of Part II of the Code. This also includes the proposal for the allocation of proceeds, if any, resulting from said proceedings, subsequent to the dissolution or the culmination of the liquidation process.

- 3.18 The Liquidator further relies upon Regulation 37A of the Liquidation Regulations to submit that the asset can be assigned to any individual holding the capacity to submit a resolution plan for the corporate debtor's insolvency resolution. It is distinctly understood that “not readily realizable asset” encompasses any part of the liquidation estate deemed unsalable through extant modalities, inclusive of contingent, disputed assets, and those ensnared within proceedings typified within sections 43 to 51, coupled with section 66 of the Code.
- 3.19 The Liquidator has submitted that a publication was made in widely circulated newspapers offering assignment of Not Readily Realizable Assets (NRRA) i.e., Avoidance Transactions in response to which two proposals were put forward by 1) VRSA Consultancy LLP and 2) Mr. Manjit Anjana along with the EMD of INR 1 Lac. In 6th meeting of Stakeholders Consultation Committee (SCC) convened on 30.01.2024 Mr. Manjit Anjana was voted with 78.44% votes in favor, to be the successful bidder of the assignment of NRRA for total consideration of INR 7.50 lacs upfront and 50% sharing in the proceeds of avoidance transactions with no sharing in legal cost / expenses.
- 3.20 Liquidator has submitted that the Corporate Debtor has been sold as a going concern to M/s Krishna Constellation Pvt Ltd and affairs of the corporate Debtor has been completely Liquidated after realising the assets and distributing the amount to the stakeholders duly complying with the provisions of section 53 of the code in order of priority as mandated under the code.
- 3.21 On perusal of the Application being IA-03/2024 and also records of the matter were seized of the fact that some Applications being IA-4998/2022 under section 43 of the Code and IA-4997/2022 under section 66 of the Code are pending before us for adjudication.
- 3.22 Qua those avoidance applications, the Liquidator as per Regulation 44A ought to have given full particulars in application for closure of liquidation about how these proceedings will be pursued post

closure of the liquidation, however the same were missing except only the resolution passed in stakeholders' consultation committee to assign these proceedings.

Regulation 44A reads as follows:

44A. Treatment of avoidance of transaction. The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.

3.23 Hence, in view of insufficient records on assignment of avoidance of transactions, this Adjudicating Authority vide order dated 13.06.2024 sought following clarification from the Liquidator, Ms. Reshma Mittal:

CLARIFICATION ORDER

IA/03/2024 (Dis.), IA-922/2024

1. As per Regulation 44A of the Liquidation regulations, the Liquidator must to the satisfaction of this Adjudicating Authority, provide for the 'Manner in which Applications for avoidance of transactions will be pursued' after the closure of Liquidation proceedings and the manner in which the proceeds shall be distributed, including identification of person / entity who shall pursue such application. However, to the contrary, no such details has been provided in the Application for closure of Liquidation Proceedings. Mere record of minutes of the meeting in which resolution was purported to have been passed to assign NRRRA, has been annexed with the Application which does not throw light on this. However, neither any assignment deed / letter of intent / and consent letter of alleged successful bidder or any like document evidencing the assignment and its terms has been brought on record.

...

3.24 Pursuant to above clarification sought, Liquidator filed clarification on 20.06.2024, vide which the Liquidator has duly provided the following records:

- a. Demand Draft No. 327447 for INR 6.5 lacs and Demand Draft No. 327599 for INR 1 lac submitted by successful bidder, Mr. Manjit Anjana towards upfront amount of total INR 7.5 lacs;
 - b. Assignment Deed dated 14.02.2024 executed between Liquidator, Ms. Reshma Mittal (Assignor), Punjab National Bank (Secured Financial Creditor) and Mr. Manjit Anjana (Assignee) for assignment of avoidance transactions identified as 'Not Readily Realizable Assets';
 - c. Letter of Intent dated 05.02.2024 for assignment of Avoidance Transactions issued by the Liquidator, Ms. Reshma Mittal in favour of Mr. Manjit Anjana; and
 - d. Minutes of 6th stakeholders' consultation committee held on 30.01.2024, voting results and e-voting sheet.
- 3.25 It has been clarified by the Liquidator that resolution was passed in 6th meeting of stakeholders' consultation committee with 78.44% majority in favour to assign avoidance transactions to Mr. Manjit Anjana for total consideration of INR 7.50 lacs and 50% sharing in proceeds of Avoidance Transactions with no sharing in legal cost/ expenses.
- 3.26 As per the aforesaid Assignment Deed, NRRA means:

avoidance transactions identified by the Assignor as not readily realizable, as more specifically detailed in Schedule I

Schedule I to the Assignment Deed provides for **List of Avoidance Transactions** recognized assigned as NRRA, which are as follows:

<i>Description of Assets to be assigned</i>	<i>Amount (In lakh)</i>
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1. Assignment of underlying proceedings with I.A. No. 4998 of 2022 in C.P. (IB) No. 76 of 2018 for preferential transactions under section 43 of the IBC, 2016	Rs. 13.50
2. Assignment of underlying proceedings with I.A. no. 4997 of 2022 in C.P. (IB) no. 76 of 2018 under section 66 of the IBC, 2016	Rs. 2777.00

3.27 Further clause 2, of the Assignment Deed for **Assignment and Transfer of Avoidance Transactions**, provides as follows:

- a) *The Assignor hereby irrevocably assigns, transfers, and conveys to the Assignee, its entire right, title, and interest in and to the NRRA, including all claims, rights to sue, and all other legal and equitable rights associated with the NRRA.*
- b) *The Assignee shall have sole and absolute discretion in respect of all decisions relating to of NRRA including cost to be incurred, settlement of claims, period of perusal, viability of further perusal, assignment of claims, relinquishment of rights, further legal proceedings, if any required.*
- c) *The Assignee hereby accepts the assignment and agrees to be bound by the terms of this Deed.*

Clause 3, '**Consideration for Assignment**' provides as follows;

- a) **The Assignee shall pay an upfront consideration of Rs. 7.50 lakhs** (Indian Rupees Seven Lakh Fifty Thousand only).
- b) **After assignment the Assignee shall realise the NRRAs at his own cost including any legal cost.**
- c) **The Assignee shall remit 50% of proceeds of realisation from to the Secured Financial Creditor, which shall be paid directly to the secured financial creditor.** In ca se the NRRAs are not adjudicated by the Adjudicating Authority for any reason or there is no recovery of any amount adjudicated, Rs. 7.5 lacs shall constitute absolute consideration.

Clause 4, '**Establishment of a Designated Recovery Account for NRRA**', provides:

- a) **The Assignee shall open and maintain a designated account ("Designated Recovery Account") with Punjab National Bank for depositing recoveries from Not Readily Realizable Assets (NRRAs) after adjudication of NRRAs by the Adjudicating Authority.**

...

We observe that in the assignment deed annexed as Exhibit C in the clarification dated 19.06.2024, two pages 21 and 22 purportedly provide for the same clauses i.e., clause 2 and 3 however at page 21, clause 2 only provides two sub-clauses, while the same at page 22 provides for three sub-clauses and an additional clause as sub-clause b), which reads as follows:

b) The Assignee shall have sole and absolute discretion in respect of all decisions relating to of NRRA including cost to be incurred, settlement of claims, period of perusal, viability of further perusal, assignment of claims, relinquishment of rights, further legal proceedings, if any required.

As a matter of abundant caution, we herein have considered clause 2 with three sub-clauses given at page 22 for the purpose of record.

3.28 The Liquidator also issued a Letter of Intent to the bidder on 05.02.2024, which was duly accepted by the bidder. This acceptance confirmed their agreement to undertake the assignment.

4. Order:

4.1 We have perused the Application for closure of Liquidation, clarification dated 19.06.2024 as filed on 20.06.2024 and annexed documents.

4.2 As noted above that application for closure of liquidation has been filed while Avoidance proceedings under section 43 and 66 being IA-4998/ 2022 and IA- 4997/ 2022 respectively are pending for adjudication. In this respect we take note of relevant regulations in this regard i.e., Regulation 37A, 44(1) and 44A of the Liquidation Process Regulations.

Regulation 37A reads as follows:

37A. Assignment of not readily realisable assets.

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any

person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. — For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]

Regulation 44(1) reads as follows:

44. Completion of liquidation.

(1) The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority or any action thereof.

Regulation 44A reads as follows:

44A. Treatment of avoidance of transaction. The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.

- 4.3 Upon perusal of the aforesaid regulations we hold that liquidation can be closed even while proceedings for avoidance of transactions are pending before the Adjudicating Authority provided the Liquidator must to the satisfaction of this Adjudicating Authority, provide for the ‘Manner in which Applications for avoidance of transactions will be pursued’ including identification of person / entity who shall pursue such application.
- 4.4 The liquidator has pursuant to clarification sought by this Adjudicating Authority furnished detailed clarification and all requisite records viz. Minutes of Meeting of 6th stakeholders’ consultation committee, Assignment Deed dated 14th February 2024 and Letter of Intent dated 05.02.2024 issued by the Liquidator, as already discussed above. From perusal of these

documents we are satisfied as to the manner in which these proceedings will be pursued after closure of Liquidation.

4.5 Accordingly, **IA(IBC)- 03(PB)/2024** is **ALLOWED** and **Disposed of**.

4.6 IA(I.B.C.)- 922(PB)/2024 has been stated by the Liquidator, Ms. Reshma Mittal as final report under regulation 15(1)(a) of the Liquidation Process Regulations, which is incorrect. It should have been filed as final report under regulation 45 of the Liquidation Process Regulations. IA(I.B.C.)-922(PB)/2024 also forms part of IA(IBC)-03(PB)/2024. Accordingly, **IA(I.B.C.)-922(PB)/2024** is **disposed of**.

Sd/-
RAMALINGAM SUDHAKAR
PRESIDENT

Sd/-
AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)