

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT-I)
KOLKATA**

I.A. (IB) No. 1149/KB/2024
in
CP (IB) No. 1147/KB/2020

*An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Regulation (38) of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016*

In the matter of

Janpragati Commodities Private Limited

... Financial Creditor

Versus

Radission Resources Private Limited

...Corporate Debtor

And

In the matter of

Pratap Mukherjee

... Liquidator/ Applicant

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via hybrid mode):

Ms. Vedika Sureka, Adv.

] For the Applicant/ Liquidator

Order pronounced on: 24.07.2024

ORDER

Per: Coram

1. This Court convened through hybrid mode.

2. This is an application preferred by Mr. Pratap Mukherjee i.e Liquidator of the Corporate Debtor, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) read with Regulation (38) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”), inter alia, seeking the following reliefs;
 - i. *Pass necessary order to allow distribution of unsold assets of the corporate debtors by the liquidator to the stakeholders;*
 - ii. *Any other directions which this Adjudicating Authority may deem fit in the facts and circumstances of the matter.*

Brief facts of the case

3. The underlying Company Petition in C.P. (IB) No. 1147/KB/2020 was filed by Janpragati Commodities Private Limited, the Financial Creditor against the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“CIRP”), under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 27.01.2022.
4. Mr. Neeraj Jain was appointed as the IRP *vide* the said order. Thereafter, the IRP was replaced by the Applicant herein as Resolution Professional *vide* order dated 25.05.2022. Subsequently, the Adjudicating Authority allowed the application filed for initiation of liquidation process of the Corporate Debtor *vide* order dated 23.03.2023.

Submissions of the Applicant in I.A. (IB) No. 1149/KB/2024

5. Public announcements as per Regulation 12 of the Liquidation Regulations was made by the Applicant in Form B which was published in two newspapers namely “***Morning India***” (English Daily) and “***Sanmarg***” (Hindi daily), both having circulation in Jharkhand. The only claim received was from the Financial Creditor herein for an amount of Rs. 49,61,753/-.

6. The Applicant/Liquidator initiated the e-auction process and the public notice¹ for e-auction was published in two newspapers of Ranchi edition namely “**Morning India**” (English Daily) and “**Sanmarg**” (Hindi daily) on 28th June, 2023. The first e-auction conducted by the liquidator failed. The notice of the E-auction was also published on the website of IBBI.
7. Thereafter, in the 3rd meeting of the Stakeholders Consultation Committee (“SCC”) held on 14.07.2023 the SCC permitted the Applicant to conduct 2nd e-auction for the intangible assets i.e., book debts. The sale notice of 2nd e-auction was published² in two newspapers viz. “**Morning India**” (English Daily) and “**Sanrnarg**” (Hindi daily), both Ranchi Edition , on 22d July, 2023. However, since no bid application was received, the 2d e-auction also failed. The Applicant again published³ sale notice for 3rd e-auction on 25.08.2023 in “Sanmarg” and “Morning India”. The third e-auction also failed since no bid was received. The e-auction notices of both 2nd and 3^d e-auctions were also published on the website of IBBI.
8. The Applicant, for the recovery of the book debts, also sent various letters and e-mails to the debtors. One of the debtors i.e Naman Ispat Private limited was admitted into CIRP and later liquidated as on 23.11.2023. The claim of the Corporate Debtor was admitted⁴ to the extent of Rs. 22,50,000/- by the liquidator of Naman Ispat Private limited. No response was received from other debtors either during the Corporate Insolvency Resolution Process Period or during liquidation process period.
9. The Applicant has also filed an application under Section 65 and section 66 of the Code being IA(IBC) No. 3/KB 12024 against the Corporate Debtor, Financial Creditors and other Sundry Debtors of the Corporate Debtor with the allegations

¹ Annexure C

² Annexure D

³ Annexure E

⁴ Annexure G & H

that the Corporate Insolvency Resolution Process was initiated maliciously and for purposes other than resolution of the Corporate Debtor. The Adjudicating Authority has issued notices to the Respondents therein.

10. The registered office of the Corporate Debtor is presently occupied by somebody else. The Applicant has issued various letters, e-mails to the erstwhile directors of the Corporate Debtor for sharing of relevant documents, invoices, challans, lorry receipts etc for sale/assignment of the book debts to the intending purchasers/assignees. The Applicant in the capacity of the Resolution Professional also filed an application under section 19(2) of the Code being IA(IBC) No. 1066/2022 against the erstwhile directors of the Corporate Debtor. However, the directors escaped by advising that they do not have the documents under their possession.
11. The Financial Creditor has not paid CIRP cost and the liquidation cost to the Applicant and on various occasions has expressed its inability to pay any amount towards the same. The Applicant had filed an application for direction upon the Financial Creditor to make payment of the CIRP and liquidation costs. However, even after the direction on behalf of the Adjudicating Authority to consider payments of the costs, the Financial Creditor has failed to make such payments.
12. In the 6th SCC Meeting⁵ held on 26.04.2024, the Applicant informed the SCC that in the present circumstances, two options were available with the SCC viz. (i) identifying the assets as not readily realizable assets under Regulation 37A and (ii) distribution of the unsold assets among the stakeholders under Regulation 38 of the Liquidation Process Regulations. After deliberations, the SCC recommended the filing of appropriate application before the Adjudicating Authority for distribution of unsold assets to the stakeholders.

Analysis and Findings:

13. Heard the Ld. Counsel on behalf of the Applicant and perused the record.

⁵ Annexure J

14. In the instant matter the intangible assets being the book debts remain unsold and hence the Applicant is seeking to distribute the same amongst the stakeholders. It is submitted that the Applicant has issued notice for e-auction of the said book debts thrice but all three attempts failed due to lack of bids. The Applicant has also attempted to contact⁶ the sundry debtors but has not been able to recover any of the amounts payable by the said debtors. It is thus clear that since the efforts of the Applicant in realizing the intangible assets have borne no fruit, the options remaining with the SCC are to either identify the asset as not readily realizable assets under Regulation 37A of the Liquidation Process Regulations or to distribute the aforesaid unsold assets among the stakeholders under Regulation 38 of the Liquidation Process Regulations. The Applicant, with the consent of the SCC in the 6th SCC Meeting, has decided to take the latter route.

15. In this regard it is necessary to refer to Regulation 38 of the Liquidation Regulations which is reproduced hereinafter:

“38. *Distribution of unsold assets.*-

(1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that could not be sold, assigned or transferred due to its peculiar nature or other special circumstances.

(2) The application seeking permission of the Adjudicating Authority under sub-regulation (1) shall-

(a) identify the asset;

(b) provide a value of the asset;

(c) detail the efforts made to sell the asset, if any; and

(d) provide reasons for such distribution.”

⁶ Annexure H- Pages 51-63

16. It is seen that in compliance of Reg. 38 (2), the Applicant has identified the unsold assets to be the book debts of the Corporate Debtor. Further, the value⁷ of said asset has been submitted as follows:

<i>S. No.</i>	<i>Name of Sundry Debtors</i>	<i>Amount due as on 27.01.2022 (Rs.)</i>
(1)	Ancient Suppliers Private Limited	11,80,680.80
(2)	Pragish Textiles Private Limited	6,06,17,348
(3)	Naman Ispat Private Limited	22,50,000
(4)	Urvee Investments Private Limited	17,00,000
	Total	6,57,48,028.80

17. Further, as mentioned above, the efforts made by the Liquidator in realizing the said asset has been mentioned in details by the Applicant and is provided hereinafter:

<i>Attempt Details</i>	<i>Notice Publication Date</i>	<i>Attempt Failure Reason</i>
1 st E- Auction	28.06.2023	E-Auction failed
2 nd E-Auction	22.07.2023	No bid received
3 rd E-Auction	25.08.2023	No bid received
Letters and Emails issued to various sundry debtors	Between 12.05.2023 to 13.09.2023	Claim of Corporate Debtor herein admitted by liquidator of Naman Ispat Private limited. No other reply received

18. Since the intangible asset *i.e* book debts had not been sold during the liquidation period, and since the Financial Creditor had expressed its inability to pay CIRP and Liquidation costs to the Applicant, the SCC, in the 6th SCC Meeting held on 26.04.2024, decided on advise of the Applicant to distribute the said assets under

⁷ Page 17 of Application

Regulation 38 of the Liquidation Regulations. A resolution to that effect was passed⁸ by 100% votes in the 6th SCC Meeting.

19. In light of the aforesaid facts and circumstances, we see no reason to continue further with the liquidation process and incur more liquidation cost in due course. As such, we deem it fit to allow the instant application and hold so.
20. IA (IB) No.1149/KB/2024 is hereby *disposed of* accordingly.
21. The Registry is directed to email copies of the order forthwith to the learned Counsel on record and the Liquidator for information.
22. Certified copies of this order may be issued, if applied for, upon compliance of all requisite formalities.
23. List C.P.(IB) 1147/KB/2020 on **06.09.2024** for further consideration.
24. File be consigned to the record.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated the 24th day of July 2024

SM(LRA)

⁸ Annexure J, Page 79