

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.303  
**IA/1479(AHM)2023**  
in  
**CP(IB) 20 of 2020**

**Proceedings under Section 60(5)(c) IBC & Rule 11 of NCLT Rules, 2016**

**IN THE MATTER OF:**

Inderdeep Construction Company

.....Applicant

Vs

Anuj Bajpai Liquidator Of Aniwesha Engineering & Projects  
Limited

.....Respondent

**Order delivered on: 04/07/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

SD/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT No.2**

**IA 1479/NCLT/AHM/2023  
IN  
CP (IB) 20/7/NCLT/AHM/2020**

[An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016]

**In the matter of:**

Inderdeep Construction Company  
1<sup>st</sup> Floor, 32/01, Kestral Pride,  
Near Hira Ghat,  
Opp. AVM Automobiles,  
Ulhasnagar, Thane-421003

... Applicant

**Versus**

Anuj Bajpai & Ors.  
1006, 10<sup>th</sup> Floor, Raheja Centre,  
Nariman Point, Mumbai-400023

... Respondents

And

**In the matter of:**

Continental Piling and Excavation Private Limited

.... Petitioner

Versus

M/s. Anwasha Engineering & Projects Limited

...Respondent

**Order pronounced on 04/07/2024**

**Coram:**

**MRS. CHITRA HANKARE,  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

For the Applicant : Mr. Rasesh Sanjanwala, Sr. Adv.  
a.w. Mr. Kunal Vaishanv, Adv.  
Liquidator : Mr. Anuj Bajpai party in person  
For the Income Tax : Ms. Bhumi Gandhi Adv. for  
Ms. Maithali Mehta Adv.

**Per: Bench**

**J U D G E M E N T**

1. An Interlocutory Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 of Insolvency and Bankruptcy Code, 2016 for seeking various reliefs and concessions.

The brief facts of the case are as under:

2. The Petition is filed under Section 9 of the Code, the CIRP of the Corporate Debtor viz. M/s. Anwasha Engineering & Projects Limited commenced vide order dated 25.01.2021.
3. There being no resolution plans forthcoming for the Corporate Debtor, on an application filed by the erstwhile RP, this

Tribunal passed an order dated 13.01.2023 for commencement of the Liquidation Process of the Corporate Debtor.

4. An E-auction process was scheduled for 28.08.2023 for sale of the Corporate Debtor as a going concern as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016.
5. That the Respondent had invited bids for the sale of the Corporate Debtor as a 'going concern' by way of an e-auction process Memorandum.
6. The Applicant has put assets for sale :

Lot	Description	Reserve Price (Rs.)	EMD Amount (Rs.)
Lot 1	All the assets of the Corporate Debtor on a going concern Basis as per Regulation 32A of IBBI (Liquidation Process Regulations, 2016	42.60 Crores	4.26 Crores

The Applicant submits that it was declared as the Successful Bidder of the auction whereby the applicant has subsequently paid the entire amount of sale consideration of Rs. 42,85,00,000/- within 30 days from the date of completion of the bidding process in accordance with the terms and conditions of the bid document.

7. The Respondent has issued the sale certificate dated 25.09.2023 (“Transfer Date”) to the applicant. The Applicant being Successful Bidder to take over Corporate Debtor on a going concern basis, it is imperative that certain reliefs and concession are granted in order to enable the applicant to run the operations of the Corporate Debtor as a “going concern”.
8. The Applicant submits that there are certain requirements to be fulfilled for the transfer of legal ownership of the Corporate Debtor in favour of the Applicant.
9. The Applicant relied upon various judgments :
  - i. *K.K.R India Financial Service Pvt Ltd. VS Kwality Limited IA No. 5881 of 2021 CA No. 32 of 2021 IA No. 5208 of 2021 in CP(IB) No. 1440/ND/2018 dated 27.01.2021*
  - ii. *Gian Celsius Bio Chemicals Ltd. Vs. KSK Energy Ventures Ltd. IA No. 112 of 2021 in CP(IB) 675/7/HDB/2018*
  - iii. *Bank of Baroda vs. M/s. Topworth Pipes & Tubes Pvt. Ltd. CP(IB) No. 1239/MB/2018 dated 09.03.2021.*
  - iv. *Dr. Devaiah Pagidipati vs southern online bio Technologies Ltd. IA No. 1039 of 2019 in CP(IB) No. 343/7/HDB/2018 dated 26.11.2019.*
  - v. *Dr. Devaiah Pagidipati vs Souther online Bio Technilogies Ltd. IA No. 1039 of 2019 in CP(IB) No. 343/7/HDB/2018 dtd. 26.11.2019*
  - vi. *M/s. Elecon Engineering Company Ltd. M/s. Enviuro Bulk Handling systems pvt. Ltd. IA 741 of 2021 in CP(IB) No. 1319/MB/2017 dtd. 21.06.2021.*
  - vii. *M/s. Sherisha Powertech Private Limited vs. Sundaresh BHat Liquidator of Emco Limited IA No. 870 of 2022 in CP(IB) No. 2849(MB) 2018 dtd. 09.09.2022.*
  - viii. *Nitin Jain Liquidator of PSL Ltd. Vs. Lucky Holdings Pvt. Ltd. IA No. 391 (AHM) 2021 in CP(IB) No. 37 of 2017 dtd. 08.09.2021*

- ix. *Dr. G.V. Narasimha Rao, Liquidator for Transstroy (India) Limited vs. Hruday Infra and Resources Solutions Private Limited IA No. 39 of 2022 in CP(IB) No. 33/7/AMR/2019 dtd. 26.10.2022.*
- x. *Mohan Gems & Jewels Private Limited through its Liquidator Debashish Nanda vs. Vijay Verma Company Appeal (AT) (Insolvency) No. 849 of 2020 dtd. 24.08.2021.*
- xi. *OFB Tech Pvt. Ltd. vs. Alok Saksena Liquidator of Gujarat Foil Ltd. IA No. 53 of 2022 in CP(IB) 116/AHM/2017.*

10. In response to the issuance of notice on the Department of Income Tax. The Ld. Counsel for the Department of Income Tax appeared and filed its reply are as under:

Name: M/s. Anwesh Engineering & Projects Limited			
PAN :AABCA9599A			
Sr. No.	A.Y.	Subject	Section
1	2012-13	Penalty Proceeding	271(1) (c)
2	2016-17	First Appeal Proceeding	143(3)
3	2017-18	First Appeal Proceeding	143(3)
4	2017-18	Penalty Proceeding	270A

11. Heard Ld. Counsel for the Applicant and perused the facts pleaded. The applicant has filed this application under Section 60(5) and Rule 11 of NCLT Rules, 2016. He has sought many reliefs and concessions which are stated to be given on the event of the sale of the asset as a going concern. An examination of the act of such sale by the liquidation

estate under Section 32A of IBBI (Liquidation Process) Regulations 2017 opens up certain issues which are the basis to examine whether the liquidator was within his rights to offer such sale with such concessions to the applicant.

12. It is stated in the application that on initiation of CIRP vide order dated 25<sup>th</sup> January 2021, the COC could not be placed with any resolution plans of the Corporate Debtor, and thereby on recommendations of COC liquidation process of the Corporate Debtor was initiated vide order dated 13<sup>th</sup> January 2023 of the Corporate Debtor. The liquidation commenced and an e-auction process for sale of Corporate Debtor as a going concern as per Regulation 32 A of Regulations IBBI 2016 on 26<sup>th</sup> July 2023.
13. It is stated that the liabilities will be settled in terms of Section 53 of the IBC 2016 (dissolution), however on going litigations involving the Corporate Debtor, if any will continue in accordance with the provisions of IBC 2016. The assets of the Corporate Debtor were sold on a going concern basis as per Regulation 32 A of the IBBI (LP) Regulations 2016 with reserve price of Rs. 42.60 Crores. The applicant is the successful bidder of the auction and has stated that he is

entitled to take over the Corporate Debtor without any claims, encumbrances or charges and is free from action by any creditor. Similarly any pending proceedings with respect to liabilities/enquiries/investigations/assessments/charge of civil/criminal nature/claims/disputes/litigation against Corporate Debtor and or its subsidiaries and or its affiliates or its assets shall not have any bearing on the assets sold in the e auction process. Various judgments for grant of such reliefs sought are mentioned but copies of such judgments have not been submitted as per records.

14. As per the records, in the application filed for liquidation by the liquidator vide IA 373/2022, it is informed vide para 21 that the COC in its 17<sup>th</sup> meeting had passes a resolution that the liquidator shall explore possibility under regulation 32 A(4) for 'sale as going concern' of corporate debtor within 90 days from the date of liquidation order and if it fails then liquidator shall liquidate the assets of the corporate debtor. It appears that the COC gave a prior authorisation before passing liquidation order to explore possibility of selling the Corporate Debtor as a going concern.

15. As per records submitted the liquidator has issued the E auction process scheduled on 28 August 2023 which was through a public announcement on 26 July 2023. This apparently, was not within the 90 days specified.
16. The order of liquidation passed by this Tribunal did not contain any such conditions and the liquidator was appointed who had to discharge his duties accordingly.
17. From the documents, it is not clear as to whether the liquidator took the necessary advice from the SCC before issue of such notice, nor there is any record placed of the valuation obtained both at the time of Resolution Plan and subsequently as the offer bid of Rs 42.85 crores does not have any record to prove that this was the liquidation/fair value at the time of arriving at the Reserve Price.
18. Also we have gone through the public announcement dated 26 July 2023, copy of the Auction Process Document and sale certificate dated 25 Sept 2023.
19. The Income tax department has vide its letter dated 1 March 2024 stated that there are various proceedings pending against the CD from 2012-13 to 2017-18.

20. There are as per the relief and concessions sought on page 24 (xx) that work orders amounting to Rs 1544.78 crores will remain valid to be taken over by the bidder. The applicant further states that after taking over with various concessions, he will extinguish the existing share capital of the CD and issue fresh equity share capital of appropriate amount against sale consideration of Rs 42.85 crores.
21. In view of the above mentioned facts, it is observed that the liquidator has unilaterally and without proper authorisation or approval of this Tribunal has gone for such a sale which was beyond the 90 days stipulated by COC. Further, liquidator has neither taken the approval of the authorities concerned including this Tribunal, particularly when there are huge Income Tax arrears and also other litigations and unfulfilled work orders. The liquidator has not applied with the relevant financial documents of outstanding assets or liabilities, while he has unilaterally gone for a sale as going concern with all such outstanding dues payable, and the concessions sought under Regulation 32 A cannot be considered, as this could be a case of an appropriate identification in terms of regulation 39C which has not been

complied with (assessment of sale as a going concern) by the liquidator.

22. In view of the above, we pass the following orders.

**ORDER**

IA No. 1479 of 2023 in CP(IB) 20 of 2020 is rejected and stands disposed of.

**SD/-**

**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

**SD/-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**

vc