

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.04.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : IDBI Consortium & Sulzer India Pvt. Ltd.
Vs
Nagarjuna Oil Corporation Ltd.

MAIN PETITION NUMBER : TCP/10/2017

(IA/MA) APPLICATION NUMBERS

IA/526(CHE)/2024

ORDER

Present: Shri. V. Mahesh, Liquidator in person.

Shri. P.H. Arvindh Pandian, Ld. Sr. Counsel for the Respondent
No.2.

Heard.

This application has been filed by the Liquidator / Applicant seeking the following reliefs:

- A) Permit the Applicant/Liquidator to immediately proceed with the sale of the huge pile of materials and scrap that were shifted as per the suggestion of the District Authority to the north gate or elsewhere of the Project site of Nagarjuna Oil Corporation Limited and also the materials that are stored at the warehouse located at Pondicherry for safekeeping as per the Valuation Report through E-auction in accordance with IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016, in order to curb the theft and other unfortunate incidents recurring at the site.*

- B) Appoint an Independent Observer to oversee, supervise and monitor the process of E-auction as prayed for in (A) and to issue such directions and to fix such fees for the same.*

C) Permit the Liquidator to immediately distribute the proceeds (sale proceeds minus expenses connected to sale) as per Section 53 of the Insolvency & Bankruptcy Code, 2016, to the Secured Financial Creditors after setting aside appropriate amount to meet the pending CIRP/Liquidation Costs payable, at the discretion of the Liquidator, without holding or locking the funds in an ESCROW/no lien account.

It is stated that the Liquidator has been regularly interacting with the Secured Creditors updating the site situation, security issues and developments. The senior members of the lenders also visited the site along with the Liquidator and took note of the situation. It is stated that the secured lenders have no other alternative but to monetize the materials lying there as the value proposition and costs incurred for the security of these assets would cause a huge burden on the liquidation estate. It is stated that the Applicant expresses great concern regarding the safety of the men and materials at site and needs to expedite the scheme implementation. It is stated that the only recourse available to the Applicant as well as the beneficiaries is to sell and distribute the sale proceeds in accordance with Section 53 of the Code.

In the reply filed by Respondent No.2, it is submitted as under:

10. 2nd Respondent does not have any objection to the sale of materials/scrap belonging to and in the possession of NOCL (Company under Liquidation) as proposed by the Applicant subject to the following pre-conditions which are stated below:

- A. The sale has to be in accordance with the rules and regulations under the IBC and subject to the approval by this Hon'ble Tribunal;*
- B. The 2nd Respondent should also be involved in the valuation of the materials and in the sale process. It is prayed that, the valuation of the assets of NOCL and the sale process must happen with the concurrence and under the supervision*

of the 2nd Respondent, considering that the 2nd Respondent is the successful Scheme proponent of NOCL and the same must be based on competitive pricing and in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016;

- C. The entire proceeds realised from the sale of the materials should be deposited in an escrow account by the Applicant/Liquidator and is to be adjusted/set off against the balance payments [i.e. Stage 2 & Stage 3] to be made by the 2nd Respondent to the Applicant under the Scheme, upon the occurrence of the Appointed Date. Therefore the 2nd and 3rd Stage payment would be reduced to the extent of the amounts recovered from the sale of the scrap materials and paid to the Liquidator.*
- D. A sum of Rs. 20 crores from the sale proceeds could be utilised by the Applicant for further maintenance and safe keep of the NOCL assets in accordance with due process and for meeting the maintenance expenses and CIRP costs. However it is clarified that the said amount of 20 Crores shall be deducted from the final payments to be made by the 2nd Respondent as per the Scheme.*
- E. In case, the remaining payments are made by 2nd Respondent before the sale takes place, the 2nd Respondent shall have the sole right over the scrap materials and to carry out the sale process; and*
- F. The Applicant/Liquidator shall be solely liable for any claims, charges, damages, losses, liabilities and expenses, including but not limited to interest, penalties, litigation expenses due to claims arising from third parties or cause of action of any type, whether administrative, regulatory, at law or in equity, out of or in connection with this sale of these assets, including costs of sale of the assets. The 2nd Respondent shall not be liable for the above.*

The Liquidator has filed a memo vide S.R. No.2123 dated 29.04.2024 in this respect and the relevant paras of the memo are reproduced as under:

3. *The Stakeholders Meeting discussed several matters relating to the Company under Liquidation (NOCL) and the relevant portion of the Minutes of Meeting held on 22.04.2024 which pertains to the IA 526, for sale of materials is herein extracted below for the kind reference of this Hon'ble Bench. The meeting was attended by all the Secured Lenders and they have unanimously approved the following:*

“(V) SALE OF MATERIALS – IA(IBC)/526/2024 IN TCP/10/IB/2017

The Liquidator took the next important item for discussion & stated that this Meeting is being mainly held as submitted to the Hon'ble Bench in IA(IBC)/526/2024 recorded in the Order dated 02.04.2024 to record the views and decisions of the Stakeholders and submit the same before the Hon'ble Tribunal.

The Counter filed by HPL (2nd Respondent herein) was previously circulated to all the Lenders & the same was taken up during the proceedings of the Meeting for due discussions and recording the views of all the Lenders.

It was placed on record by all the Lenders unanimously that the said Counter is not in line with the previous written communication issued by HPL where they have agreed for sale of Assets vide Letter dated 21.06.2023. The Prayers as sought for now by HPL in their Counter are prejudicial to the interest of the Lenders and the Stakeholders of NOCL as a whole & is self-serving in nature (i.e.) for HPL.

The Lenders further concluded and placed on record that HPL shall have no say whatsoever in forcing any terms or conditions for the sale proposed by the Liquidator as per the decision of the Stakeholders. The Stakeholders were unanimously of the view that HPL having not paid the 2nd &

3rd stage payment, and being solely responsible for this SALE of materials to meet the Liquidation Estate Expenses as well as part repayment of dues to the lenders, including the amount funded by the lenders for Liquidation as far back as in 2019-2020. Therefore, the counter of HPL is not tenable and should not be considered.

The Lenders further specifically decided unanimously that whatever money realised from the SALE of Materials or Scrap, after keeping some amount, for meeting the Liquidation Expenses, already incurred and to be incurred be distributed, first for the Liquidation Fund paid by the Bankers and then to their dues, strictly in accordance and as prescribed under Section 53 of the Insolvency & Bankruptcy Code, 2016.

After discussions, IDBI, the head of consortium, SBI, the largest Lenders and all the other Secured Financial Creditors, unanimously directed the Liquidator to place strong objections to the Counter of HPL in the Memo proposed to be filed by the Liquidator after the Meeting. The Liquidator took note of all the views and decisions of the Lenders assured them it would be filed with the Hon'ble Bench. Besides, if the Lenders, so desire, they can file an independent affidavit or their counsel be instructed to submit the views of the lenders on 30.04.24."

9. *The Applicant/Liquidator humbly requests this Hon'ble Bench to grant permission to immediately proceed with the sale of the huge pile of materials and scrap that were shifted as per the suggestion of the District Administration (Office of the Collector, Cuddalore and SP, Cuddalore) to a specific single location at the site (Near the entrance-North Gate) of NOCL and the materials that are stored at the warehouse located at Pondicherry for safekeeping as per the Valuation Report through E-auction in accordance with IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016, to ensure that the Liquidation expenses are*

brought to the minimum and at the same time ensure that these amounts are credited to the Liquidation Estate. It is further submitted that the Liquidation Estate (Applicant) and the First Respondent shall suffer irreparable damage if the SALE is not allowed, while the 2nd Respondent, subject to clause E of their Prayer/Counter, shall have no prejudice caused to them.

The Applicant submitted that in this matter, the valuation was conducted in June, 2023 and no purpose will be served by fresh valuation of the assets as there will not be any much difference.

The report of the valuation is reproduced as under:

a) Valuation of P&M and materials available within the site (excluding the items assembled in the North Gate)

Description	Liquidation value	In words
<i>Liquidation of value of various items –(comprising plant and machinery and various materials related to the construction of the refinery which are partly erected and partly lying at site, many of which have been damaged as explained above, scrap materials of various kinds, structural steel members, containers, pipes and fixtures and the like)</i>	<i>INR 19,00,00,000/-</i>	<i>(INR One thousand nine hundred lakh only)</i>

Note: *Considering the fact, the site is under an extraordinary situation where the materials are being looted every day despite the best efforts of the Liquidator's team and police department and given the fact the top Government officials of the district have directed the Liquidator's team to shift the materials from out of the site in an expeditious manner so as to avoid any law and order issues, adequate time for an orderly liquidation is not available, it is learnt. As such the sale will be a kind of forced sale; in such a situation the value of the assets will be at a discount of say 10-12% from the value worked out above assuming orderly liquidation with*

adequate time frame. Accordingly, we will put the value of the above set of assets at INR 1700 lakh (INR One thousand and seven hundred lakh only).

b) Valuation of Materials and P&M assembled in the north gate

Description	Liquidation value	In words
<i>Liquidation of value of various items –(comprising plant and machinery and various materials related to the construction of the refinery which have been damaged as explained above, scrap materials of various kinds, structural steel members, containers, pipes and fixtures and the like assembled at the north gate in different heaps)</i>	<i>INR 28,50,00,000/-</i>	<i>(INR Two thousand eight hundred and fifty lakh only)</i>

***Note:** Considering the fact, the site is under an extraordinary situation where the materials are being looted every day despite the best efforts of the Liquidator's team and police department and given the fact the top Government officials of the district have directed the Liquidator's team to shift the materials from out of the site in an expeditious manner so as to avoid any law and order issues, adequate time for an orderly liquidation is not available, it is learnt. As such the sale will be a kind of forced sale; in such a situation the value of the assets will be at a discount of say 10-12% from the value worked out above assuming orderly liquidation with adequate time frame. Accordingly, we will put the value of the above set of assets at INR 2500 lakh (INR Two thousand and five hundred lakh only).*

Having gone through the submissions made and the concern raised by the Applicant regarding the safety of the men and materials at site and to monetize the materials lying there and the no objection given by the Respondent with pre-conditions, we allow the application with the following directions:

- (i) The sale has to be in accordance with the rules and regulations under the IBC and subject to the approval of this Tribunal. No fresh valuation of assets may be got done.

- (ii) **Shri. N.P. Vijay Kumar, Advocate [Mobile No. 9790911370]** is appointed as **Independent Observer** to oversee, supervise and monitor the process of e-auction.
- (iii) His fee is fixed as Rs.1,00,000/- which shall be paid out of the Liquidation Estate in advance by the Applicant. The entire sale proceeds be deposited in an Escrow Account by the Applicant. A reasonable sum from the sale proceeds be utilized for further maintenance and upkeep of assets which may be adjusted towards the liquidation expenses.

Application is accordingly **disposed of**.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)

vs