

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

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

IN THE MATTER OF : VS & B Containers (L.L.C)
Vs
Xllent Marline India Pvt Ltd

MAIN PETITION NUMBER : CP/976/IB/2018

(IA/MA) APPLICATION NUMBERS

IA/407(CHE)/2023

ORDER

Present: None for the Applicant / Liquidator.

None for the Respondent.

Vide separate order announced in Open Court, the application is **disposed of** with directions.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

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

IA/407/IB/2023 in CP/976/IB/2018

*(Filed under Regulation 38 of IBBI(Liquidation Process) Regulations, 2016 read
with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of
NCLT Rules, 2016)*

In the matter of Xllent Mariline India Private Limited

Vinod Radhakrishnan Nair, (Liquidator)

Xllent Mariline India Private Limited (In Liq)

A-108, OM Rachana CHS, Sector-17,

Vashi, Navi Mumbai-400 705

Reg No. IBBI/IPA-001/IP-PO1352/2018-19/12083

...Applicant

-Vs-

1. **Employees Provident Fund organization,**
Recovery officer/ Regional PF Commissioner-II (Legal)
Employees Provident Fund organization
Regional Office, Chennai- I
37, Royapettah High Road,
Chennai- 600 014.

2. **Axis Bank Limited**
George Town Branch,
4th Floor, Arcot Plaza New No 38
Old No.165, Arcot Road, Kodambakkam,
Chennai- 600 024.

3. **VS & B Containers LLC,**
Office at PO Box- 115 267
M-1, jC Rais Hassan Saadi Bldg,
Khalid Bin Walid Street,
Bur Dubai, Dubai, U.A.E.
And also office at
402, 4th Floor, Sai Samarth,

Deonar Village, Near Shah Industrial Estate, Govandi (E)
Deonar, Mumbai- 400 088.

4. **Sattva CFS & Logistics Pvt Ltd.**
Office at High Gate, Level 4, Old No. 82, New No 153,
Santhome High Road, Raja Annamalaipuram,
Chennai-600 028
5. **Sattva Hi Tech & Conware Private Limited,**
Office at High Gate, Level 4, 153/82
Santhome High Road,
Raja Annamalaipuram,
Chennai- 600 028

...Respondents

Order pronounced on 9th May 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *PV Balasubramaniam, Senior Advocate*
Athiban Vijay, Advocate

For Respondent : *Richardson Wilson, Advocate for R3*

ORDER

(Heard through video conferencing mode)

This Application has been filed by the Applicant under
section 60 (5) of the IBC, 2016 r/w Regulation 38 of IBBI,

(Liquidation Process) Regulations, 2016 seeking the following reliefs

- (i) *Grant an order permitting the Applicant to distribute the unsold assets being the amount recoverable from the corporate debtor and its erstwhile management under the action to be initiated against their previous preferential, undervalued and fraudulent transactions to an extent of Rs.-80,92,605/- along amounts of Rs.1,83,154.19/- (Rupees One Lakh Eighty Three Thousand One Hundred and Fifty Four and Nineteen Paise only) amongst the Respondents;*
- (ii) *Pass any such other orders/ direction/ reliefs as this Hon'ble Tribunal may deem fit and just in the facts of the case and thus render justice.*

FACTUAL MATRIX:

2. It is stated that, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) process vide order dated 03.12.2018 and the Applicant herein was appointed as the IRP of the Corporate Debtor.

3. Thereafter, on 09.08.2019, this Tribunal ordered liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator. It is stated that, the Applicant invited claims,

formed stakeholders committee, and carried out other functions as per IBBI (Liquidation Process) Regulations, 2016.

4. It is stated that, the applicant received claims to the extent of Rs.1,80,46,293/- (Rupees One Crore Eighty Lakhs Forty Six Thousand Two Hundred and Ninety Three Only) from 5 creditors.

5. It is stated that a Liquidation account under Regulation 41 IBBI (Liquidation Process) Regulations, 2016 was opened bearing Account no. 5211264845 in Kotak Mahindra Bank for depositing the amounts belonging to the Corporate Debtor. Subsequently the Applicant sent letters and emails to banks in which the Corporate Debtor was holding accounts to transfer the amounts lying in the name of the Corporate Debtor to the Liquidation account. It is stated that the amounts have not been transferred till date by the banks.

6. It is stated that the Corporate Debtor had only two physical assets left namely one car being TOYOTA INNOVA 2.5G, bearing registration no. TN-01-AV-3458 and the other vehicle being Maruti Ritz VDI, bearing registration no. TN-06-A-8235. It is stated that an application for private sale of the two vehicles/assets stated *supra* bearing IA No.898 of 2020 was filed by the Applicant and this Tribunal allowed the said application for private sale on 23.12.2020.

7. It is stated that the Applicant had started the process of coordinating with various agents and prospective buyers on Cardekho website for private sale of assets of the CD. Further an Application was preferred for extension of liquidation process of the Corporate Debtor by the Applicant in IA.No. 25 of 2021 and the said application was allowed by this Tribunal vide order dated 03.03.2021.

8. It is stated that, amounts realized were distributed by the Applicant to the creditors in a proportionate manner.

9. It is stated that the Applicant approached various third parties for sale of assets and the Applicant sold one car, namely Toyota Innova 2.5G, bearing registration no. TN-01-AV-3458. In the interim period, the Applicant sought another extension of the Liquidation process from this Tribunal in IA.828 of 2021 and the same was allowed vide order dated 17.02.2022.

10. It is stated that, the Applicant carried out the inspection of the other car and the same was found damaged. However the Applicant took possession of the car and the same was sold to a scrap dealer.

11. It is stated that the only asset left was the amount recoverable through the application against Preferential, Undervalued and Fraudulent Transactions along with amounts of Rs.1,83,154.19/- (Rupees One Lakh Eighty Three Thousand One Hundred and Fifty Four and Nineteen Paise Only) lying in various banks.

12. It is stated that, Miscellaneous Application No. 1080 of 2019 in CP No.976 (IB) of 2018 was filed by the Applicant, against the preferential, undervalued and fraudulent transactions and this Tribunal had passed an order to proceed *ex-parte* against Respondent No.1, 5 and 7 therein in vide an order dated 05.02.2020.

13. It is stated that, the Respondent No.1, 5 & 7, has approached this Tribunal by filing three separate interlocutory applications (I.A. No. 465 & 466 of 2021 and IA No.551 of 2021) for setting aside *ex-parte* order dated 05.02.2020 and the said applications were listed collectively with MA No.1080 of 2019. The said MA No.1080 of 2019 was dismissed by this Tribunal vide order dated 14.10.2022 whereby liberty was granted to the Applicant to file fresh application in this matter.

14. It is stated that the amounts to be recovered from PUFÉ Transactions in MA.No. 1080 of 2019 in CP No.976 (IB) of 2018 by

virtue of this Tribunal fall under the category of 'Not Readily Realisable Assets' (NRRA).

15. It is stated that, the feasibility of assignment of not readily realizable assets (NRRA) as per regulation 37-A of IBBI (Liquidation Process) Regulations, 2016 was placed before SCC meeting on 08.07.2022. Thereafter, the SCC decided that the Not Readily Realisable Assets (NRRA) of the Xllent Mariline India Private Limited (In liquidation) be assigned through Public e-auction.

16. It is stated that, the Applicant published public notice for assignment of NRRA on 07.01.2023 and e-auction bid document in the web portal of <https://eauctions.co.in/> of Linkstar Infosys Pvt. Ltd. However, no bids were received pursuant to the publishing of the auction notice of the said website.

17. It is stated that, the Applicant published another public notice for assignment of NRRA on 13.02.2023 and e-auction bid

document in the web portal of <https://eauctions.co.in/> of Linkstar Infosys Pvt. Ltd.

18. It is stated that the considerable time and money has been spent for public auction of the NRRA Assets. However despite the same, it remains unsold.

19. It is stated that the Applicant has already sought two extensions for completing Liquidation proceedings and any further delay would be detrimental to the stakeholders. Thus this present Application has been filed to distribute the unsold NRRA assets amounting to Rs.1,83,154.19/ - (Rupees One Lakh Eighty Three Thousand One Hundred and Fifty Four and Nineteen Paise Only) among the stakeholders.

20. Heard the Ld. Counsel for the Applicant and perused the documents placed on record.

21. Regulation 38 of IBBI (Liquidation Process) Regulations, 2016 states as follows;

38. Distribution of unsold assets.

(1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that 69[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.

22. The details of the NRRA which is sought to be assigned is as follows;

Assets	Description of Not Readily Realizable Assets (NRRA) Assets
Assets under PUFEE application IA No.1080 of 2019 and amended application thereto.	<p>a) Amount of Rs.91,82,481/- which is shown as differences in sundry debtor in the books (2017-18) of the Corporate Debtor, which amount is reduced to Rs.30,78,805/- in books of (2018-19);</p> <p>b) Rs.95,000/- is payable by directors against cash withdrawals from bank account;</p> <p>c) Rs.11,50,000/- is payable by Xllent Marine Line Pvt. Ltd. against bank account transfer made by directors during CIRP;</p> <p>d) Rs.37,68,800/- payable by Amid Enterprises (excess payments made by Xllent Mariline India Pvt. Ltd. towards loan of Rs.50,00,000/-</p> <p>Assets worth Rs.66,47,501/- towards Container and Rs.9,14,672/- towards trailer sold to Xllent Marine Line Pvt. Ltd. at written down value. (actual value to be determined by taking into account the actual market value of the trailer)</p>
Other NRRA Asset	Amount of Rs.1,83,154.39/- lying in various Banks at Chennai

23. In the 5th SCC meeting held on 22.01.2024, it is seen that the Liquidator has proposed to assign the right to file PUFÉ proceedings for avoidance/recovery of amounts contemplated under the M.A.No. 1080 of 2019 (now disposed with liberty to file fresh proceedings). The assignment was accepted by VS & B Containers LLC during the meeting. It is seen that SCC with 66.82% voting (majority) resolved that the right to file PUFÉ proceedings for avoidance, recovery of amounts contemplated under M. A. No.1080 of 2019 (now disposed with liberty to file fresh proceedings) shall be assigned to Stakeholder - **VS& B Containers LLC**. It has been further resolved by SCC that, if recovery of any amounts is successful, VS & B Containers LLC shall share the amounts recovered with other Shareholders as per the claim sharing ratio of the Stakeholders as below-

Sr. No.	Stakeholders* under section 53(1)	Share in Total Amount of Claims Admitted (in %)
1	VS & B Containers L.L.C.	66.82
2	Sattva Hi Tech & Conware Pvt. Ltd.	32.61
3	Sattva CFS & Logistics Pvt. Ltd.	0.57
	Total	100

24. Thus, by taking into consideration the Resolution passed in the 5th SCC meeting dated 22.01.2024, we order that the right to recover from PUFEE proceedings shall be assigned to Stakeholder - **VS& B Containers LLC**. The amount recovered if any, shall be shared in accordance with the table as extracted *supra*.

25. With the above said directions, IA(IBC)/407(CHE)/2023 stands **disposed of**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)