

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 215**  
**(IB)-656(ND)2020**  
**Contt. Pett.-50/2023**

**IN THE MATTER OF:**  
**FAIHZAN KHAN**

**... APPLICANT/  
PERSONAL GUARANTOR**

**VERSUS**

**M/s. LI DIGITAL PAYMENTS PRIVATE  
LIMITED.**

**... RESPONDENT**

**AND IN THE MATTER OF Contt. Pett.-  
50/2023:**  
**SOFTWARE TECHNOLOGY PARKS Of INDIA**

**... APPLICANT**

**Versus**

**ADITYA KUMAR, RESOLUTION  
PROFESSIONAL For M/S LI DIGITAL  
PAYMENTS PVT. LTD.**

**...CONTEMNOR**

**Under Section: 9 of IBC, 2016**

**Order delivered on 03.04.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Honey Satpal, Adv. Nandini, Mr. Jasvinder  
Singh for (STPI) in person, Contt. Pett.-50/2023

**For the RP** : Sr. Adv. Arun Kathpalia, Adv. Arnav Kumar,  
Adv. Chetanya Kapoor, Mr. Aditya Kumar, RP  
in person

**HYBRID HEARING (PHYSICAL & VC)**

## **ORAL-ORDER**

**Contt. Pett.-50/2023**: On 21.03.2024 we passed the following order:-

**“Contt. Pett.-50/2023:-** We passed the following order in I.A.-3331/2023.

**IA-3331/2023:** *The prayer made in the application reads hus:*

- a. *“Allow the present Application;*
- b. *Pass necessary directions against the Resolution Professional of the Corporate Debtor for treating the charges Incurred towards the license fees of the premises of Rs. 1,16,09,418/- from commencement of CIRP till filing of this Application Le. From 18.04.2022 to 15.06.2023 as CIRP Costs in terms of Section 5(13) of the Code read with Section 14(1)(d) and Regulation 31 of the CIRP Regulations.*
- c. *Pass a necessary direction to Resolution Professional to pay the license fee in terms of the 2019 Agreement till vacant and peaceful possession is handed over by the Corporate Debtor to Applicant;*
- d. *Pass a direction to the Resolution Professional to ensure peaceful and vacant possession of the Premises belonging to the Applicant as early as possible since he has failed to comply with the conditions enshrined under Section 14(1)(d) of the Code to retain the possession during moratorium;”*

*Ld. Counsel appearing for the RP submitted that the grievance highlighted in the IA could never be raised before the RP. In view of the stand taken by the RP, the present application is disposed of with a direction to RP to examine the grievance espoused by the Applicant in the present application within one week from today and communicate his decision within the given time only.*

*In the case of being aggrieved by the decision to be taken by RP (ibid), the Applicant would be entitled to move a fresh application challenging the same.*

*Nevertheless, it is made clear that irrespective of there being any order directed to be passed by the RP within one week, the RP shall hand over the peaceful possession of the premises belonging to the applicant on expiry of seven days from today.*

***The IA stands disposed of.***

*Undoubtedly, the order has not been complied with by the RP. Today, when the Contt. Pett.-50/2023 came for hearing at the first instance Ld. Counsel appearing for the RP submitted that the key of the premises could be handed over the petitioners. Then immediately he changed his arguments and submitted that the RP has no money needed to remove the goods of the Corporate Debtor from the premises. In the next statement, Ld. Counsel made third submission that the RP has asked the Petitioner to pay him Rs. 8 lac, as consideration of the goods lying in the premises occupied by the CD.*

*It is difficult to appreciate such conduct, attitude and approach of the RP. In the wake the RP is directed to remain present in person on 03.04.2024 to show cause as to why the charges should not framed against him for disobeying the order dated 04.07.2023.*

*List on 03.04.2024.”*

2. Mr. Arun Kathpalia, the Ld. Sr. Counsel appearing for the RP produced before us the hard copy of the affidavit dated 02.04.2024. Having drawn our attention to Annexure R-22 to the affidavit, he submitted that the RP had given two proposals to CoC for its decision. The E mail containing the proposals A and B (Annexure R-22 the e-mail dated 28.10.2023) reads thus:-

4/1/24, 6:28 PM

Gmail - Re: LI Digital Payments Private Limited: Decision of Remove remaining assets lying in the premises of STPI 291



ANNEXURE R22

Chetanya Kapoor <chetanyakapoor15@gmail.com>

**Re: LI Digital Payments Private Limited: Decision of Remove remaining assets lying in the premises of STPI**

5 messages

Aditya Kumar <aditya@ashwaniassociates.in>

Sat, Oct 28, 2023 at 8:45 PM

To: ceo@svcl.in, Kiran Pandey <kiran.pandey@ashwaniassociates.in>, mahender.gupta@svcl.in, payal.girotra@svcl.in, Ganesh Bagree /Financial Solutions Group/Srei <Ganesh.bagree@srei.com>, Maya Gupta /FSG/Srei <maya.gupta@srei.com>, Rajesh Agarwal /Operations/Srei <rajesh.agarwal@srei.com>, Amit Roy1 /Financial Solutions Group/Srei <amit.roy1@srei.com>, Jaita Sarkar /Operations/Srei <jaita.sarkar@srei.com>, Sanjay Kumar Agarwal /Financial Solutions Group/Srei <sanjay.agarwal2@srei.com>, Ajay Kumar Gupta /Accounts/srei <Ajay.Gupta@srei.com>, Sumit Sharma /Operations/Srei <sumit.sharma@srei.com>, chandani.gagwani@svcl.in  
Cc: arnav kumar <arnav@dgjlaw.co.in>, Mohd Mumtaz <mohdmumtaz@ashwaniassociates.in>, Chetanya Kapoor <chetanyakapoor15@gmail.com>

To

The Members of CoC

LI Digital Payments Private Limited

This is in reference to the urgent steps required to be taken by the Committee of Creditors with respect to the immovable/fixed assets situated at the premises of STPI. This is to inform you that:

1. Software Technology Parks of India (STPI) through their authorized representative has filed a Contempt Petition against the RP on account of the failure to arrive at a decision regarding fixed assets on the fifth floor, plot no. 30, Sector 18, Electronic City, Gurugram, Haryana (the Premises).
2. It is pertinent to mention that STPI had also earlier filed an application before the Hon'ble NCLT titled I.A. No. 3331/2023. The Committee of Creditors (CoC) at the 5<sup>th</sup> CoC meeting conducted on 10.07.2023, was briefed by the RP regarding the said interlocutory application filed by STPI seeking vacation of possession, removal of assets, and payment of license fees. It was further informed that from the period beyond 18.04.2022 (till the date STPI submitted its Claim to IRP) until 15.06.2023, STPI is claiming from the Corporate Debtor monthly license fees of Rs. 1,16,09,418/- as CIRP costs. The members were made aware that in response to the situation, the Hon'ble NCLT vide order dated 04.07.2023 had granted a one-week time frame for the RP to take a decision or else remove the assets and vacate the office.

3. Considering these circumstances, the object of the fifth CoC meeting was called to seek approval for the resolution. The RP then submitted a proposal regarding the retention of the physical assets located at the premises of STPI. The proposal suggested a lump sum payment of Rs. 8 Lakh in exchange for the assets situated on the aforementioned premises. During the meeting, the proposal was discussed and a 15-day extension for internal discussions was requested before final approval. However, no decision has been communicated so far.
4. In light of the above, there are only two options available. Accordingly, the CoC must choose between either of the two following options:

**A. Release the Assets at the Premises to STPI for compensation**

After careful consideration, the RP determined the major assets on-site that are affixed and not easily movable. Since the cost of de-installation with respect to these assets will surpass the realizable value of these assets, it will be an impractical option to remove them. The STPI had proposed the intent be given along with a lump sum proposal in exchange for the assets situated at the premises. Accordingly, the CoC may choose to let STPI retain the immovable assets at the Premises for a price as determined by an independent valuer.

**B. To raise funds required to remove the immovable assets and shift them to the registered office**

Alternatively, since the Corporate Debtor does not have any funds available, the CoC must contribute funds in terms of Regulation 34B(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to transport the immovable assets after detaching them from the premises to the registered office of the Corporate Debtor. It is estimated that the cost of detachment and transportation would be approximately Rs. 6 to 7 lakhs. (Quotation taken earlier from a vendor is enclosed)

Therefore, the Committee of Creditors is kindly requested to vote for any of the aforementioned options so that the issues with STPI can be amicably resolved. Kindly note that the RP would be compelled to approach the Tribunal in the event no decision is taken.

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3. As can be seen from proposal A, the RP had sought approval of CoC to the proposal of STPI that an intent might be given along with a lump sum proposal in exchange for the assets situated at the premises. As per the proposal the CoC might choose let STPI retain the immovable assets and the premises for a price as determined by an independent valuer.

4. In terms of the e-mail dated 12.01.2024, the CoC allowed the RP to move ahead. The text of the e-mail reads thus:-

4/1/24, 6:28 PM

Gmail - Re: LI Digital Payments Private Limited: Decision of Remove remaining assets lying in the premises of STPI 292

*Best regards*



aditya kumar / fca,lib,mba,irp  
partner & ceo | ashwani & associates  
mobile: +91-98554-00428  
site: www.ashwaniassociates.in  
email: AKumar15@gsb.columbia.edu  
address: 226-A, tagore nagar, ludhiana - 141001



**ashwani & associates**  
chartered accountants



[Schedule a 30 minute meeting here](#)

Please consider the environment before printing this email  
[Quoted text hidden]

Amit Roy1 /Financial Solutions Group/Srei <amit.roy1@srei.com> Fri, Jan 12, 2024 at 6:26 PM  
To: Aditya Kumar <aditya@ashwaniassociates.in>, mahender.gupta@svcl.in, payal.girotra@svcl.in, ceo@svcl.in, Ganesh Bagree /Financial Solutions Group/Srei <ganesh.bagree@srei.com>, Maya Gupta /FSG/Srei <maya.gupta@srei.com>, Rajesh Agarwal /Operations/Srei <rajesh.agarwal@srei.com>, Jaita Sarkar /Operations/Srei <jaita.sarkar@srei.com>, Sanjay Kumar Agarwal /Financial Solutions Group/Srei <sanjay.agarwal2@srei.com>, Ajay Gupta <Ajay.Gupta@srei.com>, Sumit Sharma <Sumit.Sharma@srei.com>, chandani.gagwani@svcl.in  
Cc: arnav kumar <arnav@dglaw.co.in>, Mohd Mumtaz <mohdmumtaz@ashwaniassociates.in>, Kiran Pandey <kiran.pandey@ashwaniassociates.in>, Chetanya Kapoor <chetanyakapoor15@gmail.com>

Dear Mr. Aditya

In reference to your appended mail, you may proceed on the same

You are requested to confirm the receipt of funds

Regards

Amit

**From:** Aditya Kumar [mailto:aditya@ashwaniassociates.in]  
**Sent:** 12 January 2024 17:56  
**To:** Amit Roy1 /Financial Solutions Group/Srei; mahender.gupta@svcl.in; payal.girotra@svcl.in; ceo@svcl.in; Ganesh Bagree /Financial Solutions Group/Srei; Maya Gupta /FSG/Srei; Rajesh Agarwal /Operations/Srei; Jaita Sarkar /Operations/Srei; Sanjay Kumar Agarwal /Financial Solutions Group/Srei; Ajay Kumar Gupta /Accounts/srei; Sumit Sharma /Operations/Srei; chandani.gagwani@svcl.in  
**Cc:** arnav kumar; Mohd Mumtaz; Kiran Pandey; Chetanya Kapoor  
**Subject:** Re: LI Digital Payments Private Limited: Decision of Remove remaining assets lying in the premises of STPI

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5. Today Mr. Arun Kathpalia, the Ld. Sr. Counsel appearing for the RP espoused that the STPI i.e. the Applicant may dispose of the article lying in the

premises in question and act in terms of the aforementioned proposal “A” referred to in the e-mail. However, Ms. Honey Satpal, the Ld. Counsel appearing for the Applicant submitted that the Applicant is a Government organization and there is no procedure that it can dispose of the goods and hand over the proceed thereof to the RP/CoC. She further submitted that the Applicant had given the vacant possession of the premises to the Corporate Debtor and the RP should ensure that the premises is handed over to it vacant and in the same condition as it was given on rent.

6. From the aforementioned factual development it is more than clear that the Applicant is not prepared to take the responsibility to dispose of the goods lying in the premises and pay the proceed thereof to RP. In any case, the ramification of the aforementioned e-mail sent by CoC to RP is that the goods may be disposed of. It does not make any reference as to whether the same are to be disposed of by the Applicant or by the RP.

7. In terms of the provisions of Section 28 of IBC 2016, the decision to dispose of the assets/shares may be taken with the approval of CoC. The Section 28 reads thus:-

***“28. Approval of committee of creditors for certain actions.***

*(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—*

- (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;*
- (b) create any security interest over the assets of the corporate debtor;*
- (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;*
- (d) record any change in the ownership interest of the corporate debtor;*
- (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;*
- (f) undertake any related party transaction;*
- (g) amend any constitutional documents of the corporate debtor;*
- (h) delegate its authority to any other person;*
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;*
- (j) make any change in the management of the corporate debtor or its subsidiary;*
- (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;*
- (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or*
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.*



*(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).*

*(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of <sup>1</sup> [sixty-six] per cent. of the voting shares.*

*(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.*

*(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.”*

8. The position regarding the sale of the assets of Corporate Debtor during CIRP has been amplified in Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Debtor Persons) Regulations, 2016. The Regulation reads thus:-

***“Regulation 29: Sale of assets outside the ordinary course of business.***

**29.** *(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:*

*Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.*

(2) A sale of assets under this Regulation shall require the <sup>1</sup>[approval of the committee by a vote of sixty-six per cent of voting share of the members].

(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.”

9. As has been submitted by Mr. Arun Kathpalia the Ld. Sr. Counsel, also in the **Jet Aircraft Maintenance Engineers Welfare Association JAMEWA Versus Ashish Chhawchharia Resolution Professional for Jet Airways (India) Ltd. And Others** (2022 SCC OnLine NCLAT 278), Hon'ble NCLAT viewed that during CIRP the assets of the Corporate Debtor may be sold. The relevant excerpt of the judgment reads thus:-

*“The Code being complete Code, all provisions of the Code have to be looked into to decipher the object and purpose of any provision contained in the Code. The provision has further to be given harmonious construction to ensure all provisions are given due effect to achieve the object. The prohibition as contained in Section 14(1)(b), which automatically come into force, has to be taken to its logical end that is unless there is any other indication in the Code, the provision is to continue till currency of the Moratorium. Section 23 and 25 contain provisions empowering the RP to protect and preserve the assets of the Corporate Debtor, although as noted above, the injunction under Section 14(1)(b) is against the Corporate Debtor. When we see Section 28, sub-section (1), sub-clause (b), which provides that RP shall not take any actions without the*

*prior approval of the CoC. The provisions concede a decision of RP to create any security interest over the assets of the Corporate Debtor. Section 28, sub section (1), which is relevant is as follows:*

*“28(1) Notwithstanding anything contained in any other law for the time being in force, there solution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—*

*(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;*

*(b) create any security interest over the assets of the corporate debtor;*

*(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;*

*(d) record any change in the ownership interest of the corporate debtor;*

*(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;*

*(f) undertake any related party transaction;*

*(g) amend any constitutional documents of the corporate debtor;*

*(h) delegate its authority to any other person;*

*(i) dispose of or permit the disposal of shares of any shareholder of the corporate Debtor or their nominees to third parties;*

*(j) make any change in the management of the corporate debtor or its subsidiary;*

*(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;*

*(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or*

*(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.”*

**23.** *The prohibition under Section 14(1)(b) as noted above is also regarding encumbering the assets of Corporate Debtor. When Section 28(1) expressly provides for approval of Committee of Creditors for creating any security interest over the assets of the Corporate Debtor, this is a clear exception engrafted under the Code itself to Section 14(1)(b). The above scheme of the Code leads us to come to the conclusion that injunction under Section 14(1)(b) is against the Corporate Debtor, which provision does not restrain any other entity authorised under the Code to transfer, encumber or alienate the assets of the Corporate Debtor. Thus, prohibition under Section 14(1)(b) has to be read along with exceptions created in the Code itself.*

**24.** *Now we come to Regulation 29 of CIRP Regulations, on which much emphasis has been laid by the learned Counsel for the Respondent. CIRP Regulations are the Regulations, which have been framed in exercise of power conferred by different sections including Sections 14 and 25. Section 14 as noted above, deals with ‘Moratorium’ and Section 25 deals with ‘duties of Resolution Professional’. Regulation 29 contains a heading “Sale of assets*

outside the ordinary course of business”, which is to the following effect:

**“29. Sale of assets outside the ordinary course of business.**

(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

*Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.*

(2) A sale of assets under this Regulation shall require the approval of the committee.

(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders’ agreement, joint venture agreement or other document of a similar nature.”

**25. Regulation 29, sub-regulation (1) specifically empowers the RP to sell unencumbered asset(s) of the Corporate Debtor, if he is of the opinion that such sale is necessary for better realization of value. Thus, the power conferred on RP to sell unencumbered assets is on satisfaction that such a sale is necessary for better realization of the value. Regulation 29 specifically empowers the RP and it being framed under exercise of powers conferred under Sections 14 and 25, it has to be treated that it is to give effect to the provisions of**

**Sections 14 and 25. It is not in any manner in excess of Sections 14 and 25. We, thus, accept the submission of learned Counsel of Respondent that despite declaration of Moratorium under Section 14(1)(b), the RP is empowered to conduct sale of unencumbered assets, if he is of the opinion that it is necessary for better realization of the value.**

**26.** *The Board, which has framed the above Regulation is well aware of the contents and expanse of the provisions of the Code. We, thus, reject the submission of the learned Counsel of the Appellant that RP has no jurisdiction to conduct any sale during pendency of Moratorium under Section 14.*

**27.** *There is another expression of limitation of sale of assets by RP under Regulation 29 and Section 28, sub-section (3) that sale of assets requires approval of CoC by vote of sixty-six percent. We need to notice whether in the facts of the present case the above two conditions have been adverted to and complied with or not. The proceedings of the CoC in the 10<sup>th</sup> Meeting dated 24<sup>th</sup> April, 2020 are on the record, where RP has specifically stated that minimum sale price is higher than liquidation value given by registered valuers and following is noticed in the CoC dated 24<sup>th</sup> April, 2020.*

*“The representative from Bank of India enquired if an independent valuation had been obtained for the said price to which the RP informed the members that Liquidation value given by the registered valuers is lower than above mentioned minimum sale price, however the exact value cannot be disclosed to the members as the confidentiality of the same has to be maintained as per the Code and the CIRP Regulations.”*

**28.** *The above thus indicate that RP was of the opinion that sale of asset shall result in better realization of the value. In the same meeting dated 24<sup>th</sup> April, 2020, the CoC has passed Resolution,*

*approving minimum sale consideration for the sale of two floors being 3<sup>rd</sup> and 4<sup>th</sup> floors of BKC property as INR 490 crores. The CoC although in its Resolution has contemplated for approval of NCLT for carrying out sale transaction. Thus, the condition as contained in Regulations 29, sub-regulation (2) by approval of the CoC and Section 28, sub-section (3) by minimum 66% of vote is satisfied, since the Resolution was passed by CoC with 74.45% of votes. We further notice that under Regulation 29, the jurisdiction has been given to the RP to sell unencumbered assets. Thus, the sale is permissible of only unencumbered assets. In the present case, subject property was under encumbrance, since the Corporate Debtor had taken a loan from HDFC on the security of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors of the subject property. What has been submitted by the Respondent that HDFC had agreed to relinquish its charge and has filed its affidavit of no objection before the NCLT, which fact has been noticed by the NCLT in its impugned judgment. We, thus, conclude that prohibition in transferring the assets of the Corporate Debtor is on the Corporate Debtor and the said prohibition ipso-facto does not prohibit RP or CoC, who were empowered by specific provision of the Code to undertake any such sale. We need also to notice that provision with regard to assets of the Corporate Debtor, object to which is to ensure that assets of CD are not depleted or alienated during pendency of the CIRP. The prohibition under Section 14(1)(b) thus in transferring the assets of the CD is throughout the currency of CIRP except where statute specifically empowers RP to carry the sale on fulfillment of conditions as laid down in the statute.”*

10. Though, the IBBI (CIRP) Regulations 2016 do not contain any procedure regarding the sale of the assets of the Corporate Debtor, but the procedure has

been laid down in Regulation 33 of IBBI (Liquidation Process) Regulation 2016. The Regulations,2016 reads thus:-

**“33. Mode of sale.**

*(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.*

*(2) The liquidator may sell the assets of the corporate debtor by means of [private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I when]-*

*(a) the asset is perishable;*

*(b) the asset is likely to deteriorate in value significantly if not sold immediately; or*

*(c) the prior permission of the Adjudicating Authority has been obtained for such sale:*

*Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-*

*(a) a related party of the corporate debtor;*

*(b) his related party; or*

*(c) any professional appointed by him.*

*(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor’s related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”*

11. As is apparent from Regulation 33(2) (ibid), the liquidator can sell the assets of the Corporate Debtor by means of private sale in the manner specified in Schedule 1.



12. In terms of the provisions of Section 33(2)(d), the private sale may take place with prior permission of this Adjudicating Authority.

13. The Schedule 1 (ibid) regarding mode of sales as referred to in Regulation 33(ibid) reads thus:-

**SCHEDULE I**  
**MODE OF SALE**

*(Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)*

**1. AUCTION**

*(1) Where an asset is to be sold through auction, a liquidator shall do so in the manner specified herein.*

*[(1A) Subject to provisions of regulation 2B, the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date unless the consultation committee advises to extend the timeline.*

*(1B) The liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.*

*(1C) Notwithstanding anything contained in this Schedule, the liquidator shall complete an auction process within thirty-five days from the issue of public notice for auction.*

*(1D) The liquidator shall provide at least fourteen days from issue of public notice for submission of eligibility documents by prospective bidder.*

*(1E) The liquidator shall provide to qualified bidder at least seven days, for inspection or due diligence of assets under auction, from the date of declaration of qualified bidder.*

*(1F) A prospective bidder in an auction process shall deposit earnest money deposit at least up to two days before the date of auction.]*

*(2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-*

*(a) releasing advertisements;*

*(b) preparing information sheets for the asset;*

*(c) preparing a notice of sale; and*

*(d) liaising with agents*

*(3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.*

*[Provided that the liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process: Provided further that the earnest money deposit shall not exceed ten percent. of the reserve price.]*

*[Provided further that the liquidator shall mention in the auction notice, the period extended under clause (h) of sub-regulation (1) of regulation 31A.]*

*(4) [The reserve price shall be the value of the asset arrived at in accordance with regulation 35 and where an auction fails, the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time:*

*Provided that in cases where the reserve price of the failed auction of the asset was fixed as per the valuation under sub-regulation (1) of regulation 35, the liquidator may, on the advice of the consultation committee, reduce the reserve price up to twenty-five percent, once during the process.]*

*(5) The liquidator shall [issue a public notice] of an auction in the manner specified in Regulation 12(3);*

*Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction.*

*(6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.*

*(7) [From a date to be notified through circular by the Board, the liquidator shall sell the assets only through an electronic auction platform empanelled by the Board.]*

*(8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.*

*(9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.*

*(10) If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.*

*(11) If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.*

*[(11A) Where the liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.]*

*(12) [On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days or such period as mentioned in the auction notice under clause 3, of the date of such demand: Provided that payments made after thirty days shall attract*

*interest at the rate of twelve per cent.: Provided further that the sale shall be cancelled if the payment is not received within the period provided under this clause.]*

*(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.]*

## **2. PRIVATE SALE**

*(1) Where an asset is to be sold through private sale, a liquidator shall conduct the sale in the manner specified herein.*

*(2) The liquidator shall prepare a strategy to approach interested buyers for assets to be sold by private sale.*

*(3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.*

*[(3A) The private sale shall be confirmed to the buyer after consultation with the consultation committee under regulation 33.]*

*(4) The sale shall stand completed in accordance with the terms of sale.*

*(5) Thereafter, the assets shall be delivered to the purchaser, on receipt of full consideration for the assets, in the manner specified in the terms of sale.”*

14. In the peculiar facts and circumstances, where there is impasse regarding the sale of the belonging of CD lying in the premises owned by the Applicant, we need it appropriate to permit the RP to dispose of the articles/goods lying in the premises of the Applicant by way of private sale. Nevertheless, for the purpose, the Applicant will resort to the procedure, prescribed for private sale. The needful

shall be done within four weeks'. It would be open to CoC to appoint valuator to get the valuation of assets done if they chooses to do so. For the purpose, the members of the CoC would pay the professional fees of valuator to the RP in advance. The RP may intimate the CoC about the present order.

15. While we were dictating the aforementioned order, the Ld. Counsel for the Applicant on instruction from Mr. Jasvinder Singh, Senior Admin Officer submitted that the RP may also approach the Applicant to negotiate on the price of the goods lying in the rented premises and if the price is reasonable, the applicant may also purchase the goods and retain the same. The RP may resort to such process on priority. We are conscious that, no directions may be issued in contempt proceedings. Nevertheless, the aforementioned order has been passed to facilitate the parties to comply with the order, alleging disobedience for which the present C.P. has been filed. **The C.P. stands disposed off.**

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**