

NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण
CUTTACK BENCH
कटक खंडपीठ

ORDER OF THE HEARING ON 17th APRIL, 2024, 10:30 A.M.

CP (IB) No. 199/CB/2020, IA (IB) No. 92/CB/2024,
 IA (IB) No. 93/CB/2024, IA (IB) No. 95/CB/2024
 IA (IB) No. 96/CB/2024, IA (IB) No. 100/CB/2024

Coram: 1. Hon'ble Member (Judicial), Shri P. Mohan Raj
2. Hon'ble Member (Technical), Shri Kaushalendra Kumar Singh

Name of the Company	Indian Overseas Bank - Vs- Srabani Constructions Pvt. Ltd.
Under Section	7 IBC

Hearing through: VC and Physical (Hybrid) Mode

For Petitioner (s)

Mr. Sanjeev Panda, Adv. } For Liq.
 Mr. Sumit Shukla, Adv. }
 Sh. Gagan Bihari Bhuyan, Liq.
 Mr. R. K. Rout, Adv.

For Respondent (s)

ORDER

IA (IB) No. 100/CB/2024:

This is an application filed under Section 11 of the NCLT Rules, 2016 for urgent listing of IA (IB) No. 92/CB/2024 and IA (IB) No. 93/CB/2024. IA (IB) No. 92/CB/2024 and IA (IB) No. 93/CB/2024 are on Board today. Hence, IA (IB) No. 100/CB/2024, is Allowed and Disposed of.

IA (IB) No. 93/CB/2024:

This is an application filed under Section 60 (5) of IBC read with Rule 11 of the NCLT Rules 2016 for recalling the order of Liquidation passed by this Tribunal dated 13.12.2023. The learned counsel appearing for the applicant submitted that since the liquidation order has been obtained without disclosing the fact that OTS Proposal was pending before sole COC Member viz Indian Overseas Bank and also without giving notice to the applicant. Thus, the liquidation order has been passed on suppression of material facts and by misrepresentation and without giving notice hence the liquidation order has to be recalled. It is well settled proposition of law that by invoking inherent power under Rule 11 of the NCLT

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Rules 2016, the Adjudicating Authority can recall its own order; but it can be used sparingly. The five Member Bench of NCLAT held in Greater Noida Industrial Development Authority case, the NCLT & NCLAT have the power to recall its order under certain circumstances. (i) If the order is passed without jurisdiction. (ii) Without giving notice to the parties to whom notice to be given. (iii) If the order is obtained by misrepresentation or by playing fraud upon the authority.

In this case, this Adjudicating Authority has jurisdiction to pass an order of liquidation. In respect of notice is concerned, this Adjudicating Authority passed an order of liquidation when the RP sought time extension for CIRP after the expiry of period provided in the Code. Further, there is no provision to give notice to the Suspended Board of Directors before passing the Liquidation order. Further, there is no fraud played upon this Adjudicating Authority, thus this application does not come under any category laid down by the Hon'ble Full Bench of NCLAT subsequently, affirmed by the Hon'ble Apex Court. In these circumstances, we are not inclined to entertain this application, accordingly, this application is Dismissed.

IA (IB) No. 92/CB/2024:

This is an application filed by the applicants, who are suspended Board of Directors of CD; alleging that the Liquidator is hurry in proceeding with the private sale of immovable properties immediately after the public auction failed. It is admitted by the Liquidator public auction conducted on 28.03.2024 was failed. Subsequently with the approval of the SCC, he is trying to sell the property by private sale. It is referred Schedule I of IBBI (Liquidation Regulation) 2016 1A and 1B when the public auction failed the Liquidator has to proceed for second public auction if needs after reducing the sale price. It is alleged instead the Liquidator making arrangements to sell the properties on private sale. The Liquidator admitted that the private sale process is ongoing and submitted that after the failure of the public auction now he tried to sell the property for higher price than the sale price fixed for auction sale, which is permissible under Regulation 33(2) (c) of the IBBI Liquidation Regulation of 2016. Further, he stated that private sale is under process not yet concluded. After the conclusion, he intends to file necessary application before this Adjudicating Authority for approval of the sale. At this juncture, the counsel appearing for the applicant stated that the property was valued much below the market value.

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This statement denied by Liquidator and said that properties were valued by the IBBI Authorised Valuers. The applicant can raise all the objection with the supporting documents including the valuation; when the Liquidator has filed an application for the approval of private sale. Hence at this stage, we are not inclined to stay Liquidation process since it will cause disturbances to the proceedings. Accordingly, this application is Dismissed.

IA (IB) No. 95/CB/2024:

This is an application filed by the Liquidator for the direction assistant suspended Board of Directors requests to co-operate with the applicant. Ld. Counsel appearing for the respondent taken notice and prayed three weeks' time to file reply. Time is granted for the same. List the matter by 28.05.2024.

IA (IB) No. 96/CB/2024:

This is an application filed for return of the amount which was withdrawn by the Respondents after the admission of CD into CIRP. Respondent counsel taken notice and sought time for reply. Three weeks' time is granted for the reply. List the matter on 28.05.2024.

Sd

Kaushalendra Kumar Singh
Member (Technical)

Sd

P. Mohan Raj
Member (Judicial)