IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.301 - Mis.A/1(AHM)2024 in CP(IB) 203 of 2020

Order under Section 60(5) & 52(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

STCI Finance Limited Vs IMP Powers Limited **.....Applicant**

V/s

IMP Powers Limited **.....Respondent**

Order delivered on 22/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev/P.S

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD

Mis. A/1(AHM)2024
in
CP(IB) 203 of 2020

[An application filed under Sections 60(5) & 52(5) and 31 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT, 2016]

STCI FINANCE LIMITED
Having its address at:
A/B1 – 802, 'A' Wing,
8th Floor, Marathon Innova,
Marathon Next Gen Compound,
Off Ganpatrao Kadam Marg,
Lower Parel (W), Mumbai-400013.

....Applicant

Versus

M/s. IMP POWERS LIMITED
Through its liquidator Mr. R.K. Goyal,
Having address at:
Eden I – 807, S G Highway,
Godrej Garden City, Jagat Pura,
Ahmedabad, Gujarat-382470.

....Respondent

Order Pronounced On: 22.04.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr Saurabh Soparkar, Sr. Adv. a.w.
: Mr. Bhash Mankad, Adv.

For the Respondent : Mr. Arjun Sheth, Adv.

O R D E R
[Per: Bench]

1. This Miscellaneous Application is filed by the STCI Finance Limited (hereinafter referred to as **"Applicant"**) under Sections 60(5) and 52(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as **"NCLT Rules, 2016"**) seeking the following prayers:-

   a. *set aside the E-Auction Sale Notice dated 08.03.2023 published by the Liquidator for sale of the Corporate Debtor as a "going concern" scheduled on 04.04. 2024;*

   b. *direct the Liquidator to allow the Applicant to realize the Secured Assets as per Section 52(3) of the Code and other related provisions of the Liquidation Regulations;*

   c. *extend the time period to pay to the Liquidator the costs as more particularly mentioned in Regulation 21(A) of the Liquidation Regulations;*

d. *pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to stay the sale of the Secured Assets as mentioned in the E-Auction Sale Notice as per Regulation 32(e) of the Liquidation Regulations; and*

e. *pass such other orders as this Hon'ble Tribunal deem fit.*

2. Order dated 02.04.2024 records that counsel for the Respondent submitted that pursuant to sale notice dated 08.03.2024 no EMD was received and, hence, prayer (a) and (d) have become infructuous.

FACTS

3. The facts of this case are stated to be as under:-

i. The Corporate Debtor – M/s. IMP Power Limited was admitted to Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) on 29.03.2022 and Mr. Mukesh Verma was appointed as Interim Resolution Professional (hereinafter referred to as **"IRP"**). Pursuant to the admission of the Corporate Debtor to CIRP, the IRP invited claims and formed the

Committee of Creditors (hereinafter referred to as **"CoC"**). Various CoC meetings were held.

ii. Since no Resolution Plan was approved by the CoC and the CIRP period of 487 days had expired, the RP filed IA No. 987 of 2023 seeking liquidation of the Corporate Debtor. Accordingly, this Tribunal vide its order dated 19.12.2023 passed the order of liquidation and appointed Mr. Ravindra Kumar Goyal (Respondent herein) as the Liquidator.

iii. Thereafter, the Liquidator published public announcement in Form-B on 21.12.2023 inviting claims from the creditors.

iv. The erstwhile CoC in its 12th meeting vide item no. C-3 resolved and recommended pursuant to Regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") to first explore the possibilities of compromise and arrangement, if the Corporate Debtor goes to liquidation. However, the

Applicant had dissented the said agenda in the 12th CoC meeting. A copy of the 12th CoC meeting a.w. voting list is annexed as Exhibit-D.

v. The first Stake Consultation Committee (hereinafter referred to as **"SCC"**) was held on 29.12.2023, the members had detailed deliberation on compromise or arrangement and required detailed process understanding etc.

vi. The Corporate Debtor had availed financial facilities from the Applicant to the tune of Rs.25,00,00,000/- and the Corporate Debtor had created first *pari passu* charge in favour of the Applicant against the facility amount.

vii. As per Regulation 18 of the IBBI (Liquidation Process) Regulations, 2016, the Applicant filed its claim under Schedule II Form – D on 17.01.2024. As on 19.12.2023, the total outstanding of the Applicant upon the Corporate Debtor is Rs.39,55,34,828/-. Further, in the said form, the Applicant has categorically denied its

relinquishment of claim on the first *pari passu* charge created in favour of the Applicant (secured assets).

viii. Thereafter, on 17.02.2024, the Liquidator addressed a letter to all the creditors of the Corporate Debtor who filed its claim with him. In the said letter, the Liquidator certified the constitution of SCC. The Liquidator further stated as under:-

> *"It is pertinent to mention that out of the total Secured Financial Creditors, creditors having a voting percentage of 69.15% (Five Secured Creditors) have relinquished their security interest and the remaining (Three Secured Creditors) having a voting percentage of 30.85% have not relinquished their security interest. Basis the legal opinion and considering references from related laws and precedents of Hon'ble NCLT & Hon'ble NCLAT, the Liquidator has assumed that the entire security of secured creditors has been relinquished and the same form part of the Liquidation Estate. Accordingly, all the Secured Creditors become members of the Stakeholders Consultation Committee and voting rights are assigned to them based on the claim amount admitted by the Liquidator."*

It is the contention of the Applicant that the Liquidator, without taking consent of the Applicant and without giving any rational or order as annexed thereto, assumed the relinquishment of Applicant's claim on its secured assets.

ix. Further, on 19.02.2024, the Liquidator addressed an email to the Applicant in response to the Form D filed by the Applicant stating that claim amount has been verified and same is admitted. The Liquidator reiterated that even though the Applicant has not relinquished its right over the secured assets, the Liquidator has presumed that the entire security of the Secured Creditors has been relinquished and the same form part of the liquidation estate. A copy of email dated 19.02.2024 is annexed as Exhibit-H.

x. In response to the letter dated 17.02.2024 and email dated 19.02.2024, the Applicant addressed an email dated 21.02.2024 requesting the Liquidator to provide the legal opinion dated 15.02.2024, and reference basis which the letter and the email have been addressed to

the Applicant. Further, the Applicant denied the contents of the email and the letter and its inclusion in SCC.

xi. The Applicant requested the Liquidator to permit the Applicant to realise its secured assets as per Section 52 of IBC, 2016 r.w. related provisions of the Liquidation Regulations.

xii. Surprisingly, on the same day, i.e., on 21.02.2024 in contradiction to the Liquidator's letter dated 17.02.2024 and email dated 19.02.2024, the Liquidator responded to the above email asking the Applicant to clarify if it had taken any steps to pay the CIRP and Liquidation costs and its share of the workmen and employees dues under Regulation 21A of the Liquidation Regulations.

xiii. Thereafter, the Liquidator addressed an email to the creditors informing them that the 3rd SCC meeting is scheduled to be held on 01.03.2024. The said notice of meeting included the agenda of the Scheme of

Compromise and Arrangement. In the 3rd SSC meeting held on 01.03.2024, the members of SSC (excluding Applicant) disapproved the Scheme of Compromise and Arrangement. The Applicant did not attend the said meeting. However, the Applicant was surprised to receive a voting link for voting in respect of the e-auction of the Corporate Debtor which was not even part of the agenda of the said meeting.

xiv. The majority of the members were attending the meeting. The Liquidator without having an agenda on the meeting, in a completely arbitrary manner addressed the members in respect of the sale of the Corporate Debtor. On the same day, the voting link was shared by the members and the Liquidator also attained approval on the same. Given that the Applicant had already conveyed that the Applicant does not wish to relinquish the secured assets. However, on 07.03.2024, the Applicant clearly stated in the email that the Applicant does not wish to relinquish the rights of the secured assets. Despite, the said letter, the

Liquidator has proceeded to issue the said e-auction sale notice. A copy of the email dated 07.03.2024 is annexed as Exhibit M.

xv. Despite the Applicant, addressing an email to the Liquidator, raising grounds for realization of secured assets being a first *pari passu* charge holder and not having relinquishment its right on the secured assets, the Liquidator with *mala fide* intent and without bringing the said email before the other Secured/Unsecured Creditors in the SCC meetings has deliberately proceeded to issue the e-auction sale notice dated 08.03.2024 for sale of the Corporate Debtor as a "going concern" as per Regulation 32(e) of the Liquidation Regulations. The said sale includes the secured assets of the Applicant and great prejudice shall be caused to the Applicant if the Applicant is not given liberty to realize the secured assets.

xvi. That while the Liquidator has sought information as per Regulation 21A of the Liquidation Regulations, the Liquidator himself has not complied with Section 52(3)

of IBC, 2016, *inter alia*, verification of the secured assets and permitting the Secured Creditors to realise such secured assets. Therefore, the steps under Regulation 21A of the Liquidation Regulations are subject to the Liquidator's communication that the Liquidator has completed the verification of the Applicant's charge over the secured assets and also subject to the Liquidator's handing over the possession of secured assets in relation to the Applicant for realizing its secured assets.

xvii. As per the records of the Registrar of Companies (**"RoC"**), only SBI and the Applicant have the first *pari passu* charge on the secured assets and the rest of the Secured Creditors have the second charge over the secured assets. Moreover, the SBI's and Applicant's outstanding claim qua such secured assets is only approx. Rs. 4 crore and approx. Rs.40 crore respectively.

xviii. The Liquidator in a completely arbitrary manner assumed the relinquishment of the secured assets of

the Applicant. The Liquidator has failed to bring it to the notice of other creditors regarding the emails exchanged between the Applicant and the Liquidator. Further, without verifying the secured assets and granting permission to realize the secured assets, the Liquidator even indicated to the Applicant to deposit the costs as per Regulation 21A, knowing fully well that the same ought to be paid pursuant to obligations under Section 52(3) of IBC, 2016.

xix. It is the cardinal principle of propriety of charges as held in various Supreme Court judgments that_

"in terms of Section 48 of the Transfer of Property Act claim of the first charge holder shall prevail over the claim of the second charge holder and in a given case where the debts due to both, the first charge holder and the second charge holder, are to be realized from the property belonging to the mortgagor; the first charge holder will have to be repaid first. There is no dispute as regards the said legal position. The rights of the first charge holders are superior to the rights of the second charge holders".

xx. Accordingly, the Applicant be given possession of the secured asset in relation to its statutory rights under Section 52(3) of IBC, 2016 for realization of its secured assets.

REPLY

4. Reply was filed by the Respondent/Liquidator vide inward diary no.D2710 dated 01.04.2024. In the reply, the Liquidator has stated that:-

I. Pursuant to the public announcement dated 21.12.2023, the Liquidator, in terms of Regulation 30 of Liquidation Regulations, verified the claims of each stakeholder and subsequently as per Regulation 31 of Liquidation Regulations, prepared the list of stakeholders.

II. Out of the total Secured Financial Creditors, creditors having voting percentage of 69.15% (Five Secured Creditors) had relinquished their security interest and the remaining three Secured Creditors having voting percentage of 30.85, being Karnataka Bank, Indian Bank and the Applicant herein not relinquished their

security interest. In view of the said position, the deponent herein sought a legal opinion raising the following queries:-

i. *Whether the Security Interest of Banks namely Karnataka Bank, Indian Bank and STCI Finance Ltd. (having a total voting percentage of 30.85%) can be relinquished despite the fact that they have not relinquished their security interest?*

ii. *…….*

iii. *Stakeholders Consultation Committee Formation in the* above scenario?

III. Section 13 of the SARFAESI Act, 2002 provides for enforcement of security interest. The relevant portion of Section 13(3) of the SARFAESI Act, 2002 is as under:-

> *"(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors* ***representing not less than sixty per***

cent in value of the amount outstanding *as on a record date and such action shall be binding on all the secured creditors;*

……"

IV. On the basis of the provisions of IBC, 2016 and Section 13(9) of SARFAESI Act, 2002 and further the judgment passed by NCLT, Kolkata Bench in the matter of M/s. Gujarat NRE Coke Ltd., [CA(IB) No. 1305 of 2019] and the judgment passed by Hon'ble NCLAT in the matter of Mr. Sirkant Dwarkanath Liquidator of Surana Power Ltd. vs Bharat Heavy Electricals Ltd., [CA(AT) (Ins0 No. 1510 of 2019], Mr. Sumit Sinha, Advocate on record, Supreme Court had opined that the security interest of Karnataka Bank, India Bank and the STCI Finance Ltd., i.e., the Applicant is relinquished and the same forms part of the liquidation estate of the Corporate Debtor. The said legal opinion dated 15.02.2024 is annexed as Annexure-A.

V. The details of assets has been mentioned by the Applicant at page no. 144 of the application. The said

assets, except ICICI Bank, there is charge of other Secured Creditors also being Karnataka Bank, SBI, IDBI Bank, Axis Bank, Bank of India and Indian Bank. The voting percentage of Secured Creditors that have relinquished their security interest is 69.16 and of those Secured Creditors who have not relinquished their security interest is 30.84%.

VI. In view of the aforesaid legal opinion, related laws and the judgment of NCLT, Kolkata and Hon'ble NCLAT, the Liquidator was of the opinion and assumed that the entire security interest of the Secured Creditors has been relinquished and the same form part of the liquidation estate and that all the Secured Creditors form part of the SCC. The voting rights were assigned to them on the basis of their admitted claim. Thereafter, SCC was constituted on 17.02.2024 and the same was intimated to the members including Applicant on 19.02.2024.

VII. The Liquidator in the 2nd SCC meeting held on 22.02.2024 informed the SCC about the aforesaid

legal opinion. The minutes of the 2nd SCC meeting along with legal opinion dated 15.02.2024 was shared by the Liquidator to SCC including the Applicant vide email dated 23.02.2024.

VIII. In the 3rd SCC meeting held on 01.03.2024, discussion with regard to the sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 of Liquidation Regulations was also held and the following resolution was put up for voting which was approved by 87.42% voting share.

"Resolved that pursuant to Regulation 32 & 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (including all the amendments and modifications for the time being in force) and other applicable rules, regulations and provisions of the Insolvency and Bankruptcy Code, 2016, the committee hereby advise and recommends the liquidator to proceed to sell the assets of the Corporate Debtor under clauses (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 at the Reserve Price which shall

be Rs.94,00,00,000/- Ninety Four Crores Only with the EMD of Rs.9,40,00,000/-".

IX. According to the discussion held in the 3rd SCC meeting, the Liquidator published a Sale Notice dated 08.03.2024. Pursuant to which the Liquidator received inquiries from ten participants/parties and out of the same, two parties have submitted their Expression of Interest and documents and have shown interest to visit the site of Corporate Debtor at Silvassa.

X. The Code does not provide for different categories of Secured Creditors neither based on nature of charge/security interest nor based on the ranking of the respective charge, therefore, even if the Applicant is having first *pari passu* charge on the secured assets of the Corporate Debtor, the decision of the majority Secured Financial Creditor will be binding on the minority Secured Financial Creditor.

XI. Further, the Applicant has not paid its pending CIRP cost share i.e., Rs.34,11,727/- and the liquidation

cost share i.e., Rs.9,96,272/- [being Rs.44,07,999/- in total] to the deponent herein. Therefore, the Applicant may be directed to pay the pending CIRP cost and liquidation cost to the deponent for the smooth functioning of the liquidation process.

5. The Applicant has filed a compilation of judgment wherein the Applicant has relied upon the following judgments:-

   I. *Technology Development Board through Assistant Law Officer v. Anil Goel Liquidator of Gujarat Oleo Chem Limited (GCOL) [2021 SCC Online NCLAT 349]*
   II. *Paschimanchal Vidyut Vitran Nigam Limited v Raman Ispat Private Limited [(2023) 10 SCC 60]*
   III. *Technology Development Board v Anil Goel [2020 SCC Online NCLT 3694]*

6. In compliance of the order dated 02.04.2024, the Applicant and the Respondent have filed their written submissions vide inward diary nos. D3159 dated 12.04.2024 and D3085 dated 09.04.2024 respectively.

7. We have heard the counsels for both sides and perused the material produced before us.

8. The following are the undisputed facts:

I. The liquidation of the Corporate Debtor was ordered by this Tribunal vide roder dated 19.12.2023 in IA No. 987 of 2023.

II. Para 103(x) of the liquidation order dated 19.12.2023 records as under:-

"As COC has passed resolution under Regulations 39 (B), (C) and BA, Liquidator is directed to effective steps in this regards".

III. The said liquidation order has not been challenged by the Applicant herein before any Higher Forum and thus has assumed finality.

IV. That as the CoC had passed the resolution for exploring the possibility of Compromise and Arrangement, the discussion with regard to the same was held in the 1st SCC meeting held on 29.12.2023 and pursuant to the same, the Liquidator issued a public announcement dated 03.01.2024 for the invitation of Expression of Interest for submission of Scheme of Compromise and Arrangement.

V. That, pursuant to the public notice dated 03.01.2024, the Liquidator had received a Scheme of Compromise and Arrangement from one prospective bidder, which was discussed in the 2nd and 3rd SCC meeting held on 22.02.2024 and 01.03.2024 respectively. However, the members present at the meeting having a total voting percentage of 74.10% unanimously agreed in the meeting to not to proceed further with the Scheme, and in the said SCC meeting, discussion with regard to sale the Corporate Debtor as going concerned under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 was held and the said resolution with regard to the sale of the Corporate Debtor as going concern was put for voting which was approved by the voting share of 87.42%.

VI. The present application was filed on 20.03.2024 much after the Scheme of Compromise and Arrangement failed. Therefore, it is clear that the Applicant has not objected to the actions of the Liquidator inviting the Scheme of Compromise and Arrangement.

VII. It is also clear that the Applicant has not relinquished the security under Section 52(2) of the IBC, 2016.

VIII. The Applicant has not put before us anything towards the effective steps taken by the Applicant for the disposal of the assets. At the same point of time, it is an admitted position that the Applicant along with SBI is holding the first *pari passu* charge over the assets of the company and the other Financial Creditors are holding the second charge over the same assets.

IX. It is an admitted position that the only mode of sale of the secured assets during the liquidation process by a Financial Creditor which is standing out of the liquidation process is by way of utilizing the provisions of Section 13 of the SARFAESI Act, 2002.

9. The issues before us are summarised, for the sake of brevity, as below:-

I. Can a judicial order of liquidation which requires the Liquidator to sell the Corporate Debtor as a going

concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 be thwarted by a Financial Creditor by not submitting itself to the liquidation process and standing out side under Section 52(2) of IBC, 2016?

II. Can a sale under as a going concern be made under the provisions of the SARFAESI Act, 2002?

III. What orders?

10. From the material placed before us, it is clear to us that there is a deadlock in SCC so as to the manner of sale of the assets of the Corporate Debtor. The Applicant herein is to late in the day to approach this Tribunal particularly when they have not objected to the Scheme of Compromise and Arrangement, which ultimately failed. However, no objections were raised during the period when the Scheme was under consideration. The Applicant has not taken any steps under the provisions of the SARFAESI Act, 2002 for the sale of the assets of the Corporate Debtor so far as, this we are stating because the Applicant has not placed

anything before us in this regard. At this stage, we are guided by the decision of the Hon'ble NCLAT, New Delhi in CA(AT) (Ins) No. 1510 of 2019 wherein it has observed that the secured creditors with 73.76% in value had already relinquished the security interest into liquidation estate and thus, it would be prejudicial to stall the liquidation process at the instance of a single creditor having only 26.24% share (in value), in the secured asset. That, the Hon'ble NCLAT, New Delhi in the said case had also observed that the respondents charge on the secured asset was not exclusive. That the Hon'ble NCLAT, New Delhi thus held in the said matter that section 13 of SARFAESI Act will be applicable to end the deadlock, and the decision of 73.76% of majority Secured Creditors, who have relinquished the Security Interest shall be binding on the dissenting secured creditors. It is to be noted that 60% is calculated qua whole body of creditors.

11. That the Applicant at page. no. 144 of the application has mentioned the details of security held by it. It is stated and submitted that on the said assets, except ICICI Bank, there

is charge of other secured creditors also being Karnataka Bank, State Bank of india, IDBI Bank, Axis Bank, Bank of India and Indian Bank. It is pertinent to note that voting percentage of secured creditors that have relinquished their security interest is 69.16% and of those secured creditors who have not relinquished their security interest is 30.84%.

12. That as per Regulation 37(1) of the IBBI (Liquidation Process) Regulations, 2016, the secured creditor who seeks to realize its security interest under section 52 shall intimate the liquidator of the price at which he proposes to realize its secured asset. No such intimation has been made by the Applicant herein to the Liquidator. Therefore, the Applicant has not taken any steps as per Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016 for the realization of the security interest pursuant to liquidation order dt. 19.12.2023.

13. Further, as per Regulation 37(7) of the IBBI (Liquidation Process) Regulations, 2016, the provisions of Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016

shall not apply if the secured creditor enforces its security interest under SARFAESI Act, 2002 or the RDDBFI Act, 1993.

14. It is humbly submitted that as per Regulation 21 A of the IBBI (Liquidation Process) Regulations, 2016, a secured creditor has to realize the security interest within a period of 180 days and if the secured creditor fails to realize its security interest within a period of 180 days, then the same forms part of the liquidation estate of the CD. That period of almost 4 months have already been over since the liquidation commencement date i.e., 19.12.2023 and further, if the Applicant proceeds under the provisions of SARFAESI Act, 2002 for enforcement of security interest then also the Applicant would not be able to realize its security interest within a period of remaining two months. Therefore, even if the Applicant is now permitted to realize the security interest, then the same would be a futile exercise and further deteriorate the condition of the asset of the CD which is not the intent of the Insolvency and Bankruptcy Code, 2016.

15. The issue nos. (I) and (II) are answered that in order to speedly liquidate the assets of the Corporate Debtor where some of the creditors are standing out of liquidation process and have not relinquished their security interest to the Liquidator, have to be delicately dealt by this Bench.

16. In the totality of the situation, it will be a travesty of justice especially when no steps have been taken by the Applicant herein under the SARFAESI Act, 2002 for speedier disposal of the assets of the Corporate Debtor and when under Regulation 21(A), a period of only 180 days is available. This period of 180 days will end on 16.06.2024 and the process under the SARFAESI Act, 2002 cannot be completed by that date since it has not started so far. To hand over the assets to the Applicant for disposal will be a time-consuming exercise with unknown outcome.

17. We are also conscious of the fact that under the SARFAESI Act, 2002, the sale as a going concern is not possible and if the Corporate Debtor is not sold as a going concern, the value of maximization may not be possible.

18. We accordingly, order issue no. (I) and (II) in negative and we are of the view that the Liquidator should continue to sale the company as a going concern in order to comply with the liquidation order dated 19.12.2023 passed in IA No. 987 of 2023.

19. We are conscious that the Financial Creditor has certain rights available to them under the Code so as to the manner of sale, accordingly, we direct the Financial Creditor to participate in all the SCC meetings, more particularly, regarding fixing the Reserve Price and the manner of sale of the Corporate Debtor as a going concern in the SCC meetings.

20. We also direct the Liquidator not to issue the sale certificate or to distribute the proceeds of realized by way of sale as a going concern. The Liquidator is hereby directed to place the entire records before this Tribunal and after hearing the Applicant herein and the Liquidator, this Tribunal will further decide on the issue of the sale certificate and the distribution of the proceeds realized.

21. As regards prayer (c), no ground has been made by the Applicant seeking the deferment of cost payable to the Liquidator. Prayer (c) is hereby denied. Applicant to comply with the same in 15 days if not already complied.

22. With the above directions, the present Mis. A/1(AHM)2024 in CP (IB) 203 of 2020 is hereby disposed off.

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rajeev Sen/P.S.