

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

**IA (IBC)/500/KOB/2023
IN
CP (IBC)/20/KOB/2021**

*(Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
NCLT Rules 2016)*

Memo of Parties

Union Bank of India

Represented by the Chief Manager and
Authorized Officer,
Asset Recovery Branch,
2nd Floor Union Bank Bhavan,
M.G Road, Ernakulam, Pin 682035

...Applicant/Financial Creditor

Versus

K Easwara Pillai

Liquidator of Corporate Debtor,
M/s.Periyar Agro Food Industries Private
Limited (under liqn)
6th Floor, Amrita Trade Towers,
SA Road, Pallimukku, Kochi- 682016
IP Regn: IBBI/IPA-001/IP-
P00448/20172018/10791

...Respondent/Liquidator

In the matter of:

M/s ITC Limited : Operational
Creditor

Versus

M/s Periyar Agro Food : Corporate
Industries Pvt Ltd Debtor

Order delivered on: 08.02.2024

Coram:

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Shri. Shyam Babu Gautam

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant : Mr. V A Ajaikumar, Advocate

For the Respondent : Mr. K. Easwara Pillai, Liquidator

Mr. Dhananjaya Sud, Advocate

ORDER

Per: Coram

1. The present application is filed by the Financial Creditor, Union Bank of India of M/s Periyar Agro Food Private Limited under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') and Rule 11 of NCLT Rules, 2016 for permitting the Applicant to realise its security assets belonging to the Corporate Debtor and adjust the sale proceeds towards the part payment of the admitted debt due to the Applicant.

2. The facts as narrated in the application and explained by the Learned counsel for the applicant are summarised hereunder:

- i. The Operational Creditor, M/s ITC Limited had filed an application under Section 9 of the Code for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against, M/s Periyar Agro Food Industries Private Limited (hereinafter referred to as the 'Corporate Debtor) which was admitted vide order in CP(IBC)/20/KOB/2021 and appointed Mr. George Varkey as the Resolution Professional. Since no Resolution Plan was received for the Corporate Debtor, this Tribunal vide order dated 17.02.2023 ordered for initiation of the liquidation process of the Corporate Debtor. Resolution Professional Mr. George Varkey was replaced by Mr. Easwara Pillai, the respondent herein as the Liquidator of the Corporate Debtor.
- ii. The Applicant submits that the Corporate Debtor had availed the following credit facilities from the Applicant:
 - a) *Cash Credit limit of Rs.6,90,29,000/-*
 - b) *Union Guaranteed Emergency Credit Line of Rs.2,50,83,000/-*
 - c) *Working Capital Term Loan of Rs.10,16,80,000/-*
 - d) *Fund Interest Term Loan of Rs. 1,63,70,000/-*
- iii. To ensure the repayment of the outstanding amount, the Corporate Debtor established an equitable mortgage on the Company's assets, including the plant and machinery, in favor

of the Applicant Bank. Additionally, the personal assets of the suspended directors, Mr. Marakkar P.P and Mr. Muhammed Riyas, were exclusively mortgaged with the Applicant Bank. The liquidator incorrectly assessed the value of Mr. Muhammed Riyas's personal property including it in the Corporate Debtor's assets

- iv. The Respondent liquidator assessed properties totalling 115.73 Ares (285.878 cents), which include personal holdings of Mr. Abdul Marakkar (8.40 Ares), Mr. Muhammed Riyas (9.31 Ares), and Mr. Muhammed Rafi (4 Ares). The assets of Mr. Abdul Marakkar and Mr. Muhammed Riyas are exclusively mortgaged to the Applicant Bank and are not subject to the liquidation process. The value of these personal properties should be excluded from the overall valuation. The liquidator also appraised value of the plant and machinery of the Corporate Debtor, and the details of this valuation are outlined below.

Name of Valuer	Details of property	Fair value	Liquidation value
Mr. N.B. Krishnan	Plant and machineries of M/s. Periyar Agro Food Industries	Rs.19,21,000/-	Rs.14,41,000/-
Mr. Naraynankutty Kannery	Plant and machineries of M/s. Periyar Agro Food Industries	Rs.20,50,000/-	Rs.16,00,000/-
Average Fair value		Rs.19,85,500/-	Rs.15,20,500/-

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In re Periyar Agro Industries Private Limited*

Name of Valuer	Extent	Market value/maximum value of entire property assessed by the Valuer	Out of which, Market value/maximum value of personal properties of Abdul Marakkar, Muhammed Riyaz and Mr. Muhammed Rafi (ie.21.71 Ares of property).	Actual Market value of secured property of Corporate Debtor i.e. 232.25 cents (ie. After subtracting value of personal properties of Abdul Marakkar, Muhammed Riyaz and Mr. Muhammed Rafi.)
Sanjeevan R.	115.74 Ares (285.878 cents)	Rs.5,79,32,000/-	Rs.1,34,05,925/-	Rs.4,45,26,075/-
Indira T.S.	115.74 Ares (285.878 cents)	Rs.6,20,56,559/-	Rs.1,34,05,925/-	Rs.4,86,50,634/-
Average market value		Rs.5,99,94,279.50	Rs.1,34,05,925/-	Rs.4,65,88,354.50
Average Fair value		Rs.5,39,94,851.55	Rs.1,20,65,332.5	Rs.4,19,29,519.05

- v. The Corporate Debtor possesses no assets except for the mentioned secured immovable properties earmarked for liquidation. The Applicant being the Financial Creditor to the Corporate Debtor filed its claim in Form D on 15.03.2023 and informed the said intention to the Liquidator under Section 52 (2) (1) of the said Code. The Applicant's admitted claim is Rs. 18,97,31,478/-. Having deposited the entire estimated Liquidation cost of Rs. 18,16,000/- as per the Liquidator's assessment, the Applicant was granted permission on 23.05.2023 to realize its security interest in the secured immovable properties. The Applicant, invoking the SARFAESI Act, obtained possession of the properties. Despite issuing

three sale notices (on 26.09.2023, 27.10.2023, and 06.11.2023), no bidders emerged.

- vi. During this period, the Liquidator sent a letter to the Applicant, demanding payment of Rs.55,52,097/- for liquidation costs, which includes an estimated Liquidator Fee of Rs.39,81,120/- based on the valuation conducted during the liquidation process, arriving at an average fair value of Rs.6.74 Crores. Since the claimed amount wasn't paid, the Respondent Liquidator filed IA(IBC)/323/KOB/2023 in CP(IBC)/20/KOB/2021, seeking NCLT's direction for the Applicant to pay the specified amount. The Tribunal suggested an amicable settlement, and the Applicant proposed to pay Rs.1,67,000/- for an additional 2 months until 16.10.2023, following the fee fixed by the COC under Regulation 39 D of IBBI (IRP) Regulations. The Respondent Liquidator, accepting this proposal, issued a letter on 28.10.2023, claiming the agreed amount of Rs.1,67,000/- plus Rs.1,20,000/- for 18% GST. The Financial Creditor has paid a total of Rs.2,87,000/-, comprising Rs.1,67,000/- as the liquidator fee and Rs.1,20,000/- for 18% GST.
- vii. And further submitted that the Liquidator has issued a letter to the Financial Creditor stating that the Financial Creditor failed to realize the security interest within the time prescribed, the secured assets will become part of the liquidation estate and requested Applicant Financial Creditor

to entrust possession of the secured properties to the Liquidator at the earliest.

viii. The Applicant contends that the Liquidator has misinterpreted Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016. The acknowledged debt from the Corporate Debtor to the Applicant is Rs.18,97,31,478/-. The average market value of the secured immovable properties, including the factory building and machinery, is Rs.4,85,73,854. This value is less than the total secured debt of Rs.18,97,31,478/- to be recovered. Therefore, there is no excess amount of realized value over the admitted debt payable to the liquidator. The Applicant further submitted that the Liquidator should have allowed them to realize the secured debt by selling the secured property. Given that only 1/4th of the admitted claim of the Financial Creditor can be recovered through the sale of the secured property, the Liquidator should permit the Applicant Financial Creditor to enforce its security interest by selling the property and subsequently file an application for the dissolution of the Corporate Debtor, considering there are no other assets for liquidation.

3. This Tribunal directed the liquidator to verify the valuation done by the Applicant/ Financial Creditor, accordingly, the liquidator in compliance with the above direction has filed an affidavit on 11.01.2023 stating that the average Fair Value of the land and building of the Corporate Debtor as per the valuation conducted is

- Rs. 4,27,66,051/- and the average Fair Value of the Plant and Machinery of the Corporate Debtor is Rs. 19,85,763/-
4. We have heard the learned counsel for the applicant and the respondent and perused the materials available on record. It is noted that the Applicant, being the Financial Creditor has already filed their claim under Form D expressing the intent to bypass liquidation and enforce its security interest by selling the secured immovable properties as per section 52 (1)(b) and 52(2)(1) and thus the liquidator granted permission to the Applicant for the same.
5. Additionally, we have also noticed that the aggregate admitted claim amounts to Rs. 18,97,31,478/-. Notably, only one-fourth of the admitted claim from the Financial Creditor can be recovered from the secured assets.
6. Section 21A of the IBBI (Liquidation Process) Regulations, 2016, reads as follows,

1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II

PROVIDED that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date,

the assets covered under the security interest shall be presumed to be part of the liquidation estate.

2) Where a secured creditor proceeds to realise its security interest, it shall pay

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub section (1) of Section 53 IBC, as it would have shared in case it had relinquished security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within 180 days from the liquidation commencement date.

PROVIDED that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the Liquidator

PROVIDED FURTHER that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

3. *Where a secured creditor fails to comply with sub-regulation (2), the asset which is subject to security interest, shall become part of the liquidation estate.*
4. It is imperative to highlight that in adherence to the aforementioned regulation, the Respondent is obligated to realize its Security Interest within the specified timelines outlined under Regulation 21A (2) of the Liquidation Regulations. Failure to do so would result in the Respondent surrendering custody of the secured assets to the liquidator of the Corporate Debtor.
5. The timeframes outlined in Regulation 21A(2)(b) of the Regulations are deemed mandatory, aligning with the objectives of the Code, Permission cannot be granted to the Applicants for any contingent action that contradicts the object and provisions of the Code. These regulations intent to ensure the liquidation process proceeds in a definitive and timely manner.
6. Consequently, the application is dismissed, and the Applicant/Financial Creditor is directed to transfer possession of the Secured Assets to the Liquidator within two weeks from the date of receiving this order. The secured debt of the Financial Creditor will be settled from the sale of assets of the liquidation estate by the Liquidator strictly in accordance with the prioritization outlined in Section 53 of the Insolvency and Bankruptcy Code.

7. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
8. Let the certified copy of the order be issued upon compliance with requisite formalities.

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 8th day of February, 2024.

Krishna