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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA/255/IB/2021 in IA/71/IB/2021 in IA/819/IB/2020
& IA/10/IB/2020 in CP/1307/IB/2018

*(filed under section 60 (5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **M/s. Jeypore Sugar Company Limited***

1. IDBI BANK LIMITED,
Branch Office at 115,
Anna Salai, Saidapet,
Chennai - 600015.
2. Bank of India,
Branch office at:
Chennai Mid Corporate Branch,
IV Floor, Tarapore Towers,
No. 826, Annasalai,
Chennai - 600 002.
3. Pridhvi Asset Reconstruction and
Securitisation Company Ltd.,
No. 1-55, Raja, Prasasadamu,
4th Floor, Wing 1, Majid Banda Road,
Kondpur, Hyderabad - 1.
4. Bank of Baroda Stressed Asset Management Branch,
No.45, Moor Street,
JBAS Building, 4th Floor,
Chennai — 600 001.
5. Indian Overseas Bank,
Branch office at: Asset Recovery Management Branch,
762, Anna Salai,
Chennai - 600 002.
6. The District Co-Operative Central Bank Limited,
Branch office at: PanugantiVari Street,
R.R.Pet, Eluru, West Godavari District - 534 002.

... Applicants/Secured Creditor

-Vs-

1. V. Venkata Sivakumar,
Liquidator of M/s The Jeypore Sugar Company Limited,
No. 10/11, Dr, Subbarayan Nagar Main Road,
Kodambakkam,
Chennai -600024.
2. M/s Aaria Projects Ltd,
Represented by Mr. C.H. Venkateswara Rao,
Flat No-1-206, Divya Shakthi complex Green Lands,
Ameerpet, Hyderabad - 500 016.
3. M/s Kineta Global Limited
in consortium with Power Mech Projects Limited,
Rep. by Mr. B. Venkat,
4th floor, Kineta Towers,
Plot no.51 to 54, Journalist Colony,
Road no. 3, Banjara hills,
Hyderabad – 500034.
4. M/s. Synergy Holdings,
Rep. by Mr. Inuganti Murali Krishna,
1101, A Block, Quiescent Heights,
Raheja Mind Space, Madhapur,
Hyderabad -50008.

...Respondents

Along with

IA/256/IB/2021 in CA/816/CAA/020 in
CP/1307/IB/2018

*(filed under section 60 (5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of NCLT Rules, 2016)*

In the matter of M/s. Jeypore Sugar Company Limited

1. IDBI BANK LIMITED,
Branch Office at 115,
Anna Salai, Saidapet,
Chennai - 600015.
2. Bank of India,
Branch office at:



Chennai Mid Corporate Branch,
IV Floor, Tarapore Towers,
No. 826, Annasalai,
Chennai - 600 002.

3. Pridhvi Asset Reconstruction and
Securitisation Company Ltd.,
No. 1-55, Raja, Prasasadamu,
4th Floor, Wing 1, Majid Banda Road,
Kondpur, Hyderabad - 1.
4. Bank of Baroda Stressed Asset Management Branch,
No.45, Moor Street,
JBAS Building, 4th Floor,
Chennai — 600 001.
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Branch office at: Asset Recovery Management Branch,
762, Anna Salai,
Chennai - 600 002.
6. The District Co-Operative Central Bank Limited,
Branch office at: PanugantiVari Street,
R.R.Pet, Eluru, West GodavariDistrict - 534 002.

... Applicants/Secured Creditors/Intervenors

-Vs-

V. Venkata Sivakumar,
Liquidator of M/s The Jeypore Sugar Company Limited,
No. 10/11, Dr, Subbarayan Nagar Main Road,
Kodambakkam,
Chennai -600024.

Along with

IA/862/IB/2020 in CP/1307/IB/2018

*(filed under section 60 (5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of NCLT Rules, 2016)*

In the matter of M/s. Jeypore Sugar Company Limited

V. Venkata Sivakumar,
Liquidator of M/s The Jeypore Sugar Company Limited,
No. 10/11, Dr, Subbarayan Nagar Main Road,
Kodambakkam,
Chennai -600024

... Applicants

-Vs-

1. The Chairman & Managing Director
IDBI Bank Limited,
IDBI Tower, WTC Complex,
Cuffee Parade, Colaba,
Mumbai – 400 005
2. Mahendra Mohan Naik
General Manager (Recovery)
IDBI Bank Limited
No.115, Anna Salai, NMG Centre
Opposite to Ashok Leyland
Corporate Office, Guindy,
Chennai – 600 015
3. N. Venkateswaran
Deputy General Manager
IDBI Bank
NPA Management Group
Chennai
4. Director General of Police
Dr. Radhakrishnan Salai Road,
Mylapore, Chennai – 600 004

... Respondents

Along with

IA/525(CHE)/2021 in CP/1307/IB/2018

*(filed under section 60 (5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of NCLT Rules, 2016)*

In the matter of M/s. Jeypore Sugar Company Limited

V. Venkata Sivakumar,
Liquidator of M/s The Jeypore Sugar Company Limited,
No. 10/11, Dr, Subbarayan Nagar Main Road,

Kodambakkam,
Chennai -600024

... Applicants

-Vs-

1. Rakesh Sharma Ji
The Chairman & Managing Director
IDBI Bank Limited,
IDBI Tower, WTC Complex,
Cuffee Parade, Colaba,
Mumbai – 400 005
2. Joint Lenders Forum (Secured Creditors)
Rep. by Mr. Durga Prasad (IDBI DGM)
M/s. Jeypore Sugar Co. Ltd.
No.115, Anna Salai, NMG Centre
Opposite to Ashok Leyland
Corporate Office, Guindy,
Chennai – 600 015
3. Mahendra Mohan Naik
General Manager (Recovery)
IDBI Bank Limited
No.115, Anna Salai, NMG Centre
Opposite to Ashok Leyland
Corporate Office, Guindy,
Chennai – 600 015
4. M/s. Kineta Global Limited
In Consortitum with Power Mech Projects Limited
Rep. by Mr. B. Venkat
4th Floor, Kineta Tower, Plot No.51 to 54,
Journalist Colony, Road No.3, Banjara Hills,
Hyderabad – 500 034
5. Director General of Police
Dr. Radhakrishnan Salai Road,
Mylapore, Chennai – 600 004

... Respondents

Order Pronounced on 17th November 2021

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *Arun Kathpalia, Senior Advocate*
For Varun Srinivasan, Advocate

For Respondent : *V. Venkata Srinivasan, Liquidator*
For R1

ORDER

***Per:* R. SUCHARITHA, MEMBER (JUDICIAL)**

IA/255(CHE)/2021 is an Application preferred by Secured Creditors in relation to the Corporate Debtor viz. M/s. Jeypore Sugar Company Limited filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) r/w Rule 11 of NCLT Rules, 2016, seeking the following reliefs:

- a) Direct the 1st Respondent/Liquidator to take necessary steps and include, as part of the Liquidation Estate of the Corporate Debtor, the property/assets of the Corporate Debtor situated at Rayagada, Orissa and accordingly update the Asset Memorandum as per Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016;
- b) Set aside the valuation conducted on 30.09.2020 & 01.11.2020, it being not in compliance with Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016;
- c) In interest of maximizing the value of the assets of the Corporate Debtor, to defer the negotiations with Respondent Nos. 2 and 3, or Respondent No.4, if found eligible, as Ordered by this Hon'ble Tribunal vide Order dated 12.02.2021 in IA No. 71 of 2021 in I.A No. 819/IB/2020 & IA/10/1B/2021 in CP/1307/IB/2018, until

the compliance of the relief as prayed for above under prayer a) by the Respondent No.1/Liquidator and the relief granted by this Hon'ble Tribunal under prayer b);

d) Or in the alternate to prayer c), defer the requirement of the Applicants / Secured Creditors to complete the negotiations and submit the final decision as prayed for by the 1st Respondent I Liquidator in prayer (iv) of I.A No. 71 of 2021 in I.A No. 819/IB/2020 & IA/10/1B/2021 in CP/1307/IB/2018, until the compliance of the relief as prayed for above under prayer a) by the Respondent No.1/Liquidator and the relief granted by this Hon'ble Tribunal under prayer b);

2. The Learned Senior Counsel for the Applicant averred that the Liquidator has adopted irregular procedure for obtaining the valuation of the assets of the Corporate Debtor and also excluded certain assets of the Corporate Debtor from the 'Liquidation Estate' which resulted in non-maximization of the value of the assets of the Corporate Debtor.

3. Further, it was submitted that the Applicants are the major stakeholders of the Corporate Debtor with a claim to the tune of Rs. 567.59 Crore due and recoverable from the liquidation process and were members of the Committee of Creditors of the Corporate Debtor during the CIRP process holding a total voting share of 98.68%.

4. It was submitted by the Learned Senior Counsel for the Applicants that pursuant to liquidation of the Corporate Debtor, the

Stakeholders Consultation Committee (SCC) came to be constituted and a Joint Lender Meeting (JLM) comprising of the Secured Creditors herein was conducted on 21.09.2020.

5. It was submitted that pursuant to the liquidation of the Corporate Debtor the 1st Respondent called for Invitation for proposing a Scheme for Compromise or Arrangement under Section 230 of the Companies Act, 2013 to submit Resolution Plans to the Liquidator on or before 25.08.2020. It was submitted by the Learned Senior Counsel that a revised valuation report was sought for by the Liquidator in order to reflect the financial position of the Corporate Debtor before the CoC, which was deliberated before the 1st meeting held on 26.08.2020. Prior to this, on 03.07.2020 Expression of interest was invited by the 1st Respondent from interested Applicants to submit Schemes of Arrangement on the basis of the liquidation value arrived at by the revised valuation report. Subsequently, there were nine Applicants who submitted their scheme before the Liquidator.

6. It was submitted that in the 2nd CoC meeting, the four Applicants out of the nine who submitted their proposal scheme, made their presentation on their proposal before the stakeholders. They were subsequently asked to revise their respective schemes. Subsequently, the Liquidator moved the Section 230 Application

viz., CA 816/CAA/2020 in CP/130711B/2018 to which all the Secured Creditors objected due to infirmities in the proposed application, which were brought to the attention of the Liquidator by way of several emails.

7. It was submitted that when the above application was pending consideration before this Tribunal, other applications were filed by 2nd and 3rd Respondents and thereafter, the 1st Respondent had moved an application before this Tribunal viz., IA/71(CHE)/2021, in which this Tribunal vide Order dated 12.02.2021, directed the Secured Creditors to negotiate with 2nd and 3rd Respondent in order to present the correct picture of the asset valuation of the Corporate Debtor.

8. It is averred in the Application that the fresh valuation report submitted by the 1st Respondent demonstrates a drastic reduction in the liquidation value of the Corporate Debtor's assets, which was initially valued at Rs.332.52 Crores during the CIRP period and subsequently during the liquidation period was valued at Rs.223.21 Crores, which is almost Rs.100 Crores lesser than the previous valuation.

9. It was submitted by the Learned Senior Counsel that there was absolutely no basis/explanation on which the said valuation

has been arrived at and as to why there has been such a significant drop in such a short period of time. In fact, it was submitted that the stakeholders of the Corporate Debtor also suggested to get a fresh valuation of the assets considering the huge drop and to avoid ambiguity; however, the said request was not acceded to by the Liquidator.

10. The Learned Senior Counsel for the Applicant submitted that there is no necessity for the Liquidator to seek for a fresh valuation without consulting the Stakeholders and also it is alleged that the Liquidator has shared these draft valuation report to the Potential Resolution Applicants without even informing the stakeholders about the same. Thus, it was submitted that as a consequence thereof, the potential Resolution Applicants offered quotes which are much below the old liquidation value of Rs. 332.52 Crore. Hence, it was submitted that the undervaluation of the assets of the Corporate Debtor is against the principle of maximization of assets as held by the Courts.

11. It was further submitted that then Liquidator has obtained a fresh liquidation without taking into consideration a prime property/asset belonging to the Corporate Debtor situated at Rayagada, Orissa, which if included as part of the liquidation estate, which would have increased the liquidation value by

additional 1078.25 Crores. It was further submitted that the Applicants raised their contentions on the fresh valuation report to the Liquidator during meetings that the fresh valuation report was completely inconsistent with the valuation that was conducted by the Resolution Professional during the CIRP phase of the Corporate Debtor and that the report fails to explain the reasons for the drastic reduction in its value. It was further submitted that the said Rayagada property is a subject matter of litigation and the Liquidator has accepted a zero valuation as provided by the Valuer. In the event the litigation is decided in favour of the Corporate Debtor, then the potential Resolution Applicant, will get the entire benefit of the said asset. It was further submitted that the Applicants suggested to the Liquidator that atleast the proceeds from the said property, if decided in favour of the Corporate Debtor, should be shared among the Stakeholders and not with the potential Resolution Applicants.

12. It was further submitted by the Learned Senior Counsel that the manner in which the revised valuation, which was conducted by the registered valuers, viz. Mr. Shanthakumar and Mr. R. Chandran, who were appointed by the Liquidator on the assets of the Corporate Debtor, is not in accordance with the procedure established under Regulation 35(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016,

which stipulates that the valuation of the Corporate Debtor shall be conducted by two registered valuers, who shall conduct their valuation independently on the entire assets of the corporate debtor and that the average of the two estimates received shall be taken as the value of the assets or business of the Corporate Debtor. However, it was submitted that although the valuation of the assets of the Corporate Debtor was conducted by two registered valuers, the valuation was conducted separately on the plant and machinery by one registered valuer (Mr. Shantha Kumar) and on the land and building by the other valuer (Mr. R. Chandran) instead of the same being conducted holistically on the entire assets of the Corporate Debtor. Hence, it was submitted that the revised valuation is in clear contravention to the procedure established under the Code.

13. Thus, it was contended by the Learned Senior Counsel for the Applicant that, although the Applicants do not have any objection in negotiating with the 2nd and 3rd Respondent or any other eligible Resolution Applicant, it was submitted that the said negotiations would not yield much result considering the fact that any proposal presented by the 2nd and 3rd Respondent, would be on the basis of the imprecise valuation presented by the Liquidator and hence the same may not be feasible for the Applicants to accept the same.

14. The Liquidator has filed counter and the Learned Liquidator contended that the IA/255(CHE)/2021 and IA/256(CHE)/2021 filed by the filed by the Applicants are infructuous and the same was filed only to delay the proceedings. It was submitted by the Learned Liquidator that there is no need for intervention of this Tribunal in this issue because the Applicants have the right to exercise their commercial wisdom in accepting or rejecting the Scheme proposed under Section 230 of the Companies Act, 2013. The Learned Liquidator submitted that only one Scheme proponent is willing to offer Rs.207 Crore, whereas the Applicants want more than Rs.333 Crore which was the liquidation value arrived at during the year February 2020. It was further submitted that the Liquidator has included the land at Rayagada, Orissa in the Liquidation estate which can be seen in the Audited Financial Statements for the year 31.03.2020 and it forms the part of the Asset Memorandum.

15. The Applicants have filed rejoinder and the Learned Senior Counsel for the Applicant submitted that the Liquidator deviated from core issue which is pertaining to erroneous liquidation value and irregular procedure adopted by the liquidator in valuation of the assets of Corporate Debtor. It was submitted that the new liquidation value of Rs.223.21 crore arrived at by the Liquidator

vide his letter dated 02.10.2020 is not in consonance with the requirements of Regulation 35 of IBBI (Liquidation Process) Regulations, 2016 and the land at Rayagada was given a Zero valuation and excluded from the final liquidation valuation and there is no mention as to how the said property would be treated if the asset retrieved by the Corporate Debtor.

16. It was further submitted that the valuation being done against Regulation 35 of IBBI (Liquidation Process) Regulations, 2016 and when a valuation was required to be conducted by two independent valuers who were required to independently take into account consolidated total of all assets of the Corporate Debtor, however in the present case, only one valuer has provided his report on 30.09.2020 and further there being no mention as to the property of Rayagada, Orissa as to how the said property would be treated, in the event the asset is retrieved by the Company, pursuant to the outcome of the pending litigation.

17. It was submitted that during the CIRP, the valuation was properly done by two registered valuers independently on the total assets of the Corporate Debtor and therefore the valuation process adopted by the Liquidator during the liquidation process is fundamentally flawed and against the requirements of the Code and Regulations framed thereunder.

18. Further, it was submitted that when the issue of the Rayagada property was discussed, the perception as apparent from the minutes was that although the said property was embroiled in litigation, that a major portion of the said property could be retrieved if the Corporate Debtor was to enter into a compromise with the Government. In this regard, it was submitted that the Applicants/Secured Creditors also directed the Liquidator (erstwhile Resolution Professional) to take a legal opinion from a Retired Judge or Senior Advocate specializing in land reform laws from Orissa, as seen in the 3rd and 4th CoC minutes; however, for reasons best known, it was never done by the Liquidator. In fact, even as per the Liquidator's own statement in the 17th COC, it was recorded as follows:

"The chairman of the meeting informed that he also took opinion from the same counsels who categorically assured that about 300 acres out of the total 792 acres of land which is under litigation now can be retrieved if the Corporate Debtor enters into compromise with the Government."

19. It was submitted by the Learned Senior Counsel that subsequently to the Liquidation of the Corporate Debtor by this Tribunal vide Order dated 29.05.2020, the Applicants were not aware of any further developments and were under the impression that the Liquidator was taking the necessary steps to retrieve the Rayagada Lands as per his own opinion, which he had procured



from a lawyer and thereby include the same as part of the final valuation. However, it was submitted that to their utter surprise, the Applicants received the letter dated 02.10.2020 and subsequently the reports of the valuers dated 30.09.2020 and 01.11.2020, which stated that the valuation of the Rayagada property was to be valued at zero and consequently the liquidation value of the Corporate Debtor was brought down to 223.21 Cores. In fact, in the valuation report dated 01.11.2020 submitted by Mr. R. Chandran, the registered valuer has specifically mentioned that he has not considered the valuation of the Rayagada property while arriving at the liquidation valuation of Rs.166 crores for the land and building of the Corporate Debtor. It is, therefore, absurd for the Liquidator to project before this Tribunal that the Applicants are attempting to derail the liquidation process. Further it was submitted that it was puzzling as to why the liquidator is thrusting the 230 scheme on the lenders and asking them to vote on the plan, when serious issues, as raised by the lenders, are required to be addressed and dealt with by this Tribunal.

20. Further, it was submitted by the Learned Senior Counsel for the Applicants that the issue of liquidation value, arrived at during the CIRP, could not be challenged by the Applicants at an earlier stage considering that no resolution plan was presented during the CIRP, which ultimately led to the company being ordered into



liquidation. It was submitted that the Applicants had thereafter by way of several correspondences and meetings, attempted to bring to the attention of the Liquidator the above issues and thereby smoothly resolve the same so that liquidation process could be continued without much hassle. It is, however, submitted that in view of the Liquidator taking no action, the Applicants were constrained to approach this Tribunal by filing the present application amongst others. It was submitted that the Liquidator by email dated 17.11.2020 had also advised the Applicants to implead themselves in the Section 230 application filed by him if they had any grievance against his actions.

21. It was submitted that, besides the above issues, the Liquidator, by making matters worse, has also gone ahead and circulated the draft valuation reports with the potential Resolution Applicants, thereby making them aware of the recent liquidation value of the Corporate Debtor, even prior to any of them making their offers. This action of the Liquidator, as stated above, is in violation of several provisions of the Code and Regulations, which clearly prohibits the disclosure of the same to the CoC/SCC itself, let alone the Resolution Applicants. It was submitted that the said act of the Liquidator is against the provisions of the Code and Regulations and has compromised the sanctity of the Section 230 process, which is required to be followed as per Regulation 2B of



the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It was submitted that the moment the Resolution Applicants are made aware of the liquidation value, which information is highly confidential and not to be disclosed, obviously the offers provided by them would also be for a limited / restricted amount. Considering the same, and the moment the Applicants were aware of there a being a drop of nearly Rs.100 Crore in the valuation of the Corporate Debtor, i.e. from Rs. 332 Crores during the CIRP as compared to Rs.223.21 Crores during the liquidation, and further considering that the Rayagada property was not included in the valuation, taking into consideration the interest of all the stakeholders, the Applicants communicated to the liquidator that the offers presented by the Resolution Applicants were not acceptable and that they at least provide their offers above the previous valuation of Rs.332 crores as arrived at during the CIRP.

22. However, it was submitted that the Liquidator had moved Applications before this Tribunal seeking for directions for the Applicants to start negotiations and vote on the plans presented to them. It was submitted that, as stated above and in the Application filed by the Applicants, their intention is not to in any manner derail the liquidation process but to solely ensure that the proper procedure is followed by the Liquidator so that interest of

all the stakeholders of the Corporate Debtor are protected and the maximization of the value of the assets of the Corporate Debtor are achieved, which unfortunately is not the case in the present proceedings.

23. It was further submitted that till date, the Liquidator has not even provided any explanation as to what are the steps taken by him in the pending litigation in Orissa and thereby ensure that the said property is retrieved for the benefit of the Company and its stakeholders, especially taking into consideration the opinion procured by the Liquidator himself from a counsel engaged by him, which clearly states that the issue between the Corporate Debtor and the government can be compromised. Further, it was submitted that the Liquidator has also not been clear as to how the said property would be treated in the event the Corporate Debtor is to succeed the pending litigation and whether the property would go to the potential resolution applicant(s) in the event the present plan is approved by the Applicants or if it would be given to the benefit of all the stakeholders. In fact, there is absolutely no specific mention of its treatment in the Resolution Plan presented by the Resolution Applicants, which thereby has necessitated the Applicants to approach this Tribunal so that the maximization of the value of the Corporate Debtor are achieved while safeguarding



and protecting the interests of all the stakeholders of the Corporate Debtor.

24. Therefore, it was submitted that considering the above significant issues, it is imperative that this Tribunal resolve and decide on this issue before dealing with any other points involved in the pending litigations. It was further submitted that this Tribunal has the power and scope to intervene and pass necessary directions to ensure that the Liquidator complies and follows the proper valuation of all the assets of the Corporate Debtor as per the Code and Regulations and ensure that maximization of the value of the assets of the Corporate Debtor are achieved, while also ensuring that the interests of the stakeholders are protected.

25. The Learned Liquidator has filed its written submissions and it was contended that the CoC lead by the Secured Creditors was the one who wanted to remove the value of land situated at Rayagada and that the Liquidator as advised by the CoC, referred to the expert legal opinion, based on the said opinion the valuers made the changes and the same was approved by the CoC and also this Tribunal. It was contended that the said Property was not mortgaged or realizable because of Orissa Land Reforms Act Proceedings and they are reflected in the balance sheet of the company which is listed in the stock exchange and money was

lend by the PSU Banks after knowing well about the facts. Further, it is stated in the written submissions that the Liquidator who was earlier the Resolution Professional has kept the lenders informed of all the proceedings on a day-to-day basis and during the SCC Meetings and it was submitted that lenders are in concurrence with all the acts / decisions of the Liquidator and never raised any objections.

26. Further, it was contended that the liquidator strictly followed the regulations and also gave the reasons for conducting a revised valuation to achieve the object of maximum realization to the Stake Holders. In support of his contention, the Learned Liquidator referred to the minutes of the CoC meeting, which is extracted hereunder;

Extract of the 2nd CoC Minutes

- i. The COC was very appreciative of the Resolution Professional's work, and also expressed satisfaction that CIRP expenditure is self-sufficient and FCs need not contribute any funds as there is no shortfall.
- ii. Chairman explained that it's not possible to reflect the views of every one during the discussion so there is a possibility of omission, hence requested them to raise the omissions if any after receiving the draft minutes.

Extract of the 3rd CoC Minutes

Valuation Report, though was not formally submitted by the valuers, the following valuations were provided by them and were placed before the members as under:



- (i) Mr. Sugumar and Mr. Chandran valuers for Land & Buildings came and presented their method /procedure followed by them in arriving at the said values after exhaustively carrying out the physical verification as already mentioned by them in the report. FC's representing IDBI and BOI in particular raised, several questions and the same were answered and the deliberations on this issue went on for about 30 minutes. It should be observed that some of the Land holding/title deeds are under dispute/pending before various courts. It was confirmed by the valuer that with respect to land and building of Rayagada unit, he has valued only those parcel of land which is not under dispute and is in possession of the company.
- (ii) The plant and machinery valued by Mr. Shantakumar also made his presentation. The representatives of BOI raised several queries and suggested slight modifications in the values considering the closure of the factories because of elections. They have also pointed out the immediate need for renewing the licenses and directed the resolution professional to renew the license which may run pending statutory liabilities like Pp; gratuity, ESI, income tax on long term capital gains, electricity dues also be paid. The license fees payable for renewal is Rs.2.25 Crores + GST.

Extract of the 4th CoC Minutes

RP explained the issues of litigation concerning Rayagada Land which is under OLR proceedings (Orissa land Reforms Act). The IDBI representative mentioned that the valuers while giving their report have considered the litigation aspects. The representative of BOI wanted a legal advice and moving Adjudicating Authority in respect of the property which is in the name of the Company and in its possession for securing a value with proper title deeds. RP was directed to obtain the legal opinion from some retired Judge or a senior advocate dealing in land reforms Act in the state of Orissa.



Extract of the 5th CoC Minutes

The RP placed the legal opinion obtained from legal advisor of the company for the Rayagada land. CoC drew kind attention of RP to the proceedings of 4th CoC meeting held on June 18, 2019, wherein RP was directed to obtain the legal opinion from some retired judge or a Senior advocate dealing in Land Reforms Act in the State of Odisha. However, CoC noted that the opinion placed before CoC was obtained from the Legal Advisor of the company and was obtained prior to the date of CoC on which the RP was requested to obtain the opinion. It was once again re-iterated by CoC to adhere to the directions given in the 4th CoC meeting held on June 18, 2019.

Extract of the 8th CoC Minutes

i. RP also informed CoC about the legal opinion received from the advocate at Rayagada. CoC discussed the matter and instructed Corporate Debtor to provide all relevant orders/documents to deliberate further in forthcoming CoC.

ii. CoC further instructed RP to sell all non-core assets such as Cars to realise money to run operations smoothly. RP explained the problems being faced by the workers union.

Extract of the 14th CoC Minutes

i. The CoC first took up the issue of valuation. The valuers have done valuation of the Land & Buildings. In particular to the Rayagada lands the CoC raised the issue of Litigation of Orissa Land reforms Act that is pending. The detailed analysis revealed that the matter is though stayed by the Honorable Orissa High Court, 36 Acres of land is given to store the slag. Since the Manganese ore production is stopped, no longer the slag will be kept, which means that marketability of entire 870 acres is in question.

ii. The CoC in their wisdom called for Legal opinion, two lawyers given their independent opinion and another

advocate our council of CoC was also requested to submit their opinion.

iii. The COC checked up with valuers whether this legal opinion will have any impact on the valuation that was given. If so, the valuers may consider appropriate necessary corrections or adjustments in their books. The valuers agreed to do the needful within a week's time.

Extract of the 15th CoC Minutes

1. Valuation report submitted by the valuers as per the request of the members in 14th CoC, to take into consideration the two expert legal opinions on the litigation at Rayagada because of OLRA proceedings. The valuers brought down the land values to nil (refer to the valuation report).

2. Valuation of the land excluded as per the directions of CoC led by the Petitioner after taking independent legal opinion.

The valuer of plant and machinery cautioned that the values given were more than 6 months old. The revised value for discussion would be less by 20 to 30% because of non-maintenance of the plant and machinery.

27. Thus, by referring to the above CoC minutes, the Learned Liquidator contended that the stand of Applicants has been vindicated from the above CoC meetings and hence prayed for the dismissal of the present Application.

28. We have heard the submissions made by the Learned Senior Counsel for the Applicant and also the submissions made by the Learned Liquidator and also perused the file including the pleadings placed on record. From the rival submissions made by

both the parties, the following issues are required to be determined by this Adjudicating Authority;

- (i) Whether the assets of the Corporate Debtor at Rayagada, Orissa, would form part of the 'Liquidation estate' of the Corporate Debtor and if so, whether ascribing valuation as zero on account of pending litigation, for the said property is right?
- (ii) Whether the decline in the valuation of the Corporate Debtor during the liquidation period was adequately addressed by the Liquidator and whether the valuation of the Corporate Debtor during the Liquidation process has been done in accordance with Regulation 35 of IBBI (Liquidation Process) Regulations, 2016
- (iii) Whether the Application filed under Section 230 of the Companies Act, 2013 for the sanction of Scheme in respect of the Corporate Debtor can be ordered without including the assets situated at Rayagada, which is valued as 'zero'.

Issue No. (i)

29. In so far the first issue is concerned, after considering the rival contentions made by both the parties, this Tribunal in the light of the provisions of IBC, 2016 is required to examine whether the assets of the Corporate Debtor situated at Rayagada, Orissa would form part of the 'Liquidation Estate' of the Corporate Debtor.

30. The fulcrum of the said issue revolves around the question of valuation of the Rayagada property. It is seen that during the CIRP period, the 1st Respondent / Liquidator has obtained a valuation



from the IBBI Registered Valuer dated 29.05.2019 which gives the total valuation of the Corporate Debtor as follows;

S. No.	LOCATION	VALUE OF LAND (CRORE)	VALUE OF BUILDING (CRORE)	TOTAL VALUE / FMV (CRORE)	REMARKS
1	Chagallu Sugars + Yernagudem	81.63	8.00	89.63	Yernagudam land for Agricultural use
2	Chagallu Distillery	49.25	1.75	51.00	-
3	Pothavaram	75.33	22.51	97.84	-
4	Jangareddigudam + Narasannapalem	38.23	1.54	39.77	Narasannapalem land for SSI use
5	Rayagada assets (5 places)	1087.98	2.56	1090.54	-
	Total	1332.42	36.36	1368.78	-

31. Thereafter, it is seen that the Learned Liquidator, at the instance of the Secured Creditors and on the pretext that the property at Rayagada, Orissa is under litigation and hence persuaded the Liquidator to obtain a Legal opinion. It is seen that Liquidator has obtained a Legal opinion in respect of the Rayagada property. At this juncture, the relevant extracts of the Legal opinion obtained by the Liquidator from one Mr. Nrushinga Nath Panda is extracted hereunder;

It is revealed from the records of J.S.Co.Ltd., that, the J.S.Co.Ltd., is in possession of lands as per the R.O.R to an extent of Ac. 784.90 in 13 numbers of Mouza (Revenue Villages). But they are in physical possession of Ac. 565.75. They have already surrendered the lands to the State of Odisha to an extent of Ac. 117.96 and others (Rayagada People) have occupied to an extent of Ac. 101.19.

There are numbers of cases relating to the lands of J.S.Co.Ltd., from 1974. At present situation no Sugar Company and ferrow-manganese factory is running on the land of J.S.Co.Ltd., and no lands are used for raising of sugarcane for

J.S.Co.Ltd., except few members to watch and ward the waste materials of J.S.Co.Ltd. Nobody are working for J.S.Co.(Sugar Factory). and ferrow-manganese factory. There is a dispute between the State & J.S.Co.Ltd., for no cause. So it can be sorted out, if J.S.Co.Ltd., will take a decision to mitigate the litigation.

I have gone through all the documents of the J.S.Co.Ltd., and found that except few lands there are recorded in Rayagada Nagar all are agricultural lands. In view of that these lands cannot be enforceable under SARFAESI Act.

The lands are in dispute with the Government of Orissa. The property is involved in OLR Proceedings with the Govt. under OLR Case No.60/74 which is still pending before the Revenue Officer, Rayagada as the O.L.R Proceedings are stayed by the Hon'ble High Court of Orissa in W.P.C.No.4490/2015 by the J.S.Co.Ltd. There is no record before me (supplied by the J.S.Co.Ltd.,) about the present status of the case in W.P.C.No.4490/2015 of Hon'ble High Court of Orissa.

It reveals from the records of the (supplied by the J.S.Co.Ltd., Rayagada) that the lands in question are indulged in OLR proceedings. So, it is not marketable and it cannot be disposed of. It cannot be mortgaged.

32. Thus, it is seen the Advocate has given the opinion that the lands in question are indulged in OLR Proceedings and hence it is not marketable and it cannot be disposed of and also cannot be mortgaged. Based on the said Legal Opinion one of the Registered Valuer viz. Mr. R. Chandran has ascribed the value as 'zero' for the property situated at Rayagada, Orissa. The extract of the said report is reproduced hereunder;

During the process of valuation, I have asked for latest legal opinion about all land owned / possessed by JSCo. But I was provided with one, which the company seems to have received earlier for some other purpose. We did our valuation based on the information provided to us. But later, the NCLT Bench at Chennai declined to accept the valuation of assets in Odisha / Rayagada, stating the legal dispute related to the land claimed to be owned by JSCo.

Hence, you have asked us to revisit the report and submit a revised report based on a new Legal opinion received from Advocate Nurshinga Nath Panda, of Rayagada. This Advocate has given a different opinion that the lands said to be owned by JSCo in Odisha can neither be sold nor be mortgaged now. This opinion completely changes the background and the values we have arrived at the earlier exercise. Hence, I have given you a new report on 28th Oct 2019. According to the said report the Odisha assets (including Land & Buildings) were valued as zero. So, the new value I arrived for the L&B assets of JSCo have come down 278.24 crore (Fair Value) and the Liquidation value as 212.80 crore.

Also, in the current exercise, which was done after the NCLT bench of Chennai accepted the JSCo case for Liquidation, the Odisha assets were not taken for valuation. Also, new situations like the COVID have emerged & impacted the market. Hence, the Realisable / Liquidation value of assets of JSCo currently stands as Rs.166 crore.

33. Thus, it is seen that the IBBI Registered valuers, based upon the Legal opinion given by the Advocates that the property of Rayagada is under litigation and has no marketable title and hence it cannot be disposed, have arrived at a value as 'zero'. Based upon the same, it is seen from the Asset Memorandum filed by the Liquidator before this Tribunal on 21.09.2020 that the Liquidator has not included the property of Rayagada assets and has arrived at a Realizable value of Rs.217.52 Crore. At this juncture, it is imperative for this Tribunal to ascertain as to what assets form part of the Liquidation Estate. Section 36(3) details the list of assets which are forming part of the Liquidation Estate, which is extracted hereunder;



36. Liquidation estate. –

(1)

(2)

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

34. Sub – section 3(e) of Section 36 of IBC, 2016 would clearly manifest the fact that the assets which are subject to the determination of ownership by the Court or Authority **would form**

part of the Liquidation Estate of the Corporate Debtor. Thus, on the basis of the Legal opinion obtained and on the pretext that the said property is under litigation and thereby ascribing the value as 'zero' for the said Rayagada Property which forms part of the Liquidation Estate would indirectly make Section 36(3)(e) of IBC, 2016 as *otiose*.

35. The valuers ascribing the value as 'zero' in respect of Rayagada property on the ground that the said property is under litigation has been done in total disregard of Section 36(3)(e) of IBC, 2016, which clearly manifest that the '*assets which are subject to determination of ownership by the Court or Authority*' would form part of the 'Liquidation Estate'. It is seen from the documents filed along with the typed set, that the valuers have not examined the nature of litigation and also failed to examine whether such litigation is relating to determination of ownership in respect of the Corporate Debtor.

36. It is required to be borne in mind that the valuation of the assets of the Corporate Debtor is different from the issue that whether Corporate Debtor has marketable title over the property. Simply because the Corporate Debtor has no marketable title over the property, does not make the value of the property as 'zero'. Further, the Liquidator who is holding the liquidation estate in a



fiduciary capacity for the benefit of the stakeholders is required to examine first as to what are the properties which are forming part of the 'Liquidation Estate'. The Valuation of the property has to be done by the Registered Valuers by keeping into consideration the parameters as set forth in Section 36(3) of IBC, 2016.

37. It is also pertinent to note here that from the Legal opinion obtained from the Advocate, it is seen that the Corporate Debtor is in possession of lands as per the R.O.R. to an extent of 784.90 acres of land in 13 number of Revenue village and that the Corporate Debtor is in physical possession of the land to the extent of 565.75 acres and that the Corporate Debtor has already surrendered the lands to the extent of 117.96 acres to the State of Odhisa and a land to the extent of 101.19 acres are occupied by the villagers. Thus, it is seen that atleast the Corporate Debtor is in physical possession of land to the extent of 565.75 acres of land and that simply on the pretext that the land to the extent of 228 acres of land is under litigation, the entire property at Rayagada cannot be valued as 'zero' and it strikes down the cardinal principal of IBC, 2016 which engulf on the concept of 'maximization of the value of the assets'.

38. Hence, it is seen that the Report of the Registered Valuers in ascribing the value as 'zero' for the Rayagada property is not valid

in the eye of law, more particularly by taking into consideration Section 36(3)(e) of IBC, 2016.

Issue No. (ii)

39. The second issue which is required to be adjudicated before this Tribunal is that whether the valuation of the Corporate Debtor during the liquidation process has been done in accordance with the Regulations framed under IBBI (Liquidation Process) Regulations, 2016 by the Liquidator and also whether the reasons for decline in the valuation has been adequately addressed. Regulation 35 of the IBBI (Liquidation Process) Regulations 2016 deals with the valuation of the assets of the Corporate Debtor intended to be sold, which is extracted hereunder;

35. Valuation of assets intended to be sold.

(1) Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or



businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

Provided that the following persons shall not be appointed as registered valuers, namely: -

- (a) a relative of the liquidator;
- (b) a related party of the corporate debtor;
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

40. *Prima facie*, it is seen that the Liquidator has not adopted the values which has been arrived at during the CIRP period and as per sub – regulation (2) of Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator ordered for a fresh valuation of the assets of the Corporate Debtor. However, it is a fact which is borne on record that the Liquidation value has been arrived at only by one set of valuers and the Liquidator has not obtained valuation from the second set of valuers in order to obtain a mean value. It is also seen that the Liquidator has ordered for a fresh valuation after filing of the present Application, which fact

itself shows that the Liquidator has not acted in accordance with Regulation 35(2) of IBBI (Liquidation Process) Regulations, 2016 which says that the Liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets. If the Liquidator would have appointed the second set of valuers simultaneously in accordance with Regulation 35(2) of IBBI (Liquidation Process) Regulations and also as per the request of the stakeholders, the issue in respect of decline in value to the tune of Rs.100 Crore could have been averted. Further, it is also seen that the Liquidator has also brushed aside the request of the stakeholders to order for fresh set of valuation, without assigning any reasons whatsoever.

41. Be that as it may, since the issue No. (i) is decided in favour of the Applicant, and that the Rayagada property forms part of the Liquidation estate, a fresh valuation is required to be made pursuant thereto in accordance with Regulation 35 of IBBI (Liquidation Process) Regulations 2016. Hence for the aforesaid reasons, the issue No.(ii) need not be further gone into by this Tribunal.

Issue No. (iii)

42. In so far as issue No. (iii) is concerned, it is required to be noted that as rightly pointed out by the Learned Senior Counsel for

the Secured Creditors that the Liquidator has not addressed the issue as to how he is going to deal with the property situated at Rayagada, which forms part of the Liquidation Estate and also it is pertinent to point out here that the said Rayagada property cannot be sold for a value of 'zero' in favour of a prospective scheme proponents.

43. The Hon'ble Supreme Court in the matter of **Maharashtra Seamless Limited -Vs- Padmanabhan Venkatesh & Ors.** in *Civil Appeal No. 4242 of 2019* at para 27 has held that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Further, it is required to be noted that the valuation report should be treated as a confidential document and it is used as a yardstick for the CoC / Stakeholders to negotiate with the prospective Resolution Applicant / Scheme Proponents in order to maximize the assets of the Corporate Debtor. However, in the present case it is alleged by the Secured Creditors that the Liquidator has shared the valuation Report with the prospective Scheme proponents and the Liquidator has nowhere in his counter has denied the same. Hence, the apprehension of the Secured Creditors that the sharing of the draft valuation report with the prospective Scheme proponents made them to quote the rates in line with the liquidation value seems to be plausible contention and that the Liquidator having not denied

them in his counter affidavit would go on to show that the Liquidator has not acted in accordance with the provisions of IBC, 2016.

44. The contention of the Learned Liquidator that the present Application is not maintainable in view of the fact that the Secured Creditors have an option to reject the proposal by voting against the Scheme is not tenable in view of the fact that the Secured Creditors have challenged the process in which the Scheme has been put forth before this Tribunal without adhering to the provisions of IBC, 2016 and also without proper valuation of the assets which are forming part of the Liquidation Estate. The said contention of the Liquidator would hold water only if the Scheme is placed before the stakeholders after the same is in conformity with the provisions of IBC, 2016 read with attendant Regulations framed thereunder. Since the fulcrum of challenge in the present Application pertains to the valuation of the Rayagada property and to include the same in the Asset Memorandum, the contention raised by the Liquidator that the Secured Creditors have an option to reject the proposal by voting against the Scheme, is not sustainable.

45. Another contention of the Learned Liquidator that the Secured Creditor have been silent from the period June 2020 till

April 2021 for almost a period of 10 months and suddenly in the month of April 2021 when the matter is about to be concluded, the Secured Creditors have moved this present Application and as such they are estopped from raising such an objection. In relation to such a contention raised by the Learned Liquidator that it is a well settled principle that there is '*no estoppel against a statute*' and that the principle of estoppel cannot supersede a statutory provision. When the Regulation 35(3)(e) of IBBI (Liquidation Process) Regulations states that the assets which are subject to the determination of ownership by the Court or Authority would form part of the Liquidation Estate, the Learned Liquidator cannot raise the principle of estoppel in order to negate the said contention. Thus, without valuing the Rayagada property and without including the said property in the Liquidation Estate and ascertaining a value to the said property, the Scheme in respect of Section 230 of the Companies Act, 2013 as moved by the Liquidator cannot be deliberated upon by the Stakeholders. Hence issue No. (iii) is decided in favour of the Applicant.

CONCLUSION:-

46. As a necessary sequitur, in view of the discussions made *supra*, as per Section 36(3)(e) of IBC, 2016 the Rayaga assets shall form part of the Liquidation Estate of the Corporate Debtor.



The Liquidator is directed to order for fresh valuation of the assets of the Corporate Debtor, including the Rayagada Property in accordance with Regulation 35(2) of IBBI (Liquidation Process) Regulations, 2016 and accordingly update the Asset Memorandum and thereafter invite the Schemes from the prospective Scheme proponents in accordance with Section 230 of the Companies Act, 2013.

47. With the above said directions, the IA/255(CHE)/2021 stands **disposed of**.

IA/256(CHE)/2021

48. In relation to IA/256(CHE)/2021 it is an Application filed by the Secured Creditors of the Corporate Debtor viz. M/s. Jeypore Sugar Company Limited seeking thereof to intervene as party Respondents to CA/816/CAA/2020 filed by the Liquidator under Section 230 of the Companies Act, 2013. In view of the findings rendered by us in IA/255(CHE)/2021, the prayer as sought for has become redundant and accordingly this Application stands **closed**.

IA/862/IB/2020 and IA/527(CHE)/2021

49. In relation to IA/862/IB/2020 and IA/527(CHE)/2021 it is an Application filed by the Liquidator against the Officials of the IDBI

Bank Limited seeking thereof to direct the officials of the IDBI Bank to extend full co-operation to the Liquidator in conducting the Liquidation proceedings and also to direct the Inspector of Police to carry out an investigation since the Respondents have tampered with the minutes of the CoC. In relation to IA/525(CHE)/2021, it is an Application filed by the Liquidator against the Officials of the IDBI Bank Limited seeking thereof to direct the officials of the IDBI Bank not to cause any impediment to the Liquidator in conducting the Liquidation proceedings. Since much water has flown under the bridge after the filing of the Application and in view of the findings given by this Adjudicating Authority in IA/255(CHE)/2021, we hereby **dispose of** the IA/862/IB/2020 and IA/525(CHE)/2021 with an observation that only if the Liquidator is able to work in tandem with the stakeholders, the Liquidation process in respect of the Corporate Debtor would reach its logical conclusion.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond