

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-02-2024 AT 10:30 AM**

**IA (IBC) 176/2024, IA (IBC) 7 & 732/2022, IA(IBC) 1489, 1404/2023 &
Ivn .P (IBC) 40/2023 in CP(IB) No.199/7/HDB/2019
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

IDBI Bank Ltd

...Financial Creditor

VS

Aster Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA(IBC) 1489/2023

Orders pronounced. In the result, **this application is dismissed.**

Ivn .P (IBC) 40/2023 in IA No 1489/2023

Since IA No 1489/2023 is dismissed, consequently **this application becomes infructuous.**

IA(IBC) 1404/2023

This IA No 1404/2023 also dismissed.

IA (IBC) 7, 732/2022 & IA (IBC) 176/2024

Matter adjourned to 11.03.2024 for hearing.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH-I, HYDERABAD**

IA (IBC)/1404/2023

In CP (IB) No.199/7/HDB/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Between

Triumph Global India Private Limited
Through its Authorised Signatory
Having registered office at:
Kochar Bliss, 4th Floor, A8 & A9,
TVK Industrial Estate, Guindy,
Chennai, Tamil Nadu – 600032

And Corporate Office at:
8-2-293/82/C/16/A, 3rd Floor, Plot No.16,
Susheela Pride, Road No. 07, Jubilee Hills,
Hyderabad, Telangana-500033
Email: rithish@tgpl.com.sg
Mobile: 9573501501

...Applicant

Vs.

Mr Naren Sheth
Liquidator, Aster Private Limited
Having Office at: Plot No.141/1, Phase-II, IDA,
Cherlapally, Hyderabad, Telangana – 500051.
Mobile Number: 9891848886
email: cirp@asterco.in ; nvsheth@mvindia.com

...Respondent

DATE OF ORDER: 20.02.2024

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Shri Vikram C. Puttapaga & Ms. Aakanksha
Nehra, Counsel.
For the Respondent : Mr. Naren Sheth, Liquidator.

PER: BENCH

ORDER

1. This is an Application filed by the Applicant under Section 52(5) read with 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking to:
 - a. Restrain the Respondent from taking the following assets of the Corporate Debtor on which the Applicant has security interest (and has exercised its right not to relinquish the security interest under Section 52 of the Code) to form a part of the liquidation estate:
 - i. Leasehold rights held by Aster Private Limited (hereinafter referred to as the “Corporate Debtor”) Plot No.2 to 7/1, RS No 497/P, 498/P499/P and 500 part, Savli (Alindra), GIDC Industrial Estate, District Vadodara, Gujarat;
 - ii. Leasehold rights in the lands situated at Bhootpur Village and Gram Panchayat, Bhootpur Mandal, Mahbubnagar District, Telangana with the following Survey Nos. (hereinafter referred to as “Bhootpur Property”)

Hereinafter collectively referred to as the “Said Properties”.
 - b. Direct the Respondent to provide its estimates to the Applicant as per First Proviso to Regulation 21A(2) of the Liquidation Regulations in respect of the said Properties, extend the time

period to comply with the Regulation 21A read with first Proviso of Regulation 21A(2) of the Liquidation Regulations by a further period of 180 days from the date of providing of estimates by the Liquidator; and/or

- c. During the pendency of the captioned application, pass an ad-interim ex-parte direction restraining the Respondent from taking any steps whatsoever in respect of the said properties.

2. Gist of the application:

- a. It is averred that while the directions for commencement of liquidation process were passed by this Tribunal vide its order dated 22.09.2021 passed in IA No 259 of 2021. The said order was directed not to be implemented by the Hon'ble National Company Law Appellate Tribunal vide its order dated 22.11.2021. However, the same stood vacated in the light of the dismissal of the appeal by the Hon'ble NCLAT vide its Final Order dated 23.02.2023. For completeness, it is stated that the Applicant has filed its claim on 22.10.2022. However, the liquidator admitted the claim of the Applicant only on 16.04.2023 and intimated his decision in this regard.
- b. It is averred that the applicant has thereafter requested the Respondent to permit the applicant to proceed with the realization of its security interest as required to be communicated by a liquidator as per Section 52 of the Code. However, only vide his email dated 26.04.2023 the Respondent stated as follows:

“ Dear Sir/Madam,

We have accepted your claim and the communication regarding the same was already communicated to you on 16th April, 2023. We reiterate that and as previously stated in our email, valuation of the assets is under progress, once it is available with us we will share the same. Kindly co-operate.

Further we have noted your request that you are not relinquished the security interest. In this connection we would like to bring your attention to the following provisions of IBC Code.

Under Liquidation Regulation 37 of the IBC Code

- (1) A 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
- (2) The liquidator shall inform the secured creditor within twenty one days of receipt of the intimation under sub-regulation (1) if a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation under sub-regulation (1), at a price higher than the price intimated under sub-regulation (1)
- (3) Where the liquidator informs the secured creditor of a person willing to buy the secured asset under sub-regulation (2), the secured creditor shall sell the asset to such person.
- (4) If the liquidator does not inform the secured creditor in accordance with sub-regulation (2), or the person does not buy the secured asset in accordance with sub-regulation (2), the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (1)
- (5) Where the secured asset is realized under sub-regulation (3), the secured creditor shall bear the cost of identification of the buyer under sub-regulation (2).
- (6) Where the secured asset is realized under sub-regulation (4), the liquidator shall bear the cost 53[***] incurred to identify the buyer under sub-regulation (2)

Under Liquidation Regulation 21A of the IBC Code

- (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, as it would have shared in case it had relinquished

the security interest, to the liquidator within ninety days from the liquidation commencement date; and
(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Thanks for making a note.

Regards

Liquidation Team, Aster”

- c. It is averred that the applicant was left with no other option, he immediately began to process to realise its security interest. However, impediments were faced by the Applicant due to the following reasons:
- a. The original title documents including the lease agreement pertaining to the Said properties have been received by the Applicant from the assignor banks only on the following dates in pursuance of the directions of this Hon’ble Tribunal passed in Company Petition No. (IB) No. 37/9/HDB/2018:
 - i. The Bhootpur property: by IDBI Bank on 15.06.2023;
 - ii. Vadodara Property: by Axis Bank on 26.06.2023;
 - b. The Bhootpur property is under seal by the Municipal Tax Authorities on account of dues pertaining to property tax from the Corporate Debtor and non-cooperation of the Respondent in resolving the said dispute despite admitting that no claim has yet been submitted by the Bhootpur Municipal Tax Authority.
 - d. It is averred that the applicant is left with no other option but to file the present application. In the light of the recent

communication issued by the Respondent alleging that the time period to conclude the process of realization of security interest is due to expire on 22.08.2023, the Applicant duly responded to the Respondent vide the email dated 21.08.2023 explaining the impediments faced. However, having not received any response and on further advise, the Applicant has proceeded to file the present application.

- e. It is averred that Section 21A of the Liquidation Regulations provides as follows:

“21A. Presumption of security interest.

- (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 the 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, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and*

- (b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted to the liquidator within one hundred and eighty 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.”

f. It is averred that Regulation 21A of the Liquidation Regulations merely prescribes the period for payment of the excess of realised value of the security interest, if any and does not provide for the time period to realise the security interest. In fact, the first proviso to Regulation 21A of the Liquidation Regulations, requires the Liquidator to provide the estimate to the relevant secured creditor, in case:

A. Amount payable under Regulation 21A(2) of the Liquidation Regulation is not certain;

B. The time period prescribed under Regulation 21A(2) of the Liquidation Regulations is due to expire.

g. It is averred that however, in the present case despite the Applicant seeking the estimate vide its email dated 21.08.2023, no response has yet been received. The last communication received by the Applicant from the Liquidator is the email dated 11.07.2023 and relevant extract whereof is reproduced herein below:

“ Dear Sir/Madam,

In continuation of our email of April 26th, 2023, and in accordance with the Decision of Not relinquishing the Security interest as per

your claim form dated September 22nd, 2021, Secured assets are in your possession, and we are expecting confirmation of the following.

1. The price at which you will realize the Not relinquished security.

Further we draw your attention to the Regulation 21A(3) of the Code “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”

Based on the above 180th Day is 22nd August (From NCLAT stay vacated date), kindly make a note and revert it...”

- h. It is averred that the present application is being preferred by the applicant seeking directions against the Respondent/Liquidator to ensure that the Applicant is able to efficaciously safeguard its security interest and no prejudice is caused to the Applicant. The Applicant is in the process of negotiating with serious interested parties and any adverse remark by the liquidator may derail the said negotiations.

3. Counter affidavit filed by the Respondent:

- a. It is averred that as the liquidator have published an advertisement regarding a notice of sale of assets under Liquidation regulation 32 of the IBC Code, between September 21 and September 23, 2023, the sale will take place.
- b. It is averred that the assets described by the petitioner in the application, in respect of the first property (2a) described by the IA petitioner, that the Gujarat Industrial Development Corporation (GIDC) allotted a Plot/shed of land no.2 to 7/1 area measuring about 145175.98 Sq. Meters in Savli Industrial Area to M/s Aster Private Limited vide license agreement, the lease

applicant has agreement for utilization of said plot for 99 years. M/s Aster Private Limited pledged leasehold rights of the above land as collateral security to IDBI Bank and Axis Bank to obtain financial assistance for its sister concern M/s Aster Building Solutions Private Limited.

- c. It is averred that in the year 2018 M/s Aster Building Solutions Private Limited has undergone the CIRP process, and a resolution plan submitted by M/s Triumph Global India Private Limited (formerly known as Yap trading company) was approved by Hon'ble NCLT vide order dated 04.06.2019. Whereas the resolution plan also includes the assignment deed executed by IDBI & Axis bank in favour of M/s Triumph Global India Private Limited (**formerly known as Yap trading company**) and the liquidator's e-auction notice dated August 21, 2023, does not include the aforementioned property.
- d. It is averred that in the second property described by the IA petitioner (2b), Aster Private Limited is the owner of the said property, Aster Private Limited executed a non-cancellable lease agreement with its sister concern M/s Aster Building Solutions Private Limited till 2038.
- e. It is averred that on the Asset described in 2(a) & 2(b), Aster Private Limited lenders have the Second Pari passu charge.
- f. It is averred that since Aster Private Limited is under liquidation, the date of liquidation commencement is 21st September 2021, thereafter, NCLAT imposed a stay.

- g. It is averred that on the liquidation process till 23.02.2023. Following that, the liquidation procedure is proceeded.
- h. It is averred that the petitioner, M/s Triumph Global India Private Limited, submitted its claim to the liquidator as a secured financial creditor with the option of not relinquishing its security in favour of the liquidation estate, Aster Private Limited, and the Liquidator accepted their claim and informed the petitioner.
- i. It is averred that regarding Bhoothpur property the Liquidator/ Respondent already replied on 17.07.2023 through email that:
- “ The Boothpur 34 acres property was given as a security along with the corporate guarantee to ABSPL lenders in order to get a loan from IDBI and Axis. Due to non-payment, the land was taken over by banks, and thereafter ABSPL was admitted under the CIRP process. Furthermore, the liquidator does not have physical possession of the 34 acres (leased land) and, Boothpur municipal tax dues with the liquidator. Regarding the other issues as per your email, please take up with your bankers, IDBI and Axis” and the liquidator vide email dated April 26, 2023, informed the Applicant that **“Liquidator is initiating the process to sell the company as a going concern”. Please note that Baroda Property not relinquished by you was excluded from the liquidation estate under the going concern sale.***
- j. It is averred that the applicant failed to comply with Regulation 21A(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Hence, the said assets have become part of the Liquidation Estate as per Regulation 21A(3) Section 52 and 53(1)(b) of the Code are two alternative routes available to a secured creditor. The applicant further relied on Section 36(3)(g) of the IBC, it is amply clear that in

case of assets subject to security interest, only such of the assets become part of the liquidation estate over which the secured creditors have relinquished security interest.

k. It is averred that M/s Triumph Global India Limited submitted a claim to the liquidator including these two properties, which has been already admitted by the liquidator.

4. The Counsels for the applicant have filed written submissions by reiterating the same facts which are mentioned in the application.
5. In the light of the contentions put forth by both the parties, the following point emerges for our consideration :

Point : “Whether Applicant’s prayer for restraining the Liquidator from including 2 properties of Corporate Debtor in the Liquidation estate can be considered in view of the “provisions of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016 and other facts of the case ?”

6. We have heard Shri Vikram C. Puttapaga, Learned Counsel for the Applicant and Shri VVSN Raju and Ms. JVL Bharati, Learned Counsels for the Respondent/ Liquidator, perused the records and the written submissions and applicable provisions of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016.

Point : “Whether Applicant’s prayer for restraining the Liquidator from including 2 properties of Corporate Debtor in the Liquidation estate can be

considered in view of the “provisions of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016 and other facts of the case ?”

Regulations 21A of IBBI (Liquidation Process) Regulations, 2016 , which is relevant regulation to decide the point is reproduced hereunder:

“21A. Presumption of security interest.

(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 the 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, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted to the liquidator within one hundred and eighty 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.”*

Submissions:

7. The Applicant submits that Applicant is having security interest in 2 properties and applicant has already requested the Liquidator vide its e-mail dated 18.04.2023 not to relinquish these properties. The Liquidator also replied on 26.04.2023 through which the Liquidator noted the above said request for relinquishment of the property. Thus, Section 52(2) and regulation 21A (1) , wherein it is provided that if security creditor fails to take a decision within a period of 30 days the security interest being held by security creditor will be deemed to be part of security interest is complied with.
8. The applicant further contended that as far as provisions contained in Regulation 21A(2) are concerned, the provision relating to 21A(2)(a) regarding payment of CIRP cost, Liquidation cost and workmen dues for 24 months which was to be paid within 90 days from the Liquidation commencement date could not be complied as the Applicant's share in the cost were intimated for the first time vide e-mail dated 29.09.2023 and the Applicant is in the process of taking action in that regard. The applicant further submitted that in respect of compliance of 21A(2)(b) of the Liquidation Regulations in which

excess of realised value of the assets which is subject to security interest is to be paid to the liquidator within 180 days from the Liquidation commencement date could not be complied as amount was not certain and Liquidator has till date not intimated the estimates as required under first provision to Regulation 21A(2) of the Liquidation Regulations. The applicant would contend that in view of the above, the question of not having complied with sub-regulation does not arise. The Applicant also contended that only requirements is to intimate the liquidator of the price at which sale of the security assets has been effected as per regulation 37 of the Liquidity Regulations. Furthermore, the Applicant submitted that there is no prohibition for the Secured Creditor even to retain the assets on which it holds the Security interest at the intimated value, in case the Liquidator does not have any buyer on the valuation higher than that. The Applicant further submitted that it has informed the liquidator vide e-mail dated 20.09.2023, marked as Exhibit-A filed with Written Submission that it proposes to realise its security interest in respect of the Vadodara property at the price of Rs.50 Crores only . The Liquidator vide e-mail dated 29.09.2023 marked as Exhibit-B replied that it has received valuation of Rs.64.30 Crores and Rs 66.21 Crores for the said property.

9. The applicant further submitted that as per Regulation 37 of the Liquidation Regulations, the Liquidator had 21 days' time to report a better offer for the said period which expired on 11.10.2023 and no

response of better offer have been received by the Respondents till date.

10. The Applicant rejected the contention of the liquidator that applicant filed its claim for full amount and also did not relinquish the properties , thus has not approached this Tribunal with clean hands and submitted that filing of claim for full amount cannot be treated that applicant has relinquished its security interest.
11. The Respondent submitted that the Applicant though is the first Charge Holder on these securities, but not the sole charge holder, as the lenders of the Corporate Debtor/ Aster Private Limited are also secured creditors having Second Pari passu charge over these assets.
12. The Respondent further contended that in terms of “Regulation 37(1) Liquidation Regulations” , the Applicant was informed vide emails dated 11.07.2023 and 26.04.2023 to confirm the prices at which the Security Creditor will realise the assets and in terms of the said regulation the liquidator has to intimate back the secured creditor within 21 days whether he has some other buyer offering better prices. But, the Applicant did not comply with regulations 37(1) as it did not inform the price on which it proposes to sell the security assets which are not relinquished.

13. The Respondent/ Liquidator further submitted that Regulation 21A(3) clearly says that if secured creditor fails to comply with sub-regulation (2), the asset, which is subject to the security interest, shall become part of the liquidation estate . Because in this case, the applicant could not comply with regulation 21A(2) within 180 days from the Liquidation commencement date, therefore in terms of the 21A(3) the subject property shall become part of the liquidation estate. The Respondent further submits that vide its email dated 11.07.2023, he advised the applicant that once 180 days are over i.e on 27.08.2023, if Applicant could not comply with Regulation 21A(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 the subject assets will become part of the liquidation estate.

14. The Liquidator further submitted that creditor has filed its claim for the entire amount, and has also not relinquished the security interest which is in contrast because if it has filed claim for the full amount which is admitted also, he can not realize its security interest outside liquidation. The Liquidator contended that the Applicant has not approached this Tribunal with clean hands, their intentions are not good and are detrimental to the interests of other creditors, and they are unnecessarily interfering with the liquidation process.

OUR FINDINGS:

15. We have considered submissions made by both the parties and perused all the relevant sections and regulations in respect of relinquishment of secured assets and presumption of security interest. Section 52(2) of IBC, 2016 provides that the secured creditors have to identify and inform the liquidator about the secured interest which it does not want to relinquish and want to realise at its own. This section does not lay down any timeline but regulation 21A (1) provides that this act of informing to the Liquidator has to be completed within 30 days from liquidation commencement date , otherwise the secured assets will become part of the liquidation estate. Further, Section 52(3) provides that before any secured interest is realised, liquidator has to verify the request received from secured creditors and permit the secured creditor to go ahead with the realisation of the security. We find in this case that the Applicant requested on 18.04.2023 to the liquidator in terms of section 52 of the Code and was replied by liquidator vide email dated 26.04.2023. The Liquidator though did not give any explicit permission for realisation of secured assets but noted the request for not relinquishment of securities, thus it can be treated as complied. The Liquidator has also not made a case that section 52(2) was not complied with. Therefore, we can treat that section 52(2) was complied with along with regulation 21A(1) .
16. Regulation 37(1) of Liquidation Regulation, 2016 provides that the secured creditor which is to realise the security interest under section

52 shall intimate liquidator of the price at which he proposes to realise its secured assets. Regulation 37(2) further provides that liquidator has to reply the secured creditor within a period of 21 days from the receipt of the intimation under regulation 37(1) whether he has any person who is offering higher price than the price intimated by secured creditor as per regulation 37(1). We find from the records that the Applicant has failed to intimate the liquidator about the price in terms of Regulation 37(1) at which he proposes to realise its secured assets and therefore has not complied with regulation 37(1). However, the Applicant after filing of this application has intimated liquidators on 20.08.2023 about the price on which it proposes to sell the said property in which it has security interest which cannot be treated as compliance of regulation 37(1) as more than 6 months from commencement of liquidation process is already over by that time.

17. We have perused regulation 21A which talks about presumption of security interest. Regulation 21A(1) provides that if secured creditor does not inform the liquidator of its decision to relinquish its secured interest to the liquidation estate the security interest shall be presumed to be part of the liquidation estate. Admittedly, this is not applicable in this case as applicant has informed on 18.04.2023 to the liquidator about its decision for not relinquishing the security interest and liquidator also replied to the same on 26.04.2023.
18. Regulation 21A (2) (a) provides for payment of CIRP cost, liquidation cost and workmen dues for 24 months within 90 days from the

liquidation commencement date by secured creditor and we find that this clause has not been complied with . We did not agree with the contention of the applicant that it could not be complied with because no details were provided to the applicant by the liquidator. We find from the records that the Applicant has also not made any efforts to inquire and subsequently pay its share of costs for complying Regulation 21A(2)(a). Applicant has not paid its share in the costs inspite of getting an e-mail from liquidator on 29.09.2023.

19. As far as compliance of 21A(2)(b) is concerned, we find that it has also not been complied with. We also do not agree with the contention of the Applicant that because the liquidator has not submitted the estimate he could not pay the amount. In our view , the starting point is compliance of Regulation 37(1) of Liquidation Regulation, 2016 which provides that the secured creditor which is to realise the security interest under section 52 shall intimate liquidator of the price at which he proposes to realise its secured assets, which was not complied with by the applicant. We find from the records that though liquidator has not submitted any estimates but he certainly reminded the applicant on 11.07.2023 about the compliance of 21A(2) and reminded that if the said regulation is not complied with within 22.08.2023 the security interest will become part of the liquidation estate. At this stage also, the applicant did not ask the liquidator about estimates , so that it can comply with the regulation, instead the applicant filed this application on 24.08.2023 with a request to direct the liquidator to provide

estimates to the applicant and to restrain the liquidator from taking these assets into liquidation estate.

20. We also find that explanation given by the applicant for filing claim for the entire amount instead of net amount after deducting the amount which it can realise from the securities outside liquidation estate, is not convincing .
21. Further, we find that these securities are not exclusively charged to the applicant but the lenders of Corporate Debtor also has second Pari Passu charge on these assets. In our view, the Pre-CIRP arrangement of ranking of charges ceases to exist once the Corporate Debtor is put into liquidation as no section in IBC provides for sub-clauses within secured creditors . IBC only recognizes secured creditors as one class, whether it is first charge holder or second charge holder. In view of this, the other secured creditors though second charge holders also becomes secured creditors for the properties referred in this application.
22. In view of the above facts and findings, we hold that Applicant's prayer for restraining the Liquidator from including 2 properties of Corporate Debtor in the Liquidation estate can not be considered in view of the violations of "provisions of IBC, 2016 and IBBI (Liquidation Process) Regulations, 2016 and in view of other facts as discussed above. Accordingly the point is decided.

23. In view of our answer to the point before us and also considering the facts as discussed above, we decide that this application is liable to be dismissed. Hence, we hereby dismiss the same. However, without costs.
24. The Liquidator is directed to treat both the secured assets as part of Liquidation Estate and proceed accordingly and file a compliance report within 15 days.

SD

Charan Singh
Member (Technical)

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Swapna/ Sridher

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH-I, HYDERABAD**

IA (IBC)/1489/2023

In CP (IB) No.199/7/HDB/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Between

Preca Solutions India Private Limited

Through its Authorized Representative

Being the lead member of the consortium with Dr Madala Srinivasu,

Ms. Madala Anithaa and MSA Ventures Private Limited

Having its registered office at:

Plot #6, D. No. 2-9/5/6, 2nd Floor,

Venkata Sai Gateway, Green Land Colony,

Gachibowli, Hyderabad – 500032.

Mobile Number: +91-9908656789

Email: satish@preca.in

...Applicant

VS

CA Naren Sheth

Liquidator, Aster Private Limited

Having Office at: Plot No.141/1, Phase-II, IDA,

Cherlapally, Hyderabad, Telangana – 500051.

Mobile Number: 9821133426,

email: cirp@asterco.in ; nvsheth@mvindia.com

...Respondent

DATE OF ORDER: 20.02.2024

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Shri T.S. Anirudh Reddy, Counsel.

PER: BENCH

1. This is an Application filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 32 Read with Regulation 32A and Regulation 33 read with Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 seeking to
 - a. Permit the applicant to acquire the Corporate Debtor as a going concern on such terms and conditions as provided in this application as mutually agreed between the Applicant and the Respondent in compliance with the provisions of the Code read with the Liquidation Regulations; and/or.
 - b. Cancel the ongoing auction process in pursuance of E-Auction notice dated 21.08.2023 (Auction scheduled to be held on 20.09.2023, 21.09.2023 and 22.09.2023) as issued by the Respondent in respect of sale of different assets of the Corporate Debtor on a piecemeal basis; and/or
 - c. During the pendency of the present application, grant an ex-parte ad-interim stay on the presently ongoing auction process in pursuance of E-Auction notice dated 21.08.2023 (Auction scheduled to be held on 20.09.2023, 21.09.2023 and 22.09.2023);
2. **Gist of the application:**
 - 2.1 It is averred that this application is filed by the applicant, being an interested party to acquire Aster Private Limited (hereinafter referred to as “Corporate Debtor”) as a going concern and submitted its expression

of interest in an earlier round of auction being conducted in pursuance of Auction Notice dated 21.07.2023 issued by its Liquidator, CA Naren Sheth (hereinafter referred to as “Respondent”) bearing the following details:

- a. Last date of Submission of EMD: 17.08.2023
- b. Period for conducting due diligence (and conducting site visits): 21.07.2023 till 12.08.2023
- c. Reserve Price: Rs. 263,00,00,000/- (Rupees Two Hundred Sixty-Three Crores Only)
- d. Date of Auction: 19.08.2023.

2.2 It is averred that the applicant had sincerely participated in the said auction process. However, due to the enormity of the affairs of the Corporate Debtor, the applicant was left with no other option but to seek an extension of time from the Respondent for a period of 10 (ten) days *vide* email dated 17.08.2023. The Applicant was also in the process of getting the EMD deposited.

2.3 It is averred that the abovementioned extension was not granted to the applicant *vide* email dated 17.08.2023. During this period as well, the Applicant was making its best efforts to complete due diligence of the documents and assets of the Corporate Debtor. However, the said process could not be completed and the EMD could not be deposited within the prescribed timeline.

2.4 It is averred that however, the applicant was informed that in the meanwhile the respondent had published an E-Auction Notice dated

21.08.2023 with respect to the Corporate Debtors Assets on a piecemeal basis and the same is scheduled to be conducted on 20.09.2023, 21.09.2023 and 22.09.2023. The said e-auction on a piecemeal basis was issued due to the failure of the earlier round of auction that was proposed to be conducted for selling the Corporate Debtor as a going concern and further submitted that the sale on piecemeal basis is merely a fallback option provided under the Code only when the sale of the corporate debtor as a going concern is not possible.

2.5 It is averred that as mentioned above, as the sale of the Corporate Debtor as going concern should always be preferred over the piecemeal basis as the going concern sale is in the interest of all the stakeholders, the Applicant has approached this Hon'ble Tribunal in extreme urgency seeking prior permission of this Tribunal under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as "Liquidation Regulations") to conclude the sale of the Corporate Debtor as a going concern at a price above the Reserve Price prescribed in the E-Auction Notice dated 21.07.2023 i.e., Rs 263,01,00,000/- (Rupees Two Hundred and Sixty Three Crores One Lakh Only) and to duly comply with the applicable terms and conditions or an alternative payment mechanism as described in Paragraph 1.8 of this application.

2.6 It is averred that the applicant has also seeking imposition of stay on the ongoing auction process and no third-party rights have yet been created.

Hence, no prejudice will be caused to any party if the opportunity being sought under this application is granted to the applicant.

2.7 It is averred that it has been upheld by the Hon'ble Supreme Court that every endeavour ought to be made to save a company from being exposed to the rigours of the process of liquidation. Hence, it is in the interest of the Corporate Debtor if this one opportunity is granted to the Applicant and would be in compliance of the legislative intent of the Insolvency and Bankruptcy Code, 2016 and this will ensure the survival of the Corporate Debtor as well as the maximization of the value of the Liquidation Estate of the Corporate Debtor, especially as the cumulative value of the Reserve Price of difference assets in the subsequent auction notice dated 21.08.2023 i.e., Rs. 257,07,00,000/- .

2.8 It is averred that upon taking cognizance of this application by this Tribunal, the applicant shall forthwith pay/handover the 10% of the Reserve Price i.e. Rs. 26,30,10,000/- and furthermore, the applicant undertakes to act in compliance with the agreed applicable terms and conditions.

3. **Counter filed by the Liquidator/Respondent:**

3.1 It is averred that the Corporate Debtor herein was admitted for CIRP on 19.11.2019 and the applicant herein was appointed as the IRP and later confirmed as RP. The Corporate Debtor herein was ordered for liquidation vide order of this Tribunal dated 22.09.2021 and the Liquidator/ Respondent has been appointed as the Liquidator of the Corporate Debtor herein namely Aster Private Limited.

- 3.2 It is averred that against the order of the Liquidation of the Corporate Debtor herein, the unsuccessful Resolution Applicant has preferred an Appeal before this Tribunal and there has been operation of stay on the liquidation proceedings, until this Tribunal has dismissed the said appeal on 23.02.2023. subsequently, an Appeal preferred against the Order of this Tribunal before the Hon'ble Supreme Court has also been dismissed on 25.08.2023.
- 3.3 It is averred that the Liquidator herein has issued a public announcement for the sale of the Corporate Debtor herein as a going concern and the sale of the Corporate Debtor as going concern was scheduled on 21.07.2023 and out of the 5 EoIs received by liquidator in response for sale notice of Corporate Debtor as a Going Concern one of the EoIs was submitted by M/s Preca Solutions India Private Limited (Applicant), However neither the Applicant herein nor the other four applicants who had furnished EoIs, have deposited the EMD amount, as per the terms of auction, leading to failure of the auction and by this time the period of 90 days prescribed under "GOING CONCERN SALE" had expired.
- 3.4 It is averred that subsequent to failure of the E-auction of Corporate Debtor as a going concern, the liquidator in terms of Resolution No.4 of the 2nd adjourned SCC meeting dated 11.06.2023, and published an E-Auction Notice dated 21.08.2023 with respect to E-auction of the Corporate Debtor's Assets on a piecemeal basis and accordingly, the E-

Auction for the same was scheduled to be conducted on 20.09.2023, 21.09.2023 and 22.03.2023. The Liquidator has published the process memorandum dated 21.08.2023 and also the Version 2 of process memorandum dated 25.08.2023 and made available to the eligible participants, who have filed their EOI. At clause 8 of the version 2 of the process memorandum, the liquidator has clearly indicated about the pendency of matter before the Hon'ble NCLT vide IA No. 685/2021.

The abstract of the same is placed as under for ready reference:-

“Letter received from TSIIC for cancellation of land allotment, Plot. No. 130 at IDA Mallapur, Liquidator filed. IA before NCLT (IA No. 685/2021)- “

- 3.5 It is averred that there were fourteen items listed for sale with a total reserve price of Rs. 257,07,00,000 (Rupees Two Hundred Fifty-Seven Crore Seven Lakh Only). Meanwhile, prior to receipt of e-mail dated 13.09.2023 from Applicant, the Liquidator had received 234 bid applications from 52 applicants for the 14 items proposed to be sold via E-auction.
- 3.6 It is averred that the applicant herein had sent an unsolicited e-mail dated 17.09.2023 to the Liquidator, requesting for a period of 24 months for making payment of Rs. 230,76,90,000/- or for a period of 90 days for making payment of Rs. 236,70,90,000/-, in addition to remittance of an amount of Rs. 26,30,10,000/- as upfront payment in both the scenarios.

- 3.7 It is averred that the liquidator vide his e-mail dated 17.09.2023 informed that, Item wise sale is going on and last date of remittance of EMD amount for participation in the said E-auction is 18.09.2023 and to deposit EMD amount by 18.09.2023 and participate E-auction process. The Item wise sale of assets of Corporate Debtor was taken up only after the failure of attempted sale of Corporate Debtor as a Going Concern and it may be mentioned that, Applicant has not remitted EMD amount on both the Occasions viz. on-Going Concern Basis and also on piece meal basis.
- 3.8 It is averred that the applicant met the liquidator to discuss the prospects about “Going Concern sale”, but the applicant has stated that it would not be possible for them to make payment of EMD and which was already been brought to the notice of this Tribunal along with the status report filed by the respondent counsel on 20.09.2023.
- 3.9 It is averred that this Adjudicating Authority vide its order dated 20.09.2023 has passed an interim order; directing liquidator to put the auction scheduled on hold in pursuance of the e-auction notice dated 21.08.2023 and all proceedings pursuant thereto, on hold. The status of the auction and the assets yet to be auctioned which was mentioned in counter.
- 3.10 It is averred that the amount realised in the auction dated 20.09.2023 and 21.09.2023 itself for eight out of ten items stands at Rs. 173.14 Cr and the expected amount to be realized on 22.09.2023 for the balance

items stands at around Rs. 31.81 Cr., the third day's sale have been postponed as per the interim direction of this Tribunal.

3.11 It is averred that the auction pertaining to items No. 3 & 5 are still pending for the reason of non-receipt of the EMD and the auction of the said items in near future would fetch minimum of amount of Rs. 52.33 Crore.

3.12 It is averred that various bidders are demanding for refund of EMDs from the Liquidator and there is every possibility that if these bidders walk out, it would further diminish the value of the assets of the Corporate Debtor, thereby defeating the value maximization of the Corporate Debtor and the applicant herein has no intention to acquire these assets either as "Going Concern" or under item-wise sale. They failed to make payment of EMD in both auctions and they just want to create hurdles.

3.13 It is averred that the Regulation 32A of the IBBI (Liquidation Regulation), 2016:-

"Liquidation Process Regulation 32A says: (1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses 9(a) to 9(d)."

In view of the above, the liquidator herein has exercised the first option “GOING CONCERN SALE” which did not fetch any EMDs.

3.14 It is averred that in the 2nd SCC meeting it was already discussed and advised by the SCC that the liquidator shall make attempt to sell the Corporate Debtor as a going concern and in case of failure, the liquidator shall proceed with sale of the assets in piecemeal basis.

3.15 It is averred that after consulting the stakeholders consultation committee and upon their advice, the Liquidator has advertised item-wise sales and for the CoC to decide regarding “Going Concern Sale”, in this case too as per CoC recommendations liquidator tried “Going Concern Sale” and now the same members of CoC are in Stakeholders’ Committee and failure of “Going Concern Sale”, the committee recommended for item wise sale, since liquidation is a time-bound process and to keep on trying for the same will consume more time.

4. In the light of the contest put forth by both the parties the following point has been framed.

Point: “ Whether this application seeking order from the Tribunal to acquire CD without participating in the auction process is maintainable ?”

5. This is an application filed by the Applicant with a prayer for seeking order for acquiring Corporate Debtor as a going concern and cancel the ongoing Auction process on a piecemeal basis. The first Auction

process by Liquidator was conducted as a going concern and the Applicant also participated in the said process and submitted Expression of Interest and has failed to submit the EMD amount and the application in time. We heard advocates from both sides and liquidator in person and perused written statements and other documents submitted to the Tribunal.

Point: “Whether this application seeking order from the Tribunal to acquire CD without participating in the auction process is maintainable ?”

Submissions:

6. The learned counsel for applicant contended that decision of Stakeholder Consultation Committee to go for auction process on a piecemeal basis instead of selling Corporate Debtor as a going concern is not in the overall interest of the stake holders, hence direction is sought for cancellation of the ongoing auction process . The Applicant further submitted that he is ready to pay the price above the reserve price prescribed in the e-auction notice dated 21.07.2023 if the Corporate Debtor is offered to him as a going concern. The Applicant also contended that he is forthwith ready to pay 10% of the reserve price if his offer is accepted.
7. On 20.09.2023, we heard the Liquidator and the Learned Counsel on this point. The Liquidator submitted that since the Liquidator has put the Corporate Debtor for sale as a going concern once, he cannot put it again for sale as a going concern as per Regulation 32A (4) of IBBI

(Liquidation Process) Regulations 2016. On this point, we clarified in the order dated 20.09.2023 that the submission of the Liquidator in respect of Regulation 32A(4) is not correct and Regulation 32A(4) does not put any such bar in selling the assets of the Corporate Debtor in subsequent actions as a going concern. Since , one asset i.e., Plot No.130 in IDA, Mallapur was also included in the auction process though the said property was under dispute and IA.No.685 of 2021 was filed by the Liquidator to recall Cancellation-cum-Rejection order issued by TSIIC in respect of this property, this Tribunal in view of these facts, put the auction on hold in pursuance of the e-auction notice dated 21.08.2023 and all proceedings pursuant thereto on hold till further orders.

8. The Respondent/Liquidator submitted that the Corporate Debtor was offered as a going concern on 21.07.2023. The sale of Corporate Debtor was scheduled on 21.07.2023 as a going concern and five EoI's were received by the Liquidator. However, none including the Applicant in this IA deposited the EoI amount as per the terms of the Auction, leading to failure of the Auction on a going concern sale basis. The Respondent/Liquidator further submitted that in terms of Resolution 4 of the 2nd adjourned SCC meeting dated 11.06.2023, he published an E-auction Notice dated 21.08.2023 with respect to E-Auction of the Corporate Debtor's Assets on a piecemeal basis and accordingly, the E-Auction for the same was scheduled to be conducted on 20.09.2023, 21.09.2023 and 22.03.2023. In respect of pendency of IA.No.685 of 2021, the Respondent clarified that in Clause 8 of the Version 2 of the

process memorandum, the liquidator has clearly indicated about the pendency of matter before the Hon'ble NCLT vide IA.No. 685 of 2021.

9. Further, the Respondent submitted that vide his e-mail dated 17.09.2023, the Applicant was advised to participate in the said E-Auction process, however, he has not shown his willingness to participate in the said process and filed this Application to stall the process of liquidation of Corporate Debtor.
10. The Liquidator further contended that in the E-Auctions dated 20.09.2023 and 21.09.2023, he has already received bids for an amount of Rs.173.14 Crores for 8 items and for the other 2 items, he is expecting to receive bids for a sum of more than Rs.31.81 Crores. Also, auction pertaining to items 3 and 5 are also expected to fetch a minimum amount of Rs.52.53 Crores, as IA.No.685 of 2021 has already been adjudicated. Thus, the total amount expected to be received is Rs.257.48 Crores which is more than the reserve price fixed by the SCC for this auction. In view of the above facts, the Liquidator sought to allow to continue the same on a piecemeal basis as resolved by SCC in its meeting dated 11.06.2023.

Our findings:

11. Having gone through all the facts and records, we find that Applicant's contention that he may be allowed to acquire the Corporate Debtor as a going concern without participating in the E-Auction process is not maintainable and not as per law. We further observe that the Applicant

did not participate in the process when an opportunity was available to him and also did not show any interest in the 2nd action process. Further, we find that SCC in its wisdom has already resolved to sell the Corporate Debtor on a piecemeal basis.

12. In view of the above facts, we decide that this application is not maintainable and the point is decided accordingly. In view of the same, this application is dismissed and disposed of.
13. The interim order dated 20.09.2023 putting the sale process on hold is vacated and the Liquidator is allowed to continue the process of auction as per law and submit report within 15 days.

SD

Charan Singh
Member (Technical)

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Swapna/ Sridher