
(2025) 03 NCLAT CK 0687

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 592 of 2024 & I.A. No. 3167 of 2024 & 1166 of 2025

Phoenix ARC Pvt. Ltd.

APPELLANT

Vs

Kuldeep Verma Liquidator of KS Oils Ltd. & Ors

RESPONDENT

Date of Decision : 20-03-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 52, 53
Companies Act 2013 — Section 230, 231
IBBI (Liquidation Process) Regulations, 2016 — Section 21A

Citation : (2025) 03 NCLAT CK 0687

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T)

Bench : Division Bench

Advocate : Amit Singh Chadha, Suresh Dutt Dobhal, Shikhar , Abhinav Sharma, Krishnendu Dutta, Sidhartha Sharma, Arjun Asthana , Shalini Basu, Vivek Sibal, Aditya J. Pandya, Siddharth Sangal , Richa Mishra

Final Decision : Dismissed

Judgement

ASHOK BHUSHAN, J.

M/s Phoenix ARC Pvt. Ltd. has filed this Appeal challenging order dated 16.02.2024 passed by National Company Law Tribunal, Indore Special Bench, Court No.1 in MA No.3 (MP) of 2023 rejecting MA No.3(MP) of 2023 filed by the Appellant objecting to the decision of Liquidator to include the Haldia property in the Liquidation Estate.

2. Brief facts necessary to be noticed for deciding the Appeal are:

(i) The liquidation process against the Corporate Debtor ("CD") KS Oils Ltd. commenced vide order dated 16.03.2021 passed by this Tribunal in Company Appeal (AT) (Ins.) No.98 of 2021.

(ii) In pursuance of publication issued by Liquidator inviting claims, the Appellant

filed its claim in Form-B dated 14.04.2021 for an amount of Rs.793,45,16,428/-. The Appellant also claimed security interest in the immovable property of 12.84 acres in District Purba, Medinipur, Mauza Debhog J.L. No.149 and all plant and machinery attached to it or permanently fastened to anything attached. In Form-D, the Appellant did not relinquish its security interest for "Haldia Unit", whereas security interest in respect of all other securities were relinquished.

(iii) Some time was taken in the liquidation proceeding in considering a scheme submitted under Section 230 of the Companies Act, 2013. After scheme having been not approved, the NCLT vide its order dated 06.01.2023 directed the Liquidator to proceed with the liquidation.

(iv) On 10.01.2023, the Appellant sent an email to the Liquidator reiterating its decision of non-relinquishment of its security interest of the Haldia Unit assets. On 20.01.2023, the Appellant sent a letter to the Liquidator claiming to handing over the possession of 8.02 acres, which in the earlier report was not claimed as security assets of the CD. The Liquidator by letter dated 21.01.2023 handed over Haldia property to the Appellant of 12.08 acres. With regard to claim of 8.02 acres, it was communicated that the said has already been part of the Liquidation Estate.

(v) On 14.07.2023, the Liquidator communicated to the Appellant that Haldia Unit has become part of the Liquidation Estate by virtue of Section 21A of IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Process Regulation"). On 17.07.2023, the Appellant objected to the email dated 14.07.2023 of the Liquidator and submitted that it has received two offers of Rs.35 crores and Rs.40 crores for Haldia Unit. After communication dated 14.07.2023, the Liquidator issued a Sale Notice on 19.07.2023 for Haldia Unit for reserve price of Rs.74.21 crores. It is relevant to notice that prior to issue of Sale Notice for Haldia Unit, the Liquidator has already issued Auction Notice for sale of CD as going concern, excluding the Haldia Unit, which remained unsuccessful.

(vi) After issuance of Sale Notice dated 19.07.2023, the Appellant filed a MA No.03 of 2023, objecting to the decision dated 14.07.2023 of the Liquidator and further praying for setting aside the Sale Notice dated 19.07.2023 for Haldia Unit. In the application, a reply was filed by the Liquidator. In pursuance of the Sale Notice dated 19.07.2023, no bids were received. Further, Sale Notices have been issued by the Liquidator including the Sale Notice dated 20.09.2023 and 28.10.2023. Last Sale Notice was issued for Haldia property on 03.01.2024 fixing the auction of Haldia property on 02.02.2024 for reserve price of Rs.57,10,54,500/- for Block A, which included immovable and movable properties.

(vii) One Halder Venture Limited was declared as successful bidder in the Stakeholder Consultation Committee ("SCC") Meeting held on 03.02.2024. A Letter of Intent ("LoI") was issued. Halder Venture had deposited the 10% of the amount as EMD.

(viii) The Adjudicating Authority by the impugned order rejected MA No.03 of 2023. The Adjudicating Authority held that non-compliance by the Appellant of Regulation 21A, sub-regulation (2), the assets of Haldia Unit has become the Liquidation Estate of the CD. It was held that the Appellant failed to comply with the requirements of Regulation 21A(2). Hence, entire property is part of the Liquidation Estate. It was further noticed that inspite of handing over symbolic possession on 21.01.2023 of 12.84 acres of land, the Appellant could not take steps for sale of the secured assets. The Adjudicating Authority by the impugned order dated 16.02.2024 rejected the MA. Aggrieved by which order this Appeal has been filed.

3. IA No.1166 of 2025 has been filed by Halder Venture Limited seeking direction to the Liquidator to accept the balance consideration of Rs.51,39,54,500/- along with interest and further direction to the Liquidator to handover vacant and peaceful possession of Haldia manufacturing unit.

4. We have heard Shri Amit Singh Chadha, learned Senior Counsel

appearing for the Appellant; Shri Vivek Sibal, learned Senior Counsel appearing for the Liquidator; Shri Krishnendu Datta, learned Senior Counsel appearing for Applicant in IA No.1166 of 2025; and Siddharth Sangal, learned Counsel for Respondent Nos.2 to 9 other secured creditors.

5. Learned Counsel for the Appellant submits that the Appellant while submitting its Form-D on 14.04.2021 has already indicated that it is not relinquishing its security interest in Haldia property assets. The Liquidator has also recognized the right of the Appellant regarding Haldia Unit vide email dated 21.01.2023, when possession was handed over. It is submitted that secured creditor has already exercised its right by not relinquishing security interest by virtue of Section 52 of IBC and Regulation 21A of Liquidation Regulation. There has been no default or refusal on the part of the Appellant to pay its share of amount payable under Section 53(1)(a) and 53(1)(b)(i). The Appellant claims is of Rs.793,46,16,428/- and the Haldia property could fetch the amount of only Rs.57,10,54,500/-, hence, there is no question of any payment as per Regulation 21A(2)(b). It is submitted that the Liquidator never gave any estimate of the amount to the Appellant as contemplated under first proviso of sub-regulation (2) of Regulation 21A. There has been no failure on the part of the Appellant in complying with Regulation 21A, sub-regulation (2). The decision of the Liquidator to treat the Haldia Unit as assets of the CD is wrong and illegal. It is the duty of the Liquidator to inform the secured creditor of estimate under Regulation 21A, if any amount is required to be paid. The finding of the Adjudicating Authority that Appellant has failed to comply with Regulation 21 is erroneous. It is further submitted that the Appellant has also security interest of 8.02 acres of land as communicated on 21.01.2023, possession of which ought to have been handed over to the Appellant.

6. Learned Senior Counsel for the Liquidator refuting the submission of the

learned Counsel for the Appellant submits that the Appellant has relinquished security interest only with regard to 12.84 acres of land of Haldia Unit vide his Form-D dated 13.04.2021 and the Appellant did relinquish its security interest in all other assets including 8.02 acres of the Haldia Unit. The Haldia Unit of 12.87 acres was handed over to the Appellant by the Liquidator on 21.01.2023 and within 90 days, neither necessary charges as required to be paid by the Appellant under Regulation 21A, sub-regulation (2) was paid, nor there was any communication till the expiry of 180 days. On 14.07.2023, the Liquidator intimated that Haldia Unit form part of liquidation and thereafter Sale Notice was issued on 19.07.2023 for Haldia assets. On 17.07.2023, for the first time, the Appellant informed that he has received two offers from interested parties of Rs.35 crores and Rs.40 crores. After three failed auctions of Haldia Unit under the Sale Notice dated 30.01.2024, Haldia property was sold for Rs.57.10 crores in favour of Halder Venture, whose bid has also been approved. The LoI was also issued on 02.02.2024. It is submitted that as per Regulation 37, it was obligation of the Appellant to communicate the Liquidator the amount for which the secured creditor is proceeding to sale the assets. No steps were taken by the Appellant under Regulation 37, nor it made necessary payment towards the amount payable under clauses (a) of sub-section (1) of Section 53, which was required to be done within 90 days from liquidation commencement date, which having not been done, the Haldia Unit became the part of the Liquidation Estate. According to own case of the Appellant, the value of the assets of Haldia Unit was Rs.50 crores and Unit having been sold at Rs.57.10 crores, there is no error in auction conducted by the Liquidator.

7. Learned Counsel appearing for other Financial Creditors, i.e. Respondent Nos.2 to 9 has supported the decision of the Adjudicating Authority and submits that on account of Appellant having failed to comply with sub-regulation (2) of Regulation 21A, the Liquidator has rightly taken the Haldia Unit of 12.84 acres as part of the Liquidation Estate. It is submitted that with regard to 8.04 acres of Haldia property, no communication was sent by the Appellant within one month from the liquidation order dated 16.03.2021, hence, the said asset was already part of the liquidation. It is submitted that according to own case of the Appellant, it has received the offer from two parties of Rs.35 crores and Rs.40 crores only.

8. We have considered the submissions of learned Counsel for the parties and perused the record.

9. After order was passed by this Tribunal on 16.03.2021, directing for liquidation of the CD, Form-D was submitted by the Appellant on 14.04.2021, communicating its decision of not relinquishing its security interest with respect of Haldia Unit. In Column 8A of Form-D, following was mentioned:

"8A

WHETHERSECURITY

Sr.No.

Property

Security

INTEREST

Interest

relinquished

RELINQUISHED

1

Haldia

No

2

All

other

Yes"

Securities

(except

Haldia Unit)

10. In Column 8, details of security held was mentioned. With regard to Immovable Property owned by Borrower Company, in Column 8, following was mentioned:

"8

DETAILS

OF

ANY

Immovable

Property

owned by

SECURITY

HELO,

THE

Borrower Company

1. First Exclusive Charge over Haldia

VALUE

OF

THE

Unit Assets:

SECURITY,

AND

THE

Plot No. 633P, 813P, 815P, 819P,

DATE IT WAS GIVEN

820P, 821P, 822P, 823P, 824, 825,

826,

827P,

829P,

1629P,

1630P,

1631P, 1632P, 1633P, 1634P, 1662P,

1663P, 1664P, 1665P, 1666, 1667P,

1668, 1669, 1670P, 1671P and 1674P

for an area of 12.84 acres in District

Purba, Medinipur, Mauza Debhog J.L.

No. 149 together with all building and

structures thereon and all plant and

machinery attached to earth or

permanently

fastened

to

anything

attached to the earth, both present

and future

2. First pari Passu Charge over other

Fixed assets:

- i. Leasehold factory land and building at A. B. Road, Industrial Area, Morena
- ii. Free hold factory land and building at Gram Silavati, Guna (24 different Khasra Nos.) admeasuring 31.08 hectares
- iii. Freehold factory land and building at Khasra No. 838, 839 and 840, Village Tatjode, tehsil Ladpura, Kota admeasuring 3.36 Hectares
- iv. Khasra no. 783 and 792 in village Tathode, Tehsil Ladpura, Kota, Rajasthan admeasuring 4.10 hectares
- v. Khasra no. 783 and 792 in village Tathode, Tehsil Ladpura, Kota, Rajasthan admeasuring 4.10 hectares
- vi. Free hold factory land and building of the plant at Village Khara Kheri, Ratlam in Madhya Pradesh"

11. Thus, the Haldia Unit measuring 12.84 acres together with plant and machinery was the assets for which security interest was not relinquished. With respect to other assets, security interest were relinquished.

12. It is an admitted fact that on 20.01.2023, the Appellant has written a letter to the Liquidator pleading that possession of assets and land parcel of 12.87 acres be handed over. In letter dated 20.01.2023, the Appellant also referred to 8.02 acres, which was not captured by Phoenix ARC Pvt. Ltd. in its earlier reporting. It is useful to notice email dated 20.01.2023, sent by the Appellant to the Liquidator, which is as follows:

"Dear Sir,

The captioned Corporate Debtor has been ordered to be liquidated vide NCLAT order 16.03.2021. Pursuant to the said order, Phoenix has submitted separate claims/ Form D before you for its outstanding amount under Phoenix

Trust FY 15-15 and Phoenix Trust FY 14-3. The security interest mentioned in the Form-D for Phoenix Trust FY 15-15 consist of exclusive charge of Phoenix on the haldia property which includes Land admeasuring 12.87 acres, Building, Plant and machineries. It may be mentioned herein that while, the Borrower has created mortgage of only 12.87 acres by way of registered mortgage, the Borrower had subsequently at the time of deposit of title deeds, however deposited the title deeds of the entire property admeasuring 20.46 acres and accordingly it is submitted that the entire secured asset has since been

mortgaged exclusively in favour of Phoenix.

The above facts of the mortgage creation of 8.02 acres in favour of Phoenix and/or its assignor lender was not captured by Phoenix in its earlier reporting and filing on account of the inadvertent error and failure to verify the title documents deposited by the authorised officer of Phoenix handling the account. To substantiate our claim, please find enclosed the title deeds dated 24.04.2009 handed over by the Assignor lender, pertaining to 8.02 acres

In view of the said deposit and availability of the title documents it is crystal clear that the Borrower had deposited the same with the intention to create mortgage for the said land and hence Phoenix is claiming its right, title and interest as mortgagee for the said balance land of 8.02 acres. Request you to handover the possession of the entire mortgage property admeasuring 20.46 acres.

In view of the revised claimed on the secured property kindly let us know what steps Phoenix as lender should take to revise its Form D.

Regards,

Mahesh Malunjkar”

13. The above email was replied by the Liquidator on 21.01.2023. The Liquidator handed over the symbolic possession of 12.87 acres to the Appellant. The email sent by Liquidator on 21.01.2023 is as follows:

“From:

Sent:

To:

Cc:

Subject:

acres

Kuldeep Verma liquidation.ksoils@gmail.com

21 January 2023 10:38

Mahesh Malunjkar

Ajit Kewin; Kinnary Silgiri

Re: Phoenix mortgage on entire haldia plant-20.46

Dear Sir,

Thanks for your mail. As per our detailed discussions regarding your request for the handover of symbolic possession of the Haldia Asset including 20Acres approx land parcel of the Corporate Debtor. The undersigned has carefully gone

through all the records available including the MRA entered into by the then secured financial creditors of the Corporate Debtor and the Security Trustees namely SBI Caps which clearly indicates security interest of only 12.87 Acres of land parcel at Haldia unit of the Corporate Debtor along with plant and machinery, building, stocks and all other assets on the 12.87 acres are mortgaged to Phoenix Arc.

As per your request, the undersigned hereby hand over symbolic possession, subject to payment of outstanding security costs for said assets built on land parcel of 12.87 Acres to Phoenix Arc, under section 52 of IB Code, as per your claim document submitted before the undersigned. You are also requested to file an additional Form D (including affidavit) for the balance land parcel as indicated in your trail mail along with all records available with you to establish the security for balance 8 Acres (approx) land parcel of the Haldia Asset of the Corporate Debtor to enable the undersigned do the needful.

Kind regards, Kuldeep Verma

Liquidator of

KS Oils Limited (in liquidation)"

14. The Appellant, thus, received the Haldia Unit, with regard to which it did not relinquish its security interest and thereafter, it was required to take steps for sale of its secured interest as per the Liquidation Regulations.

15. We may now notice relevant Regulations of IBBI (Liquidation Process) Regulations, 2016 for answering the issue raised herein. Regulation 37 provides for steps to be taken by the security interest holder. Chapter-VI of Liquidation Regulation deals with realization of assets, in which Chapter, Regulation 37 provides as follows:

"37. Realization of security interest by secured creditor

(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 66[***] incurred to identify the buyer under sub-regulation (2).

(7) The provisions of this Regulation shall not apply if the secured creditor enforces his security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993).

(8) A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.”

16. The first step which secured creditor has to take is to intimate the Liquidator of the price at which he proposes to realize its secured asset and it was thereafter the Liquidator was to inform as to whether a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation, at a price higher than the price intimated under sub-regulation.

17. Now we notice Regulation 21A, which fell for consideration in the present proceeding. Regulation 21A 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 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 subregulation 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.

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.”

18. This Regulation has been inserted with effect from 25.01.2019. Sub-regulation (2) of Regulation 21A provides “Where a secured creditor fails to realise its security interest, it shall pay”. Thus, the obligation to pay the amount as referred to in sub-clause (a) of sub-regulation (2) of Regulation 21 is on the security interest holder. It is relevant to notice that the requirement of making the payment as provided under 21A (2) (a) is 90 days from the liquidation commencement date. In the present case order of liquidation was passed on 16.03.2021 and Adjudicating Authority directed the Liquidator to proceed on with liquidation on 06.01.2023, which is treated to be liquidation commencement date. Ninety days’ time came to an end on 06.04.2023. The assets were handed over to the Appellant of Haldia Unit on 21.01.2023, as noted above. There was no communication by the Appellant to the Liquidator. The learned Counsel for the Appellant submitted that the Liquidator having never estimated the expenses, there was no occasion for the Appellant to deposit the amount. The learned Counsel for the Appellant has relied on proviso to Regulation 21A, sub-regulation (2). The proviso begins with the expression “Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable, the secured creditor shall pay the amount, as estimated by the liquidator”. The Appellant was part of the SCC and has throughout participated in the Meetings of the SCC. The Appellant himself has brought on the record the Minutes of the proceeding of SCC held on 20.11.2023, which indicate that the Appellant was also part of the said Meeting. With regard to Haldia Assets, the SCC in its Minutes of the Meeting, noticed following:

“For Haldia Assets:

It was suggested by all present members of the SCC (other than Phoenix Arc) that the reserve price should be reduced by 5% and further attempt should be made to sale movable (including all plant

& machineries) and immovable assets (land and buildings) separately by the liquidator.

Liquidator took note of the suggestions/advice from the SCC. Liquidator stated that he has already taken a decision that Haldia plant forms part of the

liquidation estate and have published 3 sale notice for e-auction in the past.

He is of the view that it will be in best interest of the creditors that sale notice is published by reducing reserve price by further 5% from Rs. 60,11,10,000 to Rs.57,10,54,500 and will strip the Haldia Unit into moveable (including plant & machinery) and immovable assets. The sale notice should be subject to outcome of application filed by Phoenix ARC."

19. It was as per the decision dated 20.11.2023, the reserve price of Haldia Unit was reduced to Rs.57,10,54,500/-. Of course, the steps for sale was subject to decision of the IA filed by the Phoenix. It is further relevant to notice that admitted claim of different stakeholders and their percentage, including Phoenix was noticed by providing contribution towards the cost, which is relevant to notice and is as follows:

"Security costs, Legal costs, paper publication costs, Virtual data room, retainer fees etc.

Liquidator stated that the outstanding security guards costs is Rs. 6.83ccr. The security service provider is following up since long for payment and have also stated that the service provider is not in a position to continue if some payment is not released immediately. There are other costs also incurred for legal advisors, paper publications, VDR, retainer fee for respective plants etc.

After deliberations the liquidator requested to contribute Rs. 1.50cr immediately towards the above cost in the following ratio in addition to insurance amount:

"Sr.

Name

% of

Liquidation

No.

admitted

Cost to be

claim

contributed

(Rs.)

1

State Bank of India

31.0

4,649,140

2

Phoenix

ARC

Private

21.1

3,163,247

Limited (Acting in Capacity

as Trustee of Pheonix Trust

FY 14-3

3

IDBI Bank Limited

16.2

2,422,794

4

Life Insurance Corporation

2.6

397,353

of India

5

Phoenix

ARC

Private

6.1

921,937

Limited (Acting in Capacity

as Trustee of Phoenix Trust

FY 15-15)

6

Central Bank of India

6.8

1,018,281

7

Union

Bank of

India

6.7

1,009,941

(Erstwhile Andhra Bank)

8

The Federal Bank Limited

2.6

390,035

9

Punjab National Bank

4.4

657,008

10

Jammu & Kashmir Bank

2.5

370,264

Limited

Total

100.0

15,000,000"

Liquidator informed that the contribution shall be considered as Liquidation cost and shall have priority at the time of distribution under Section 53 of IBC, 2016.

The contribution can be made to the following bank account:

1. Beneficiary: KS Oils Limited (in liquidation)

2. Bank-State Bank of India

3. Account number: 40085751347

4. IFSC: SBIN0001971”

20. The Phoenix ARC entire percentage of admitted claim is Rs.21.1 + Rs.6.1 and rest of the claims admitted belong to other secured creditors, i.e, Respondent Nos.2 to 9.

21. The present is a case where no steps were taken by the Appellant under Regulation 37 and at no point of time, even a communication was sent by the Appellant to the Liquidator for informing about the estimated amount required to be paid under Regulation 21A (2) (a). As noted above, the Applicant as a secured creditor was to make payment under sub-regulation (2) of Regulation 21A, within 90 days from the liquidation commencement date. When obligation is linked with the time period, the Appellant cannot fall back on the argument that the Liquidator has not communicated the estimated amount to the secured creditor. When secured creditor at no point of time even asked for estimated amount from the Liquidator and no steps were taken under Regulation 37 by the Appellant, it is not open for the Appellant to contend that Regulation 21A, sub-regulation (2) shall not apply, since he was not communicated the estimated amount by the Liquidator. In this context, we may further notice second proviso of Regulations 21A(2), which provides as follows:

“21A (2) xxx xxx

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 subregulation 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.”

22. The second proviso clearly protects the interest of the secured creditor to the extent that if there is any difference between the amount payable under sub-regulation (2) and the amount paid under the first proviso, the Liquidator or the creditor, as the case may be, is to do the needful. Thus, even if, a secured creditor, who does not write to the Liquidator for any estimation or Liquidator does not send any estimate and any amount is paid by the secured creditor, he is well protected by second proviso and thus, the secured creditor cannot fall back on the argument that Liquidator having never communicated the estimated amount, sub-regulation (2) of Regulation 21A is not attracted.

23. We, thus, are of the view that the view taken by the Liquidator as well as by the Adjudicating Authority that by virtue of sub-Regulation 2 of Regulation 21A, Haldia Unit is also part of the Liquidation Estate of the CD, is correct and cannot be faulted. It is further relevant to notice that the Appellant in its Appeal in paragraph 9.4 has pleaded that secured assets/ Haldia property is worth more than Rs.50 crores. It is useful to notice the following part of paragraph 9.4:

"8.4 xxx xxx xxx

In the present case, Liquidator has created a disastrous situation where against an admitted claim of Rs.793,45,16,428/- (Rupees Seven Hundred Ninety Three Crores Forty Five Lacs Sixteen Thousand Four Hundred & Twenty Eight Only) and despite having an exclusive specific charge on a secured asset/Haldia property worth more than 50 crores, the Appellant/Phoenix ARC is now forced to accept a fraction of the sale consideration of Haldia property and lose its mortgagee rights on Haldia property forever. Such an interpretation of law has never been intended and would be disastrous for the economy."

24. In paragraph-1 of the Appeal, the Appellant has stated following:

"1. xxx xxx xxx

.....The Respondent/Liquidator admitted the claim of Appellant/

Phoenix ARC 15-15 for a sum of Rs.793,45,16,428/- (Rupees Seven Hundred Ninety Three Crores Forty Five Lacs Sixteen Thousand Four Hundred & Twenty Eight Only), while the value of the secured asset was assessed by the Respondent/Liquidator itself below Rs. 60 Crores."

25. Thus, according to own case of the Appellant, the value of the secured assets of the Haldia property was less than Rs.60 crores and the Liquidator was able to sell the said assets at Rs.57.10 crores. Learned Counsel for the Appellant has contended that the Appellant had received offer from two interested parties for the Haldia assets of Rs.35 crores and Rs.40 crores. It is further relevant to notice that after the Liquidator sent an email dated 14.07.2023 at 18:24 informing the Appellant that under Regulation 21A, Haldia Unit is now part of the Liquidation Estate. The Appellant wrote on 14.07.2023 at 08:15 PM, stating following:

From: Mahesh Malunekar

Sent: Friday, July 14, 2023 8:15 PM

To: Kuldeep Verma <liquidation.ksoils@gmail.com>

Cc: Ajit Kewin <ajit.kewin@phoenixarc.co.in>; Ramesh Verma <liquidation1.ksoils@gmail.com>; Vivek

Sibal <cviveksibal@yahoo.com>; Aditya Pandya <advocateadityapandya@gmail.com>

Subject: RE: In the matter of KS Oils Limited (Corporate Debtor): Intimation under Regulation 21A of the 1881 (Liquidation Process) Regulations, 2016 for the security interest being Haldia Unit in the name of Corporate Debtor now forms part of the liquidation es

Dear Sir,

Phoenix has gone through the contents of your mail and regulation 21A of the

IBC (Liquidation) Regulations, 2019 duly in furtherance to would like to place on record the following facts:

In furtherance to the Form-D submitted by Phoenix ARC Private Limited acting in its capacity as Trustee of Phoenix Trust FY15-15 (hereinafter referred to as "Phoenix") dated April 14, 2021 wherein it had not relinquished the security hereinbelow described in "Schedule-A" and after unsuccessful attempts of selling K.S. Oils Limited (In liquidation) (hereinafter referred to as "CD") as a going concern under the provisions of Sections 230 to 232 and other applicable provisions (if any) of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and under Regulation 28 and Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2019, phoenix informed you to handover the possession of the scheduled property via email dated January 20, 2023. Although no action has been taken by your office in furtherance to the email, phoenix has continued with its efforts in realizing the security and has received two expressions of interests (hereinafter referred to as "EO") for purchase of the property as per the provisions of Regulation 37 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

Bid amounts quoted by the two interested parties are Rs. 35,00,00,000/- (Rupees Thirty-Five Crores Only) and Rs. 40,00,00,000/- (Rupees Forty Crores Only) respectively, among the two bids phoenix has considered the bid of Rs. 40,00,00,000/- (Rupees Forty Crores Only) as the highest bid.

In furtherance to the OIs submitted with Phoenix during the month of June, 2023 as informed to your good office immediately over meeting and as per the procedure laid down under Regulation 37 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, had communicated to you about the bids and also requested you to let us know the way forward.

However, to our surprise and shock we are in receipt of the appended email, the contents of which are contrary to the discussions and understanding the undersigned has been having with you in the matter. Kindly note that Phoenix strongly disputes and objects to the action and contents proposed and/or contemplated in the email appended hereto and calls upon you to desist from taking any action as contemplated in the notice failing which, Phoenix will be constrained to take such legal action as may be advised at your costs and expenses, which please note."

26. Thus, according to own case of the Appellant he had received quotation for the purchase of property as per the Regulation 37 with respect of Haldia Unit. It is to be noted that prior to the above email, at no point of time, the Appellant has intimated about any offer received by it to the Liquidator. In any view of the matter, due to non-fulfillment of obligation under Regulation 21A (2), the Haldia Unit has become part of the Liquidation Estate and the Liquidator has rightly proceeded to issue Sale Notice with the concurrence of SCC. We,

thus, do not find any error in the order of the Adjudicating Authority, rejecting MA No.03 of 2023.

27. Now, we come to IA No.1166 of 2025 filed by Halder Venture Ltd., the successful bidder. In the application, the Applicant prayed for following relief:

"1. MAIN RELIEFS:

Wherefore, in light of the below mentioned facts and circumstances, it is most humbly prayed that this Hon'ble Appellate Tribunal be pleased to:

1.1 Direct the Liquidator of K S Oils Limited to accept the balance auction consideration of INR 51,39,50,000 (Indian Rupees Fifty One Crore Thirty Nine Lakh and Fifty Thousand only) along with interest as directed by this Hon'ble Appellate Tribuna;

1.2. Direct the Liquidator of K S Oils Limited to handover vacant and peaceful possession of the Haldia Manufacturing Unit Asset of K S Oils Limited to Halder Venture Limited upon receipt of the balance sale consideration as prayed above at paragraph (1.1);

In the alternative:

1.3 Direct urgent listing and hearing of the appeal being Company Appeal (AT) (Insolvency) No.592 of 2024;

1.4 Such further or other order and/ or directions as this Hon'ble Appellate Tribunal may deem fit and proper."

28. From the facts, which have been brought on the record, it appears that SCC in its Meeting dated 03.02.2024 has declared the Halder Venture Ltd. as successful bidder. Halder Venture has submitted the EMD of Rs.5,71,00,000/- on 30.01.2024. We have already noticed that as per the SCC decision, auction of Haldia Unit was subject to order passed by NCLT in MA 03 of 2023, which MA remained pending till the order was passed by the Adjudicating Authority on 16.02.2024. It is further relevant to notice that Liquidator on non-payment of entire amount by Halder Venture, has proceeded to issue fresh Sale Notice for auction to be held on 30.08.2024. It has been submitted before us that no bidder came forward and no auction has yet taken place of the units. The successful bidder, Halder Venture is ready to deposit the balance amount. Learned Counsel for the Liquidator has also referred to and relied on the judgment of the Hon'ble Supreme Court in V.S. Palanivel vs. P. Sriram, CS, Liquidator, Etc. – Civil Appeal Nos.9059-9061 OF 2022 decided on 28.08.2024, where the Hon'ble Supreme Court has held that Liquidator has no jurisdiction to extend the time to deposit the amount, whereas the NCLT shall have jurisdiction to extend the time.

29. We, thus, are of the view that sufficient cause has been made out to allow IA No.1166 of 2025 and permit the Halder Venture to deposit the balance amount with 12% interest within 30 days from today. The Liquidator is directed to take further steps in accordance with law.

30. The Appeal is dismissed, subject to as directed above. Pending IAs, if any, are disposed of. There shall be no order as to costs.