

(2023) 06 NCLT CK 0087

In the National Company Law Tribunal

Case No : I.A.(IB) No.1687/KB/2022 IN C.P (IB) No.108/KB/2019

State Bank of India Vs Shyamal Kumar Bhattacharjee ?

Date of Decision : 07-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 52, 52(1)(b), 52(2), 52(3), 60(5)
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 —
Regulation 21A, 21A(2), 21(A)(3)

Citation : (2023) 06 NCLT CK 0087

Hon'ble Judges : Bidisha Banerjee, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Shaunak Mitra, Vikash Singh, Zeenat Shabab, Om Narayan Rai,
Deblina Lahiri, Mrinmoy Chatterjee, Teresa Chetree, Meenakshi Manot, Saubhik
Chawdhury, Tirthankar Das, Kumarpal R. Singh

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial)

1. Heard Ld. Counsel for the parties.
2. This application has been preferred by the applicant to seek the following reliefs inter alia;
 - a. To quash and/or set aside the letter dated 15.12.2022 served by the Respondent No. 1 to the Applicant, being Annexure-"A-19" herein, whereby the Respondent No.1 has attempted to treat all the assets subject to security not yet relinquished as being part of the "Liquidation Estate" of the Liquidator and has decided to start auction for disposal of the entire property of the Corporate Debtor as a going concern.
3. The order dated 15.12.2022 (Annexure-19) impugned herein reads as under:

" The Chief Manager
State Bank of India,
Jeevan Deep Building 1,

Middleton Street, Kolkata-700071

Attn: Mr.Kallol Bhattacharya

Sir,

Kindly refer to my communication in E-mail dated 20/10/2022, wherein you were requested to comply as per section 52 of IBC,

2016 and other related regulations of IBBI (Liquidation Process) Regulations, 2016 but you have not informed about any steps taken as per the said provisions of Section 52 and the Regulations 21A(2) under IBBI (Liquidation Process) Regulation, 2016 to the Liquidator.

Period of Liquidation already crossed 180 days on 14/11/2022 from the date of commencement of Liquidation (i.e.18/05/2022) and also you have failed to comply the provisions of liquidation process as per Regulation 21(2) and therefore as per Regulation 21A (3) all the assets subject not yet relinquished stands being part of the "Liquidation Estate" of the Liquidator.

The Liquidator, therefore, will start auction procedure for disposal of the entire property of CD as a going concern.

Regards,

Shyamal Kumar Bhattacharjee

Liquidator of

Purple Advertising Services (P) Ltd.

Place: Kolkata

Date: 15/12/2022"

4. The brief facts leading to the application:-

i. The Applicant Bank, the State Bank of India is the one of the secured creditors' of the Corporate Debtor presently in liquidation;

ii. The Applicant has while submitting Form-D i.e., claim during the liquidation period, vide email/letter dated 06/06/2022, intimated the Liquidator about its decision not to relinquish its security interest in the secured assets to the liquidation estate and that it would proceed as per Section 52 of the Code.

iii. The Applicant Bank has also requested the Liquidator to intimate the amount, if any, payable as per the share of the Applicant in terms of the Code and the Regulations.

iv. Vide a subsequent email 30.09.2022, it has requested the Liquidator not to make any attempt to sale the Corporate Debtor as a going concern as that would have the effect of restraining the Bank from exercising its lawful rights, including its rights under Section 52 of the IBC, 2016.

v. Vide subsequent email, the Liquidator has requested the Applicant Bank to comply with the provisions of Section 52(2) and Section 52(3) of the Insolvency and Bankruptcy Code, 2016 and Section 21A(2) of the Insolvency and Bankruptcy Board of India, (Liquidation Process) Regulations, 2016.

vi. It is alleged that the Liquidator has failed to indicate the Bank's share of the CIRP cost and estimated liquidation cost.

vii. The Applicant Bank apprehends that if for the delay caused by the Liquidator in giving the estimation, the Applicant Bank fails to comply with Section 21(A)(2), then the Applicant Bank may suffer the consequence as per Section 21(A)(3).

viii. That one application being IA(IBC)/1496/2022 has been filed inter alia, seeking direction upon the Respondent No.1 to provide the estimated unpaid share of CIRP cost and the share of estimated liquidation cost payable by the Applicant Bank and seeking further directions upon the Respondent No.1 to not create any obstacle to the Applicant Bank from exercising its right under the provisions of Section 52 of the IBC, 2016.

ix. That, before orders could be passed on IA(IBC)/1496/2022, the Respondent No.1 has served the impugned letter dated 15.12.2022, inter alia, alleging that vide email dated 20.10.2022, the Applicant was requested to comply as per Section 52 of IBC,2016 and other related regulations of IBBI (Liquidation Process) Regulations, 2016 but that the Applicant has not informed about any steps taken as per the said provisions of Section 52 and the Regulations 21A(2) under IBBI (Liquidation Process) Regulations, 2016 to the Liquidator and that the period of liquidation already crossed 180 days on 14.11.2022 from the date of commencement of liquidation (i.e., 18.05.2022) and that the Applicant has allegedly failed to comply the provisions of liquidation process as per Regulation 21(A)(2) and therefore as per Regulation 21A(3) all the assets subject to security not yet relinquished stands being part of the "Liquidation Estate" of the Liquidator and that the Liquidator, therefore, will start auction procedure for disposal of the entire property of the CD as a going concern.

x. That it is alleged that the said letter is bad in law as well as on facts, in as much as not only the Applicant has complied with Section 52 of the Code, the Applicant vide repeated emails have sought to comply with the Regulations 21A(2) under IBBI (Liquidation Process) Regulations,2016 but it is because the Respondent No.1 has not cooperated till date, for which the Applicant was constrained to approach this Tribunal by filing IA(IBC)/1496/2022 in connection with CP(IB)/108/KB/2019 seeking specific directions upon the Respondent No.1.

xi. That act of the Respondent No.1 in serving the letter dated 15.12.2022 is violative of the Code, the regulations made thereunder, the principles of natural justice as well as violation of the Code of conduct as desired from the Liquidator.

xii. That on 29.11.2022 when the matter came for hearing, neither the liquidator nor his arguing counsels were present and adjournment, subject to payment of

cost from personal sources of the liquidator, was allowed by this Tribunal.

xiii. That the Respondent No.1 is acting in extreme highhandedness and it is necessary that the letter dated 15.12.2022, served upon by the Respondent No.1 upon the Applicant be quashed/set aside and orders in IA(IBC)/1496/2022 be passed.

5. The options available to the secured creditors in liquidation proceedings are the following:

i. Relinquish its security interest to the liquidation estate and realise proceeds from the sale of assets by the Liquidator in the manner specified in Section 33; or

ii. Realise its security interest under section 52(1)(b)

iii. Realise its security under SARFAESI Act etc.

6. Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 clearly envisage the following :-

"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".

7. It is explicit therefrom that the decision to realise its security interest shall have to be intimated within 30 days of Liquidation commencement date, or else it shall be presumed to be a part of the Liquidation estate.

8. In the present case, the Liquidation commencement date is 18.05.2022. The applicant Bank has evidently and admittedly failed to act in terms of the provision to intimate to the liquidator within the said 30 days from 18.05.2022, its intention to realise its security interest. Having failed to comply with the provision, it cannot seek quashing of the letter dated 15.12.2022 as by the operation of law after 30 days from the date of commencement of liquidation, upon failure of a secured creditor to intimate about its decision of realise its security interest, it shall be deemed to become a part of liquidation estate.

9. No provision or authority has been placed on record to show that the timeline prescribed under Section 21 A is not mandatory or that 21A(2) will precede 21A(1).

10. Accordingly, the prayer fails.

11. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.