

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA(IBC)/1262/CHE/2024 In IBA/216/2019

(filed under Regulations 32(e) & (f) of the Insolvency And Bankruptcy Board of India
(Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules, 2016)

In the matter of M/s. Sri Venkat Ram Spinners Private Limited

CA Mahalingam Suresh Kumar,
Liquidator of
M/s. Sri Venkat Ram Spinners Private Limited
M/s. SPP Insolvency Professionals LLP,
2nd Floor, CODISSIA – GD Naidu Towers,
Huzur Road, Coimbatore – 641 018.



: Applicant

Order pronounced on 26th July, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Mr. T.K.Bhaskar, Advocate
Mr. A.G.Sathyanaarayana, Advocate

ORDER

(Hearing conducted through hybrid mode)

This application has been filed by the liquidator seeking reliefs as follows



- a. To pass an order confirming the Corporate Debtor Sale as a going concern as required under the law;
- b. To pass an order declaring that the Successful Bidder is entitled to avail immunity as prescribed under Section 32A and 238 of the

Code (i.e., waiving off all the existing liabilities, penalties, removing attachments, encumbrances, etc., if any made by the statutory authorities i.e., ESI, EPF, RoC, MCA, IT, GST, Industries Department, Electricity dues, Panchayats, revenue, Pollution Control Board, etc.) in accordance with law;

- c. To pass an order directing the statutory authorities involved in management of Corporate Debtor to modify their records by entering the successful bidder's name or as proposed by them; and
- d. To pass such orders or further orders which may deem to be fit and proper in the interest of justice.

2. It is stated that on an application filed by State Bank of India / Financial Creditor under Section 7 of IBC, 2016, the CIRP was initiated against the Corporate Debtor viz., Sri Venkat Ram Spinners Pvt. Ltd vide order dated 09.08.2018 and the Applicant Mr. Mahalingam Suresh Kumar was appointed as the IRP. He issued the public announcement on 17.08.2019. The CoC confirmed his appointment as RP of the Corporate Debtor. The Resolution Plan of the Corporate Debtor was approved vide an order dated 17.02.2022 however, the successful Resolution Applicant contravened the plan and the Monitoring Committee passed a resolution to liquidate the Corporate Debtor. The Tribunal vide an order dated 24/06/2023 passed an order for liquidation and appointed the Applicant as the Liquidator.

The Applicant / Liquidator made the public announcement and invited the claims from the stakeholder. He prepared the list of

stakeholders as detailed in para 4 of the application and also prepared the preliminary report and asset memorandum under Regulation 5 and 13 of IBBI Regulations, 2016. He continued with the bank account maintained with State Bank of India during the CIRP upon conversion into the liquidation account for the liquidation process. He constituted the Stakeholder Consultation Committee (SCC) under Regulation 31 and convened the meeting of SCC where it was decided to proceed with fresh valuation of the assets of the Corporate Debtor by appointing two IBBI Registered Valuers. After receipt of the valuation report, 2nd SCC meeting was held on 12.04.2023 where it was decided to proceed with the auction notice for sale of the Corporate Debtor as a going concern along with the land to be sold under the SARFAESI Act as a combined action. The Liquidator issued 1st e-auction sale notice on 12.05.2023 by publishing in the leading newspaper however no one came to bid for the e-auction. 3rd SCC meeting was held on 15.06.2023 where it was decided to proceed



With the 2nd e-auction sale notice with two lots by reducing the reserve price by 10% from the 1st e-auction reserve price. The 2nd e-auction sale notice was published on 18.06.2023, but no one came to submit the bid. 4th SCC was held on 18.07.2023 where after detailed discussions SCC decided to reduce 10% of the reserve price from the last auction price. 3rd


e-auction notice was published on 21.07.2023 but no one came. 5th SCC meeting was held on 16.08.2023 and it was decided to proceed with the 4th e-auction on the same auction price. 4th e-auction sale notice was published on 18.08.2023. One party submitted the bid application but it did not deposit the EMD amount on or before the last date. So the 4th auction also became unsuccessful. In the 6th SCC meeting held on 12.09.2023 it was decided to auction the assets of the Corporate Debtor in 6 lots on the reserve price agreed by the SCC members. 5th e-auction sale notice was published on 17.09.2023. Some parties submitted the e-auction process documents to participate in the e-auction scheduled on 13.10.2023 but the auction process was stayed by the Tribunal vide order dated 10.10.2023 on the application filed by the unsuccessful resolution Applicant. The stay was vacated by the Tribunal on 09.02.2024. The Liquidator thereafter proceeded with the 6th e-auction on the same terms and conditions as fixed in the 5th auction. The sale notice was published

on 16.02.2024.



4. In the 6th e-auction held on 20.03.2024, out of total 6 lots, Lot-4 (Windmill along with windmill land) was sold to M/s. Sree Kaderi Ambal

Mills Private Limited for Rs.4,70,00,000/- against the reserve price of




Rs.4,65,00,000/-. Lot-5 (Vacant land measuring to 3.20 acres) was sold to Mr. Ram Mohan M for Rs.1,11,60,000/- against the reserve price of Rs.99,60,000/-. Factory land and building, plant and machinery remained unsold. 9th SCC meeting was held on 26.03.2024 where it was resolved that the reserve price for the e-auction of the assets of the Corporate Debtor be reduced by 10% of the last e-auction reserve price for the remaining 4 Lots. 7th e-auction sale notice was published on 29.03.2024 and e-auction was scheduled for 30.04.2024.

5. In the 7th e-auction, the Applicant / Liquidator received one bid for Lot-1 (Sale of the Corporate Debtor as a going concern – including the immovable property belonging to Mr.S.Srinivasan and Mr.N.K.P.Jaganatha Raja – refer e-auction advertisement of Bank of Baroda and 3 bids for Lot-3 (Sale of plant and machinery). M/s. H.R Commercial Private Limited which bided for Lot-I for Rs.17,81,00,000/-

emerged as the successful bidder. Lot-3 e-auction was not conducted since the Corporate Debtor was sold successfully as a going concern in





6. The Applicant / Liquidator sent intimation to the bidder on the same day i.e., 30.04.2024 declaring it as a successful bidder requesting it to make the balance sale consideration of remaining 15% within 48 hours. The bidder deposited the 15% sale consideration on 02.05.2024. It is stated that balance 75% along with applicable taxes and duties is payable within 30 days from the date of approval of Sale of Going concern by the Adjudicating Authority (or within 90 days provided that the payment made after 30 days will attract interest at the rate of 12% for such extended period i.e., from 31st day of actual date of payment which shall not be later than 90th day.

7. It is stated that the Applicant sold the Corporate Debtor as a going concern through the 7th e-auction conducted on 30.04.2024 during liquidation process of the Corporate Debtor to maximise the value of the Corporate Debtor. It is stated that the successful bidder has come

forward to revive the Corporate Debtor on a clean slate theory with a pre-condition in clause 12 of the bid application seeking certain waivers, exemptions, etc., under Section 32A and 238 of IBC, 2016. It is stated that revival of the Corporate Debtor is an object of the Code and recovery of the Corporate Debtor is not an object of the Code. Accordingly, the



Liquidator sold the Corporate Debtor as a going concern which is beneficial to the stakeholders' as per Section 35 of the Code. It is stated that the Applicant has not violated any of the provisions of IBC or IBBI Regulations. He has submitted Form-H in support of the application.

8. We have heard Ld. Counsel Mr.T.K.Bhaskar and Mr.A.G.Sathyanarayana for the Applicant / Liquidator and perused the record. It is seen that the Liquidator has already sold the Corporate Debtor as a going concern to M/s. H R Commercial Private Limited.

9. In the present case, it is seen that the Building is standing in the name of the Corporate Debtor and the Land belongs to the guarantor / promoter of the Corporate Debtor. This Tribunal in IA(IBC)/1800(CHE)/2023 vide order dated 09.02.2024 has rejected the challenge mounted against the Sale notice dated 16.09.2023. The Sale Notice dated 16.09.2023 was issued jointly under IBC 2016 as well as

SARFAESI Act, 2002. In the present case, the 7th e-auction sale notice was also issued jointly under IBC 2016 as well as SARFAESI Act, 2002 on

29.03.2024 and e-auction was scheduled for 30.04.2024. The same is

extracted hereunder;





SALE NOTICE UNDER IBC, 2016
along with Sale by Secured Creditor under SARFAESI, 2002.
M/s. Sri Venkat Ram Spinners Private Limited (In Liquidation)
Reg.off: 109/1, Koonakulam Road, Cholapuram, Virudhunagar District - 626139
Liquidator: CA Mahalingam Suresh Kumar
(IP Registration No: IBBI Reg No. IBBI/TPA-001/TP-P00110/2017-2018/10217)
Liquidator Address: M/s. SPP Insolvency Professionals LLP, 2nd Floor, COOISSIA G.D.Naidu Towers,
Huzur Road, Coimbatore- 641018 Email: msureshkumar@icai.org / Contact No. +91 94888-10404
[For Sale of Asset under SARFAESI kindly refer the e-auction notice published by authorized officer of
M/s. Bank of Baroda]


E- Auction
Sale of Assets under Insolvency and Bankruptcy Code, 2016 & SARFAESI 2002
Date and Time of Auction: Tuesday, 30th April, 2024 at 10:30 AM to 4:00 PM
(With unlimited extension of 5 minutes each)

Sale of assets and properties owned by M/s. Sri Venkat Ram Spinners Private Limited (In Liquidation) forming part of Liquidation Estate by the Liquidator, appointed by the Hon'ble National Company Law Tribunal, Chennai bench vide order no: **IA/985(CHB)/2022 IN 1A/47/2021 IN 1RA/216/2019** dated **24th January, 2023** along with immovable property belonging to **Mr.S.Srinivasan & Mr.N.K.P.Jaganatha Raja** mortgaged / charged to the Secured Creditor. The sale will be done by the undersigned through the e-auction platform <https://nclt.nclt.co.in/>

Asset	Reserve Price	Earnest Money Deposit & EOI Submission	Bid Increment Amount
BATCH - I			
LOT 1: Sale of Corporate Debtor as a Going concern [including the immovable property belonging to Mr.S. Srinivasan & Mr.N.K.P.Jaganatha Raja - refer e-auction advertisement of M/s. Bank of Baroda] [E-Auction time for Lot 1 - 10:30 AM to 11:30 PM]	Rs.17,81,00,000/- (INR Seventeen crores Eighty one Lakhs Only)	Rs.1,78,10,000/- (INR One Crore Seventy-Eight lakhs and ten thousand Only) on or before 26 th April,2024 [EMD/25 th April,2024 [EOI].	Rs.5,00,000/- (INR Five Lakhs Only)
BATCH - II			
Lot 2 : Sale of Factory Land and Building & Plant and machinery situated at Cholapuram,Village, Rajapalayam Taluk & SRO, Virudhunagar District measuring to 17.28 acres [13.64 plus 3.64 acres]. [including the immovable property measuring to 3.64 acres belonging to Mr.S. Srinivasan & Mr.N.K.P.Jaganatha Raja - refer e-auction advertisement of M/s. Bank of Baroda] [E-Auction time for Lot 2 - 12:00PM to 1:00 PM]	Rs.17,74,00,000/- (INR Seventeen crores seventy-four Lakhs Only)	Rs.1,77,40,000/- (INR One crore Seventy-seven lakhs and forty thousand Only) on or before 26 th April,2024	Rs.5,00,000/- (INR Five Lakhs Only)
Lot 3 : Sale of Plant & Machinery [Textile Spinning unit - 38000+ spindles] situated at Cholapuram Village, Rajapalayam Taluk & SRO, Virudhunagar District. [E-Auction time for Lot 3 - 1:30 PM to 2:30 PM]	Rs.8,50,80,000/- (INR Eight crores Thirty lakhs and eighty thousand Only)	Rs.83,08,000/- (INR Eighty-three lakhs and Eight thousand Only) on or before 26 th April,2024	Rs.5,00,000/- (INR Five Lakhs Only)
LOT 4: Sale of Factory Land and Building situated at Cholapuram,Village, Rajapalayam Taluk & SRO, Virudhunagar District measuring to 17.28 acres. [plus 3.64 acres] [including the immovable property measuring to 3.64 acres belonging to Mr.S. Srinivasan & Mr.N.K.P.Jaganatha Raja - refer e-auction advertisement of M/s. Bank of Baroda] [E-Auction time for Lot 4 - 3:00 PM to 4:00 PM]	Rs.9,43,00,000/- (INR Nine crores Forty three lakhs Only)	Rs.94,30,000/- (INR Ninety-four lakhs and Thirty thousand Only) on or before 26 th April,2024	Rs.5,00,000/- (INR Five Lakhs Only)

Date of Inspection: 6th/10th/13th/17th/20th/24th & 27th April 2024, (from 10 AM to 1:00 PM) with prior intimation to the Liquidator.



 Last date for EOI submission for Lot-1 : 25th April, 2024 & EMD : 26th April, 2024
Last date for Bid application and EMD for Lot-2/3/4: 26th April, 2024

Terms and Condition of the sale is as under:

1. E-Auction will be conducted on "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS" and "WITHOUT RECOURSE" BASIS as such sale is without any kind of warranties and indemnities through approved service provider M/s National E-Governance Services Limited (NESL). (<https://nbiel.nesl.co.in/>)
2. The above referred assets are being auctioned jointly with the SARFAESI auction of M/s. Bank of Baroda, as the assets of the Corporate Debtor are interlinked with assets of the guarantors. Please refer the SARFAESI auction notice of Bank of Baroda published along with this notice.
3. The auction comprises of 2 batches with 4 lots, the corporate debtor is sold as going concern in Lot-1. The Factory asset [L&B and P&M] at Cholapuram village are auctioned in Lot 2 and the said L&B and P&M are individually auctioned in Lot 3 & 4. In case there are no bidders for Lot 1, E-auction of Lot-2 will be conducted and in case of no bidders for Lot 2 also, E-auction of lot 3 & 4 will be conducted. E-auction of Lot-4 will be conducted only upon successful E-auction of Lot-3.
4. Bids shall be submitted to Liquidator (online or hard copy) in the format prescribed. The bid form along with detailed terms & conditions of complete E-Auction process can be downloaded from the website of <https://nbiel.nesl.co.in/>

Note:

- 1) Cash and Cash equivalents shall not form part of the Sale as going concern, as the same will be utilized for distribution to the stakeholders as per Section 53 of IBC, 2016.
- 2) Lot-1 and Lot-2 & 4 include immovable property belonging to the guarantor, being auctioned under SARFAESI by the concerned Secured Creditor.

Date: 29.03.2024
Place: Coimbatore

CA Mahalingam Suresh Kumar, Liquidator
AFA No. AA1/10217/02/251024/106166 valid upto 25.10.2024
Ph no. +91 94888-10404/ mail to: msureshkumar@icai.org

Published in the following newspapers on 29.03.2024:

1. The New Indian Express and Dinamani - Madurai (covering Rajapalayam) edition
2. Economic Times- All India Edition
- Dinamalar- All Tamilnadu Edition



In so far as the approval for sale as a going concern, the Hon'ble NCLAT in the matter of M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. KTC Foods Pvt. Ltd. Through Liquidator, Mr. Anup Kumar Singh & Anr. in Company Appeal (AT) (Insolvency) No. 650 of 2020 has extended

the 'clean slate' principle to going concern sale under liquidation. It has

held in para 21 as follows;

21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.

(emphasis supplied)



Thus, taking into consideration the attendant facts and the circumstances of the present case, the Application filed for Sale as a

Going Concern by the Applicant deserves to be allowed. We order accordingly.

11. Apart from the above, the Applicant has sought relief as under;

To pass an order declaring that the Successful Bidder is entitled to avail immunity as prescribed under Section 32A and 238 of the Code (i.e., waiving off all the existing liabilities, penalties, removing attachments, encumbrances, etc., if any made by the statutory authorities i.e., ESI, EPF, RoC, MCA, IT, GST, Industries Department, Electricity dues, Panchayats, revenue, Pollution Control Board, etc.,) in accordance with law

12. The above said relief sought by the Applicant is granted in terms of Section 32A of IBC, 2016. However, for removal of encumbrances, the E-auction purchaser shall approach the appropriate authorities and the same shall be dealt with in accordance with the clean slate principles enshrined under IBC, 2016.

13. In terms of the above, the Application for sale of "Corporate Debtor as a going concern" stands allowed. The Liquidator, after

distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of Liquidation Process.





14. With the above said directions, IA(IBC)/1262/CHE/2024 stands disposed of.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)



Certified to be True Copy

K. Nat f 31/2/24
DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR,
29, RAJAJI SALAI, CHENNAI-600001

NATIONAL COMPANY LAW TRIBUNAL CHENNAI	
Order No. / Date :	1A/1262/2024 dt. 26/07/2024
Certified Copy made Available on :	30/07/2024
Applied for Certified Copy (Applicant / Respondent)	29/07/2024
Certified Copy issued on	31/07/2024

