

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

I.A. No. 763 OF 2023

IN

CP(IB) No. 187/7/HDB/2019

**Under sections 60(5) of IBC, 2016 read with
Rule 32A(4) of IBBI (Liquidation Process
Regulations, 2016) r/w Rule 11 of NCLT
Rules, 2016**

M/s. Millenium Steel India Pvt. Ltd

Rep. by its Managing Director,

Mr. Hari Prasad Reddy,

No.98, Halls Road, 3rd Floor,

Kilpauk, Chennai – 600010.

.. Petitioner

VERSUS

1. M/s Ind Barath Power Gencom Limited,

Having its registered office at No. 20,

Chamiers Road, Chennai-600035.

...Respondent No.1

2. Mr. Rajesh Chillale,

Liquidator of M/s. Ind Barath Power Gencom Ltd

No. B-241, Western Plaza, O.U. Colony,

H.S Darga, Hyderabad,

Telangana-500008

...Respondent No. 2/Liquidator

3. Dr. Madala Srinivasu,
S/o. Sri Govardhana Rao Madala,
Door No. 4/211, Dr. MGR Road
Palavakkam, Chennai-600041,
Tamil Nadu, India.

...Respondent No.3

4. Mrs. Madala Anita,
W/o. Dr. Madala Srinivasu,
S/o. Sri Govardhana Rao Madala,
Door No. 4/211, Dr. MGR Road
Palavakkam, Chennai-600041,
Tamil Nadu, India.

...Respondent No.4

Date of Order: 12.10.2023

Coram:

**HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
MEMBER (JUDICIAL)**

and

HON'BLE SHRI CHARAN SINGH, MEMBER (TECHNICAL)

Parties / Counsels Present

For Petitioner : Shri Abdul Hameed, Sr.Counsel

for Ms.Revathi Manivannan, Counsel

For Respondent2 : Shri V.V.S.N.Raju, Counsel along with Shri Srikanth
Rathi, Counsel for Liquidator Shri Rajesh Chillale.

For Respondent No.3&4 : Shri Anirudh Reddy, Counsel

PER BENCH
ORDER

1. This is an application filed by the purported operational creditor of the corporate debtor under liquidation, to set aside the e-auction dated 20.04.2022 and all further proceedings arising out of the said e-auction including the confirmation of sale made in favor of the respondents 3rd and 4th , on the ground that the sale is vitiated by fraud, collusion, misrepresentation and so non-est in the eye of law.

2. **The facts as per the application in brief are;**
 - That the Applicant herein supplied coal to the Respondent No.1 and payments for the said supply were not made in respect of the same. For realizing the said payments, the Applicant filed a suit vide C.S. (Comm) No. 402 of 2017 before the Hon'ble High Court, Madras against the Respondent No.1. An application vide, A.No. 2920 of 2017, was filed in the same suit by the Applicant seeking the garnishee i.e., TANGEDCO, to deposit the monies into the credit of the suit to secure the suit. The Hon'ble High Court passed an order directing the Garnishee/TANGEDCO to deposit a sum of Rs. 14,28,88,073/- into the credit of the suit and the same was deposited by the Garnishee/TANGEDCO in an interest-bearing account.

- During the pendency of the said suit, the present Company Petition CP (IB) No. 187/7/HDB/2019, was filed by M/s. Axis Bank Ltd and the same was admitted by order dated 13.11.2019, by appointing Mr. Rajesh Chillale as IRP.
- In the present Company Petition, i.e., CP (IB) No. 187/7/HDB/2019, M/s. Trimex Industries Pvt. Ltd. filed I.A. No. 19 of 2019 to direct the RP and Mr. Raghu Rama Krishna Raju not to take any steps towards withdrawing or utilizing or creating 3rd party rights over the amount deposited by TANGEDCO in **C.S. No. 302 of 2017** without paying the claims of M/s. Trimex Industries Pvt. Ltd. The said application was rejected saying that this Tribunal can't interfere with the money lying in deposit in C.S. No. 302 of 2017 and left open to the Applicant therein to avail other remedies available in law.
- During this, it was resolved by CoC of Respondent No.1 to go for liquidation and appointed Respondent No.2 herein as the liquidator and the same was allowed by this Tribunal.
- The Respondent No.2 herein, in the capacity of Liquidator, intimating the order of liquidation, filed an application in C.S. No. 402 of 2017 before the Hon'ble Madras High Court seeking withdrawal of monies deposited by Respondent No.1 herein and the same is pending for consideration.
- The Respondent No.2 herein, in the capacity of liquidator of Respondent No.1 filed an affidavit dated 17.03.2023 in C.S. No. 402 of 2017 stating that he sold Respondent No.1 Company herein as a going concern to Respondents No.3 & 4 herein and issued a Sale Certificate on 26.09.2022 and hence, to discharge him from C.S No. 402 of 2017.

- That the said sale of Respondent No.1 herein as a going concern is fraudulent, collusive and non-est in law as the affidavit was filed after a lapse of five months from the date of sale and thereby kept this Tribunal, Hon'ble Madras High Court and the Applicant herein in dark so that no interference is caused to the sale.
- That when the Hon'ble High Court was a custodia legis of the monies of Respondent No.1 herein, the e-auction and sale of Respondent No.1 cannot be proceeded with without the permission of the Hon'ble Madras High Court.
- The e-auction notice also included the monies deposited with the Hon'ble Madras High Court, but the Liquidator has no right to include the same. When the said monies deposited with the Hon'ble High Court alone value Rs. 50 Crores, the sale of Respondent No.1 for Rs.98.762 crores reflect a collusion between Liquidator-Respondent No.2 and Respondents No. 3 & 4.
- The liquidator, instead of maximizing the assets of Corporate Debtor, brought down the reserve price from Rs. 107.35 Crores on 20.01.2022 to Rs. 98.762 Crores on 20.04.2022 and sold to Respondents No. 3 & 4 without intimating this Tribunal and the stakeholders.
- The Counsel appearing for the Liquidator and also on behalf of Respondents No. 3 & 4 before the Court is one and same and hence, there is a collusion in the sale of Respondent no.1.
- As per Section 35 of IBC, 2016, the Liquidator is to seek permission of this Tribunal before initiating the sale of Corporate Debtor and the same was not followed by the Liquidator and hence, the sale is illegal.

- When the Liquidation was ordered on 13.08.2021, the invitation for sale of Corporate Debtor was done on 20.04.2022, beyond 90 days from the date of commencement of liquidation.
- The Liquidator did not obtain the approval of Stakeholders Consultation Committee before reducing the reserve price.
- The Respondents No. 3 & 4, as successful bidders, have not paid the balance amounts by 10.08.2022. The liquidator, instead of forfeiting the already deposited amount and cancelling the auction sale, had not the same and defrauded Respondent No.1 in collusion with Respondents No. 3 & 4.
- The Liquidator let the management of CD Scott free.

3. The Reply of Respondents No. 1 & 2

- The suit stated in the present application was filed in 2017 before the Hon'ble Madras High Court while the Company Petition against the Corporate Debtor U/S 7 of IBC, 2016 was filed in 2019 before this Tribunal.
- On the admission of CP, moratorium U/S 14 of IBC came into operation.
- As per Section 35 of IBC, Respondent became custodian of all the assets after the order for Liquidation of Corporate Debtor was made. As per Section 36 of IBC, the liquidation estate includes assets under the determination of ownership by the court or authority.
- As per Regulation 31 of the Liquidation Regulations, the Liquidator prepared the list of stakeholders and an filed the Asset Memorandum and Preliminary Report before the Tribunal on 27.10.2021.

- The Respondent No.2 filed an application U/S 43 r/w Section 66 which were disposed off by the Tribunal and the same are pending in Appeal by the Liquidator before the Hon'ble NCLAT. Hence, the allegations of Liquidator let the management Scott free is false and baseless.
- The Stakeholders Consultation Committee decided to sell the Corporate Debtor as a going concern and hence, the Respondent No.2 issued auction notice inviting bids.

S.No	Date of publication of sale notice	Date of e-auction	Date of SCC where the Reserve price is approved.	Reserve Price Rs. in crs.	Remarks / Status
1	25.10.2021	06.12.2021	20.10.2021	149.10	No bidders e-auction failed
2	15.12.2021	15.01.2022	13.12.2021	119.28	2 EoI received, no bids received.
3	20.01.2022	18.02.2022	18.01.2022	107.35	3 EoI received, no bids received.
4	04.03.2022	26.03.2022	28.02.2022	98.762	5 EoI received, no bids received.
5	20.04.2022	13.05.2022	14.04.2022	98.762	8 EoI received, one bid received. Mr. Madala Srinivasu & Ms. M. Anita was declared as a successful

					bidder for a sale price of Rs. 98.762 crs.
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- The Respondents No. 3 & 4 emerged as successful bidders. The reserved price was reduced as per Regulation 33, 1(\$A) and 1(4B) of IBBI Regulations, 2016.
- The delay in making the payment of sale was allowed by this Tribunal by an order dated 26.08.2022 in I.A. No. 828 of 2022 asking them to pay interest on the delay.
- The Respondent No.2 approached this Tribunal for reckoning date of sale certificate of Corporate Debtor as 26.09.2022 and the same was allowed by order dated 09.02.2023 in I.A. No. 197 of 2023.
- The timeline of 90 days was not followed owing to multiple reasons and the said timeline is directory and not mandatory. Moreover, the extension for timelines was sought from the Tribunal as per the directions of SCC.
- The timeline of the Liquidation was extended by this Tribunal from 08.02.2023 to 07.05.2023 by order dated 23.02.2023 in I.A. No. 335 of 2023.
- The Respondent No.2 has followed the waterfall mechanism as per Section 53 of IBC, 2016.
- The Respondent No.2 filed a dissolution closure application and pending the same, the present application was filed.

- An application with a similar prayer as in the present application was filed by the Applicant herein before the Hon'ble Madras High Court and the said fact was hidden by the Applicant herein.
- The Applicant also filed an affidavit before the Hon'ble Commercial Court, Hyderabad.

4. Reply of Respondents No. 3 & 4

- After the appointment of Respondent No.2 as Liquidator, public announcement was made by the Liquidator on 19.08.2021 under Form B as per Regulation 12 of IBBI Regulations, 2016 inviting claims from various stakeholders.
- The list of creditors would reveal that the Applicant herein had filed its proof of claim and after considering the documents, the claim was admitted by the Liquidator.
- The e-auction notice included the amount deposited with the Hon'ble High Court of Madras, but insurance claims of Rs.48.20 crores and amounts to be recovered in respect of applications filed under Section 43 and 66 of IBC, 2016 (presently pending in Appeal before the NCLAT filed by the Liquidator-Respondent No.2) were excluded.
- The Liquidator issued Letter of Intent dated 13.05.2022 confirming the sale to Respondents No. 3 & 4 after they emerged as successful bidders.
- An application was filed by Respondents No. 3 & 4 to extend the time for payment of balance sale consideration and the same was allowed by this Tribunal. In compliance of the said order, an amount of Rs.101,42,33,192/-

(including sale consideration and interest thereon) was paid by Respondents No. 3 & 4.

- A sale certificate dated 26.09.2022 was issued by the Liquidator which signifies the Corporate Debtor along with the monies deposited with the Hon'ble Madras High Court stands duly transferred to the benefit of Respondents No. 3 & 4. The said sale certificate was confirmed by this Tribunal by an order dated 09.02.2023 in I.A. No. 197 of 2023 and directed ROC to incorporate the names of Respondents No. 3 & 4 as BOD.
- The Respondents No. 3 & 4 relied on the order of ***Deepa Venkat Ramani RP for CT Ramanathan Infrastructure Private Limited (2019 SCC NCLT 8048)*** wherein it was observed at Para 20 as follows:

“Para 20 (X) A cursory glance of the Additional Affidavit filed by the Applicant/Resolution Professional reveals that the amount of Rs.7.50 Crores deposited with DRT-I Chennai is transferred to DRT-II, Chennai for want of territorial jurisdiction, which forms part of an estate of the assets of the Corporate Debtor for the purpose of liquidation as per Section 36(3) of the Code. In view of the above, the Liquidator appointed is directed to collect the said amount along with interest due from the DRT-II, Chennai by taking all the steps so that the amount so received may be dealt with under Section 53 of the Code, as no preferential payment can be made in favor of the Bank of Baroda, as claimed.”

- The Respondents No. 3 & 4 relied on the ruling in ***liquidator of M/s. Albanna Engineering (India) Pvt. Ltd. vs. Bharat Petroleum Corporation Limited (2022 NCLT 122)***, NCLT, Kochi Bench, wherein it was observed as follows:

“15. The Liquidator stated that all the Garnishee holders have submitted their claims before the Liquidator under Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016 and Sec 52 of the code. All the Garnishee holders have a security interest through the Garnishee which they have relinquished by filing the claim with the Liquidator. Therefore, all those injunctions/ garnishee orders have become infructuous. It is further stated that in all these proceedings the respondent is a party and the respondent can bring to the notice of Hon'ble Civil Courts the existence of the moratorium passed by this Tribunal and various orders of this Tribunal including the invocation of bank guarantee vide order in MA No. 25/KOB/2020.

21. There is no asset of the Corporate Debtor available and the only source to be distributed among the claimants to the tune of Rs. 30,59,46,949/- (Rupees Thirty crore fifty-nine lakh forty six thousand nine hundred and forty nine) is the Fixed Deposit and interest accrued therein as also the amount retained by the Respondent under the direction of this Tribunal. Hence, we allow this application and direct the Respondent to transfer Rs. 25,13,38,078/- (Rupees Twenty-five crore thirteen lakhs thirty-eight thousand seventy-eight) deposited by way of Fixed Deposit with interest accrued therein and Rs. 5,46,08,871.37/- (Rupees Five crore forty-six lakh eight thousand eight hundred seventy-one and thirty-seven paise) retained by the Respondent pursuant to the direction of this Tribunal to the account of the Applicant/Liquidator Account No. 4271002110005708 maintained in the Punjab National Bank, for utilizing the said amount for the distribution of assets in accordance

with Section 53 of the Code, 2016 within two weeks from the date of receipt of this order.”

- The Applicant herein have already submitted its claim before the liquidator and thereby relinquished its claim over the security deposit made by the Garnishee. Hence, has no right to claim the monies lying to the credit of the suit.

5. Rejoinder by the Applicant

- The Applicant herein and M/s. Trimex Industries Pvt. Ltd had filed Applications I.A. (IBC) 927/2020 and I.A. (IBC) 980/2020 before this Tribunal seeking for appointment of Independent Forensic Auditor for conducting a forensic audit into the activities of “Corporate Debtor” and the same were disposed off by an order dated 01.09.2022 by observing that there is no merit in conducting the Forensic Audit and disposed off the said applications.
- On 30.01.2023, the Applicant herein filed an Application for Summary Judgment before the Hon’ble High Court, Madras against the Corporate Debtor. Pursuant to the said application, the Liquidator, for the first time, contended that he sold the Corporate Debtor as a going concern and sought for discharge from the suit.
- At the same time, the Respondents No. 3 & 4 also entered into presence in the said suit by way of an application seeking the dismissal of the suit. It is at this juncture the Applicant herein came to know that the Corporate Debtor was sold as a going concern and the sale was confirmed.

- It was pleased that the Counsel, Mr.T.Ravichandran, representing the Liquidator of the Corporate Debtor, also represented the Respondents No. 3 & 4 before the Hon'ble Madras High Court.
- It was pleased that this Tribunal was not informed by the Liquidator regarding the sale of monies deposited with the Hon'ble High Court of Madras and in the absence of any express order by any Authority, ought not have dealt with the said monies. The Liquidator has not brought to the notice of the CoC/SCC about any of the orders of any Authority relating to the deposited monies.
- It was pleased that the Respondents No. 3 & 4 have not adhered with the timelines in payment of the bid amount and hence, the same is vitiates the auction itself.
- The Respondents No. 3 & 4 flouted the order of this Tribunal by delaying the payment of bid amount by two days.
- At Para 7, it was stated that the monies deposited with the Hon'ble High Court of Madras were not shown in the balance sheet of the Corporate Debtor and hence, the same cannot be construed as Liquidation Estate as per Section 66 of IBC, 2016.
- Relying on “(1918) ILR Madras 1053”, “1973 SCC Online Bombay 126”, Order dated 18.02.2014 passed by the Hon'ble High Court of Karnataka in “L&T Finance Limited vs Official Liquidator”, order dated 19.05.2020 passed by the Hon'ble High Court, Bombay in “Board of Trustees of the Port of Mumbai vs Atlantic Shipping”, it was pleaded that the monies lying to the benefit of the Applicant herein cannot be termed as assets of Corporate Debtor.

- In reply to the contention of Respondents No. 3 & 4 that by filing the claims before the Liquidator, the Applicant extinguished the right to claim monies lying to the deposit in the suit in the Hon'ble Madras High Court, the Applicant relied on the order dated 28.04.2006 passed by the Hon'ble Supreme Court in "ICICI Bank Ltd vs. Sidco Leathers Ltd and Ors" and rejected the said contention of the Respondents.
- It was also pleaded that the fact regarding the deposit of monies lying to the credit of suit in the Hon'ble High Court of Madras was brought to the notice of this Tribunal and only then, this Tribunal decided the applications and thereby protected the said monies by way of its order dated 25.02.2020 and 01.09.2022
- It was pleaded that the judgment of *Deepa Venkat Ramani RP for CT Ramanathan Infrastructure Private Limited* (2019 SCC NCLT 8048), relied on by Respondents No. 3 & 4 was overruled by the Hon'ble NCLAT, Chennai Bench vide order dated 04.12.2019. It was also pleaded that the judgment of *The liquidator of M/s. Albanna Engineering (India) Pvt. Ltd. vs. Bharat Petroleum Corporation Limited* (2022 NCLT 122), *NCLT, Kochi Bench*, relied on by Respondents No. 3 & 4 is not applicable to the facts of the present issue.

6. In the light of the contest as above the Point that emerge for consideration by this Tribunal is:

Whether the e-auction held on 20.04.2022 and all consequent proceedings including the sale certificate issued by the liquidator in favor of 3rd and 4th respondents is liable to be interfered with on the grounds pleaded by the petitioner?

7. We have heard Shri Abdul Hameed, Ld. Sr.Counsel for Ms.Revathi Manivannan, for Applicant and Shri V.V.S.N.Raju, Counsel assisted by Shri Srikanth Rathi, Counsel for Liquidator Shri Rajesh Chillale.

Point.

Whether the e-auction held on 20.04.2022 and all consequent proceedings including the sale certificate issued by the liquidator in favor of 3rd and 4th respondents is liable to be interfered with on the grounds pleaded by the petitioner?

8. Learned Sr. Counsel for the petitioner at the threshold contended that the balance sale price in respect of sale as going concern in favour of the respondents 3&4 since was not paid within time granted by this Tribunal, the impugned sale is liable to be set aside. Nextly, Learned Sr.Counsel contends that the reserve price as fixed by the liquidator is substantially low besides collusive, as such the sale held on the basis of such reserve price is liable to be set aside.
9. In support of the first contention that balance sale price was not deposited within the time allowed by this Tribunal, the Learned Sr. Counsel, contended that the direction of this Tribunal, in IA /2022 dated 26.08.2022, that the Respondents.3&4 shall deposit the entire balance sale price by 24.09.2022, and in case of default the liquidator shall go for fresh auction, has been breached by the respondents 3&4, as the entire

amount was deposited only on 26.09.2022. As such the impugned sale is liable to be set aside.

10. However, Learned Liquidator/R.2 while refuting these allegations, contends that while last date of deposit of entire balance sale price as per the order of this Tribunal dated 26.08.2022, 24.09.2022 being 4th Saturday, is holiday for banks and as the next day Sunday also happens to be a holiday, the respondents 3&4 have deposited the entire balance amount on the next working day for Banks i.e 26.09.2022, (Monday) as such there is no default.
11. Learned Counsel for R.3&4, contending similarly, refuted the plea of breach of the order of this Tribunal dated 26.8.2022.
12. In the light of the aforesaid rival contentions, we have carefully perused the records placed before us. It is no doubt true that the last date for deposit of entire balance amount as per the direction of this Tribunal is 24.09.2022 and the entire amount was deposited only on 26.09.2022. The reason put forth for depositing the amount on 26.09.2022 is Bank holidays on 24th & 25th September 2022, being 4th Saturday and Sunday, It is a fact that the entire balance sale price was deposited on the immediate next working day i.e 26.09.2022. Therefore, it is to be seen whether the said deposit amounts to compliance or not.
13. It is not in dispute that 2nd and 4th Saturdays are holidays for the banks and 24.09.2022 happens to be 4th Saturday and the next day being Sunday

there was no possibility of normal banking operations taking place on these two dates. Here we usefully refer to Section 10 of General Clauses Act, which is as below:

(1) Where, by any¹⁹ [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877)²⁰, applies.

(2) This section applies also to all¹⁹ [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

14. Reliance also can be placed on the ruling of Hon'ble Supreme Court of India in re **Huda & Anr vs Dr.Babeswar Kanhar & Anr., Case No. Appeal No.(Civil) 7522 of 2004**, where in it was held that,

“this Court has observed and held that every consideration of justice and expediency would require that the accepted principle which underlines Section 10 of the General Clauses Act, 1987 should be applied in cases where it does to otherwise in terms apply. The Principles underlying are *lex non cogit impossibilia*(the law does not compel a man to do the impossible) and *actus curiae nemi nem gravabit*(the act of Court shall prejudice no man)”

15. Therefore, in the light of Section 10 General Clauses Act and ruling of Hon'ble Supreme Court of India, the deposit of the entire balance payment made on 26.09.2022 can be construed as made within time.
16. Coming to the plea that reserve price as fixed is too low besides collusive, it is to be stated that, according to the liquidator before the impugned sale four attempts for sale of the subject property remained un successful. Therefore, relying on Regulation 33(1) 4 A he had reduced the reserve

price. A perusal of Regulation 33(1) 4(A), which is reproduced below, reads as follows:

"Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction"

Further, under sub regulation 1(4B) it is also stated that-

Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.

clearly discloses that when an auction fails at the reserve price, the reserve price in subsequent auctions may be further reduced by not more than 10% at a time.

17. Admittedly four earlier auctions for sale of the subject asset did not fructify. Therefore, the liquidator has followed the above procedure and reduced the reserve price. Moreover, the Monitoring Committee of the corporate debtor under liquidation which admittedly comprises of the lenders would never be interested in selling away the liquidation estate at a price far below the price it can fetch, and thus act detrimental to its own interest. Except making a bald allegation of collusion, the applicant failed to substantiate the said allegation with any acceptable material. Therefore, we don't find any reason much less a tenable to accept the plea of collusion put forth by the applicant. Hence the said plea is liable to be rejected and accordingly the same is hereby rejected.

18. Lastly, the Learned Sr. Counsel contended that permission of the Hon'ble High Court of Madras where C.S.No.402 of 2017, filed by the applicant for recovery of its purported dues is pending is required for the liquidator for distribution of liquidation estate in terms of Section 53 is concerned and the same was not done the amount must be ordered to be restored.

19. However, the Liquidator, while refuting the said contention, placed reliance on the following rulings;

a). Deepa Venkat Ramani RP for CT Ramanathan Infrastructure Private Limited (2019 SCC NCLT 8048) wherein it was observed at Para 20 as follows:

“Para 20 (X) - A cursory glance of the Additional Affidavit filed by the Applicant/Resolution Professional reveals that the amount of Rs.7.50 Crores deposited with DRT-I Chennai is transferred to DRT-II, Chennai for want of territorial jurisdiction, which forms part of an estate of the assets of the Corporate Debtor for the purpose of liquidation as per Section 36(3) of the Code..... In view of the above, the Liquidator appointed is directed to collect the said amount along with interest due from the DRT-II, Chennai by taking all the steps so that the amount so received may be dealt with under Section 53 of the Code, as no preferential payment can be made in favor of the Bank of Baroda, as claimed.”

b). Liquidator of M/s. Albanna Engineering (India) Pvt. Ltd. vs. Bharat Petroleum Corporation Limited (2022 NCLT 122), NCLT, Kochi Bench, wherein it was observed as follows:

“15. The Liquidator stated that all the Garnishee holders have submitted their claims before the Liquidator under Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016 and Sec 52 of the code. All the Garnishee holders have a security interest through the Garnishee which they have relinquished by filing the claim with the Liquidator. Therefore, all those injunctions/ garnishee orders have become

infructuous. It is further stated that in all these proceedings the respondent is a party and the respondent can bring to the notice of Hon'ble Civil Courts the existence of the moratorium passed by this Tribunal and various orders of this Tribunal including the invocation of bank guarantee vide order in MA No. 25/KOB/2020.

21. There is no asset of the Corporate Debtor available and the only source to be distributed among the claimants to the tune of Rs. 30,59,46,949/- (Rupees Thirty crore fifty-nine lakh forty-six thousand nine hundred and forty nine) is the Fixed Deposit and interest accrued therein as also the amount retained by the Respondent under the direction of this Tribunal. Hence, we allow this application and direct the Respondent to transfer Rs. 25,13,38,078/- (Rupees Twenty-five crore thirteen lakhs thirty-eight thousand seventy-eight) deposited by way of Fixed Deposit with interest accrued therein and Rs. 5,46,08,871.37/- (Rupees Five crore forty-six lakh eight thousand eight hundred seventy-one and thirty-seven paise) retained by the Respondent pursuant to the direction of this Tribunal to the account of the Applicant/Liquidator Account No. 4271002110005708 maintained in the Punjab National Bank, for utilizing the said amount for the distribution of assets in accordance with Section 53 of the Code, 2016 within two weeks from the date of receipt of this order.”

20. Ld. Liquidator further submitted that the Applicant herein having already submitted its claim before the liquidator, deemed to have relinquished its claim over the security deposit made by the Garnishee, hence, has no right to claim the monies lying to the credit of the suit. It is further contended that the liquidation estate has already been distributed as per provisions of Section 53 of Act, as such the prayer in this regard has become infructuous.

21. Having carefully considered the above submissions we are of the view that the submission that the liquidator requires the leave of the Hon'ble High court, as the civil suit filed by the applicant for recovery of its purported dues is pending is wholly unsustainable for the reason that

provisions of IB Code, shall prevail over the proceedings for money claim against the corporate debtor, besides the distribution of the liquidation estate has already taken place.

22. Before, we part with, it is pertinent to note that the present application is belated and the fact that Applicant had filed similar application before Hon'ble High Court of Madras with similar prayers but failed to get any interim relief is not disclosed. That apart, the corporate debtor has been sold as a going concern, the necessary changes in the Board of directors of the respondent company were affected consequent to the confirmation of the sale in favour of the respondents 3&4 herein. Distribution of the sale proceeds in terms of section 53 of the IB Code, has already been done. Therefore, under the circumstances setting aside the impugned sale on a trivial technical ground, and for no mistake of the successful bidders, is uncalled for and unsustainable under law or on facts.

23. We therefore, find no merits or *bona fides*, in the petition. Hence the petition deserves to be dismissed Accordingly same is hereby dismissed.

No costs.

24. In the result this petition is dismissed. No costs.

SD

Charan Singh

Member Technical

Anil K. Reddy/pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial