

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 6280/ND/2022

IN

Company Petition No. (IB)-1031(ND)/2018

IN THE MATTER OF:

**Mr. Surinder Manchanda, Sole Proprietor
Sonu Trading Company**

... Applicant/Operational Creditor

Versus

Nolsar International Limited

... Respondent

AND IN THE MATTER OF IA. NO. 1349/ND/2021:

Mr. Sajeve Bhushan Deora

Liquidator of
Nolsar International Limited
Address at :
606, New Delhi House,
27, Barakhamba Road,
New Delhi – 110001

... Applicant

Order Delivered on: 08.02.2023

**SECTION: Section 35(1)(f) r/w Section 60(5) of IBC 2016 and
Regulation 32 of Insolvency and Bankruptcy Board of
India (Liquidation Process) Regulations, 2016**

CORAM :

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Liquidator : Mr. Sajeve Bhushan Deora in person

ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 6280 of 2022 has been filed by Mr. Sajeve Bhushan Deora, Liquidator of Orchid Salon Services Private Limited (hereinafter referred to as the '**Applicant/Liquidator**') under Section 35(1)(f) r/w Section 60(5) of IBC 2016 and Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 Seeking the following reliefs:

- “a) Grant permission for sale of the Corporate Debtor as a going concern with the identified assets and liabilities of the CD and broad conditions governing the sale of the Corporate Debtor as a going concern mentioned in Para 12(B) of this Application.*
- b) Issue any other directions as this Hon’ble Adjudication Authority may consider fit and proper in the interest of justice and facts and circumstances of the matter.”*

2. To put succinctly, the facts of the case are that the Liquidation Process of the Corporate Debtor commenced vide order dated 28.02.2020 and vide the same order, the Applicant Mr. Sajeve Bhushan Deora was appointed as Liquidator of the Corporate Debtor.

3. Through the present application the Applicant/Liquidator is seeking permission of this Adjudicating Authority to sell the Corporate Debtor as a going concern.

4. It is stated by the Liquidator that he had conducted the following rounds of auctions till date in respect of the Corporate Debtor:

Sl. No. of e-auction	Date of e-auction and asset of the CD put for sale	Outcome of e-auction
1	15.02.2021: Land & Building, Plant & Machinery, Vehicles and Inventory	Realization of an amount of Rs. 2,18,410/- from e-auction sale of four number vehicles of the CD.
2	27.03.2021: Land & Building, Plant & Machinery, Vehicles and Inventory	(i). Realization of an amount of Rs. 8,860/- from e-auction sale of one vehicle of the CD. (ii). Two intending bidders of vehicle, in-spite of submitting Bid Form and EMD, did not participate in bidding process. (iii). One intending bidder of inventory did not submit all relevant documents and was not considered eligible to participate in e-auction.
3	12.08.2021: Land & Building, Plant & Machinery, Vehicles and Inventory	Realization of an amount of Rs. 4,18,52,720/- (further amount of Rs. 1,36,090/- towards interest on delayed payment of bid amount) from e-auction sale of plant & machinery and one vehicle.
4	28.09.2021: Land & Building, Vehicles and Inventory	Realization of an amount of Rs. 4,84,570/- from e-auction of three vehicles.
5	06.01.2022: Land & Building, Vehicles and Inventory	No Bid Eligibility Documents and EMD was received from any of the intending bidders in this e-auction sale notice.
6	04.02.2022: Land & Building, Vehicles and Inventory	Realization of an amount of Rs. 43,15,305/- from e-auction sale of inventory one vehicle.
7	15.03.2022: Land & Building and one Vehicle	(i). Realization of an amount of Rs. 1,68,364/- from e-auction of one vehicle. (ii). Bid Eligibility Documents were received from one intending bidders in respect of sale of land & building, and no EMD was received.
8	29.04.2022: Land & Building	No Bid Eligibility Documents and EMD was received from any intending bidders against this e-auction sale notice.
9	21.06.2022: Land & Building	Bid Eligibility Documents were received from two intending bidders and EMD was received.

5. It is stated by the Liquidator that one Mr. Surender Kumar Bansal has shown interest in purchasing the CD as a going concern. He has further stated that Mr. Bansal had voluntarily handed over a bank draft of Rs. 66 Lakh drawn in favour of the CD, which is 10% of the offered price of Rs. 6.60 Crore. It is added that few other potential buyers have shown interest in purchasing only the immovable assets of the CD.

6. It is submitted by the Liquidator that the matter was placed before the Stakeholders Consultation Committee (SCC), which considered the matter in its 13th and 14th Meetings. The SCC Members discussed that the earlier decision of the COC at the meeting held on 13.11.2019 that sale of CD as a going concern be not explored by the Liquidator, the unsolicited bid received by the Liquidator from a potential bidder for purchase of CD as a going concern be re-examined and the matter be placed for consideration by way of e-voting to be held in the matter and the said bid be tested through e-auction under Swiss Challenge method.

7. The Liquidator has further submitted that he had obtained Confidentiality and Non-disclosure Undertaking (CNDU) from the potential bidder on 16.11.2022, and copies of drafts of Information Memorandum & e-auction Process Document (IM&P) and Preliminary Information (PI) Document, containing information about the Sale of CD and terms and conditions governing its sale, which was also considered by the members of SCC. The potential bidder also handed over bank draft of balance Rs. 2.50 lakhs to make up the amount of EMD, which had been

determined at Rs.68.50 lakhs. The EMD of Rs.68.50 lakhs have been placed in a fixed deposit in the bank account of the liquidation estate.

8. It is further stated by the Liquidator that the SCC, inter alia, has allowed the sale of the Corporate Debtor as going concern, for which the voting took place from 11.00 a.m. on 07.12.2022 to 11.00 a.m. on 14.12.2022. The Resolutions passed by the SCC in this regard are reproduced below, for the sake of immediate convenience:

Sl. No.	Resolution	% voting share voted for the Resolution	% voting share voted against the Resolution	% voting share abstained from voting
1	Resolution No. A: "RESOLVED that in supersession of rejection of the resolution for sale of CD as a going concern in the event of liquidation of the CD, at the e-voting held from 10:30 PM on 14.11.2019 to 10:30 PM on 15.11.2019 following discussions at the 13th (Thirteenth) meeting of Committee of Creditors of Noslar International Limited, then under Corporate Insolvency Resolution Process under Insolvency and	85.78%	0%	14.20%

	<p>Bankruptcy Code, 2016, held on 13.11.2019, in the matter of proposal for Sale of Noslar International Limited (in liquidation) as a going concern, and the Order of the Hon'ble National Company Law Tribunal dated 28.02.2020 in Company Petition No. CP (IB) No. (ND)1031/2017 issued for liquidation of Noslar International Limited (in liquidation), the Liquidator after obtaining approval of the Hon'ble National Company Law Tribunal and subject to such conditions and directions to be issued by the Hon'ble National Company Law Tribunal, take steps to sell Noslar International Limited (in liquidation) as a going concern and without any workmen and staff in employment."</p>			
2	<p>Resolution No. B: "RESOLVED that the following shall be the assets and liabilities of Noslar International Limited (in liquidation) shall form part of its sale as a going concern and will be offered to the potential bidders at a reserve price of Rs. 6.85 Crores by way of an e-auction to be conducted by the Liquidator: Assets: I. Leasehold Factory Land admeasuring about 11.25 acres situated at Plot No. 2, Industrial Area, Mandideep, Distt. Raisen, Madhya Pradesh, and Building of about 82,102 square feet constructed thereon; II. Not Readily Realizable Assets confined to: (i) Balances recoverable from Debtors and amounts recoverable on account of Loans and Advances given by the CD, including pursuing insolvency petition, suits, recovery actions, complaints, etc. pending against the person/s against Debtors and Advancees, (ii) Refund of taxes from Central and</p>	85.78%	0%	14.20%

	<p>State Government Agencies, and (iii). Trade Marks in use;</p> <p>III. Value in the form of Fee payable for Authorized Share Capital and applicable Stamp duty on Paid-up Capital; and</p> <p>IV. Firm amounts of GST credit on the date of successful bidder taking over the CD.</p> <p>Liabilities:</p> <p>I. Dues payable to Madhya Pradesh State Industrial Development Corporation in respect of lease of land and building and all costs related thereto;</p> <p>II. Tax payable to Gram Panchayat, House tax Authorities, etc. in respect of land and building; and</p> <p>III. Dues payable to Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited in respect of use of electric connection at the factory land and building mentioned at 'I' above.</p> <p>ALSO RESOLVED that the Successful Bidder will obtain all approvals, permissions, etc. at its own cost and expense.”</p>			
3	<p>Resolution No. C:</p> <p>“ALSO RESOLVED that the Liquidator offers inspection of records of Noslar International Limited (in liquidation) pertaining to Assets and Liabilities listed in above Resolution and available with him, to the Potential Bidder/s, and the latter will bear costs and expenses, amongst others of undertaking due diligence of the Assets and Liabilities, permissions and approvals to be obtained for purchase of Noslar International Limited (in liquidation) as a going concern, and that the sale of Noslar International Limited (in liquidation) as a going concern shall be on 'AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE</p>	85.78%	0%	14.20%

	IS and WITHOUT RECOURSE' basis."			
4	Resolution No. D: "RESOLVED that the sale of Noslar International Limited (in liquidation) as a going concern shall be by an E-Auction to be conducted as a Swiss Challenge Method, and Mr. Surinder Kumar Bansal, son of Lata Rulia Ram Bansal, resident of C 167, Maharana Pratap Enclave, Pitampura, Delhi, Income tax Permanent Account No. AAMPB0887G, the person who has offered to purchase Noslar International Limited (in liquidation) as a going concern, will participate in the E-Auction as per conditions contained in 'Information Memorandum & E-Auction Process Document'".	85.78%	0%	14.20%
5	Resolution No. E: "RESOLVED that the realizations, if any, from adjudication of Interlocutory Applications listed hereafter and pending before the Hon'ble National Company Law Tribunal, and recovery from adjudication of Interlocutory Applications, if any are filed before the Hon'ble National Company Law Tribunal, shall be to the benefit of creditors and claimants other than creditors and claimants identified in Resolution No. B, and distributed as per the provisions of section 53 of the Code: (i). Interlocutory Application filed during Corporate Insolvency Resolution Process for issuance of directions to Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited to reassess electricity load and release the excess security deposit and refund of excess amounts recovered. (ii). Interlocutory Application filed during the Corporate Insolvency Resolution Process for recovery of amounts in respect of avoidable transactions.	85.78%	0%	14.20%
	(iii). Interlocutory Application filed during Liquidation for recovery of amounts lying in Bank Accounts.			

9. During the course of hearing on 13.01.2023, it was submitted by the Liquidator that he was not successful in selling the Corporate Debtor as going concern in the first Auction. He is, therefore, seeking indulgence of this Adjudicating Authority to sell the Corporate Debtor as a going concern, as he is barred to do so by Regulation 32A (4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

10. We have heard the Ld. Liquidator/Applicant and perused the Application. The issue which emerges for our consideration is **Whether there is any bar in selling the Corporate Debtor as a going concern after the first auction and whether the Liquidator is required to seek any permission of this Adjudicating Authority for such a sale?**

11. At this juncture, we refer to Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which reads as under –

“32A. Sale as a going concern.

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

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under sub regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

*(4) The liquidator may sell the assets of the corporate debtor **under clause (e) of regulation 32 exclusively only at the first auction.***

(Emphasis placed)

12. Since the Regulation 32A (4) refers to “**clause (e) of Regulation 32**”, we would like to visit the Regulation 32 as well, which reads as below:

“32. Sale of Assets, etc.

The liquidator may sell -

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) **the corporate debtor as a going concern;** or*
- (f) the business(s) of the corporate debtor as a going concern.*

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”

(Emphasis placed)

13. From the conjoint reading of the provisions under Regulation 32A(4) and Regulation 32(e), it can be inferred that the Corporate Debtor can be sold as going concern in the first auction. However, as regards to the word “exclusively” mentioned in the Regulation 32A(4), we are of the view that whereas *the liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction*, **we find no such bar in selling the assets of the Corporate Debtor in the subsequent auctions, where the Liquidator has all other options of sale as stipulated under Regulation 32A, available including selling of the Corporate Debtor as going concern.**

14. As seen from the record, in the instant case, sale of assets through more than one auction has already taken place, therefore, in our considered view, the Liquidator has the entire basket of options available for the sale of assets as stipulated under Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and we find no legal disability for the Liquidator in exercising any of the methods of sale stipulated under Regulation 32 including the sale of the Corporate Debtor as going concern.

15. Accordingly, when the Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 itself provides requisite flexibility in choosing the methods of sale during the auctions subsequent to the first auction, and there being no requirement in law seeking permission of this Adjudicating Authority, we are not inclined to grant the prayer of the Liquidator.

16. However, we make it clear that while deciding this application, we have not expressed any view on the method/manner of sale adopted by the SCC/Liquidator of the CD in the present case and the process/procedure of sale followed by them.

17. The IA is accordingly Dismissed.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)