

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I**

KOLKATA

I.A.(IB) No. 1037/KB/2021

In

C.P (IB) No.759/KB/2017

In the matter of

The Insolvency and Bankruptcy Code, 2016
read with Insolvency & Bankruptcy Board of India
(Liquidation Process) Regulations, 2016

And

In the matter of

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 and read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of

An application under Regulation 32e,32(a),44 and 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

And

In the matter of:

State Bank of India, a public sector Banking and Financial Services Statutory body constituted under the State Bank of India Act,1955 and having its office at stressed Asset management Branch, Nagaland House,8th floor,11 and 13 Sarani, Kolkata- 700071.

.... Financial Creditor

Versus

Visa International Limited, a Company incorporated under the provisions of the Companies Act, 1956 and a Company within the meaning of Companies Act, 2013 and having its registered office at 8/10 Alipore Road, Kolkata-700027 having CIN No: U51109WB1998PLC086454.

.... Corporate Debtor (now in liquidation).

And

Ashok Kumar Gulla, having registration No. **IBBI/IPA-003/IP-N00024/2017-2018/10174**, Liquidator as appointed by an order dated 11.05.2021 of Visa International Limited having his office at RBSA

Restructuring Advisors LLP, IAPL House II,23, South Patel Nagar, New
Delhi -110008.

.... Applicant/ Liquidator

Date of hearing : 24/02/2022

Order Pronounced on :03/03/2022

Coram:

Shri Rajasekhar, V.K, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference

Mr. Ajay Gaggar, Adv.

Ms. Rakhi Purnima Paul, Adv.

} For Applicant /Liquidator in

IA/1037/KB/2021

ORDER

Rajasekhar, V.R, Member (Judicial)

1. The Court is convened by video conference.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') by the liquidator ('Applicant') namely, Mr. Ashok Kumar Gulla ('Liquidator') Liquidator of Visa International Limited (in liquidation) praying for:
 - (a) An order for the closure of the liquidation process in terms of Regulations 45(3)(a) of Insolvency and Bankruptcy Board of India, Regulations,2016 (in-brevity IBBI) on compliance in Form-H¹ of the directions passed by this Adjudicating Authority.
 - (b) An order directing the Registrar of Companies for recording the status of the corporate debtor as "active" as well as recording the names of the new directors in place of the erstwhile directors.

Facts of the Case

3. Visa International Limited ('Corporate Debtor') was admitted into Corporate Insolvency Resolution Plan ('CIRP') on 07th August, 2019.

¹ Annexure A-1 at page no 29 to 33 of the IA No.1037/KB/2021

Further, this Adjudicating Authority vide order dated May 28, 2021 passed an order of liquidation under section 33 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and Mr. Ashok Kumar Gulla was appointed as the liquidator.²

4. The Applicant/Liquidator submitted that the applicant as per Regulation 12 of the IBBI (Liquidation Regulations), 2016 Public Announcement was made in **Form B** which was published in Kolkata editions of Financial Express (English) and Aajkaal (Bengali) dated 13th May, 2021.³
5. The Applicant /liquidator submits that he issued invitation for scheme of compromise or arrangement under Section 230 of the Companies Act, 2013 by way of a Public Announcement, in Business Standard (English) and Aajkaal (Bengali), Kolkata Edition, pursuant to Regulation 2B of the IBBI (Liquidation Regulations), 2016.⁴ dated 19th May,2019.
6. The Applicant /liquidator submits that the 1st Stakeholders Consultation Committee Meeting (hereinafter referred to as the SCC meeting) of the corporate debtor dard 02nd July,2021, liquidator informed that few investors showed interest to acquire the company under the scheme of compromise and arrangement. Two Expressions of Interest (“EOI”) for scheme under Section 230 of Companies Act, 2013 were received from Sunrise Industries and Kundan Care Products Limited and in the said meeting the members of SCC also deliberated on impact of pledge of shares and mortgage of three properties on the sale of Corporate Debtor as going concern.⁵
7. The Applicant /liquidator submits that on receipt of the claims from the stakeholders of Corporate Debtor in liquidation the Liquidator verified, admitted and updated the claims and a list of stakeholders was also e-

² Annexure A-2, page 34 of the application.

³ Annexure A-3, page 58

⁴ Annexure A-5, page 72

⁵ Para-(m), page 12

filed with this Hon'ble Tribunal as per Regulation 31(2) of Liquidation Process Regulations dated 10th July,2021.⁶

8. The Applicant /liquidator submits that in the 2nd SCC meeting dated 12th July, 2021, members of SCC decided to again invite Expression of Interest for scheme of Compromise or Arrangement under Section 230 of Companies Act, 2013 and the liquidator also discussed modalities for sale of Corporate Debtor as a going concern and members agreed to sell the corporate debtor as a going concern but without relinquishment of pledge of shares and mortgage on three properties.⁷
9. The Applicant /liquidator submits that the liquidator once again made a public announcement in Business Standard ("English") and Aajkaal ("Bengali") for invitation of scheme dated 13th July,2021 under Section 230 of Companies Act, 2013.⁸
10. The Applicant /liquidator submits that the Liquidator has duly filed the preliminary reports and asset memorandum enclosing the valuers' report with Hon'ble Tribunal in compliance of Regulation 13 of Liquidation Process Regulations dated 22nd July,2021.⁹
11. The Applicant /liquidator submits that the scheme was discussed with the SCC members dated 28th July,2021 held wherein that Sunrise Industries improved the financial offer to Rs 5.50 crores. The Sunrise Industries agreed to submit the revise scheme by 31st July, 2021, however, later withdrew the scheme vide mail dated 1st August, 2021.¹⁰
12. The Liquidator invited offers for sale of the assets of the Corporate Debtor as 'a going concern' in terms of Regulation 32A and 32e of IBBI (Liquidation process) Regulations,2016 by fixing the reserve price of Rs.9,00,00,000/- (Rupees Nine Crore only) by an 1st E-auction notice

⁶ Para No.(e), page 08

⁷ Para No.4(n), page 13

⁸ Annexure A-5, page 75

⁹ Para No. 4(h), page 10

¹⁰ Para No. 4(o), page 14

dated August 05, 2021.¹¹

13. The Applicant for the purpose of E-auction process of a Corporate debtor as a going concern caused a public advertisement on 10th August,2021 by making release in Financial Express (English daily) and Aajkal (Bengali daily)¹² and the last date for submission of documents for 1st Auction by the bidders, i.e. Eligibility Certificate under Section 29A, Bid Application Form and Non-Disclosure Agreement along with EMD held on 06th September, 2021 in the manner specified in Schedule I under Regulation 33 of the Regulations, *ibid* and with respect to this e-auction, the liquidator received Expression of interest (“EoI”) from only one bidder i.e., Progressive Star Finance Pvt.Ltd. (Successful Bidder) after verification of the eligibility under section 29A of the Insolvency and Bankruptcy Code, 2016.
14. Progressive Star Finance Pvt.Ltd. (Successful Bidder) by depositing Earnest Money Deposit (EMD) to the tune of Rs. 1,35,00,000/- (Rupees One Crore Thirty-Five Lakh only) through RTGS vide UTR No. HDFCR52021090262491531 dated 02nd September,2021 being 15% of the reserve price of Rs. 9,00,00,000/-, (Rupees Nine Crore only) and offering a bid of a sum of Rs.9,00,00,000/- (Rupees Nine Crore only) being the only bid received and accordingly was declared the Successful Bidder vide a Letter of Intent (“LoI”) issued by the Liquidator dated 07th September, 2021.¹³ Mentioning that the successful bidder has to make full payment of bid amount within 90 days of date of letter of intent, provided that if, payment is made after 30 days an interest at the rate of 12% will accrue.
15. Subsequently, on October 28th, 2021 the Liquidator issued the certificate of sale to the successful bidder.¹⁴ pursuant to the payment of the balance sale consideration of Rs.7,65,00,000/- (Rupees Seven Crore Sixty-Five

¹¹ Para No. 4(s) and 4(t), page 16

¹² Page 172

¹³ Annexure A-9, page 175

¹⁴ Annexure A-10, page 178 (Copy of the Sale certificate dated 28th October,2021)

Lakh only) to the Liquidation account opened dated 21st August,2021 maintained by the Liquidator with State Bank of India, Account Number. 40381009205 in the name of Visa International Limited, Branch- East Patel Nagar, New Delhi through RTGS vide UTR No. HDFCR52021100769532742 dated 07th October,2021.

16. The applicant submitted that liquidator appointed vide NCLT order¹⁵ dated 11th May 2021, took steps for initiation of process of liquidation in the nature of public announcement in **Form-B** and published in Kolkata editions of Financial Express (English) and Aajkal (Bengali) dated 13th May,2021 as per Regulation 12 of Liquidation Process Regulations *ibid*. The Liquidator by this Public Announcement invited claims as per regulation 31(2) of the Liquidation Process Regulations from the stakeholder and submitted e-filed list of stakeholders dated 10th July,2021 i.e., within 45 days from the date of receipt of claims.
17. In this factual context, learned Counsel appearing for the applicant, submitted that the e-auction for the purchase and takeover of the Corporate Debtor as a ‘going concern’ as per the Liquidation Process Regulations by the Progressive Star Finance Pvt.Ltd. (Successful Bidder) held on “As is where is basis”, “As is what is basis”, “whatever there is basis” and “No recourse” basis as per the E-auction Process Information Document dated 10th August,2021, resultantly, the successful bidder was handed over all the assets of the Corporate Debtor.
- We have heard the learned Counsel appearing for the Liquidator, and perused the records available.
18. The Liquidator submitted the liquidation process compliances in **Form-H** within the timeline (of 90 days) from the liquidation commencement date i.e., 11th May,2021 in terms of Regulation 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, attached to the application before the Adjudicating Authority.

¹⁵ Annexure A-2, pages 34-57(Copy of the NCLT order)

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19. In light of the facts stated in the application and the submissions made, the application is allowed in terms of prayer (a) and (b) of the application by the applicant/Liquidator and the bank account, if any, be closed.
20. The application bearing **IA(IB)No.1037/KB/2021** is disposed of accordingly.
21. The Registry shall e-mail copy of this order to the Counsel on record for the Liquidator, and the Liquidator, for information and for taking necessary steps.
Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, West Bengal, Kolkata for updating the status of the company.
22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Order dated: March 03,2022

(Balraj Joshi)
Member (Technical)

(Rajasekhar V.K)
Member (Judicial)

Sneh, LRA