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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA/815/IB/2020 in CP/1307/IB/2018

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal, Rules, 2016 and
Section 276 of the Companies Act, 2013)*

In the matter of M/s. **The Jeypore Sugar Company Limited**

IDBI Bank Limited
Represented by Deputy General Manager
NPA Management Group

... Applicant / Financial Creditor

Shri. V.Venkata Sivakumar
Liquidator of M/s. The Jeypore Sugar Company Limited

... Respondent / Liquidator

Order Pronounced on **1st July, 2022**

CORAM:

**JUSTICE (RETD) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : Varun Srinivasan, Advocate
NVS & Associates

For Respondents : V. Venkata Sivakumar,
Party-in-Person

ORDER

Per: Justice (RETD) S. RAMATHILAGAM, MEMBER (JUDICIAL)

The above application has been preferred by IDBI Bank Limited, represented by its Deputy General Manager, NPA Management Group under 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 and Section 276 of Companies Act, 2013 seeking following reliefs;

- a. *Direct Shri V. Venkata Sivakumar to maintain status quo and not to take no further actions as the Liquidator of the Corporate Debtor pending the disposal of this Application;*
- b. *Remove Shri V. Venkata Sivakumar from acting as the Liquidator of the Corporate Debtor with immediate effect;*
- c. *Direct that all the actions carried out by him from May 29, 2020 as null and void; and*
- d. *Pass such other orders that it deems fit and thus render justice.*

2. This Tribunal vide order dated 25.02.2019 had admitted an Application under Section 7 of the Code and commenced CIRP of the Corporate Debtor viz. Jeypore Sugar Company Limited at the behest of the present Applicant. Consequently, moratorium of the Corporate Debtor was declared and this Respondent was appointed as the Interim Resolution Professional. It was submitted that this appointment had been done on recommendation of this present Applicant.

3. Subsequently, in the CoC meeting with a majority of 90% resolved to retain the Respondent as the Resolution Professional. The Applicant states that the CoC were actively involved during the meetings where deliberations regarding Information Memorandum, Public announcement of EoI and other aspects had taken place.

4. It was further submitted by the Applicant that this Tribunal had ordered liquidation of the Corporate Debtor vide order dated 29.05.2020 wherein the Respondent was appointed as the Liquidator of the Corporate Debtor, the relevant portion are extracted as under:

"13. The Resolution Professional expressed his willingness to continue as the liquidator and has also filed his written consent, which is placed along with the typed set to the application and a perusal of the same discloses the fact that the Resolution Professional is willing to act as the Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, V.Venkata Sivakumar, having Reg. No. IBBI/IPA-001/IP-P00184/2017-18/10852 is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process....."

5. At this juncture, it is relevant to observe Regulation 7A of the Insolvency and Bankruptcy Board of India (Resolution Professionals) Regulations, 2016, which is extracted as under:

"Regulation 7A – Authorisation for assignment.

An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case may be:

Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-

(a) 31st December, 2019; or

(b) the date of expiry of his authorisation for assignment.”

6. The applicant contends that the respondent Liquidator did not possess a valid Authorisation for Assignment as required by the above Regulation as on the date of appointment as the Liquidator, and therefore seeks the removal of the respondent as the Liquidator and to declare all the duties and functions performed as the Liquidator as null and void.

7. It is the case of the Applicant that the respondent Liquidator by way of filing his written consent to act as the Liquidator of the Corporate Debtor without the requirement under Regulation 7A of the Insolvency and Bankruptcy Board of India (Resolution Professionals) Regulations, 2016 and has suppressed material fact.

8. The fact remains that as on the date of appointment of the Respondent as the Liquidator, the Respondent did not have a valid Authorisation for Assignment (AFA)

9. However, in response to this Application, the Respondent has raised the following preliminary objections and had sought dismissal of the present Application. It was submitted by the Liquidator that the subject matter of the petition filed seeking several reliefs by the Respondents being the Secured Creditors concerning the valuation

of the Land and Buildings and Plant and Machinery carried out by the IBBI approved Registered valuers post the order of Liquidation.

10. The Learned Liquidator submitted that the Applicants are only claimants like the Operational Creditors / Government dues having no right to raise any dispute with regard to the appointment of valuers and the valuation given by them following the valuation standards. It was submitted that the Liquidator is empowered to take decision taking into consideration the relevant conditions prevailing and any advice of the stakeholders is only persuasive in nature and not binding as per Clause 9 of the Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016.

11. It was submitted that the Applicant has not made IBBI and IIIPI as party Respondents in the present Applicant since they are necessary parties and that once the Liquidator is appointed, he cannot be removed unless there is a serious allegation of corruption.

12. Heard the submissions made by the Learned Counsel for the Applicant and the Learned Liquidator. The present Application has been filed by the Applicant seeking thereof to replace the Liquidator. In this regard, the Learned Liquidator has submitted that there is no provision under the IBC, 2016 to change the Liquidator and also the



Liquidator cannot be changed at the behest of the stakeholders unless or otherwise a serious allegation has been made.

13. In this regard, we may refer to Section 16 of the General Clauses Act, 1897 which states as follows;

16. Power to appoint to include power to suspend or dismiss.— Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

14. Thus, it could be seen a conjoint reading of Section 33 of IBC, 2016 with Section 16 of the General Clauses Act, 1897 would show that the Authority which has the power to appoint a person, equally has the power to suspend or dismiss that person, in the absence of any specific powers conferred thereto. Thus, by virtue of Section 16 of the General Clauses Act, 1897 it clear that this Adjudicating Authority has the power to dismiss the Liquidator since this Authority is vested with the powers under Section 33 and 34 of IBC, 2016 to appoint a Liquidator.

15. Next coming to the issue of the grounds on which the Liquidator can be changed, the provisions of IBC, 2016 does not explicitly state the grounds on which the Liquidator can be removed. In the absence of the specific provisions under the IBC, 2016 we



may resort to Section 276 of the Companies Act, 2013 which states as follows;

276. Removal and replacement of liquidator.— (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

- (a) misconduct;
- (b) fraud or misfeasance;
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
- (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

16. The aforesaid provisions of the Companies Act, 2013 would manifest the fact that the Liquidator can be removed under the following circumstances;

- (a) misconduct;

- (b) fraud or misfeasance;
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
- (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

17. In the present case, the Liquidator has stated in his reply that no stakeholder has the right to seek for replacement of Liquidator and that once the Liquidator is appointed, he cannot be removed unless there is a serious allegation of corruption. If we go by the contention as made by the Learned Liquidator then it should be construed that the Liquidator is infallible and this Adjudicating Authority has to simply close its eyes and let the Liquidator do whatever he wants. As to the present case of M/s. Jeypore Sugar Company Limited, it is to be seen that in the previous hearings serious allegations have been made against the Liquidator by the stakeholders that he has shared the valuation report with the prospective Scheme proponents and the Liquidator has also not denied the same. In reply to such a contention, the Liquidator stated that only during CIRP the RP should not share the valuation report, however during the Liquidation period there is no bar. Such a statement made by the Liquidator shook the conscious of this Court.

18. It is an admitted fact that the Liquidator has shared the valuation Report of the Corporate Debtor with the prospective Scheme proponents which lead to the proponents quoting value on par with the valuation report. Such an act committed by the Liquidator is viewed seriously by this Tribunal. The said act of the Liquidator would amount to failure to exercise due care and diligence in performance of the powers and functions and as such, it is one of the grounds on which the Liquidator can be changed.

19. Further, one of the grounds canvassed by the Learned Counsel for the Applicant is that the Liquidator at the time of accepting the assignment was not holding a valid AFA as per Regulation 7A of the IBBI (Resolution Professionals) Regulations, 2016 and as such he is disqualified to act as the Liquidator. In this regard, when the matter was agitated before the Hon'ble NCLAT in the matter of **Committee of Creditors Represented by IDBI Bank Ltd. -Vs- V Venkata Sivakumar & Anr** in *Comp. App. (AT) (Insolvency) No. 754 of 2020*, it was held as follows;

Having heard the learned counsel for the parties, we are of the considered opinion that if there be any irregularity in appointment/confirmation of Respondent No. 1 as 'Liquidator' for not having a valid authorisation for assignment on the date of such acceptance or commencement of such assignment within the purview of Regulation 7-A of the aforesaid Regulations, that does not adversely affect and render the order of liquidation passed by the Adjudicating Authority illegal or invalid. If there is any irregularity, as contended by the learned counsel for the Appellant, he shall be at liberty to bring it to the notice of the Adjudicating Authority who may have a re-look at the

appointment of 'Liquidator' so far as the authorisation of Respondent No. 1 is concerned and pass appropriate order.

20. Thus, in so far as the appointment of Liquidator is concerned, it is an undisputed fact that the Respondent / Liquidator herein has accepted the assignment in respect of the Corporate Debtor without holding a valid AFA. Further, the Appellant viz. IDBI Bank was given the liberty to bring to the notice of the Adjudicating Authority to have a re-look at the appointment of the Liquidator so far as the Authorization is concerned.

21. It is to be noted here that IIPPI and also the IBBI have issued show cause notice to the Respondent and has stated that the Respondent has accepted the assignment without holding a valid AFA and hence IIPPI imposed a penalty of Rs.10,000/- upon the Respondent. The same is also reflecting the order passed by IBBI. Hence, it is crystal clear that the Respondent has accepted the assignment without holding a valid AFA, however as observed by the Hon'ble NCLAT, the non-holding of a valid AFA will not render the order of liquidation passed by the Adjudicating Authority illegal or invalid and moreover the Hon'ble NCLAT it has stated that if any irregularity is brought by the Appellant, then this Tribunal may have a re-look at the appointment of the Liquidator, in the present case.



22. Hence, for the aforesaid reasons, we are of the view that the Liquidator in respect of the Corporate Debtor viz. Jeypore Sugar Company Limited has failed to exercise due care and diligence in performance of the powers and functions while discharging his functions as Liquidator in respect of the Corporate Debtor viz. M/s. Jeypore Sugar Company Limited and hence he is required to be replaced. Thus, under the provisions of Section 33 and 34 of IBC, 2016 read with Section 16 of the General Clauses Act, 1897 read with Section 276 of the Companies Act, 2013, from the latest list provided from IBBI, for the period from July 2022 to December 2022, we hereby appoint **Mr. S Hari Karthik** (Reg. No. IBBI/IPA-002/IP-N01201/2021-2022/14009) (email id *harikarthikcscma@gmail.com*) as the Liquidator in respect of the Corporate Debtor viz. Jeypore Sugar Company Limited. The outgoing Liquidator / Respondent is directed to handover the charges to the newly appointed Liquidator within a period of 7 days from the date of this order.

23. Accordingly, IA/815/IB/2020 stands **allowed**. The Registry is directed to send a copy of this order to IBBI for its information and records.

- Sd -

ANIL KUMAR B.
MEMBER (TECHNICAL)

- Sd -

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)