IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

I.A.(IBC) NO. 1412/KB/2025

In

C.P.(I.B) NO. 2074/KB/2019

Application under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Section 35(1) of the Insolvency and Bankruptcy Code, 2016;

IN THE MATTER OF

Sanjeev Kumar Mishra, residing at village - Narayanpur, Post Office - Sakri, Darbhanga, Bihar – 847239

...Applicant /Operational Creditor

VERSUS

Abhijeet Hazaribagh Toll Road Limited, at FE-83, Sector – III Salt Lake City, Ground Floor Kolkata – 700 106, West Bengal, India

...Corporate debtor

AND

IN THE MATTER OF:

Mr. Nirmal Kumar Agarwal, address at Shreekunj, Block-E, 83, Golaghata Road, North 24 Parganas, West Bengal 700048 and also at 24, Tara Chand Dutta Road Street, Near Moonlight Cinema, Kolkata - 7OO O73

...Liquidator/Applicant

Order pronounced on: 08.05.2026

CORAM

SHRI. LABH SINGH, HON'BLE MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

Counsel appeared through physically and virtually:

Mr.K.Saraf, Adv.] For the Liquidator
Ms.Joveria Sabbah,Adv.]

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, JUDICIAL MEMBER

1. This is an application filed by Nirmal Kumar Agarwal,

Liquidator of Abhijeet Hazaribagh Toll Road Limited, the Corporate Debtor under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Section 35(1) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:

(a) Grant permission to the Liquidator to confirm the sale of the Land described in Schedule "A" in favour of Mr. Sudhir Baliram Mhatre for a sum of Rs. 2 Lakhs under Regulation ,33(2) of the Liquidation Process Regulations, 2016.

(b) Any other directions which the Hon'ble Tribunal may deem fit in the facts and circumstances of the matter.

2. The Application for initiating Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted by this Tribunal vide order dated January 7, 2022. Thereafter, an order of liquidation was passed on November 7, 2022 and the applicant was also appointed as the Liquidator of the Corporate Debtor.

3. It is submitted that the assets of the Corporate Debtor consisted of two realizable assets i.e an Arbitral Award of Rs. 293.00 crores approx. principal amount of Rs.176.50 crores and Interest of Rs.116.50 crores against the National

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Highways Authority of India (NHAI) and a piece and parcel of land with a liquidation value of approximately 9.80 lacs.

4. It is submitted that while the Corporate Debtor received Rs. 200.25 crores against the settlement of the arbitral award under the "Vivad Se Viswas - II" scheme, the only other asset which remained unsold is an Open Freehold Non-Agricultural Land admeasuring 230.00 sq mtr's at Plot No 68, Survey No 332/A+3341A+338/A of Mouza Zaap, Taluka -Sudhagad, Dist. Raigad, Maharashtra, India (hereinafter referred to as "Land").

5. In accordance with Regulation 33, the Liquidator issued an e-auction notice for the sale of the Land on August 8, 2023, and the Public Announcement was made in newspapers, namely, "The Indian Express" (English) in Nagpur, "Loksatta" (Marathi) in Nagpur, "The Business Standard" (English) in Kolkata and "Ekdin" (Bengali) in Kolkata. with a reserve price of Rs. 11 Lakhs, with Earnest Deposit Money ["EMD"] of Rs.1 Lakh and bid incremental value of Rs.50,000/-. However, the e-auction failed as the Liquidator did not receive any Expression of Interest (EOI).

6. It is submitted that a second e-auction notice was issued on February 13, 2024, with the reserve price reduced to Rs.

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8.50 lakhs, earnest money deposit was reduced to Rs.85,000/- and bid incremental value was reduced to Rs.10,000/-.

7. The second e-auction also failed as no EOI was received by the Liquidator. It is submitted that in the 7th SCC meeting on March 30, 2024, the SCC unanimously gave permission to the Liquidator to find private parties for the private sale of the Land, as private sale seemed to be a cost-effective method.

8. It is submitted that the Liquidator also listed the Land on BAANKNET, a portal of the IBBI, dedicated for the purpose of sale of assets of a Corporate Debtor, on November 30, 2024, but the Liquidator has failed to receive any response from such portal as on date.

9. It is submitted that the Liquidator, after vigorous efforts through various land brokers, approached individual parties who did not express any interest due to the reasons that the Land admeasuring 230.00 Sq meters is a small piece equivalent to approximately one-half of a basketball court, is non-agricultural in nature, lacks basic infrastructure, has an irregular shape with limited frontage which makes it unsuitable for independent commercial use, and does not have access to a main road or highway, making ingress and egress difficult for any meaningful commercial activity.

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Furthermore, the Land is located in a belt without any nearby industrial or commercial hub and has limited potential for appreciation in value compared to larger parcels in more developed locations.

10. It is submitted that in the 11th SCC Meeting on March 28, 2025, it was decided that the Land shall be liquidated through private sale as none of the financial stakeholders were ready to take the Land, as they would be incurring additional costs to maintain and secure it.

11. It is submitted that sometime in the month of March 2025, a land broker referred Mr. Sudhir Baliram Mhatre, residing at 104 Sunflower Neelkanth Garden, Devshil Road, Govandi East, Mumbai: 400088, who physically inspected the Land physically and informed the Liquidator to provide him some time to respond.

12. It is submitted that on April 8, 2025, through a Letter of Intent Mr. Sudhir Baliram Mhatre offered to purchase the land on an “as is where is basis” for a consideration of Rs. 2 Lakhs only. The Liquidator tried to re-negotiate and look for a better offer, which failed, and with no option left, the SCC in the 12th meeting on May 27, 2025, approved the offer for purchase at a consideration of Rs. 2 Lakhs.

13. The SCC members directed the Liquidator to file an application before this Tribunal to seek permission for the private sale of the Land at a reserve price of Rs. 2 Lakhs in accordance with Regulation 33 of the Liquidation Regulations.

14. Heard Learned Counsel for liquidator. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record. We have also appreciated the law applicable on the facts and circumstances of the present application.

15. It is pertinent to refer to the relevant provision of Regulation 33 which provides mode of sale of the asset in liquidation. The same is as under:

> "33. (1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.
>
> (2) The liquidator may sell the assets of the corporate debtor by means of private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I when-
>
> (a) the asset is perishable;
>
> (b) the asset is likely to deteriorate in value significantly if not sold immediately; or

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(c)xxxxx

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

16. It is pertinent to note that the Regulations are mandatory in nature. Regulation 33 (1) mandates that the Liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I. A private sale is meant to be an exception, allowed only in specific circumstances enumerated in Regulation 33 (2) of IBBI(Liquidation Process) Regulation 2016 where either the

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asset is perishable or asset is likely to deteriorate or asset is sold at a higher price than the reserve price of a failed auction or the prior permission of the Adjudicating Authority has been obtained for such sale.

17. Hon'ble Apex Court in case of R K Industries vs HR Commercials (2024) SCC 166 on the power of liquidator to sell the property of the Corporate Debtor under Regulation 33 of IBBI (Liquidation Process) Regulation 2016 held as follow:

> "56. When it comes to the mode of sale of the assets of the corporate debtor, whether immovable or movable and other actionable claims, Regulation 33 of the Liquidation Regulations comes into play and states that ordinarily, the liquidator will sell the said assets through auction, as specified in Schedule I (1). Sub-section (2) of Section 33 IBC gives an option to the liquidator to sell the assets of the corporate debtor through a private sale, in the manner set out in Schedule I(2). Regulation 33 of the Liquidation Regulations is couched in a language which shows that ample latitude has been given to the liquidator, who may "ordinarily" sell the assets through auction

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thereby meaning that in peculiar facts and circumstances, the liquidator may directly go in for a private sale. To avoid the pitfalls of disposing of the assets by conducting a private sale for the pittance, Regulation 33 has prescribed some stringent conditions that the liquidator is under an obligation to comply. The said preconditions are that: (i) the asset is perishable; (ii) the asset is likely to deteriorate in value significantly if not sold immediately; (iii) the asset is sold at a higher price than the reserved price of the failed auction; and (iv) the Adjudicating Authority (NCLT) must grant prior permission for such a sale. The proviso appended to Regulation 33(2) of the Liquidation Regulations places yet another embargo to the effect that when the liquidator intends to sell the assets of the corporate debtor by way of a private sale to a related party of the corporate debtor, his related party or any professional appointed by him, it is mandatory to obtain prior permission of the adjudicating authority (NCLT). Even the mode of sale has been regulated under the Liquidation

Regulations for both, a public auction and a private sale. All the above dos and don'ts have been inserted to protect the assets of the corporate debtor and safeguard the interest of the stakeholders."

18. In the instant case, the Liquidator, in compliance of Regulation 33, issued an e-auction notice dated August 08, 2023 for the sale of the Land in question by making public announcement in two newspapers, "The Indian Express" (English) Nagpur Edition, "Loksatta" (Marathi) Nagpur Edition, "The Business Standard" (English) Kolkata Edition and "Ekdin" (Bengali) Kolkata Edition with a reserve price of Rs. 11 Lakhs, with Earnest Deposit Money ["EMD"] of Rs.1 Lakh and bid incremental value of Rs.50,000/-. However, the e-auction failed as the Liquidator did not receive any Expression of Interest (EOI). Thereafter, Liquidator issued a second e-auction notice dated February 13, 2024, with the reserve price of Rs. 8.50 lakhs, earnest money deposit was reduced to Rs.85,0OO/- and bid incremental value was reduced to Rs.10,000/-. However, the second e-auction also failed as no EOI was received by the Liquidator.

19. It is an admitted fact on the part of the Liquidator that he had issued a second e-auction sale notice at a reserve price

of Rs. 8.50 lakh. The applicant is now trying to sell the property in question to one Mr. Sudhir Balram Mahtre who has expressed interest to purchase the property "as is where is basis" at a price of Rs. 2 lakh which is reduced by 76%. On May 27, 2025, the SCC in its 12th meeting held on 27.05.2025 by e-voting approved the said private sale. The question arises whether the liquidator could be permitted to sell the asset at such a price in the manner adopted by him.

20. At this juncture, it is pertinent to refer relevant provision of Schedule-1 of IBBI(Liquidation Process) Regulation 2016 which provides for manner specified for sale of property under Clause (1) by way of public auction and under Clause (2) by way 'private sale' which is as under:-

> *1. **AUCTION***
>
> *(1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.*
>
> *(2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-*
>
> *(a) releasing advertisements;*
>
> *(b) preparing information sheets for the asset;*

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(c) preparing a notice of sale; and

(d) liaising with agents.

(3) The liquidator shall prepare terms and conditions of sale, including 'Reserve Price', earnest money deposit as well as pre-bid qualifications, if any.

(4) The 'Reserve Price' shall be the value of the

(4A) 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 a subsequent auction. (4B) 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.

"2. PRIVATE SALE

(1) Where an asset is to be sold through private sale, a liquidator shall conduct the sale in manner specified herein.
(2) The liquidator shall prepare a strategy to approach interest buyers for assets to be sold by private sale.
(3) Private sale may be conducted through directly liasing with potential buyers or their agents through retails shops or through any other means that is likely to maximise the realizations from the sale of assets.

(4) The sale shall stand completed in accordance with the terms of sale.

(5) Thereafter, the asset shall be delivered to the purchaser, on receipt of full consideration for the assets, in manner specified in the terms of sale."

21. It is seen from the above stated Regulation and Schedule that the Liquidator, in auction sale notice, can reduce the 'Reserve Price' by up to 25 % of such value to conduct the subsequent auction and where an auction falls at a reduced price under Clause 4A, the 'Reserve Price' in subsequent auctions may be further reduced by not more than 10 % at a time. The applicant has tried to sell the land in second auction sale notice at a reserve price of Rs. 8.50 lakh. No doubt he might have issued another auction sale notice by reducing the reserve price by 10% under Clause (1).

22. In the instant case, the applicant, instead of going for another auction sale notice by reducing 10% of reserve price, has opted to sell the land by way of private sale as per Clause (2). He is praying to grant approval for sale of land to Mr. Sudhir Balram Mahtre, the Broker, at a value of Rs. 2 lakhs which is much below of the last auction sale notice which was issued at a reserve price of Rs. 8.50 lakhs. Thus, the property which is land is being sold at 76%

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reduced price of last auction sale notice reserve price.

23. The Liquidation Process Regulations provide for certain checks and balances on the private sale in Schedule 1 thereto, which includes, inter alia, the preparation of a strategy to approach interested buyers for assets to be sold by private sale, liaising with potential buyers or their agents, completion of sale in accordance with the terms of sale, etc. The private sale has to be conducted in a manner so as to maximise the realisations from the sale of assets. The Hon'ble NCLAT in case State Bank of India v. Bhuvee Stenovate Pvt. Ltd. & Ors., (2023) ibclaw.in 70 NCLAT observed that the Liquidator, for conducting private sale is not to identify one buyer and sell the assets; rather, strategy has to be made to approach the interested buyer for assets which is with the object to attract more and more interested buyers to maximise the realisation from the sale of assets.

24. In the instant case, Liquidator has stated that he has made vigorous efforts through various land brokers, and approached individual parties who did not express any interest to purchase the land. He further submitted that ultimately in the month of March 2025, the land broker

referred Mr. Sudhir Baliram Mhatre inspected the Land physically and on April 8, 2025, through a Letter of Intent Mr. Sudhir Baliram Mhatre offered to purchase the land on "as is where is basis" for a consideration of Rs. 2 Lakhs only. Thus, the land in question is being sold to broker for an amount of Rs. 2 lakh by reducing reserve price more than 76%.

25. In view of our aforesaid observation and law applicable thereon, we disallow private sale of said asset for an offer of Rs. 2 lakhs and issues following direction to the Liquidator under Section 35 of the Code:-

(a) The Liquidator shall issue a fresh auction notice of sale in two widely circulated newspapers and invite bids above the bid submitted by Mr. Sudhir Baliram Mhatre by adopting Swiss Challenge method, treating the bid offered by Sudhir Baliram Mhatre as the anchor bid.

(b) The interested bidders will have to submit 10% of the bid amount as EMD along with the bid.

(c) In the event of receipt of a higher bid than the anchor bid, Sudhir Baliram Mhatre shall have the option to match that bid.

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(d) Accordingly, IA.No.1412/2025 stands dismissed.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

The Order signed this, on the 08th day of May 2026.