

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA 579/2018  
in  
CP No. 64/IBC/NCLT/MB/MAH/2017

Under Regulation 38 of the Insolvency and  
Bankruptcy Board of India (Liquidation Process)  
Regulations, 2016.

In the matter of

Mr. Avil Menezes

..... Applicant  
(Liquidator)

In

M/s. Bharat Trading Corporation

..... Operational Creditor

v.

M/s. Wind – Ways Packaging Private Limited

..... Corporate Debtor

Order Pronounced on : 29.08.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

**For the Applicant / Liquidator :**

Ms. Unnati Nandalaskar, PCS – Authorised Representative for the Applicant /  
Liquidator.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. In this case, the Petition / Application U/s. 9 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) filed by the Operational Creditor viz. 'M/s. Bharat Trading Corporation' against 'M/s. Wind – Ways Packaging Private Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 07.04.2017 by this Bench wherein 'Mr. Avil Menezes (IBBI/IPA-001/IP-P00017/2016-17/10041)' was appointed as Interim Resolution Professional (**IRP**). On 12.07.2017 the CoC unanimously voted for Liquidation of the Corporate Debtor as per S. 33 (2) of the Code and affirmed RP as 'Liquidator'. Thereafter, this very Bench vide an Order dated 04.08.2017 had ordered the commencement of Liquidation process against the Corporate Debtor and the said RP has been appointed as 'Liquidator'.

2. On the commencement of Liquidation of the Corporate Debtor the Liquidator had made a public announcement on 25.08.2017 in two newspapers viz. 'Free Press Journal (English) and Navshakti (Marathi)' and invited claims against the Corporate Debtor.
3. Pursuant to the advertisement the Liquidator had received claims from various stakeholders. Thereafter for the quarter ended 30.06.2018 there is outstanding of only one stakeholder namely Abhyudaya Co-Op. Bank Ltd. amounting to ₹ 5,67,34,000/- out of its total claim of ₹ 10,69,13,000/-. All other stakeholders have been repaid from the sale proceeds of the Liquidation of the Assets of the Corporate Debtor.
4. The Liquidator has filed this Miscellaneous Application to seek the Direction from this Bench under **Regulation 38** of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter as **Liquidation Regulations**) to distribute the unsold assets of the Corporate Debtor.
5. As per the progress report for the quarter ended on 31.03.2018 there were two realizable assets of the Corporate Debtor namely, 'Investment Shares of Abhyudaya Co-Op. Bank Ltd. amounting to ₹ 15,00,000/-' (hereinafter as **Investment Shares**) and 'Trade Receivables amounting to ₹ 54,52,000/-.'
6. The Liquidator has stated that out of these two assets the Investment Shares cannot be readily sold by the Liquidator in light of the S. 55 of the Multi State Co-Operative Societies Act, 2002 as the said Section provides that the share or contribution in the Co-Op. Societies shall not be liable to attachment or sale under any decree or order of any Court.
7. It is also stated that, the Abhyudaya Bank is also having charge as well as the legal custody over the said Investment Shares pursuant to S. 55 of the Multi State Co-Operative Societies Act, 2002.
8. In light of above submissions the Liquidator has stated that as the Asset of the Corporate Debtor in terms of Investment Shares cannot be readily sold it can be distributed as per the Regulation 38 of Liquidation Regulations. Consequently the Liquidator has prayed that, since the partial claim of the Abhyudaya Co-Op. Bank Ltd. is outstanding as on date and the Investment Shares are in custody of Abhyudaya Bank, the same can be distributed to the Abhyudaya Bank and the Bank can adjust the amount of ₹ 15,00,000/- towards its outstanding amount.

9. In light of above submissions, this Bench has gone through the relevant provision of the Liquidation Regulations which is worth for reproduction as under :

**“38. Distribution of unsold assets**

*(1) The Liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.”*

By going through this provision it is noticed that as the Investment Shares cannot be readily sold by the Liquidator pursuant to S. 55 of the Multi State Co-Operative Societies Act, 2002 it can be termed as ‘Special Circumstances’ in terms of Regulation 38 of the Liquidation Regulations. Hence, it is appropriate to distribute the said unsold asset as per the above-said provision.

10. Considering above facts and circumstances this Bench hereby Orders that :

- a) The Investment Shares shall be distributed to the Abhyudaya Co-Operative Bank Ltd. and the amount of those Shares i.e. ₹ 15,00,000/- shall be adjusted by the Abhyudaya Bank towards its outstanding as on date.
- b) The MA 579/2018 is stood allowed on abovementioned directions. Disposed-of accordingly.

**Dated : 29.08.2018**

Avinash

SD/-

**M. K. SHRAWAT  
MEMBER (JUDICIAL)**