

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.10.2021 AT 13:00 HRS

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/260/2021 in CP (IB) No. 11/10/HDB/2017
NAME OF THE COMPANY	Kamineni Steel & Power India Private Limited
NAME OF THE PETITIONER(S)	Kamineni Steel & Power India Private Limited
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

Counsel for Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in IA NO.260/2021, vide separate orders.

Time is granted till 30.11.2021.


Member (Technical)


Member (Judicial)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1, HYDERABAD**

**IA.No. 260/2021 in
CP (IB) No. 11/10/HDB/2017
U/s.60(5) of Insolvency & Bankruptcy Code, 2016
R/w Rule 11 of the NCLT Rules, 2016.**

Between:

Nimmagadda Surya Pradeep Bio-Tech Private Limited
Having its Registered Office situated at
Plot No.1046, Road No.52, Jubilee Hills
Hyderabad – 500 034

...Applicant/Successful Bidder

And

M/s. Kamineni Steel and Power India Pvt. Ltd.
Represented by Mr. Racharla Ramakarishna Gupta
Liquidator
Having its Registered Office situated at
"Kamineni", 4th Floor, King Koti
Hyderabad – 500 016

...Corporate Debtor

Date of Order: 07.10.2021

Coram:

Hon'ble Shri. Madan B. Gosavi, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels present:

For the Applicant : Mr. Y. Suryanarayana, Advocate

For the Liquidator : Mr. L. Ravichander, Sr. Counsel

Heard on: 14.07.2021, 01.09.2021, 17.09.2021





[Per: Bench]

ORDER

1. The present Application is filed by M/s. Nimmagadda Surya Pradeep Bio-Tech Private Limited / the Applicant herein under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 praying the Adjudicating Authority to grant the following reliefs:
 - i. To direct the Liquidator not to proceed with cancelling the Bid dated 26.08.2020 and call for fresh bids for sale of the Corporate Debtor till the disposal of the instant application;
 - ii. To direct the Liquidator not to forfeit the Earnest Money Deposit (EMD) of Rs.5.00 crores paid by the Applicant herein till the disposal of the instant Application;
 - iii. To direct the Liquidator to accept the agreed consideration from the Applicant herein within 90 days from the date of disposal of the Applications viz. IA 796/2020 and IA 993/2020 filed by M/s. United Seamless Tubular Private Limited in the instant CP as per the provisions of the Liquidation Regulations.

2. The averments of the Application filed by the Applicant herein in brief are described hereunder:
 - i. The Applicant is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 24.05.2004. The Applicant herein is the Successful Bidder in the e-auction dated 26.08.2020 conducted by the



Liquidator of the Corporate Debtor for sale of the Assets of the Corporate Debtor.

- ii. It is averred that the Corporate Debtor had filed an application u/s 10 of the Code for initiation of CIRP which was admitted by the Adjudicating Authority, vide Order dated 10.02.2017 and initiated the CIRP of the Corporate Debtor by appointing Mr. C.B.Mouli as Interim Resolution Professional, who was later appointed by the COC as the Resolution Professional.
- iii. It is averred that the Resolution Plan was approved in the COC meeting held on 27.10.2017, which was further approved by the Adjudicating Authority, vide Order dated 27.11.2017. Aggrieved by the Order of the Adjudicating Authority approving the Resolution Plan, various appeals were filed before the Hon'ble NCLAT and the Hon'ble NCLAT vide a Common Order dated 06.09.2018 disposed of the appeals and directed the Adjudicating Authority to initiate the liquidation proceedings of the Corporate Debtor in terms of Section 33 read with Section 34 of the Code. **A copy of the Order dated 06.09.2018 of Hon'ble NCLAT is shown as Annexure-1 of the application.**
- iv. It is averred that in accordance with the Order of the Hon'ble NCLAT, the Adjudicating Authority, vide Order dated 26.10.2018 initiated the Liquidation Proceedings of the Corporate Debtor by appointing Mr. R. Ramakrishna Gupta as Liquidator of the Corporate Debtor. The Liquidator issued Public Announcement on 30.10.2018 in Form-B for calling the claims from the creditors on or before 25.11.2018.

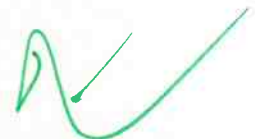




- v. It is averred that the Liquidator issued Invitation of Expression of Interest in English and Telugu Newspapers on 27.07.2020 as per the provisions of Regulation 32 and 32A of the Liquidation Regulations inviting Bids from the prospective bidders to purchase the Corporate Debtor under liquidation as a going concern with the last date for submission of the EOI was 23.08.2020 and the date of the e-auction was 26.08.2020.
- vi. It is averred that the Applicant herein was the sole participant in the e-auction and paid an amount of Rs.5.00 crores as EMD on 21.08.2020. The Applicant had bid at a price of Rs.351 crores and declared as Successful Bidder by the Liquidator.
- vii. It is averred that the highest bidder is required to pay the balance amount of Rs.346 crores within 90 days i.e. on or before 24.11.2020 from the date of auction but due to novel corona virus (Covid-19) pandemic situation, the Applicant herein could not immediately arrange for funds and adhere to the timeline and filed an Application IA No.1062/2020 for seeking an extension of further 90 days i.e. from 24.11.2020 to 24.02.2021 to complete the sale of the Corporate Debtor as a going concern. This IA is pending for adjudication.
- viii. It is averred that M/s. United Seamless Tubular Private Limited contending to be named as the Operational Creditor of the Corporate Debtor filed an application IA No.993 of 2020 seeking the following relief:

“to direct a stay on the liquidation process of the Corporate Debtor and on any steps taken in furtherance of the sale of the Corporate Debtor as a going concern to M/s.





Nimmagadda Surya Pradeep Bio-Tech Private Limited, Hyderabad, or to any entity whatsoever until the final disposal of IA 796 of 2020 in CP (IB) No.11/10/HDB/2017 filed by the Applicant and IA No.124 of 2017 in CP(IB) No.49/7/HDB/2017 filed by the erstwhile Resolution Professional of the Applicant”.

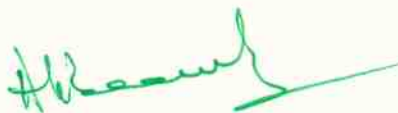
- ix. It is also averred that the Applicant herein has identified an overseas investor who are inclined to invest in the Corporate Debtor and pay the balance amount of Rs.346 crores towards the sale of the Company under liquidation as a going concern. The pending applications in the instant Company Petition have cautioned the foreign investor for funding and is sceptical to invest such huge amounts in the Company in which there are pending litigations. The foreign investors are apprehensive in receiving encumbrance free assets of the Company alongwith a litigation free Company immediately after making the payments.
- x. It is averred that the Applicant herein is unaware of the IAs stated by M/s.United Seamless Tubular Private Limited in the above stated reliefs. On becoming aware of the applications filed by M/s.United Seamless Tubular Private Limited, wrote several letters to the Liquidator raising concerns of the pending applications before the Adjudicating Authority and informing the Liquidator about the expectations of the foreign investor in acquiring the company without any litigation and also requesting the Liquidator to expedite the disposal of the said applications. The Liquidator has not replied to any of the above mentioned letters and issued a forfeiture letter vide email on 07.06.2021 stating that the “Liquidator will be constrained to proceed to cancel the Sale of the Corporate

Abbas

[Signature]

*Debtor as a going concern, if the balance payment of Rs.346 crores with interest for delayed payment, is not received within 7 days of this letter. If the balance consideration is not received within the said period, the SALE STANDS CANCELLED' with effect from 15th June, 2021 and your Earnest Money Deposit of R.5 crores will stand forfeited as per clause 4.15 read with 7.7 of the E-Auction Process Document dated 26th July, 2020". **A copy of the Forfeiture Letter dated 07.06.2021 is shown as Annexure-6 at page nos. 52 to 54 of the application.***

- xi. It is averred that due to the pandemic situation, it was difficult for the applicant herein to immediately raise such huge funds for payment of consideration towards purchase of the company under liquidation. The Applicant is willing to continue and honour the purchase of the Company under Liquidation as a going concern at an agreed price and extremely confident of making the payment within the extended period that may be granted. The Applicant is seeking disposal of the Applications filed before this Adjudicating Authority which shall satisfy the foreign investors and to enable the applicant to make the payments at the earliest.
- xii. It is averred that the Applicant is acquiring the Company on a going concern basis which would result in maximization of value of the company under liquidation. In case the reliefs are not granted as prayed for, it will result in piecemeal sale of the assets of the company under liquidation which would undoubtedly result in substantial erosion of the value of the Corporate Debtor which eventually would be against the very basic tenets and objectives of the code.



3. We have heard the learned counsel for Successful Bidder and Senior Learned Counsel for Liquidator. We have verified the record and gone through the submissions made by the Learned Counsels representing the Successful Bidder as well as the Liquidator and written submissions made by the Liquidator. During the hearings on the subject, the Bench has given several opportunities to the Successful Bidder to make payment as per the terms and conditions of the bid. However, the Applicant in this IA i.e. Successful Bidder has failed to make any further payment except depositing the EMD of Rs.5.00 crores. The Liquidator further submitted that even after expiry of 250 plus days beyond the statutory time of 90 days, the Successful Bidder has not deposited any amount as per the promises made by him despite several notices issued by the Liquidator in this regard. However, during the hearing on 16.06.2021, the Bench has finally given time to proof the bonafides of the successful bidder for payment of 10% amount within 30 days without fail. It appears from the records that the Successful Bidder has still not paid any amount. Similar Order has also been passed on 14.07.2021.
4. On 14.07.2021, when the hearing took place, the Learned Counsel representing the Successful Bidder has submitted to the Bench that the Successful Bidder will make payment of 10% of the bid amount within a month and remaining amount within three months from today. His statement made at bar was recorded by this Bench. During the hearing, we have also made it very clear that if the Successful Bidder has not honoured this commitment given to the Bench, we will be constrained to cancel the entire bid and the matter was posted to 01.09.2021.
5. During the hearing on 01.09.2021, it was brought to our notice by the Liquidator that the Successful Bidder has not honoured his commitment given to the Bench on 14.07.2021 to make the



payment of 10% of the bid amount within 30 days to show his bonafides.

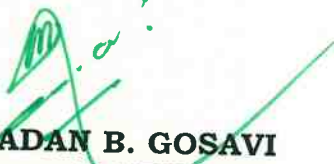
6. The matter was again posted for hearing on 17.09.2021. During the hearing on 17.09.2021, the Counsel for the Successful Bidder submitted that he wants some more time as the funds received from abroad to honour the commitment to the Bench was stuck with Financial Investment Unit (FIU) which monitors the funds received from abroad. He urged the Bench, as a last chance, give one more opportunity as the funds are expected to be cleared very shortly by the FIU to make the promised payment as committed on 14.07.2021. However, the Senior Counsel appearing for the Liquidator has vehemently objected giving any further time in the matter as on several occasions, the Successful Bidder has taken similar pleas and sought time for making payment and the Successful Bidder is not honouring his commitment given to the Bench even on 14.07.2021. Therefore, he requested for dismissal of the IA and permit the Liquidator to proceed further in the matter.
7. We heard both the parties and directed them to file written submissions in this regard. However, the Counsel for the Successful Bidder has not submitted his written submissions in the matter.
8. As per Clause 12, Schedule I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the Successful Bidder has to make balance payment of sale consideration within 90 days and interest will be charged at the rate of 12% from 31st day to 90 days. If the payment is not paid within 90 days, the sale shall be cancelled. In this case, the Bid was allotted to the Successful Bidder on 26.08.2020. Enough time has elapsed and several pleadings for additional time were made by this Successful Bidder. Further, we observed that the commitments given to the



Bench were also not honoured by the Successful Bidder on one pretext or the other. The counsel for the Successful Bidder has also not made any new grounds to consider their plea for extension of time for making payment of the bid amount.

9. Notwithstanding the above and considering the facts mentioned by the Successful Bidder and also keeping in mind that sale as a going concern is always a better resolution of the Corporate Debtor than permitting part sale. We give a final chance to Applicant to make the payment of 25% of the bid amount including EMD amount of Rs.5.00 crores on or before 30th November, 2021.
10. With the above direction, **IA 260/2021 in CP(IB) No.11/10/HDB/2017** is disposed of.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


MADAN B. GOSAVI
MEMBER (JUDICIAL)

Syamala