



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.1081/2023
In
CP (IB) No.97/Chd/Hry/2018
(Admitted Matter)**

**Under Section 60(5) read with Section 33(5) &
35(1) (k) of IBC, 2016 read with Rule 11 of NCLT
Rules, 2016**

In the matter of:

Oriental Bank of Commerce

....Financial Creditor

Vs.

M/s. Isolux Corsan India Engineering and Construction Private Limited
Through Liquidator Professional, Mr. Rajeev Bansal.

...Corporate Debtor

And in the matter of IA No.1081/2023

M/s. Isolux Corsan India Engineering and Construction Private Limited
Through Liquidator CA Mr. Rajeev Bansal
Having its registered office at
2163A, Shri Nagar Colony, Jagadhri, Yamunangar-135003

...Applicant Liquidator

Order delivered on: 29.11.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant

: Mr. Abhinav Mishra, Advocate
Ms. Nivedita Chauhan, Advocate
Ms. Jagriti Dosi, Advocate
Ms. Komal Singh, Advocate



Per: Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 1081/2023

1. This application has been filed under Section 60(5) read with Section 33(5) & 35(1) (k) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 with the prayer to grant the Applicant/Liquidator, the post facto approval/ratification/regularisation of filing and continuation of the Writ Petition [C. W.J.C. No. 13042 of 2022] filed before the Hon'ble High Court of Patna, to quash the Order dated 07.10.2021 and the Demand Notice dated 09.10.2021, passed and raised by the JSCT, Bihar; and to grant the Applicant/ Liquidator approval to pursue/defend/initiate any other incidental and consequential proceedings on behalf of/in the name of the Corporate Debtor, which may arise out of the said Writ Petition.

2. The facts stated by the applicant-liquidator in his application are as under:

- i. Consequent to the audit objections raised by the Accountant General (Audit), Bihar, an order dated 07.10.2021 was passed by the Ld. Joint Commissioner of State Tax (hereinafter referred to as JCST Bihar) in the re-assessment hearing of the corporate debtor under Section 33 of the BVAT in 2005 for Assessment Year 2012-13 and a demand of Rs. 7,06,418/- was raised against the corporate debtor.



- ii. Against the issuance of notice of demand of Rs. 7,06,418/-, a writ petition [C.W.J.C. No. 13042 of 2022] under Article 226 read with 227 of the Constitution of India, 1950, titled as 'M/s. Isolux Corsan India Engineering & Construction Private Limited through its Liquidator CA Rajeev Bansal against the State of Bihar seeking necessary directions from the Hon'ble Patna High Court towards quashing the order dated 07.10.2021 passed, and the notice of demand dated 09.10.2021 issued, to the tune of Rs. 7,06,418/- (Rupees Seven Lakh Six Thousand Four Hundred and Eighteen Only), by the JCST, Bihar, against the corporate debtor.
- iii. It is further stated that due to the urgent necessity to file a writ petition before the Hon'ble High Court of Patna to protect the interests of the corporate debtor as soon as possible, the applicant/liquidator could not approach this Tribunal to seeks its consent/approval under Section 33(5) of the IBC, 2016.
- iv. It is also stated that an interlocutory application bearing IA No. 405/2021 in CP(IB) No. 97/Chd/Hry/2018 was filed before this Tribunal by the applicant/liquidator seeking blanket approval of this Tribunal to initiate/defend all litigations, both civil & criminal in nature, against entities/individuals to effect recoveries for the beneficial liquidation of the corporate debtor and the said IA was allowed by our order dated 28.04.2022, wherein liberty was granted



to the applicant to defend all the litigations mentioned in the chart/list of litigations provided by him.

3. We have heard the learned counsel for the applicant and have perused the records carefully.

4. We also note the fact that the impugned demand notice was raised on 09.10.2021 and the filing of the writ petition on 25.08.2022, i.e., comes after the raising of notice of demand dated 09.10.2021. Thus, the applicant had sufficient time to approach this Authority especially when a similar matter was pending in IA No. 405/2021 before this Bench.

5. We have perused our order dated 28.04.2022 in IA No. 405/2021, wherein liberty was granted only in respect of the litigations mentioned in the list provided by the liquidator, this list was specifically directed to be furnished by this Bench.

6. For the sake of clarity, Section 33(5) of IBC is extracted hereinbelow:

“Section 33: Initiation of Liquidation.

(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”

7. It is noticed that this Sub-Section is clearly mentioned to regulate the institution by or against the corporate debtor and has provided for strict judicial supervision of the same.

8. The applicant, in his short note filed vide Diary No. 01424/01 dated 06.11.2023 placed reliance primarily on the decision of the Co-ordinate Bench Cuttack in the matter



of **Ravi Shankar Devarakonda vs. M/s. Bharat Heavy Electricals Limited** (Misc Appln. No. 60 CTB/2019 connected with CP (IB) No. 593/KB/2017' which was upheld by the Hon'ble NCLAT in its order dated 24.02.2022 in Company Appeal (AT) (Insolvency) No. 383/2020.

8.1 We note the fact that while co-ordinate Bench at Cuttack has allowed the application observing that 'in the interest of justice, keeping in mind the spirit of IBC', especially when the 'focus of the company in liquidation is to "maximisation of the asset".

8.2 The NCLT Co-ordinate Bench, New Delhi (Court V) has also allowed the relief on the ground that due to the limitation prescribed under Section 34, prior approval could not be taken and there was urgency in the matter.

8.3 The applicant has further placed reliance on the following decisions:

- The judgment of the Hon'ble Supreme Court in the matter of '**State of H.P. & Ors. V. Gujarat Ambuja Cement Ltd & Anr.** (2005) 6 SCC 499.
- The judgment of the Hon'ble Supreme Court in the matter of '**Sundaresh Bhatt, Liquidator of ABG Shipyard vs Central Board of Indirect Tax** reported as (2023) 1 SCC 472.
- The judgment of the Hon'ble NCLAT in the matter of "**EC. John vs. Jitender Kumar Jain & Ors**; Company Appeal (AT) (Ins) No. 249/2020.



8.4 The facts of the other cases in the aforementioned para relied upon by the applicant, however, are not directly on the issue under adjudication in the present application.

9. Now, coming to the aforementioned decision of the Hon'ble NCLAT, we note that the appeal before the Hon'ble NCLAT against the aforementioned order of the NCLT Cuttack Bench, the appellant was not questioning the approval granted by the Adjudicating Authority per se, but the limited grievance was against the Adjudicating Authority's use of the word "the leave is granted ex-post facto" in its order. The appellant's objection was that such observation was likely to be misinterpreted before the City Civil Court in which related main litigation was pending. Thus, the issue in the present application was not considered by the Hon'ble NCLAT and placing reliance on the same will not help the case of the applicant.

10. In the present case, the facts indicate that the applicant had sufficient time to file the application before this Bench with a prayer to be allowed to file the said writ petition as per the provision of Section 33(5). Nothing prevented the applicant to include the proposed writ against the demand notice of the JCST dated 09.10.2021, along with the other cases mentioned in response to our directions dated 29.11.2021 in IA No. 405/2021. It is appropriate to mention here that the liquidator was allowed to initiate/defend all litigations mentioned in the list provided by the present applicant in IA No. 405/2021 by this Bench.

11. We are also of the considered view that no such exigency was present in the application before us and it was sheer indifference on the part of the liquidator to adhere to the requirements of the provision of Section 33 (5) of the Code. Estoppel operates



against the present applicant to file the present application on account of his own act and conduct.

12. In view of the same, we do not find any reason to grant post facto approval/regularise the writ petition filed and pending before the Hon'ble High Court, Patna without obtaining the approval of this Adjudicating Authority as stipulated under Section 33(5) of the Code.

13. In the result, IA No. 1081/2023 is dismissed as being non-maintainable without any order as to costs.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November 29, 2023

PB