

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA- 3797 (PB) OF 2021
In
CP (IB)- 532 (PB) OF 2017

Under Rule 11 & 15 of the NCLT Rules, 2016

**IN THE MATTER OF:
PUNJAB NATIONAL BANK**

.... Financial Creditor

Vs.

HARIDWAR IRON & ISPAT ROLLINGS LIMITED

.... Corporate Debtor

IN THE MATTER OF IA- 3797 (PB)/2021

Mr. Chhota

(Proprietor of Laxman Enterprises)
8KM STONE, Village Jarodha, Meerut Road,
Muzaffarnagar, Uttar Pradesh-251003

.... Applicant

Vs.

Mr. Kashi Vishwanathan Sivaraman

(Liquidator of Corporate Debtor)
E-10A, Kailash Colony, New Delhi-110048

.... Respondent

ORDER DELIVERED ON 28.01.2022.

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SHRI HEMANT KUMAR SARANGI, HON'BLE MEMBER (TECHNICAL)

-sd-

Appearance

For the Applicant: Mr. Yashu Gupta, Advocate
For the Respondent: Mr. Prateek Kushwaha, Advocate,
Mr. Kashi Vishwanathan Sivaraman,
Liquidator
For M/s. Singhi
Infra Power: Mr. Abhishek Anand,
Mr. Tanveer Oberoi, Advocates

ORDER

Per: RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

1. This application has been filed by the auction bidder viz., Mr. Chhota proprietor of M/s. Laxman Enterprises under Rule 11 and 15 of the National Company law Tribunal Rules, 2016 for the following reliefs:

- i. Consider and be merciful, as the applicant is a small businessman and provide proper remedy, as the applicant may suffer losses.
- ii. To recall the Order passed on 11.08.2021.
- iii. Accept the application and direct the liquidator to resolve the matter by considering the irrecoverable loss to the applicant.
- iv. Direct the local police station to expedite the process of investigation.
- v. Pass any other Order which this Tribunal deems fit and necessary to meet the ends of justice.

-sd-

2. The brief facts for disposal of this application are as follows:

A. M/s. Punjab National Bank (Financial Creditor) filed a Section 7 application under Insolvency and Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016, against M/s. Haridwar Iron & Ispat Rollings Limited (Corporate Debtor). This was in respect of a debt and default by the Corporate Debtor. This Tribunal vide Order dated 22.05.2018, initiated Corporate Insolvency Resolution Process (CIRP) and declared moratorium. One Mr. Sanjay Gupta was appointed as the Interim Resolution Professional (IRP). The Committee of Creditors (CoC), on 20.06.2018, confirmed the appointment of the IRP as the Resolution Professional (RP). Vide Order dated 11.10.2018, this Tribunal replaced said Mr. Sanjay Gupta, who was appointed as IRP by one Mr. Kashi Vishwanathan Sivaraman. Thereafter, the new Resolution Professional, Mr. Kashi Vishwanathan Sivaraman, issued an advertisement on 18.07.2018, inviting Expression of Interest (EoI) in respect of the Corporate Debtor. In response to the same, two potential Resolution Applicants submitted their EoIs. The Information Memorandum and other relevant documents were shared by the Resolution Professional. Out of the two bidders one M/s. Alfa Ingot Private Limited was declared as the Highest bidder.

(
-sd-

B. The sole Member of the CoC namely the Financial Creditor, rejected the Resolution Plan in the CoC meeting held on 13.02.2019, and consequently, approved initiation of liquidation. It also recommended the appointment of Mr. Kashi Vishwanathan Sivaraman as Liquidator. This Tribunal vide Order dated 17.09.2019, passed an Order for Liquidation and appointed said Mr. Kashi Vishwanathan Sivaraman as Liquidator. The Liquidator made public announcement on 19.09.2019, in Form-B in two newspapers, indicating the last date of submission of claims as 16.10.2019. The Liquidator also filed Progress Report for the period 17.09.2019 to 30.09.2019 before this Tribunal.

C. The Liquidator conducted E-Auction with regard to the assets of the Corporate Debtor on six occasions, however, the sale could not be materialized due to outbreak of COVID-19. Pursuant to the steps taken for sale and the offer given by the Applicant Mr. Chhota proprietor of M/s. Laxman Enterprises, the Liquidator issued letter of intent for sale of the assets on 22.10.2020, wherein the applicant was declared as the highest bidder in respect of movables namely plant and machinery. It is stated by the Liquidator that the applicant before participating in the E-auction submitted an affidavit with respect to the terms and conditions of the E-auction and has also given an undertaking in terms of Section 29A of IBC, 2016.

-sd-

D. The Liquidator filed an application bearing number IA-1351/2021, with a prayer to direct the Applicant in the instant application, to start the process of lifting the plant and machinery. This Tribunal vide Order dated 11.08.2021 directed the Liquidator to issue notice and serve it on the auction purchaser/applicant herein and thereby gave him a final chance to take the machinery out of the premises of the Corporate Debtor within a week. In the Order, it is stated that in the event the auction purchaser/applicant fails to comply with the above direction, the amount paid will be forfeited and fresh auction will be conducted to sell the plant and machinery. It is also stated that the present applicant was directed to appear before this Tribunal, either in person or through an Advocate on the next date of hearing. Therefore, the present application is before this Tribunal.

3. The stand taken by the applicant is as follow:

A. The applicant's grievance is that the sale certificate and Letter of possession was issued on 02.02.2021. The physical possession, however, remained with the liquidator and the physical possession was given on 12.02.2021. Applicant refers to the Liquidator's email 22.02.2021, to emphasis that actual possession was given on 12.02.2021 only. The applicant states that when he went to take possession on 12.02.2021, he found some parts of the plant and machinery were missing and therefore, he submitted a list of missing parts to the Liquidator. The

applicant states that the Liquidator failed to take action on such a complaint and replied that the Plant and machinery were sold on *“As is where is basis, As is what is basis, Whatever there is basis, and No recourse basis and the proposed sale of assets of the company does not entail transfer of any title except the title which the company has on its assets as on date of transfer. All local taxes/maintenance fee/electricity charges etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the E-Auction process applicant and would be borne by the successful bidder.”* According to the applicant, the Liquidator was in physical possession for around 20 days after issuing the letter of possession whereas as per the dates given by the applicant it will be 10 days. Be that as it may, applicant states that the Liquidator is bound to handover the articles as per the list originally given and applicant will remove the plant and machinery only after resolution of this issue.

4. The stand taken by the Liquidator is as follow:
 - A. The applicant is the highest bidder of plant and machinery. On 22.10.2020, letter of intent, confirming the sale was issued. The description of the plant and machinery *“As is where is basis, As is what is basis, Whatever there is basis, and No recourse”*. The applicant had conducted due diligence before bidding in the auction process and therefore, his new stand is not correct. In terms of the letter of intent dated 22.10.2020 payment was

not being made. The Liquidator sent a reminder for payment. The present applicant filed IA-161/2021, seeking extension of time to pay the amount with interest. An order was passed by this Tribunal on 19.01.2021, directing the applicant to give an undertaking that payment will be made along with the interest on or before 01.02.2021. The applicant complied with the direction of the Tribunal and paid the outstanding amount on 31.01.2021. As a result, the Liquidator issued the sale certificate along with a letter of possession on 02.02.2021, as per the terms of the E-Auction and informed the applicant to arrange and lift the material and vacate the premises by 21.03.2021. A reminder dated 05.02.2021 was issued by the Liquidator to the applicant.

- B. The applicant replied by email dated 06.02.2021. In that reply email, he stated that the plant and machinery are heavy in nature and therefore, to avoid damage he was getting assistance from technical person and that the applicant would sign the letter of possession and sale certificate on site.
- C. The Liquidator sent two emails dated 10.02.2021 and 11.02.2021 urging the applicant to start the process of evicting the premises. The reason for showing urgency is that the Liquidator had to handover possession of the land and building to M/s Singhi Infra Power Projects Private Limited, who is the successful

-sd-

purchaser of the land and building of the Corporate Debtor.

- D. The Liquidator states that he was shocked when an email dated 20.02.2021, was received from the applicant stating that some parts of the plant and machinery were missing and the Liquidator states that he gave a reply on 22.02.2021, reiterating that the sale was on "*As is where is basis, As is what is basis, Whatever there is basis, and No recourse.*". This email dated 22.02.2021 is Annexure R-8.
- E. The Liquidator states that it is the applicant's duty to conduct due diligence at the time of participating in the bid. The material forming part of plant and machinery have been sold as per the terms of the sale notice dated 24.09.2020. These are old and unused plant and machinery of the Corporate Debtor, which was not in operation since 2012, and all machinery have been lying on the site and the applicant had duly verified all the material and his complaint of missing items is an afterthought.
- F. The Liquidator had taken steps to safeguard the property of the Corporate Debtor by deploying security team. There was no complaint whatsoever with respect to theft of any kind and therefore, this allegation is totally misconceived.

-sd-

G. The further stand of the Liquidator is that by virtue of a false and frivolous police complaint dated 25.02.2021, the applicant has delayed the liquidation process. In any event, it is a matter of record that the police have not registered the FIR. The further stand of the Liquidator is that the applicant on payment of 25% amount was supposed to deploy his own security guards which is the part of the terms and conditions of the E-Auction document. Having failed to deploy his own security in respect of plant and machinery, applicant is not entitled to turn around and make such baseless and false allegation.

5. Having considered the rival submissions, the request of the applicant has to be declined and the prayer **rejected** for the following reasons:

A. First of all the prayer in the application is vague and confusing. The request of the applicant that certain plant and machinery are missing, was taken to its logical conclusion by filing a police complaint and no FIR was registered and the Liquidator has clearly stated that in terms of the E-Auction, the applicant had to deploy his own security guards and secure the property purchased, which the applicant failed to do. The fact that the police failed to register the complaint clearly establishes that there is no merit in the allegation.

-sd-

B. The applicant on his own filed application IA-161/2021, seeking extension of time and that was granted by this Tribunal, and he made the payment on 31.01.2021. Thereafter, the sale certificate dated 02.02.2021 was issued. Even that time there appears to be no serious disputes on the goods. Even as per the email of the applicant dated 06.02.2021 the plant and machinery are heavy in nature and needs technical person to remove it. If that is the case, his allegation that within 10 days, parts of the machine were removed, appears to be a concocted story. Furthermore, the Liquidator filed one IA-1351/2021, seeking direction, that the present applicant to remove the plant and machinery and an Order was passed on 11.08.2021 by this Tribunal which is binding on him. To get over the delay in removal of the goods for reasons best known to the applicant, it appears that he has come up with this new version of missing parts. For the reasons aforesaid we find that the prayer is totally misconceived. There is nothing for the Liquidator to resolve because the applicant has failed to establish the allegation on merits. Consequently, there is no question of directing the local police to expedite the investigation and they themselves have chosen not to proceed further in the matter. In fine, the prayer as such is vague and no remedy can be granted on such a vague prayer. It is upto the discretion of the Liquidator to take action accordance with the terms and conditions of the sale, keeping in mind the order passed in IA-1351/2021. As far as the relief sought for by the

applicant is concerned, no case is made for consideration or grant of any relief whatsoever.

6. Accordingly, IA-3797/2021 is **dismissed**. The Registry is directed to communicate this Order to the applicant and the Liquidator with immediate effect.

7. The Order is pronounced through Video Conferencing.

-sd-

**RAMALINGAM SUDHAKAR
PRESIDENT**

-sd-

**HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)**