

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 315/2023

In

C.P. No. (IB) 2660/MB/C-III/2018

Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

Filed by

L7 Hitech Private Limited)

Having its registered office at:)
Unit No. 1 B, 9th Floor, A Wing,)
Times Square Building, Andheri-)
Kurla Road, Marol, Andheri (E))
Mumbai - 400059)

*... Applicant/
Successful Bidder*

Vs.

Mr. Shailesh Bhalchandra Desai)

(Liquidator of EMI Transmission Ltd))
Having office at:)
708, Raheja Centre, Nariman)
Point, Mumbai – 400021)

... Liquidator/Respondent

IN THE MATTER OF

Dena Bank

... Petitioner/Financial Creditor

Vs

EMI Transmission Limited

... Respondent/Corporate Debtor

Order pronounced on: 8th December 2023

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Liquidator: Adv. Rohit Gupta a/w Ayush Rajani

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The above I.A. is filed by the Applicant, L7 Hitech Private Limited, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“the Code”), seeking following reliefs:
 - a) *Consider and allow this IA 315/2023 in terms of Section 60(5) read with Rule 11 of NCLT Rules, 2016;*
 - b) *Pass appropriate directions for transfer of ownership of the Auction Asset (including the legal entity i.e. EMI Transmission Limited) to the Applicant, along with certain essential reliefs and concessions as mentioned under Para 16 of the present Application;*
 - c) *Direct the Corporate Debtor/Applicant shall be at liberty in approach this Hon’ble Adjudicating Authority to address any difficulties faced with respect to implementation in taking over of the Corporate Debtor in liquidation;*
 - d) *Grant liberty to the Applicant to amend, alter, modify, delete, rescind and/or substitute any prayer(s); pass any further order(s) or directions that this Hon’ble Adjudicating Authority may deem fit and proper;*
 - e) *Issue such other orders as this Hon’ble Tribunal may deem fit.*

Facts of the Case, in brief:

2. A Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') by Dena Bank (Financial Creditor) against EMI Transmission Limited (Corporate Debtor) was admitted by this Tribunal on 11.04.2019. Subsequently, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and Mr. Shailesh Bhalchandra Desai was appointed as the Interim Resolution Professional (IRP) and was subsequently confirmed as Resolution Professional (RP).

2.1 Upon failure of the Resolution process, the Committee of Creditors (CoC) of the Corporate Debtor, in its 10th meeting held on 02.01.2020, unanimously passed a resolution for the liquidation of the Corporate Debtor as a going concern. On 14.08.2020, the Tribunal passed the Liquidation order commencing the Liquidation process of the Corporate Debtor. Mr. Shailesh Bhalchandra Desai, the Resolution Professional of the Corporate Debtor, was appointed as the Liquidator.

2.2 The Liquidator made a Public Announcement of the 34th E-auction Process was made on 19.10.2022 in the Newspapers namely 'Business Standard' (Mumbai edition – English) and 'Navshakti' (Mumbai edition – Marathi) for sale of Corporate Debtor as a Going concern. Bids were invited by an E-auction Process Memorandum wherein it was stated that the Company is proposed to be sold on a 'going concern' basis. The 34th E-auction Process was initially scheduled for 14.11.2022, however, due to certain technical difficulty, it was extended till 15.11.2022.

2.3 The assets of the Corporate Debtor that were put under Sale are as follows:

Lot	Description	Reserve Price (Rs.)	EMD Amount (Rs.)	Incremental Value (Rs.)
Lot 1	All the present assets of the Company, on a Going Concern	5.00 Crores	0.50 Crores	0.05 Crores

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	Basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016			
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Submissions of the Applicant, in brief:

3. The Applicant submits that they were considered as Successful Bidder in this 34th e-auction process. The Applicant has paid the entire amount of sale consideration of Rs. 6.60 Crores in pursuance of which a Sale Certificate was issued by the Respondent on 18.11.2022. Below is the e-auction result:

Lot	No. of EMD's received	Reserve Price	Final Sale Price (Excl of taxes)	Successful Bidder	Total Recovery (Excl of taxes)
Lot 1	3	5.00 Crores	6.60 Crores	L7 Hitech Private Limited	6.60 Crores

- 3.1 It is submitted that in the present case relating to sale of the Corporate Debtor under liquidation, only the legal entity is transferred, and the liabilities of the Corporate Debtor have to be settled in accordance with Section 53 of the Code from the proceeds of the sale (i.e. from the Sale Consideration). Thus, the Applicant, being the successful bidder is entitled to take over the Corporate Debtor without any claims, encumbrance or charge and free from action by any creditor. Similarly, any pending proceedings with respect to liabilities/ inquiries/ investigation/ assessments /charges of civil/ criminal nature /claims /disputes/litigation against the Corporate Debtor and/or its subsidiaries and/or its affiliates or its assets etc., shall not have any bearing on the assets of the Corporate Debtor survives pursuant to such sale.
- 3.2 There are certain requirements to be fulfilled for transfer of legal ownership of the Auction Asset in favour of the Applicant i.e. the requisite permissions/approvals being obtained by the Applicant, inter alia, required under the Companies Act and/or from this Adjudicating

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Authority, issuance of fresh equity in the name of bidder and completion of compliances with the Registrar of Companies (RoC) which can be done only after formal approval order passed by the Tribunal.

- 3.3 During the sale of the Corporate Debtor as a going concern under the liquidation process, grant of various approvals, reliefs and concessions are essential to continue with the operations of the Corporate Debtor on a clean slate basis with all claims being extinguished and no person being entitled to initiate or continue any proceedings in respect of the claim against Corporate Debtor. In support of the submission made above, the Applicant made reference to a plethora of decisions of various benches of the National Company Law Tribunal (NCLT).
- 3.4 The Adjudicating Authority is empowered under the Code and the Liquidation Process Regulations to grant the necessary and consequential reliefs, concessions, approvals and directions, as prayed for by the Applicant/successful bidder to effectuate and consummate the transfer of the ownership of the Auction Asset (including the legal entity i.e. EMI Transmission Limited) to the Applicant/successful bidder.
- 3.5 The Applicant further submits that since the Insolvency and Bankruptcy Board of India (IBBI) is the only body which intimate the RoC through a "Formal Change Request Form to the e-governance Cell, MCA (HQ) at the earliest for the change in status of EMI Transmission Limited i.e. the Corporate Debtor from 'Under Liquidation' to 'Active' once this Tribunal passes the necessary orders in the present Application.
- 3.6 The Applicant submits that the Tribunal is empowered to grant necessary reliefs in relation to the Corporate Debtor, sold as a 'going concern' under the provisions of the Liquidation Process Regulations, under Section 60(5)(c) of the Code. Therefore, the Applicant has sought

for certain concessions and reliefs, which are set out in Para 16 of the Interlocutory Application.

Findings

4. We have perused the facts pleaded and the reliefs sought in the present Application. The Applicant in the instant case is praying for certain reliefs and concessions in order to effectuate the sale of the Corporate Debtor as a going concern.
5. The E-auction process commenced through an electronic auction on an online portal, wherein the interested buyers could register, bid and receive confirmation of the acceptance of their bid online. The Liquidator made a public announcement on 19.10.2022 in two Newspapers namely 'Business Standard' (Mumbai edition- English) and 'Navshakti' (Mumbai edition- Marathi) advertising about the 34th E-auction Process which was proposed to be held on 14.11.2022. It is submitted that the e-auction date was extended till 15.11.2022 due to some technical difficulties (the Sale certificate mentions the date of e-auction as 15.11.2022).
6. It is an undisputed fact that the Applicant was declared as the successful bidder. Further, upon payment of the entire sale consideration of Rs. 6,60,00,000 (Rupees Six Crores Sixty Lacs), the sale was considered to be completed, in acknowledgment of which a Sale Certificate was issued by the Liquidator on 18.11.2022.
7. **Part H** of the E-auction Process Information Document issued by the Liquidator highlights the proposal of selling the Corporate Debtor on a 'going concern' basis in accordance with Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

8. The Liquidator, in **Part H (Para 7)** of the E-auction Process Information Document, stated that the Successful bidder may not be liable to pay any of the outstanding dues pending before the Liquidation commencement date i.e. 14th August 2020 as the same is to be addressed by the Liquidator in line with the mechanism provided under Section 53 of the Code. It is further stated that the Bidder may also be eligible to the benefits as provided under section 32A of IBC.

9. In this regard, this Tribunal makes reference to the observations of the Hon'ble NCLAT in **M/s Shiv Shakti Inter Globe Exports Private Limited [Company Appeal (AT) (Insolvency) No. 650 of 2020]**:

*“21. ... it is a settled law that when the sale proceeds of a ‘Corporate Debtor’ are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; **subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the ‘Corporate Debtor Company’ as a ‘going concern’**..... The Hon’ble Supreme Court in ‘Ghanshyam Mishra & Sons Pvt. Ltd.’ Vs. ‘Edelweiss Asset Reconstruction Company Ltd. & Ors.’, Civil Appeal No. 8129 of 2019 and in ‘CoC of Essar Steel India Ltd.’ Vs. ‘Satish Gupta & Ors.’ (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the ‘Sale Notice’.*

22. It is no longer Res Integra that while approving a ‘Corporate Debtor’ sale as a ‘going concern’ in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the ‘Corporate Debtor’ is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a ‘going concern’ and after payment of the sale proceeds distributed in accordance with Section 53 of the Code.”

10. Accordingly, the reliefs and concessions sought under Para 16 of the Application are directed as follows:

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Sr. No.	Reliefs/concessions sought by the Applicant	Orders thereon															
1	<p>The Applicant be allowed to extinguish the existing share capital of the Corporate Debtor and issue fresh equity share capital against the sale consideration of Rs. 6.60 Crores paid by the Applicant. The Applicant shall be allowed to adjust the Sale Consideration in the form of unsecured debt. The allotment of equity and debt between the individual Purchasers shall be as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 5%;">Sr. No.</th> <th style="width: 25%;">Name</th> <th style="width: 20%;">Shareholding (100,000 equity shares with a share value of Rs. 10 per share)</th> <th style="width: 15%;">Value of Equity Shares (INR)</th> <th style="width: 35%;">Amount of Unsecured Loan</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>L7 HITEC H PRIVATE LIMITED</td> <td style="text-align: right;">10,00,000</td> <td style="text-align: right;">10,00,000</td> <td style="text-align: right;">6,50,000</td> </tr> <tr> <td colspan="2" style="text-align: center;">Total</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Sr. No.	Name	Shareholding (100,000 equity shares with a share value of Rs. 10 per share)	Value of Equity Shares (INR)	Amount of Unsecured Loan	1.	L7 HITEC H PRIVATE LIMITED	10,00,000	10,00,000	6,50,000	Total					Granted
Sr. No.	Name	Shareholding (100,000 equity shares with a share value of Rs. 10 per share)	Value of Equity Shares (INR)	Amount of Unsecured Loan													
1.	L7 HITEC H PRIVATE LIMITED	10,00,000	10,00,000	6,50,000													
Total																	
2	<p>The existing directors shall cease to be the directors of the Corporate Debtor and the following persons nominated by the Applicant shall be appointed to constitute the new board of directors of the Corporate Debtor.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 40%;">NAME</th> <th style="width: 60%;">Director Identification Number (DIN)</th> </tr> </thead> <tbody> <tr> <td>RAVI OMPRAKASH AGRAWAL</td> <td style="text-align: center;">01871025</td> </tr> <tr> <td>SURAJ OMPRAKASH AGRAWAL</td> <td style="text-align: center;">01870975</td> </tr> </tbody> </table>	NAME	Director Identification Number (DIN)	RAVI OMPRAKASH AGRAWAL	01871025	SURAJ OMPRAKASH AGRAWAL	01870975	Granted									
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3	Pass necessary orders that since the entire sale consideration has been received, the Applicant/Successful Bidder is eligible to get all the rights, title, interest in the whole and every part of the Corporate, including but limited to contracts, free from security interest, encumbrance, claim, counter claim or any demur.	Granted
4	With effect from the date of approval of this Application by the Adjudicating Authority, except for the shares issued to the Applicant by the Corporate Debtor, the entire issued share capital of the Corporate Debtor, including equity and preference shares and convertible instruments (whether pledged or not), held by shareholders of the Corporate Debtor (including by promoters and public shareholders) shall be entirely cancelled and extinguished for a consideration equivalent to the amount, if any, to be received by the shareholders under Section 53 of the IBC without any further approval from any creditor, shareholder, regulatory authority(ies) including but not limited to the National Stock Exchange, Bombay Stock Exchange, Securities and Exchange Board of India (“SEBI”), Registrar of Companies, etc. There shall be no requirement to add “and reduced” in the name of the Corporate Debtor.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.

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5	The Applicant shall be allotted 100% shareholding of the corporate debtor pursuant the NCLT order and such shares will be issued on face value and the requirement of Section 52(2)(vii)(b) of the Income Tax Act 1961 shall be excused and such allotment shall be deemed to have been made in accordance with the law.	Granted subject to necessary compliance of the applicable provisions of law including Income Tax Act, 1961, relevant procedures, and payment of fees or charges, if any.
6	A direction be issued that all the existing shares of the Corporate Debtor shall be extinguished without any consideration, and rights and liabilities arising out of the same shall also be extinguished.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.
7	The Board of Directors of the Corporate Debtor be re-constituted as per the Companies Act, 2013 and that the individuals duly appointed under the provisions of the Companies Act, 2013 be permitted to act as Directors of the Corporate Debtor. Further direct the Registrar of Companies to do all such acts, deeds and things that are necessary to appoint the following individuals as directors of the Corporate Debtor, who are individuals recommended by the Applicant, in order to enable the Corporate Debtor to file relevant returns required by applicable law and Registrar of Companies shall make necessary changes in the records and accept relevant returns as required by applicable law.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.

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8	Electricity Board to grant a new connection of electricity without any demand towards repayment of the dues relating to period prior to date of the order of this Hon'ble Adjudicating Authority.	Granted for period before initiation of CIRP
9	Direct that all inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor), pending or threatened, present or future, in relation to any period prior to the Transfer Date shall not be continued and/or instituted in future against the Corporate Debtor/Applicant or their successors or assignees and all such proceedings stands extinguished effective the Transfer Date.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.
10	Direct that on and from the Transfer Date, the assets of the Corporate Debtor shall continue to vest in the Corporate Debtor free from any security interest, encumbrance, claim, counter claim, or charge of any creditor and free from any liability that may arise under any pending proceeding or litigations, without payment of any additional consideration.	Granted
11	Direct the IBBI to submit a Formal Change Request Form to the e-	

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	governance Cell, MCA (HQ) for the change in status of EMI Transmission Limited i.e. the Corporate Debtor from 'Under Liquidation' to 'Active' as suggested in General Circular No. 8/2020 dated 06 March 2020 of Ministry of Corporate Affairs, Government of India, New Delhi-1.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.
12	RoC be directed to update the status of the Corporate Debtor in the records of the RoC to reflect as 'active' from its current status of 'Under Liquidation'.	Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.
13	All the Power of Attorneys provided to any person by the Corporate Debtor prior to the Transfer Date and at its sole discretion, will stand terminated.	Granted
14	Financial Creditors to remove the name of the Corporate Debtor from CRILC database.	Granted

11. Any other relief and concession not mentioned in the above table shall be deemed to have been **not granted**.
12. The Interlocutory Application No. 315 of 2023 is **disposed of** in above terms.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)