

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.301.- IA/1339(AHM)2023 and
ITEM No. 302.- IA/1367(AHM)2023 in
CP(IB) 25 of 2019

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/1339(AHM)2023

Pinakin Engineers and ContractorsApplicant
V/s
Shreyansh Jain Liquidator of DMB Paper Mills Pvt Ltd.Respondent
And

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/1367(AHM)2023

Pinakin Engineers and ContractorsApplicant
V/s
Shreyansh Jain Liquidator of DMB Paper Mills Pvt. Ltd. & Anr.Respondents

Order delivered on: 15 /02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD**

**IA/1339(AHM)2023 &
IA/1367(AHM)/2023 in
CP(IB)/25(AHM)/2019**

IA/1339(AHM)2023 in CP(IB) No.25(AHM)2019

*[An application filed under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016]*

PINAKIN ENGINEERS AND CONTRACTORS

Having office at:
Plot No. 249, 2nd Phase,
GIDC, Vapi, Valsad – 396195

....Applicant

Versus

SHREYANSH JAIN

Liquidator of DMB Paper Mills Private Limited
Having office at:
505 Silver Coin apartment,
Behind Aakashwani, Paota C Road,
Jodhpur – 342001

....Respondent

AND

IA/1367(AHM)/2023 in CP(IB)/25(AHM)/2019

*[An application filed under Section 60(5) of the IBC, 2016 r.w. Rule
11 of the NCLT Rules, 2016]*

PINAKIN ENGINEERS AND CONTRACTORS,

Having Office at:
Plot No. 249, 2nd Phase,
GIDC, Vapi, Valsad-396195

... Applicant

Versus

**1. SHREYANSH JAIN
LIQUIDATOR OF DMB PAPER MILLS PVT. LTD.**

Having Office at:
505 Silver Coin Apartment,
Behind Aakashwani,
Paota C Road,
Jodhpur- 342001

2. KRISHKAN INVESTMENT PVT. LTD.

Having Office at:
7/1A, Grant lane, 2nd Floor,
Chambers Room No. 2,
Kolkata-700012

3. SARVESHWARI PAPER MILL LLP

Having Office at:
Shop No. 14, Plot No. 195,
GIDC Pandesara, Surat- 394221

... Respondents

In the matter of

CP(IB)/25(AHM)/2019

DMB Paper Mills Private Limited

....Corporate Applicant

Versus

Union Bank of India

....Respondent

Order Pronounced On: 15.02.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Monaal Davawala, Adv.
For the R-1 : Mr. Mohit Gupta, Adv.
For the R-2 : Mr. Jaimin Dave, Adv. aw. Ms. Hirva
Dave, Adv.
For the R-3 : None

ORDER
[Per: Bench]

IA/1339(AHM)2023 & IA/1367(AHM)/2023

1. In IA/1339(AHM)2023 and IA/1367(AHM)/2023 in CP(IB) No. 25 of 2019 a detailed order was given by this Tribunal on 22.01.2024. The operative portion of the said order is produced below:

(A) *The Applicant herein shall give an unconditional bid to the Liquidator within a period of **three working days** from the date of pronouncement of this order.*

(B) *The entire bid amount should be deposited by the Applicant herein in the liquidation account of the Corporate Debtor which is under the control of the Liquidator within a period of **seven working days** from the date of this order. The details of liquidation account are as under:-*

“DMB Paper Mills Private Limited Liquidation Account
Account No. : 923020051338691
Name of Bank : Axis Bank, Mumbai
Branch : Vile Parle Branch
IFSC Code : UTIB0000064”

(C) *In case, the Applicant fails to adhere to the directions given in (A) and (B) above, this Tribunal will assume that the Applicant is not interested to pursue the matter and the*

Liquidator will be free to take further steps in pursuance of the Sale Certificate already issued by him in favour of R-3.

- (D) In case the Applicant is able to satisfy (A) and (B) above, R-3 – the Successful Resolution Bidder will have an option to match the bid of the Applicant herein of course subject to payment of balance consideration within **seven working days** from the date of submission of the revised bid.*
- (E) It is made clear that in no circumstances this Tribunal will accede to any requests of either of the parties for seeking extension of time as specified in this order.*
- (F) The Liquidator is permitted to issue fresh sale certificate and to cancel already issued sale certificate to comply with the directions given under this order.*
- (G) The liquidator is directed to strictly adhere to the above directions and file an additional affidavit giving the subsequent development on record within two weeks from the date of this order.*
- (H) List the matter for compliance on **12.02.2024**.*

2. This matter was posted for reporting the compliance on 12.02.2024. The Learned Liquidator has filed compliance additional affidavit under Inward Diary No. D993 dated 08.02.2024. Perusal of the same reveals that the Liquidator received an unconditional bid offer of Rs.25.5 crores from the Applicant vide email dated 24.01.2024 which is annexed as Annexure-P1.

3. It is stated that as per the order dated 22.01.2024, the Applicant had to deposit the entire bid amount in the liquidation account of the Corporate Debtor within a period of seven working days from the date of the order. However, no bid amount was received within the time period envisaged or even afterwards.
4. Pursuant to the above, the Liquidator has written an email dated 02.02.2024 regarding non-receipt of the bid amount to the Applicant and informing the Applicant that he is going to take steps as per the order dated 22.01.2024. A copy of the email exchanged between the Liquidator and the Applicant is annexed as Annexure P2.
5. The said email was responded by the Applicant on 02.02.2024 and is reproduced below:-

“Dear Sir

Yes Sir, I am extremely sorry for not submitting the bid amount, because at the last moment the bank refuse to make the payment which the bank was suppose to pay and already has been sanctioned my payment was ready.

So I was helpless and cant able to do the payment, as the Honorable NCLT order was to make full payment, so there was no any sense of making part payment.

Please guide if there is any way.

Sorry for the same.

with Regards

for Pinakin engineerings Pvt Ltd

Hasmukh Patel.

6. Pursuant to receipt of said email, the Liquidator issued a sale validity letter in favour of Sarveshwari Paper Mill LLP which is dated 02.02.2024 and handed over the possession of the factory premises to such person.
7. It is seen that both the IAs were kept for reporting compliance and **were not disposed off.**
8. The order dated 22.01.2024 records that the Applicant herein has filed 3 IAs being IA/1293(AHM)2023, IA/1339(AHM)2023 and IA/1367(AHM)2023. Through these IAs, the Applicant was assailing the auction sale of the impugned property. IA/1239(AHM)2023 was already disposed off vide order dated 07.11.2023 recording the following directions:-

“This is an application filed by the intending auction bidder seeking the following prayers:-

- i. Your Lordship may be pleased to allow the present application;*
- ii. Your Lordshp may be pleased to quash the advertisement dated 19.10.2023 published in Gujarat Guardian News Paper and Financial Express News Paper, Surat edition with regards to auction to be held on 15.11.2023 for property of DMB Paper Mills Private Limited and be further pleased to direct that the liquidator for fresh advertisement*

be published in news-papers having wide circulation and with proper description, rescheduling the auction.

- iii. Pending hearing admission and final disposal of this petition, Your Lordship may be pleased to stay the auction which is to be held on 15.11.2023 of property DMB Paper Mills Private Limited.*
- iv. Your Lordship may be pleased to grant any other/ further relief(s) as may be deemed fit in the interest of justice.*

The matter was heard in the first round when the nobody was present for the liquidator and in the second round learned liquidator along with Mr. Hiten Parikh appeared.

Both counsel for liquidator state that still the auction has not happened and is schedule for 15.11.2023, though the time for depositing the EMD has elapsed.

It was further stated by the learned liquidator that he is ready to give one chance provided this Tribunal directs the Applicant herein to deposit the EMD and to participate in the auction process.

At this stage counsel for the Applicant states that he is ready to deposit the EMD latest by 09.11.2023, provided copies of the information be given by the learned liquidator.

In view of the above, position explained by both the parties. We direct the Applicant to approach the learned liquidator through a valid expression of interest on the E-mail as provided in the auction notice latest by 08.11.2023 by 12 hours and EMD be deposited latest by 5 P.M. on 09.11.2023.

Learned Counsel for the Applicant states during the hearing today that if the above remedies are made available to him, he is not pressing for the prayers as per the application.

In view of this above directions, the present application is dismissed with liberty to re-agitate the matter, if orders are not complied by any of the sides.

*Accordingly, **IA/1293(AHM)2023** is disposed of in above terms.”*

However, the directions were not complied by the Applicant.

9. Para 32 of the order dated 22.01.2024 records as under:-
“32.During the hearing on 17.01.2024, learned counsel appearing on behalf of Applicant, upon a question from the Bench regarding proof of funds, stated that “upon instruction from the clients he says that the client is ready and willing to deposit the entire amount of Rs.25.5 Crore”...”.
10. It is seen that based upon the representations made by the Applicant, this Tribunal considered the request of the Applicant and the said order was passed for the reasons stated in the order.
11. After having obtained favourable order for the second time, the Applicant has not deposited any amount despite assurances made across the Bar.
12. It appears that the Applicant has filed these IAs to scuttle the auction process. Through the act of the Applicant, the Applicant has wasted the precious time of this Tribunal. In view of the same, the Applicant is directed to deposit a sum of **Rs.2,00,000/- (Rupees Two Lakh Only) in the Prime Minister’s National Relief Fund (“PMNRF”)** within a period of 7 days from the date of this order.

13. List the matter for reporting compliance on **06.03.2024**.
14. In view of the above directions, IA/1339(AHM)2023 and IA/1367(AHM)2023 are hereby disposed off.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev Kr. Sen/P.S.