

THE NATIONAL COMPANY LAW TRIBUNAL
COURT III NEW DELHI

I.A. 5208/ 2021

IN

Company Petition No. (IB)-1440 (ND)/2018

In the matter of:

M/s K.K.R India Financial Services Pvt. Ltd.

...Financial Creditor

Versus

M/S Kwalitiy Ltd.

...Corporate Debtor

And

In the matter of:

Sarda Mines Pvt. Ltd.

..Applicant/Successful Bidder

Versus

**Shailendra Ajmera
Liquidator -Kwalitiy Limited**

...Respondent

Under Section 7 of IBC, 2016

Judgment delivered on:20.05.2022

Coram:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Mr Krishnendu Data, Sr Advocate along
with Mr Sumit Attri, Mr Karan Khan, Mr Rajat
Sinha

For the Respondent : Sanjay Bhatt Advocate, Adv. Apoorva
Chowdhury



ORDER

Per: Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by the Applicant, M/s Sarda Mines Private Limited (SMPL), the Successful Bidder for the Corporate Debtor under Section 60(5) of the IBC, 2016 ("Code") read with Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") seeking appropriate concessions, exemptions, reliefs and directions from this Tribunal for implementing of sale of the Corporate Debtor as a going concern. The applicant has also prayed for waiver of interest (Prayer A & B of the application). The said application was listed on 21.12.2021 and the Tribunal upon hearing the Ld. Counsel appearing for the parties, allowed the application and granted the concessions, exemptions, reliefs sought for by the Applicant except the reliefs with regard to waiver of interest as prayed for in prayer A and B of the said application.

2. Thus, it is clear from the order dated 21.12.2021 passed by this Tribunal, that the only issue which was left for consideration by the Tribunal is with regard to the waiver of interest as prayed for by the Applicant in prayer A and B of the application.

3. This Tribunal vide order dated 11.12.2018, initiated Corporate Insolvency Resolution Process ("CIRP") for the CD. As no Resolution Plan came to be approved for the CD by the Erstwhile Committee of



Creditors, this Adjudicating Authority vide order dated 11.01.2021 ordered for initiation of liquidation process for the CD in IA No. 842/ND/2019. Vide order dated 11.01.2021, this Adjudicating Authority appointed the Erstwhile Resolution Professional, Mr. Shailendra Ajmera as the Liquidator for the Corporate Debtor.

4. The bid of INR 121 crores submitted by the Applicant (SMPL) was declared as the highest bid and the Applicant (SMPL) was declared the highest bidder for the purpose of the assets of the Corporate Debtor as a going concern. The Liquidator on 27.09.2021 issued a letter of intent ("LoI") to the Applicant (SMPL) and the LOI was executed on 14.10.2021.

5. According to the LoI, the Applicant was required to pay the entire sale consideration of Rs.121 crores within 30 days from the issuance of LoI and the payments made after period of 30 days from the date of execution of LoI entail simple interest at @ 12% per annum. The Applicant has submitted that there are contingent liabilities on the Corporate Debtor including a claim of INR 9,598 crores from the Income Tax Department. The Income Tax Department has filed a claim of Rs. 10,242 crores with the Liquidator out of which Liquidator has accepted only Rs. 644 crores. Thus, an amount of Rs. 9,598 crores is outstanding towards contingent liability.

6. The Applicant (SMPL) vide email dated 30.09.2021 requested the Liquidator that a joint application be filed before this Tribunal

seeking reliefs relating to waiver of litigation and taxation, SEBI, Corporate Structuring and reliefs from any statutory authorities. In reply to the said email dated 30.09.2021, the Liquidator vide email dated 06.10.2021 stated that it is only Successful Bidder who has to file the application before this Tribunal seeking appropriate reliefs. It is also submitted that the Income Tax Authorities have also filed an application under Section 42 of IBC, 2016 before this Tribunal protesting the treatment of its claim by Liquidator. The Applicant on 14.10.2021 issued a letter to the Liquidator requesting that the final payment be allowed to be made subject to the directions passed by this Tribunal. However, the Liquidator refused to accept the request regarding payment of final sale consideration as mentioned in letter dated 14.10.2021.

7. Mr. K. Dutta, Ld. Senior Advocate, appearing for the Applicant (SMPL) submitted that the Tribunal has vide powers under Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 as well as under Rule 11 of NCLT Rules to grant the relief of waiver of interest. Mr. K. Dutta, Ld. Senior Advocate has relied upon an order passed by the NCLT, Hyderabad Bench, in the case of Dr. Devaiah Pagidipati versus Southern Online Bio Technologies Limited, IA No.1038 of 2009 in IB No.343/7/HDB/2018 wherein the Hon'ble Bench held: -

"The mere purchase of the Unit as ongoing concern without granting certain other reliefs that would be essential and necessary to run the business as an ongoing concern is of no use."

"No doubt, liquidation process Regulations do not provide for granting specific type of reliefs to the Applicant. However, when Corporate Debtor is being sold as an ongoing concern, naturally the purchaser is entitled for consequential reliefs to achieve the object of running the unit as ongoing concern. Therefore, it is a fit case to grant certain reliefs in favour of the Applicant/Purchaser which are more or less in the nature of complying necessary provisions of Companies Act, 2013."

Mr. K. Dutta, Ld. Senior Counsel also relied upon the 3 orders passed by NCLT in the cases of (i) Bank of Baroda versus M/s. Topworth Pipes & Tubes Private Limited in IB No. 1239/MB/2018 passed by NCLT, Mumbai Bench, (ii) in the case of Gland Celsius Bio Chemicals Private Limited versus KSK Energy Ventures Limited in CP No. IB-675/7/HDB/2018, passed by NCLT Hyderabad Bench and (iii) in the case of M/s. Elecon Engineering Company Limited versus M/s. Enviro Bulk Handling Systems Private Limited in CP No. IB-1319/MB/2017, passed by NCLT Mumbai Bench. In all the these three cases, the Tribunal while dealing with the provisions under Section 53 of the IBC, held that the liabilities of the Corporate Debtor should be settled in accordance with Section 53 of the Code, in the case where the Corporate Debtor is a going concern. Relying upon the said orders, Mr. K. Datta, Ld. Senior Advocate, would contend that

under Regulation 32(A) the reliefs sought for by the Applicant can be granted since the Corporate Debtor is a going concern. He also submitted that the Tribunal is also empowered under Rule 11 of the NCLT Rules, 2016 in exercise of inherent powers to grant any reliefs to meets the ends of justice.

8. The Liquidator has filed reply affidavit disputing the claim of the Applicant. Mr. Sanjay Bhatt, Liquidator submitted that the Applicant is bound by the terms of the Process Memorandum and the LoI and the provisions of the IBC read with IBBI Regulations relating to the Liquidation Process and therefore the Applicant cannot claim for any relief to be granted in its favour which is not provided by the law.

9. In the backdrop of the above submissions made by the Ld. Counsel appearing for both the parties, we have to examine as to whether the Tribunal has got powers under Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 prescribing the procedure to be adopted in case of sale as a going concern and under Rule 11 of NCLT Rules to grant relief sought for by the applicant.

Further, it also needs to examined the terms of sale under the LOI and Process Memorandum executed by the parties and the relevant provisions contained in the Regulations.

10. At the outset, it is pertinent to refer to the Schedule I of the said Regulation which deals with "MODE OF SALE". The Schedule prescribes the procedure to be adopted in case of auction as well as in

case of a private sale. It has been contemplated in the said schedule that in case of a private sale, the sale shall stand completed in accordance with terms of sale.

11. Sub-clause 12 of Clause 1 of Schedule 1 of the IBBI Liquidation Process Regulations, 2016 stipulates that “on the closure of auction” the highest bidder shall be invited to provide balance sale consideration within 90 days on the date of such demand. The first proviso to the above-mentioned provision provides that the payment made after 30 days shall attract interest @ 12%. The second proviso says that the sale shall be cancelled if the payment is not received within 90 days. In the instant case, the e-auction was conducted on 24.09.2021 and a bid of INR 121 crores submitted by Applicant (SMPL) was the highest and Applicant (SMPL) was declared as the successful bidder for the Corporate Debtor. Pursuant to the same the Letter of Intent dated 14.10.2021 was executed by the parties. Thus, the Applicant was under an obligation to deposit the entire sale consideration amount on or before 13.11.2021, failing which he would be liable to pay interest. From the perusal of the provisions contained in Regulation 32A Schedule 1 of the IBBI (Liquidation Process) Regulations, 2016 and the Process Memorandum and LOI, it is clear that the entire sale consideration amount has to be made within 30 days from the date of execution of LOI, failing which 12% interest will be leviable.

12. From the above analysis of the Regulations, LOI and Process memorandum, it is amply clear that interest is chargeable in case the payment is not made within 30 days from the execution of the LOI. Further, nowhere in the IBC or the Regulations thereto, there is any provision which empower the Tribunal to waive interest. In the light of the factual position of the present case as discussed above, we have to now examine the extent of powers under the Rule 11 of the NCLT Rules, 2016 which deals with the exercise of inherent power and which can be exercised in granting the relief claimed by the Applicant in the present case. Rule 11 of the NCLT Rules, 2016 reads as follows:

“Inherent Powers: - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

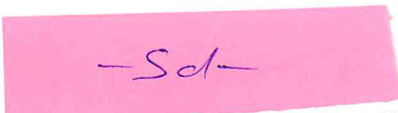
13. From the plain reading of the provision in Rule 11, it is seen that the said power can be used only to meet the ends of justice or to prevent abuse of the process of the Tribunal.

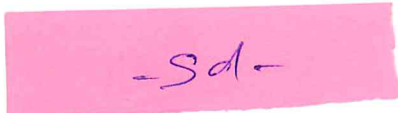
14. As already discussed earlier, an interest of 12% will be attracted if the payment is made after 30 days as stipulated under the Regulations as well as the Process Memorandum and the terms of sale under the LOI. Further, nowhere in the IBC or the Regulations thereto, there is any provision which empowers the Tribunal to waive interest.

15. In the light of the discussion as made above, we are of the view that when express provisions have been made in the IBBI (Liquidation Process) Regulations, 2016 for levy of interest in case of delayed payments and also the process memorandum and terms of sale under the LOI provide for levy of interest, we do not feel it appropriate invoke the inherent powers under Rule 11 of NCLT Rules, 2016 in the present case.

16. We would further like to add that the intention of the legislature in bringing the IBC is to consolidate insolvency resolution of corporate persons in a time bound manner for maximization of value of assets and to achieve the said objective of the legislature has in its wisdom provided for levy of interest in case of delayed payments so as to ensure that the process of liquidation is completed within time.

17. For the reasons mentioned above, the present IA-5208/2021 is **dismissed** with respect to prayer A and B of the application.


(BACHU VENKAT BALARAM DAS)
HON'BLE MEMBER (JUDICIAL)


(NARENDER KUMAR BHOLA)
HON'BLE MEMBER (TECHNICAL)