

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1605/KB/2023
in
C.P. (IB) No. 512/KB/2018

An Application under Section 60(5) of the Insolvency and Bankruptcy Code.

IN THE MATTER OF:

UCO BANK

... Financial Creditor.

Verse

Rabirun Vinimay Private Limited

... Corporate Debtor.

And

IN THE MATTER OF:

C.A. Kannan Tiruvengadam

... Applicant/ Liquidator.

Verses

Jindal Stainless Steelway Limited

(CIN: U27109HR2004PLC082454)

... Respondent.

Date of Hearing: October 06, 2023.

Date of Pronouncement: December 11, 2023.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)

Appearance:

For the Liquidator:

Mr. Rishav Banerjee, Adv. and Mr. Saptarshi Mandal, Adv.

For the Respondent in I.A. (IB) No. 1605(KB)2023:

Mr. Joy Saha, Sr. Adv.; Mr. Saurv Panja, Adv.; Mr. Patit Paban Bishwal, Adv.;

Mr. Deepanjan Dutta Roy, Adv. and Ms. Vishi Sharma, Adv.

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ORDER

PER Bidisha Banerjee, Member (Judicial):

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsel, Shri Rishav Banerjee for the Liquidator and the Ld. Senior Counsel, Shri Joy Saha for the Respondent.
3. This instant petition is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by **Mr. Kannan Tiruvengadam**, the **Liquidator** of the **Rabirun Vinimay Private Limited**, Corporate Debtor herein, seeking confirmation of sale of the Corporate Debtor as a going concern to the **Jindal Stainless Steelway Limited** (CIN: U27109HR2004PLC082454) Respondent herein who have acted as the anchor bidder and emerged as the highest bidder pursuant to Swiss Challenge auction conducted by the Liquidator of the Corporate Debtor for the sale of the Corporate Debtor as a going concern in furtherance to public notice published by the Applicant on July 24, 2023.
4. The Applicant has sought the following reliefs from this Adjudicating Authority as under:
 - a) *If deemed fit, to pass necessary direction confirming sale of the Corporate Debtor as a going concern to the Respondent and for issuance of sale certificate by the Applicant in favour of the Respondent for such sale against receipt of purchase consideration of Rs. 96 Crore.*
 - b) *To pass necessary direction upon Respondent to pay the balance amount Rs. 86,40,00,000/- and complete the acquisition of the Corporate Debtor as a going concern in the matter and with the resultant consequences specified in Part A and Part B of Schedule I to the Respondent's Request Letter enclosed as Annexure J to this Application.*
 - c) *To pass appropriate directions in terms of reliefs and concessions requested by the Respondent vide Schedule 2 to the Respondent's Request Letter enclosed as Annexure J to this Application.*
 - d) *To pass appropriate direction on the Applicant to distribute the purchase consideration received from the Respondent in terms of Section 53 of the I&B Code among all its stakeholders.*
 - e) *Such further orders or directions be passed as may be deemed fit and proper.*

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Factual Backgrounds:

5. Vide an Order dated March 07, 2019, passed in respect of the Application filed by the consortium bank having UCO BANK as the lead bank for initiation of Corporate Insolvency Resolution Process (CIRP), under Section 7 of the I&B Code, 2016 against Rabirun Vinimay Private Limited, Corporate Debtor herein, this Adjudicating Authority put the Corporate Debtor into CIRP and Mr. Kannan Tiruvengadam was appointed as the Interim Resolution Professional.
6. Since, no resolution plan received by the Resolution Professional and the Committee of Creditors (CoC) of the Corporate Debtor during the entire period of CIRP, this Adjudicating Authority has passed the order of liquidation in respect of the Rabirun Vinimay Private Limited, Corporate Debtor herein on March 05, 2020, and Mr. Kannan Tiruvengadam was appointed as a Liquidator of the Corporate Debtor.
7. Pursuant to the order dated March 05, 2020, the Liquidator caused publication of fifteen public notices for the sale of the Corporate Debtor as a going concern/ asset block of the Corporate Debtor from November 02, 2022 to November 11, 2022.

Submission of the Liquidator:

8. The Learned Counsel, Shri Rishav Banerjee, appeared on behalf of the Liquidator (Applicant) submits that from May 12, 2022 to June 20, 2022, the Applicant received offers from four parties wished to acquire the Corporate Debtor on private sale basis which were rejected by the Liquidator.
9. The Learned Counsel for the Liquidator further submits that the Applicant received a correspondence dated January 18, 2023 from one SRMB Srijan Private Limited (hereinafter referred to as "SRMB") evinced their interest in acquiring the Corporate Debtor at a consideration of Rs. 95 Crore. Subsequently, the Applicant took a proposal to the Stakeholders Consultation Committee, for brevity "SCC" of the Corporate Debtor, wherein the Liquidator proposed that the offer made by the SRMB of Rs. 95 Crore should be kept as a reserve price for a

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Swiss Challenge public auction which would result in the sale of the Corporate Debtor within the permitted timelines. However, the said proposal was rejected by the SCC.

10. It is further contended that on February 28, 2023, the Applicant filed an application being I.A. 480/KB/2023 recording the reason why the applicant did not agree with the views of the SCC and vide an order dated April 24, 2023, this Adjudicating Authority directed the Applicant to make publications in two circulated newspapers of a Swiss Challenge auction notice for bringing attention of the interested parties at large before conducting auction through Swiss Challenge method and place the result of such auction before this Adjudicating Authority for approval of the same. (Para 5(g) of the Order dated April 24, 2023)
11. It is further submitted that the SRMB had been made the anchor bidder for Swiss Challenge Auction which was scheduled to be held on June 19, 2023. SRMB's bid was Rs. 95 Crore. Necessary publications were made.
12. It is further stated that thereafter SRMB chose to prefer an appeal being Company Appeal (AT) (Ins.) No. 780 of 2023 ("SRMB Appeal") before the Hon'ble NCLAT, New Delhi against the Order dated April 24, 2023 wherein SRMB challenged their declaration as the anchor bidder by the applicant and withdrew from participating in the auction which was proposed to be held on June 19, 2023, at a belated stage and vide an order dated June 14, 2023, the Hon'ble NCLAT directed the Applicant not to proceed with the ensuing auction to be held on June 19, 2023.
13. It is further contended that during the pendency of the SRMB Appeal, the Applicant received a correspondence dated June 20, 2023 from the Respondent herein wherein the Respondent made a binding anchor bid offer of Rs. 96 Crore to acquire the Corporate Debtor as a going concern. The said offer was backed by an earnest money deposit of Rs. 9,60,00,000/- in the form of a bank guarantee dated June 20, 2023 bearing number 16090100019720, issued by Axis Bank. The said bank guarantee which was initially valid up to September 31, 2023 has been renewed till December 31, 2023 by the Respondent.

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14. The Learned Counsel for the Applicant states that the better and binding offer received from the Respondent and with the possibility of further maximisation of value, the Applicant chose to cancel the auction which was supposed to be held on June 19, 2023 with SRMB as the anchor bidder. By a notice dated June 26, 2023, copies whereof were published in Financial Express (All India Edition), Business Standard (All India Edition) and Aajkal (West Bengal Edition), the Applicant cancelled the earlier auction notice where SRMB was the anchor bidder.
15. It is further stated that the Hon'ble NCLAT vide an order dated July 13, 2023 the SRMB is no longer Anchor Bidder and thus the appeal was dismissed as infructuous. Pursuant to the disposal of the SRMB Appeal, the Applicant published a public notice dated July 24, 2023 for sale of the Corporate Debtor as a going concern with the Respondent's bid as the anchor bid. It is contended that as no expressions of interest were obtained from any person in connection to the publication made by the Applicant on July 24, 2023, the Respondent's anchor bid offer of Rs. 96 Crore stood as the **highest offer on the table**. Consequently, subject to the approval of this Adjudicating Authority, the Respondent has been declared as the successful bidder. Accordingly, by correspondence dated August 21, 2023, the Applicant intimated the Respondent about the Respondent emerging as the **successful bidder**.
16. It is further submitted that the Applicant has received a further communication dated September 11, 2023 from the Respondent. In the said Respondent's Request Letter, the Respondent, among others, has described the manner in which the Respondent wishes to complete the acquisition of the Corporate Debtor as a going concern on a "fresh slate" basis, and further requested to grant of certain reliefs and concessions by this Adjudicating Authority. The Respondent has further requested the Applicant to submit the said Respondent's Request Letter along with the schedules thereto for the kind consideration of this Adjudicating Authority.

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17. Learned Counsel, Shri Rishav Banerjee, contends that this application has been filed in compliance with the order dated April 24, 2023, recording the result of the Swiss Challenge auction pursuant to the public notice dated July 24, 2023 for its approval.

Analysis and Findings of this Adjudicating Authority:

18. We have perused the documents placed before us including the public notice dated July 24, 2023 annexed at Annexure “J” at Pages 71-81 and the copy of the correspondence dated September 11, 2023 along with the schedules thereto issued by the Respondent to the Applicant Liquidator, annexed at Pages 82-100, as Annexure “K” to this Application. It is evident that no Reply affidavit has been filed by the Ld. Sr. Counsel for the Respondent to this Application. It is further evident that **Jindal Stainless Steelway Limited**, Respondent herein has ascertained in the said correspondence letter dated September 11, 2023, at Page 83 to the Application, that **Jindal Stainless Steelway Limited** as a Successful Bidder has participated in the auction process with its binding bid relying on the above legal principles and therefore, with the aim to conclude the sale of the Corporate Debtor as a ‘going concern’, on a fresh slate basis. Further, the Respondent requested the Liquidator to filed application with all the details providing the manner of acquisition of the Corporate Debtor by the Successful Bidder before this Adjudicating Authority, seeking the following direction as:
- i. confirmation of the sale of the Corporate Debtor as a 'going concern' in favour of the Successful Bidder, with implementation of the acquisition by the Successful Bidder in the manner and with effects as set out in Schedule 1; and
 - ii. grant of the reliefs and concessions set out in Schedule 2.
19. We have perused the reliefs as sought in at Pages 15 to 16 of the Application. We have also seen the reliefs, waivers and concessions given in Schedule 1 (Part A

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and B) and Schedule 2 to the Respondent's Request Letter enclosed as Annexure J. It is evident that some of the reliefs, waivers and concessions sought by the Liquidator and the Successful Bidder come within the purview of the Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concession. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016.

20. The reliefs, waivers and concessions shall be consistent with extant law. Further since this is a 'Going concern sale', the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider granting the same keeping in mind the objectives of the Code which is concerned with resolving of the insolvency of the Corporate Debtor.
21. With respect to the waivers with regard to extinguishment of claims which arose prior to the initiation of CIRP and which have not been claimed are granted in terms of *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd* reported in (2021) 9 SCC 657: MANU/SC/0273/2021 wherein the Hon'ble Apex Court has held that *once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority,*

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guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

22. With respect to the waivers sought in relation to guarantors, the judgment of **Lalit Kumar Jain v. Union of India** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321** laid down that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.
23. Now, the only question is that craves answer is the applicability of the ratio of above two judgements to the present question where the Corporate Debtor has been sold as a going concern. In our opinion, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the aforementioned judgments shall be applicable in the present case as well.
24. Further, we direct the Liquidator to issue sale certificate in favour of the Respondent for such sale of Corporate Debtor as going concern upon verifying the due payment, if any, on part of the Respondent and to complete the acquisition of the Corporate Debtor as going concern.
25. Further, we direct that applicant shall make distribution of the purchase consideration received from the respondent in terms of Section 53 of the I&B Code read with Rule 42 of the IBBI (Liquidation Process) Regulations, 2016 among the stakeholders.

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26. In terms of view above, **I.A. (IB) No. 1605/KB/2023 in C.P. (IB) No. 512/KB/2018** is **disposed of**.
27. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 11th Day of December, 2023.

Bose, R. K. [LRA]