DIVISION BENCH
COURT - I

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/45(KB)/2018
IA(IBC)/90(KB)/2022

Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.
2. Hon'ble Member(T), Shri Balraj Joshi

MENTIONING MATTER OF 01ST FEBRUARY, 2022, 10:30 A.M

Name of the Company	INDIAN OVERSEAS BANK VS D.C. INDUSTRIAL PLANT SERVICES PRIVATE LIMITED		
Under Section	IBC UNDER SEC 7		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Appearances (via video conference)

Mr. Sourav Kumar] **Company Prosecutor for ROC, West Bengal**

Mr. Patita Paban Bishwal, Advocate] **For the Applicant**

CORRIGENDUM ORDER

In the order dated 28/01/2022 in para 1 IA No. 90/2021 will be read as **IA No. 90/KB/2022.**

This matter is not on board today. It was taken up for hearing upon being mentioned by Mr. Sourav Kumar, Company Prosecutor in the office of Registrar of Companies, West Bengal. He submitted that in terms of directions contained in the order dated 28/01/2022, the matter of 'change of status of the Corporate Debtor' was taken up with the e-governance team at New Delhi. It was submitted by the e-governance team that once the Company is marked as "Under Liquidation" then only two options are permissible i.e. either to show the company status as ***"Dissolved"*** or to show the company status as ***"Active"***. We had in our order dated 28/01/2022 directed that the status of the Corporate Debtor be changed from *"Under Liquidation to "Not Applicable"* in so far as company status for e-filing is concerned.

The ROC therefore sought appropriate modification in the order dated 28/01/2022.

Since the matter involves sale of the Corporate Debtor as a going concern and the sale certificate in this regard has already been issued on 30.12.2021, the Corporate Debtor is no longer under liquidation and it is only the liquidation process that is still continuing. This is to enable distribution of proceeds in terms of Section 53 of the Insolvency & Bankruptcy Code. Therefore, the Company's status for e-filing needs to be changed from "Under Liquidation" to ***"Active"***. This change is accordingly hereby ordered in the order dated 28/01/2022. ROC is directed to carry out necessary changes immediately.

The rest of the order dated 28/01/2022 shall remain unchanged.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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DIVISION BENCH **S-1**
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CORAM: 1. HON'BLE MEMBER(J), SHRI RAJASEKHAR V.K.
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 28TH JANUARY, 2022, 10:30 A.M

NAME OF THE COMPANY	**INDIAN OVERSEAS BANK** **VS** **D.C. INDUSTRIAL PLANT SERVICES PRIVATE LIMITED**
UNDER SECTION	**IBC UNDER SEC 7**

Appearance (via video conferencing)

Mr. Shaunak Mitra, Advocate **} For the Applicant**
Mr. Patita Paban Bishwal, Advocate

Mr. Dipankar Das, Advocate **} For the Liquidator**

Mr. Sourav Kumar **} Company Prosecutor for RoC, West Bengal**

ORDER

1. IA 90/2021 is an application filed by the successful auction purchaser of the auction conducted by the liquidator of the Corporate Debtor on 11.02.2021, who has purchased the Corporate Debtor as a going concern. The MoU entered into by the successful auction purchaser for the liquidator dated 11.08.2021 is placed at Pages 42 to 54 of the application.
2. This Adjudicating Authority vide order dated 13.08.2021 (Pages 55 to 56) of the IA approved the MoU granting operational control to the successful auction purchaser. Thereafter since the Corporate Debtor has been sold as a "going concern" the status of the Corporate Debtor in the "Master Data" maintained by the RoC on its portal is required to be changed in order to enable the successful auction purchaser to participate in tenders etc.

3. The sale certificate dated 30.12.2021 issued by the liquidator selling the Corporate Debtor as a "going concern" is placed at Pages 62 to 77 of the application.
4. The addendum to the sale certificate executed on 14.01.2022 to enable the Corporate Debtor to participate in any new or fresh bids, tenders, contracts or work orders and to execute them by using the credentials of the Corporate Debtor is at Pages 78 to 80 of the application. The relevant Para 19 which is added to the sale certificate dated 30.12.2021 is at Page 79 of the application.
5. Learned counsel for the liquidator has no objection to the application itself.
6. Mr. Sourav Kumar, Company Prosecutor representing RoC, West Bengal submits that the necessary changes will be carried out to the Master Data after obtaining instructions.
7. It is made clear to the RoC that no instructions are required from the Insolvency and Bankruptcy Board of India (IBBI) for this purpose. Upon sale of the Corporate Debtor as a going concern, the status in the RoC records is required to be changed, since only the liquidation process envisaging distribution etc is required to be completed and the Corporate Debtor itself has been sold as a "going concern".
8. Learned counsel appearing for the applicant submits that the successful auction purchaser has bid in response to the public advertisement regarding the project of BHEL at Panki, Thermal Power Station and (Pages 81 to 86) of the application. The email dated 10th January 2020 from BHEL ISG wherein one of the conditions relate to update of status of the Corporate Debtor is at Page 86 of the application.
9. The notice invited tender dated 24.12.2021 issued by BHEL in respect of the Panki Thermal Power Station Kanpur, Uttar Pradesh is at Pages 90 to 96 of the application. The corrigendum *inter alia* extending the date to 01.02.2022 is at Page 81 of the application.
10. In these circumstances it is of the utmost importance and urgency that the RoC be directed to change the status of the Corporate Debtor from "under liquidation" to "Not applicable" and in any case no later than 31.01.2022, to enable the corporate debtor under the successful auction purchaser to participate in the Tender Process.
11. The following orders are passed in so far as prayer (a) &(b) are concerned
    a. The RoC shall carry out the change without further ado so that the true status of the Corporate Debtor is properly reflected in the master data.
    b. Insofar, as prayer C is concerned this prayer ought not to have been made in view of the addendum to the sale certificate executed on 14.01.2022. Therefore, no orders

are required to be passed. With these directions, IA No. 90/2022 shall stand disposed of.

c. In view of the urgency involved the RoC, West Bengal is directed to act upon a copy of this order digitally signed by any one Member being made available to him in the prescribed Form INC 28 without waiting for a certified copy of the order to be issued. This direction is being given in view of the prevailing pandemic circumstances.

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.01.28 19:04:51 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)