NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-III

I.A. NO. 1370 OF 2021

IN

C.P./IB/3622/MB/2018

Filed by

Globomet Engineering Private Limited

Having its Registered Office at: Office No.102, Sampadan Apartment, C.T.S. No. 104/10, Erandvane, Pune, 411004

...Applicant

Vs.

1. Shri Tejas J Parikh, ...Respondent No.1
2. Committee of Creditors ...Respondent No.2
3. Shri Madhav Vishwanath Deodhar ...Respondent No.3
4. Shri. Ajit Madhav Deodhar ...Respondent No.4
5. Mrs. Sumitra Madhav Deodhar ...Respondent No.5
6. Shri. Anand Madhav Deodhar ...Respondent No.6

In the matter of

TJSB Sahakari Ltd. **...Financial Creditor**

Versus

M/s Unimetal Casting Ltd. **...Corporate Debtor**

Order Pronounced on: 26.07.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Rohan Rajadhyaksha, Advocate

For the Respondent: Mr. Rohit Gupta, Advocate

Per: *Shri H.V. Subba Rao, Member (Judicial)*

ORDER

1. The above Interlocutory Application has been filed by M/s. Globomet Engineering Private Limited on 30.06.2021 praying mainly the following reliefs:
   a. *Direct the members of CoC to forthwith refund and release the amount to the tune of INR 3,25,00,000 (Indian Rupees Three Crores Twenty-Five Lakhs only) to the Applicant held by them in no-lien account, in the name of members of CoC, with the Financial Creditor;*
   b. *Direct Respondent No. 1 to record the decision of the Applicant of withdrawing from the Resolution Plan and to facilitate the CoC for the refund and release of amount of INR 3,25,00,000 Indian Rupees Three Crores Twenty Five Lakhs only) held by CoC in the said no-lien account.*
2. The first Respondent is the Resolution Professional of the Corporate Debtor M/s. Unimetal Castings Limited. Respondent No. 2 is the COC consisting of TJSB Sahakari Bank Limited, Reliance Assets Reconstruction Company Limited, Mahindra and Mahindra Financial Services Limited. Respondent Nos. 3 to 6 are promoters, directors of the Suspended Management of the Corporate Debtor and **JDECL** (M/s. Joshi Deodhar Engineering Company Ltd.). The applicant M/s. Globomet Engineering Private Limited is an investment Vehicle set up to support the revival process of **UCL** (M/s. Unimetal Castings Ltd.) and **JDECL** (M/s. Joshi Deodhar Engineering Company Ltd). The applicant is not a party to the ongoing CIRP process of **UCL** (M/s. Unimetal

Castings Ltd.) or the then CIRP proceeding of **JDECL** (M/s. Joshi Deodhar Engineering Company Ltd).

3. M/s. Unimetal Castings Ltd. (**UCL)** and **JDECL** (M/s. Joshi Deodhar Engineering Company Ltd) both were admitted into Corporate Insolvency Resolution Process (**CIRP**) by way of C.P. No. (IB)-3622(MB)/2018 and C.P. No. (IB)-4735(MB)/2018 respectively under the Insolvency and Bankruptcy Code, 2016. In fact, TJSB Sahakari Bank Ltd was a common member of the COCs of both **UCL** (M/s. Unimetal Castings Ltd) and **JDECL** (M/s. Joshi Deodhar Engineering Company Ltd) along with Reliance Assets Reconstruction Company Limited (**RARC**) and Mahindra and Mahindra Financial Services Limited (**MMFC**) for **UCL** (M/s. Unimetal Castings Ltd.) and TJSB Sahakari Bank Ltd and **RARC** for **JDECL**.
4. In pursuance of the proceedings under the Code, the COC of UCL had decided to liquidate UCL since there was no prospect of receiving any Resolution Plan, and the NCLT, Mumbai Bench reserved its orders on 16.07.2019 in an application (M.A. No. 2589/2019) filed seeking approval for liquidation of ULC.
5. However, during the pendency of the aforesaid order, a Resolution Plan was received from the promoter of UCL belatedly, which was not accepted since the CIRP period of UCL had ended on 23.07.2019.
6. Subsequently, another M.A. bearing No. 3465/2019 (**"Stay M.A."**) was filed by a director of UCL seeking directions to be issued to the COC of UCL to consider the submitted Resolution Plan. The same director of UCL filed another application (M.A. No. 147/2020) on 13.01.2020, praying for directions to the Resolution Professional of UCL to run UCL as a going concern in the future with the assistance of the promoters and personnel or any other

person as required to retain the value of UCL (**"Going Concern MA"**).

7. It is under the aforesaid circumstances that a meeting between all stakeholders of UCL and JDECL was held on 10.02.2020 and a settlement amount was offered for UCL and JDECL by Globomet. Accordingly, TJSB and other lenders of JDECL and UCL entered into a consolidated MOU dated 16.03.2020 (**"1st MOU"**) with Globomet for a composite settlement of all dues and debts owed to them by UCL and JDECL, and by way of the 1st MOU, it has been agreed that (i) a Resolution Plan would be filed by Globomet before the COC of UCL where under Globomet would pay a total settlement amount of Rs. 9,75,00,000/- against the debts and due of UCL over a period of time preceded by a payment of an upfront amount of Rs. 25,00,000/- and (ii) Globomet would make an upfront payment Rs. 3,00,00,000/- as a one-time settlement amount to creditors of JDECL. It is not disputed that the Settlement Amount has been deposited on 04.09.2020 with TJSB.
8. It is necessary to note, that by way of the 1st MOU it was agreed that the two separate amounts, i.e. Rs. 25,00,000/- for UCL and Rs. 3,00,00,000/- would be deposited in a no lien account in TJSB and the same amount shall not be withdrawn till (i) resolution plan of UCL is approved by the Hon'ble NCLT, Mumbai (ii) an application under Section 12A of the IBC, for withdrawal of proceedings against JDECL is allowed by the Tribunal, subject to conclusion of both before 30.06.2020.
9. However, due to completely unforeseen and unprecedented situation of the COVID-19 pandemic and the ensuing lockdown, evidently the stipulation in the 1st MOU could not be adhered to. Thus, consequently, Globmet and the creditors of UCL and JDECL (including TJSB), revised the 1st MOU, by way of a fresh MOU

dated 07.08.2020 (**"2nd MOU**) wherein the obligation to (i) obtain approval of the Resolution Plan for UCL and (ii) allowing of the application under Section 12(A) of the IBC was set to be 30.09.2020.

10. In pursuance of the obligation under the 1st MOU and 2nd MOU, an application I.A. No. 1684/MB/2020 was filed by the Resolution Professional (**"12A Application"**) on the direction of the COC of JDECL under Section 12(A) of the Code seeking withdrawal of Insolvency Proceedings against JDECL, in light of the settlement. The 12A Application was accordingly, allowed by the Hon'ble NCLT, Mumbai by its order dated 02.11.2020. Thus, the 1st MOU and 2nd MOU cannot be reversed qua JDECL since the 12A Application stands allowed and proceedings against JDECL stands withdrawn in light of the settlement under the 1st MOU and 2nd MOU.

11. In so far as UCL is concerned, the director of UCL had submitted a Resolution Plan to the COC of UCL on 12.09.2020 and the same was agreed to by the COC of UCL, as recorded in the minutes of the meeting of the COC dated 26.02.2021 and the filing of the same before the Tribunal was subject to the Resolution Applicant depositing a Performance Guarantee of Rs. 25,00,000/- However, till date no such Performance Guarantee has been submitted by the Resolution Applicant and any delays therefrom would be squarely due to the inactions of the Resolution Applicant. Accordingly, the Advocate for the Resolution Professional submitted to the Hon'ble NCLT, Mumbai on 16.04.2021 that a Resolution Plan has been received and requested for time for filing of the said Resolution Plan along with appropriate application. Accordingly, the Tribunal directed the matter to be listed on 10.06.2021. Since the Resolution Plan was

submitted to the COC of UCL on 12.09.2020 and the same was allowed by the COC, it is not possible now for Globomet to renege on the 1st MOU and 2nd MOU by asking for refund of the Settlement Amount.

12. The Tribunal had disposed of the stay petition bearing MA by its order dated 04.02.2021 and directed the Resolution Professional of UCL to convene the COC of UCL immediately and to place the Resolution Plan submitted by the Resolution Applicant for consideration. This Tribunal also disposed of the Going Concern MA by its order dated 04.02.2021 and directed that in view of the direction given to the RP to place the Resolution Plan of the Resolution Applicant before the COC of UCL, there would be no harm in directing the RP to run UCL as a going concern with the assistance of the erstwhile promoters or any other persons as required, till the COC of UCL takes a decision on the Resolution Plan submitted by the Resolution Applicant.

FINDINGS

1. This Bench observes that both parties have extended the time period for completion of the terms of agreement from 30.06.2020 to 30.09.2020 which proves that time is not the essence of the above MOUs.
2. This Bench further observed that the 12 A application of JDECL was allowed within the knowledge and without any objection raised by the Applicant. As rightly contended by the Respondent No.2, the withdrawal of CIRP order under Section 12A by this Tribunal of M/s Joshi Deodhar Engineering Company Ltd. cannot be legally reversed or undone by this Tribunal.
3. It is also noticed that the above application was filed on 30.06.2021 belatedly against the Respondents as an afterthought

to cover up their own latches. The First communication received from Globomet with regard to return of the Settlement Amount and supposed non-adherence to obligations under the 1st MOU and 2nd MOU was only on 22.12.2020, by which time all processes and proceedings had already culminated and now cannot be reversed.

4. It is very surprising to observe that the applicant while arraying the promoters and directors of both the companies as Respondent Nos. 3 to 6 is praying refund only from COC i.e. Respondent No.2.
5. It is also observed that Respondent Nos. 3 to 6 are the people who are really responsible for failure of CIRP process of M/s Unimetal Castings Ltd and the same Respondents are also part of the present Applicant M/s Globomet Engineering Pvt. Ltd. Therefore, it is very clear from the above conduct of the Applicant that the applicant is trying to take advantage of their own wrong and demanding refund only from COC by exonerating its own people from their personal liability. Therefore, the above I.A. is nothing but a collusive application filed by Applicant at the behest of Respondent Nos. 3 to 6.
6. It is also observed that the applicant is altogether a third party who has nothing to do with the CIRP process of either of the Companies and the present Application under Section 60(5) of the Code is not legally maintainable as per law laid down by Hon'ble Supreme Court in *Gujrat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. (2021) 7 SCC 209.*
7. The Applicant is seeking specific performance of the above MOU through the above Application. This Tribunal has no jurisdiction as per the settled proposition of law laid down by Hon'ble Supreme Court in *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors* as it is the job of Civil Court.

8. As rightly contended by the Respondent No.2/COC, there is an arbitration clause in clause 9 of the MOU dated04.07.2019 which is extracted hereinbelow:

IX. **GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be governed by and construed in accordance with the laws of India. All disputes and differences of opinion arising out of or in connection with this Agreement shall be referred to a sole arbitrator to be appointed by the parties with mutual agreement. The arbitration shall be in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 as amended from time to time. The place of arbitration shall be in Pune, India. This Clause shall survive the termination of this Agreement.

Thus, it is very clear from the above arbitration clause that the intention of both the parties is to refer their disputes to an arbitration. The argument of the learned counsel appearing for the Petitioners to the effect that arbitration clause is not a bar for filing the Application or instituting proceedings before the NCLT does not apply to the present case both on facts and law. Thus, this tribunal has no jurisdiction to decide the above contractual disputes arising between the parties out of the CIRP process of both the Companies more so under the above MOU and the above IA is liable to be dismissed on that score alone.

9. For the aforesaid reasons and viewing from any angle there are no merits in the above Application and the above Application is liable to be rejected with heavy costs. Normally, this Bench is not awarding costs. However, considering the above Application to be an exceptional case, this tribunal is hereby imposing costs of Rs. 1,00,000/- on the Applicant payable to the “Prime Minister Relief

Fund" within two weeks from today and shall file compliance affidavit to that effect along with proof of payment.

10. Accordingly, the above I.A. is **dismissed**.

11. However, this order does not preclude the Applicant from initiating appropriate legal proceedings subject to law of limitation.

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	H. V. SUBBA RAO
Member (Technical)	Member (Judicial)

//RKS//