

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3417 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Square Port Shipyard Private Limited
...Applicant

Vs.

Mr. Vijaykumar Iyer & Others
...Respondents

In the matter of

C.P.(IB) No. 292/MB/2017

Edelweiss Asset Reconstruction Company
Limited

Financial Creditor

Vs.

Mr. Bharati Defence and Infrastructure
Limited

Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. Shyam Kapadia a/w Mr. Anil,
Advocate
For the Liquidator : Mr. Pulkit Sharma a/w Mr. Naman Kamdar
Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA no. 3417/2023 is filed under section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) by M/s Square Port Shipyard Private Limited (“Applicant”) in the Liquidation Process of M/s Bharati Defence and Infrastructure Limited (“Corporate Debtor”) for directions to Sh. Vijaykumar Iyer, the Liquidator (“Respondent No. 1”), M/s Maharashtra Samarth Kamgar Sansthan (“Respondent No. 2”) and M/s Bhartiya Kamgar Sena Union (“Respondent No. 3”). The Applicant has prayed the following :

- a. Necessary order and/or directions to the concerned Police State i.e. Dapoli Police Station to provide adequate police protection to the Officer and/or employees and/or professionals of the Applicant as and when required;
- b. Necessary order and/or directions to the members of the Respondent Nos. 2 & 3 not to create any hinderance with regards to the visit of the Office and/or employees and/or agents and/or professionals of the Applicant;

- c. Necessary order and/or directions restraining the members of the Respondent Nos. 2 & 3 to do any illegal activities such as to put up a "Dharna" on 15th August 2023 and/or any time thereafter;
- d. Necessary order and/or directions restraining the Collector Zhillia Adhikar, Superintendent of Police, SDO & Tehsildar and other authority concerned with Dabhol Village to entertain any such application and/or to grant any permission/s and/or support "Dharna" to be put up by the members of the Respondent Nos. 2 & 3 and/or Contractors along with Local Politicians on 15th August 2023 and/or thereafter;
- e. Necessary order and/or directions that the dues of the members of the Respondent Nos. 2 & 3 and/or Contractors are already been paid by Respondent No. 1 and any grievance with regards to the payment of past dues of whatsoever nature of the members of Respondent Nos. 2 & 3 be placed before Respondent No. 1 and not the Applicant;
- f. Necessary order and/or directions restraining the Local Politician such as MLA /MP/Minister and Union Leaders and MLA/MP/Ministers of Different Political Parties to create disturbance and/or hindrance for the Applicant to run and/or start the Shipyard;
- g. pending the hearing and final disposal, Necessary order and/or directions restraining the members of the Respondent Nos. 2 & 3 and/or Contractors to claim their respective dues from the Applicant and/or any grievance with regards to the payment of past dues of whatsoever

- nature of the members of Respondent Nos. 2 & 3 be placed before Respondent No. 1 and not the Applicant;
- h. pending the hearing and final disposal of this IA, Necessary order and/or directions restraining the members of the Respondent Nos. 2 & 3 not do any illegal activities such as to put up a "Dharna" on 15th August 2023;
 - i. pending the hearing and final disposal of this IA, Necessary order and/or directions restraining the Collector Zhilla Adhikar, Superintendent of Police, Dabhol Police Station, SDO & Tehsildar and other authority/s concerned with Dabhol Village to entertain any such application and/or to grant any permission/s and/or support "Dharna" to be put up by the members of the Respondent Nos. 2 & 3 and/or Contractors along with Local Politicians on 15th August 2023;
 - j. pending the hearing and final disposal of this IA, Necessary order and/or directions restraining the Local Politician such as MLA/MP /Minister and Union Leaders and MLA/MP/Ministers of Different Political Parties to create disturbance and/or hindrance for the Applicant to run and/or start the Shipyard;
 - k. pending the hearing and final disposal of this IA, Necessary orders and/or directions directing the Respondent Nos. 2 & 3 not to create any hinderance with regards to the visit of the Office and/or employees and/or agents and/or professionals of the Applicant in order that the Applicant be able to function smoothly and effectively the on-going.

2. The Applicant is the Auction Purchaser in respect of M/s. Dabhol Shipyard (a unit of M/s. Bharati Defence and Infrastructure Limited i.e. Corporate Debtor) including its Land and building, plant & Machinery, Inventory, Semi-Constructed Vessel and various other movable assets as mentioned in the said Sale Certificate dated 10th May 2023.

2.1. The Applicant took the possession of the said Dabhol Shipyard as the on-going on or about May 2023 in presence of representative of Respondent No. 1. The Applicant submits that in or about May 2023, when the Members of Respondent Nos. 2 & 3 approached the Applicants and informed that the dues of the members of Respondent Nos. 2 & 3 are not fully paid by the Respondent No. 1, to the contrary, the Applicants were informed by the Respondent No. 1 that the due of the Members of Respondent Nos. 2 & 3 are fully paid as per the Law time being in force.

2.2. The members of the Respondent Nos. 2 & 3 are/were associated with Dabhol Shipyard (a unit of M/s. Bharati Defence and Infrastructure Limited ie. Corporate Debtor) and the Applicant is the Auction Purchaser of the said Dabhol Shipyard and all the claims and/or dues of the members of Respondent Nos. 2 & 3 and/or Respondent Nos. 2 & 3 are to be paid by Respondent No. 1.

2.3. It is the case of the Applicant that as and when the Officers and/or the Employees and/or professionals engaged by the Applicant visit the Shipyard, the workers and/or Members of

the Respondent Nos. 2 & 3 and/or contractors at site creates issues with regards to freely visit of the Applicant's Officers and/or the Employees and/or professionals engaged by the Applicant at its own Property and/or the site.

2.4. The Respondent No. 2 stated to have addressed its letter dated 17th June 2023 to Applicant, inter alia giving the list of the Committee Members of the said Respondent No. 2 with a request to provide all necessary facilities on duty unit committee members to solve day to day problems of the Workmen and Staff and has asked to treat the said Committee Members as Protected Workmen under the Provision of the Industrial Disputes Act 1947. It is pertinent to note that the said Union and/or Unit Committee Members are associates with Dabhol Shipyard (a unit of M/s. Bharati Defence and Infrastructure Limited i.e. Corporate Debtor) and the Applicant is the Auction Purchaser of the said Ongoing Concern and is now independently wish to run the said Shipyard.

2.5. The Applicant is in process of repairs of the plant & Machinery and Semi-Constructed Vessel in order that the said plant & Machinery and Semi-Constructed Vessel be utilized and hence requires special and/or specific engineers and/or professionals to visit the said Shipyard, with such obstructions by the members of the Respondent Nos. 2 & 3 and/or other antisocial elements and intervention of political parties, it is becoming difficult for the Applicant to run the on-going concern.

2.6. The is in process of selling the scrap and/or movable assets of which the Applicant has no use and/or the said scrap and/or movable assets cannot be utilized for the benefit of the said Shipyard, the said process requires visitation of the said purchaser who are interested in purchase of the said scrap and/or movable assets. The Applicant submits that for the above act of the Applicant, the visit of the intending purchasers having similar interest and their visit is becoming impossible.

2.7. The Respondent No. 2 once again addressed a Letter dated 24th July 2023 to the Applicant inter alia giving a heading as "Illegal Activates", the said Letter inter alia states that the Applicant in collusion with Workmen of Respondent No. 3 have deprived the Workmen their legislative rights and the said Workmen have resigned as the member of the Respondent No. 3 and have become the members of Respondent No. 2 and have made certain allegations against the Applicant.

2.8. On or about May 2023, the Applicant's Officer visited the said Shipyard and/or Site to take the inventory and/or secure the movable properties at Shipyard and/or at site, the Members of Respondent Nos. 2 & 3 surrounded the Officer of the Applicant and threatened him of dire consequences if the said Officer and/or any other Officer and/or Employee of the Applicant visit at site and/or try to remove the movable goods of which the Applicant is the Owner. The Applicant submits that these incidences have taken place from time to time. The Applicant has time and again informed the concerned Police Station ie. Dapoli Police Station with regards the said incidences. It is

pertinent to note that the said concerned police. station though have taken the compliant of the Applicant but have not acted upon.

2.9. The members of the Respondent Nos. 2 & 3 not only threaten the Officer of the Applicant but also have tried to manhandle the Officer Applicant when visited the Shipyard. It is pertinent to note that the Applicant have paid INR 184,51,92,273/- (Rupees One Hundred and Eight Four Crores, Fifty- One Lakhs Ninety- Two Thousand Two Hundred and Seventy Three Only) to purchase the said Land and building, plant & Machinery, Inventory, Semi-Constructed Vessel and various other movable assets i.e. Dabhol Shipyard. The said Land and building, plant & Machinery, Inventory, Semi-Constructed Vessel and various other movable assets belong to the Applicant and due to the antisocial elements as stated above the Applicant's Officer and Employees and/or Professionals have difficulty in visiting the said Shipyard.

2.10. The Applicant is in process of repairs of the plant & Machinery and Semi-Constructed Vessel in order that the said plant & Machinery and Semi-Constructed Vessel be utilized and hence requires special and/or specific engineers and/or professionals to visit the said Shipyard, with such obstructions by the members of the Respondent Nos. 2 & 3 and/or other antisocial elements and intervention of political parties, it is becoming difficult for the Applicant to run the on-going concern.

2.11. During the last visit on or about end of July 2023, the Applicant's Officer was once again threatened with regards to the Payment of dues of the Members of the Respondent Nos. 2 & 3. The said Officer of the Applicant then informed the members of the Respondent Nos. 2 & 3 that the due of the members of the Respondent Nos. 2 & 3 are already be paid by the Respondent No. 1.

2.12. Due to this history of antisocial elements and threat of members of the Respondent Nos. 2 & 3 Contractors and Political interventions and the next planning of the visit of the Officer of Applicant will most assuredly be met again with same outcome. The Applicant sincerely wish to avoid the same. The Applicant and/or its Officer are coordinating with various level in the government system and personally are doing everything to ensure the safety of its Officer and/or employees, the Applicant fear, however, that all the preparations may not be enough, but without official uniformed police presence. In the light of the above what is stated herein above, the Applicant humbly request the intervention of the Tribunal to pass necessary order and/or directions the concerned Police State Le. Dapoli Police Station to provide adequate police protection to the Officer and/or employees and/or professionals of the Applicant as and when required.

2.13. The Applicants have reliably learnt that the members of the Respondent Nos. 2 & 3 along with Contractors for their mala-fide intentions and ulterior motives and the reasons best known to them are threatening to put up a "Dharna" on 15th August 2023, it appear that despite the payment of the

legitimate dues of the Respondent Nos. 2 & 3 by the Respondent No. 1, the members of the Respondent Nos. 2 & 3 are creating issues and hence the Applicant is facing difficulty to run the Shipyard

- 2.14. The Applicant submits that this Tribunal be pleased to pass necessary order and/or directions restraining the Collector. Zilla Adhikar, Superintendent of Police, SDO & Tehsildar and other authority concerned with Dabhol Village not to entertain any such application and/or to grant any permission/s and/or support "Dharna" to be put up by the members of the Respondent Nos. 2 & 3 and/or Contractors along with Local Politicians on 15th August 2023 and/or thereafter.
3. The Respondent No. 2 has filed affidavit in reply stating that this Tribunal has become functus officio after sale of Dabhol Shipyard and can not exercise the jurisdiction in relation to the present application. It has also been stated that "*Pertinently, even though the sale of the Dabhol Shipyard was executed as a going concern, most of the existing employees of the said Dabhol Shipyard were not retained by the Applicant and the Applicant only retained only a few existing employees of the said Dabhol Shipyard. It is further submitted that even the entire payment of the retained workmen/employees has not been made by the Applicant*".
- 3.1. The Respondent No. 2 has further stated that the present dispute being amongst the employer i.e., the owner of the said Dabhol Shipyard (the Applicant) and workmen of the Dabhol Shipyard (Respondent Nos. 2 & 3) lies in the realm of relevant

labour laws and is in fact dealt by the Industrial Disputes Act, 1947 which primarily deals with industrial disputes amongst employees and workmen. Section 34(1) of the Industrial Disputes Act, 1947 expressly bars the jurisdiction of any Court to take cognizance of any offence punishable under the Industrial Disputes Act and the Disputes under that Act also includes disputes connected with non-employment of the workmen.

- 3.2. The Respondent No. 2 has pleaded that the grievance of the Applicant primarily emanates out of a letter dated 01st August, 2023 intimating the Respondent No. 2's intention of holding protest / "dharna" against the actions of the Applicant and the remedy for the aforesaid cause of action lies squarely under the Industrial Disputes Act, 1947.
- 3.3. It is also pleaded that the Applicant after undertaking to keep operating the said Dabhol Shipyard as a going concern has started selling off the ship building equipment & expensive imported machinery one at a time. The said conduct of the Applicant is contrary to the terms of the Sale Certificate dated 10th May, 2023.
- 3.4. Since, the members of the Respondent No. 2 have already carried out a protest / "dharna" against the negligent management of the said Dabhol Shipyard, the reliefs sought in the present Application as such do not survive and cannot be granted by this Tribunal.
- 3.5. The case of the Respondent No. 2 is that the Respondent No. 1 i.e., the Liquidator of the said Dabhol Shipyard has cleared the dues of the workmen only pertaining to the period when the corporate debtor was under insolvency/liquidation i.e. from

the year 2017-19. However, the dues of the workmen from the period of 2014-17 i.e. prior to the insolvency of the corporate debtor are still due and have not been cleared by the Corporate Debtor, the Resolution Professional or the Liquidator. The workmen of the Dabhol Shipyard are entitled to compensation for the period of 2014-17 and have been made to run from pillar to post to recover their dues from the Corporate Debtor. The Applicant having purchased the said Dabhol Shipyard as a going concern has subsumed the liabilities of the said Dabhol Shipyard from the Corporate Debtor, including subsequent payment of wages to the shipyard's workmen. It has been emphasised that the Respondent No. 1 i.e., the Liquidator of the Corporate Debtor was only liable to clear the dues of the shipyard's workmen during the period of insolvency & liquidation i.e. for the period of 2017 till the sale of the said Dabhol Shipyard to the Applicant. The Applicant having purchased the said Dabhol Shipyard on a "as is where is" basis is not only liable to pay the workmen's dues after the purchase of the said Dabhol Shipyard but is also liable to clear the outstanding dues payable to the workmen for the period of 2014-17.

4. The Respondent No. 1, the Liquidator has filed the reply stating that *"Since the sale of the Dabhol Shipyard stands concluded in favour of the Applicant as on date, the Application cannot even be said to be one arising out of" or "in relation to" the insolvency resolution or liquidation proceedings of the Corporate Debtor, for it to be maintained under clause 5 of Section 60 of the Code. (See: Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta and Others, (2021) 7 SCC 209)*".

- 4.1. It is further stated that the grievance of the Applicant qua the Respondent No. 2 and 3 i.e. obstructions, hinderances, threats and violence caused by them, do not have any nexus with the liquidation process of the Corporate Debtor as it appears to be more of a workers' and management related issue.
- 4.2. With respect to the claims of the Respondent Nos. 2 and 3, it is submitted that the employees and workmen of the Dabhol Shipyard had submitted their claims before the Liquidator as on the commencement of the Liquidation process i.e. on 14.1.2019, for an amount of INR 9,26,44,123/- and INR 8,82,75,180/- respectively. Following the procedure prescribed under the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 the Liquidator verified the said claims along with the supporting documents and admitted the claims of the employees to the tune of INR 8,72,69,337/- and of the workmen to the tune of INR 8,79,69,051/- basis information and documents provided by the employees/workmen and records available with the Corporate Debtor. The said claims are payable in accordance with Section 53 of the Code, based on the waterfall mechanism and proceeds realized from the sale of the liquidation estate of the Corporate Debtor.
- 4.3. All the claims for CIRP period have been paid and the claims amounting to INR 6,02,10,826/- and INR 5,65,21,351/- payable to employees and workmen are payable and shall be settled in accordance with Section 53 of the Code.
5. This Bench directed the Respondent No. 1, the Liquidator to state on affidavit "*whether the employees were retained and attended the designated place of their employment during the period, and whether any*

attendance/register was maintained for making their presence". The Liquidator filed Reply stating that "*Consequent thereto and considering the significant reduction in the operations at the Dabhol shipyard of the Corporate Debtor, on 08.01.2021, the Liquidator entered into settlement letters with the employees and workmen of the Dabhol Shipyard subsequent to which, the Liquidator had engaged the employees and workmen on a monthly contract basis as per the requirement of the Corporate Debtor*". It is further stated that all steps taken by the Liquidator in relation to the engagement of employees and workmen and settlement of their dues has been in accordance with the directions of this Tribunal, provisions of the Insolvency & Bankruptcy Code, 2016 and the provisions of the IBBI (Liquidation Process Regulations), 2016. The Liquidator has also placed on record the list of workmen engaged by the Liquidator at the Dabhol Shipyard along with their attendance records from 14.01.2019.

6. Heard the learned Counsel and perused the material available on record.

6.1. During the hearing, this Bench had directed the Respondent No. 2 & 3 to desist from obstructing the activities of Applicant, which was duly complied with. As stated by the Respondent No. 2 also, we find that the protest / "dharna" has already taken place.

6.2. The bone of contention is non-payment of Pre-CIRP dues as admitted by the Liquidator also and this has given rise to obstructionist acts of the Respondent No. 2 & 3. The Respondent No. 1 is already seized of this matter and has not denied its obligation to settle the claims in accordance with the waterfall mechanism enshrined in Section 53 of the Code. Since, the dispute is arising from non-payment of Pre-CIRP

dues of the Respondent No. 2 & 3 members, we are of considered opinion that this arises from the insolvency of the Corporate Debtor, hence vests the power in this Tribunal to decide on this issue and provide protection to the successful buyer from he obstruction caused due to non-payment of Pre-CIRP dues.

6.3. There is no dispute that Order of Liquidation is notice of discharge to all employees and workmen of a Corporate Debtor. As the Liquidator had proceeded to sell the units of Corporate Debtor as going concern in course of liquidation proceedings, he had arrived at settlement with workers/employees and engaged them afresh on monthly contract basis. Since, this arrangement was with the consent of members of Respondent No. 2 & 3, they cannot raise any grievance in so far as management of affairs of the auction unit to keep it as going concern is concerned.

6.4. It is trite law that the auction purchaser gets the assets on “as is where is” and “as is what is” basis and such assets have to be free from all obligations or encumbrances, unless otherwise made part of the bidding document. Accordingly, the liability to pay Pre-CIRP dues can not be fastened on the Applicant simply because the Dabhol Shipyard was purchased in auction on “as is where is” and “as is what is basis”. Accordingly, we hold that the members of Respondent No. 2 & 3 do not have any claims against the Applicant in so far Pre-CIRP dues are concerned and such dues shall be settled in accordance with provision contained in section 53 of the Code. Since, the Liquidator has not denied any liability on this account, we do

not consider it appropriate to issue any direction to the Liquidator in this regard.

6.5. Thus, there remains no dispute in so far as payment of Pre-CIRP dues of members of Respondent No. 2 & 3 are concerned and the Applicant can not be made to suffer by such members. Accordingly, this Bench considers it appropriate to caution members of Respondent No. 2 & Respondent No. 3 to refrain from causing any obstruction or issuing any threat to any person/officer/employees/workers of the Applicant in so far as operations of the Dabhol Shipyard are concerned. The Government Authorities, including Gram Panchayat, Police and Administrative Authorities, shall ensure adequate protection to the Applicant in this regard.

7. In view of foregoing, the IA 3417 of 2023 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)