

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

*** **

IA No. 2391 of 2020
in
CP (IB) 2295/MB/2018

(In the matter of an Application under Section 33(5) of the
Insolvency and Bankruptcy Code, 2016)

Avil Menezes,
Liquidator of Sunil Hitech Engineers Ltd.
(Corporate Debtor in CP (IB) 2295/MB/2018)

... *Applicant*

In the matter of:

American Express Bank Corp.

... Financial Creditor

V/s

Sunil Hitech Engineers Limited

... Corporate Debtor

Order Dated: 27.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr Dhrupad Vaghani and Associates, Advocates.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

This is an Application by the Liquidator of the Corporate Debtor seeking approval of this Tribunal to institute certain suits and/or other legal proceedings on behalf of the Corporate Debtor.

2. The facts leading to the Application may be narrated as under.

- i. The Corporate Debtor is a Company incorporated under the Companies Act, 1956 bearing CIN: L28920MH1998PLC115155 (*as per MCA website; & wrongly mentioned as U99999MH1995PLC131152 in the Application*) and having its Head Office at Nagpur, Maharashtra, India. This Tribunal *vide* its order dated 10.09.2018 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor pursuant to an Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (the Code). Mr. Ashish Rathi was appointed as the Resolution Professional (RP).
- ii. The RP, in the absence of any Resolution Plan, made an Application under Section 33 of the Code to liquidate the Company. This Tribunal *vide* order dated 25.06.2019 ordered liquidation of the Company and appointed the Applicant herein as the liquidator. It is submitted that the Corporate Debtor was a major Engineering, Procurement and Construction (EPC) Company dealing with projects in relation to Power Generation (sic), Steel Plants, Real Estate, Roads, Sugar Plants, manufacture of Boiler Pressure Parts etc. Pre-CIRP the Company was awarded various contracts for different projects all over the country by various government and non-government entities.
- iii. That various disputes had arisen in relation to different projects executed by the Company on account of irreconcilable differences between various clients of the Company and the Company. In relation to such disputes, the Company wishes to refer them to arbitration by issuing legal notices. The Applicant also intends to file appropriate Petitions in competent Courts/Fora for appointment of Arbitrator and take other steps as would be required on behalf of the Corporate Debtor in respect of the following.

Name of the Project	Proposed Respondent	Total Outstanding (INR in Lakhs)	Remarks	Actions to be taken
Koradi	L&T	4443.68	Extra claim (2339.84L): Qty variation ₹. 1537.51 Lakhs & Increased in labour wages ₹.802.84 Lakhs. BG Invoked (₹. 2103.84L): PBG (₹. 870L + ₹.875.77L + ₹. 246.01L) & RTM (₹. 107.05L)	By issuing a legal Notice the Applicant, will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take up to a year to finalize the matter.
Vallur #1 &2	Gammon India	1160.48	₹. 211.26L Bill not certified hence Final Bill could not raised	By issuing a legal Notice the Applicant will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Vallur #3	Gammon India	636.76	₹. 378.62L Bill not certified hence Final Bill could not raised	
Vallur #1,2,3	NTECL	745.64	Associate BG invoked by NTECL against Unit #1&2 of ₹. 4,83,71,505/- & Unit #3 of ₹.2,61,92,322/-	By issuing a legal Notice the Applicant will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Harduaganj	BHEL	349.51	BHEL hold our payment for want of settlement of Insurance claim,	The Applicant intends to file a petition in Court for appointment of Arbitrator. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Harduaganj	BHEL	569.46	Now BHEL has got insurance claim but BHEL has refused to release SHEL outstanding payment.	

Barauni-IOCL	BHEL	357.44	Client has recovered ₹. 66,73,650 i.e. 10% of total executed value as a LD from invoked PBG of ₹.4,24,17,302.	The Applicant intends to file a petition in Court for appointment of Arbitrator. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Sarni	BHEL	2597.28	Sarni (₹. 3688.55L): Pending payment from Sarni site ₹.2597.28L + Recovered from Other SHEL sites ₹.1089.27L	By issuing a legal Notice the Applicant will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Sarni-Recovery done from other sites	BHEL	1089.27	A) RA Bill/Final Bill Vindhyachal Stage 4 ₹. 1,04,36,591/- Vindhyachal Stage 5 ₹. 4,24,99,895/- Chandrapur ₹.1,26,13,295/- Mouda ₹.1,20,00,000/- Ukai ₹. 667429/- B) BG invoked Vindhyachal ₹.2,72,14,028/-	By issuing a legal Notice the Applicant will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
Kudgi- Ash Dyke	BHEL	2218.81	1) Withhold, against GST ₹. 807.80 Lakhs 2) SD, From BG ₹. 1023 Lakhs & from Bills ₹. 246 Lakhs	By issuing a legal Notice the Applicant will seek reference of dispute to Arbitration. If required, then only petition for appointment of Arbitration will have to be filed in Court. Once Arbitration Tribunal is constituted, the Applicant intends to request

				that the proceedings be fast tracked. Ordinarily, the Arbitration Tribunal will take upto a year to finalize the matter.
GRAND TOTAL		14,168		

iv. The Applicant is thus before us with the following prayers:

- a. *To allow the Applicant to initiate a suit or other legal proceeding as more particularly set out in paragraph 8 above, on behalf of the Corporate Debtor; and*
- b. *Pass such other necessary orders to enable the Applicant for the purpose of protecting and preserving the assets of the Company.*

3. We have heard the Counsel appearing for the Applicant and have gone through the pleadings. The point for consideration in the present case has been expressly provided for under Section 33(5) of the Code which reads as below:

“33: Initiation of liquidation. -

(1) ...

(2) ...

(3) ...

(4) ...

(5) *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) ...”

4. Thus, a plain reading of Section 33(5) of the Code indicates that upon liquidation of the Corporate Debtor a suit or other legal proceedings may be instituted by the Liquidator of the Corporate Debtor on behalf of the Corporate Debtor with the approval of the Adjudicating Authority. On perusal of the

materials it is clear that the proposed proceedings are essential to be undertaken in the interest of the Corporate Debtor and its stakeholders. Denial thereof would be prejudicial to the Corporate Debtor. Therefore, this Application deserves to be allowed. Hence ordered.

ORDER

The Application be and the same is allowed. The Applicant is allowed to initiate suit or other legal proceedings in respect of matters detailed in Para 2(iii) above.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)