

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

IA No.702/MB-II/2020

in

CP (IB) No.380/MB-II/2018

Under section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016

In the matter of
RRC International Freight Services Limited
(in liquidation)

Ashish Singh, as Liquidator of
RRC International Freight Services Limited
(in liquidation)

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Applicant

Order pronounced on 07.10.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Applicant : Adv Geeta Lundwani a/w Adv
Amey Hadwale.

Mr. Ashish Singh, Liquidator in
person.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. Preamble

1.1. This is an Interlocutory Application filed under section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016 (IBC) by Mr. Ashish Singh, Liquidator of RRC International Freight Services Limited *(in liquidation)* (also referred to as Corporate Debtor in this order), seeking leave

of this Adjudicating Authority for continuation of Commercial Suits Nos.310/2018 and 842/2017 for and on behalf of the Corporate Debtor before the Hon'ble Bombay High Court.

2. *The factual matrix*

- 2.1. The brief facts leading up to the present application are as follows: -
- (a) EVRAZ East Metals AG (*for short East Metals AG*) had contracted to supply 10,000 MT of Metro Rails to Maharashtra Metro Rail Corporation Limited (for short MAHA METRO) and undertaken to deliver the same from Russia to the final destination at Nagpur Metro Rail Corporation site.
 - (b) East Metals AG had appointed LSI Logistics Shipping International S.A. to ship the rails from Russia and to deliver the same to MAHA METRO at Nagpur.
 - (c) LSI Logistics Shipping International S.A., in turn, entrusted the transport of the Metro Rails to the Corporate Debtor under a contract dated 17.04.2017.
 - (d) LSI Logistics Shipping International S.A. terminated the contract by letter dated 22.10.2017 and filed Commercial Suit bearing No.842/2017 on 23.10.2017 against the Corporate Debtor, since the Metro Rails could not be delivered on time. The Corporate Debtor filed another Commercial Suit No.310/2018 against LSI Logistics Shipping International S.A. challenging the termination of the contract and claiming damages and other charges. Both suits are pending before the Hon'ble Bombay High Court.
 - (e) During the course of hearing on 19.04.2018, the Hon'ble Bombay High Court directed East Metals AG (*Defendant No.3 in Suit No.310/2018 initiated by the Corporate Debtor*), to deposit a sum of €112,084.44 with the Prothonotary and Senior Master of the High Court, which was complied with by East Metals AG on 07.05.2018.

(f) Thereafter, LSI Logistics Shipping International S.A. (*Defendant No.1 in Suit No.310/2018 initiated by the Corporate Debtor*) and the Corporate Debtor settled their disputes amicably and entered into settlement terms on 12.11.2018, which was also filed into court. The Hon'ble Bombay High Court, *vide* order dated 18.12.2018, recorded the statement of the parties regarding existence of the settlement terms, but noted that the same were not taken on record as yet.

3. Commencement of CIRP and liquidation proceedings

3.1. Meanwhile, on 07.03.2018, an application under section 7 of the IBC bearing CP (IB) No.380/2018 was filed by Indiabulls Housing Finance Limited against the Corporate Debtor for initiation of Corporate Insolvency Resolution Process (CIRP). This Adjudicating Authority, *vide* order dated 26.12.2018, admitted the petition and ordered initiation of CIRP against the Corporate Debtor. In view of the commencement of CIRP, the settlement terms arrived at on 12.11.2018, and of which notice was taken by the Hon'ble Bombay High Court *vide* order dated 18.12.2018, could not be enforced.

3.2. Mr Ashish Singh, the Applicant herein, was initially appointed as the Interim Resolution Professional and thereafter became the Resolution Professional of the Corporate Debtor. Since there was no Resolution Plan for the Corporate Debtor, this Adjudicating Authority, *vide* order dated 22.10.2019, ordered the liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator.

4. Prayer in the present Application

4.1. Now, *vide* this Application, the Liquidator seeks leave of the court to continue the proceedings in the two Commercial Suits bearing

No.842/2017 and No.310/2018 before the Hon'ble Bombay High Court.

5. Statutory provisions

- 5.1. The relevant statutory provisions embodied in sections 33(5) and 35(1)(k) of the IBC, read as follows: -

“33. Initiation of liquidation.–

*(1) to (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.”

“35. Powers and duties of liquidator.– (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: –

*(a) to (j) ****

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of (and) on behalf of the corporate debtor;”

6. Findings

- 6.1. The enforcement of the settlement entered into between the litigating parties in the two commercial suits would require legal proceedings to be instituted, which would squarely fall within the meaning “*other legal proceeding*” mentioned in the proviso to sub-section (5) of section 33.
- 6.2. We have perused the interlocutory application filed by the Liquidator and the annexures thereto. Considering the value of the settlement

arrived at, we are convinced that the terms of the settlement entered into in the two Commercial Suits bearing No.842/2017 and No.310/2018 before the Hon'ble Bombay High Court will inure to the benefit of the Corporate Debtor, thus increasing its liquidation value.

7. Directions

- 7.1. Therefore, this Adjudicating Authority hereby accords its approval to the Liquidator to take appropriate legal steps to enforce the settlement in the two Commercial Suits bearing No.842/2017 and No.310/2018 before the Hon'ble Bombay High Court, for the benefit of the Corporate Debtor.
- 7.2. IA No.702/MB.II/2020 in CP (IB) No.380/MB-II/2018 is disposed of with these directions.

Sd/-

Ravikumar Duraisamy
Member (Technical)

07.10.2020

Sd/-

Rajasekhar V.K.
Member (Judicial)