NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.01.20201 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 995/2020 in CP (IB) No. 329/7/HDB/2018
NAME OF THE COMPANY	Viswa Infrastructures Finance and Services Pvt Ltd
NAME OF THE PETITIONER(S)	SREI Equipment Finance Ltd
NAME OF THE RESPONDENT(S)	Viswa Infrastructures Finance and Services Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

The IA is allowed vide separate order.

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Karim

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

IA No 995/2020

IN

CP IB No.329/7/HDB/2018

Application filed by the Liquidator under Section 60(5)(c) of Insolvency and Bankruptcy Code 2016, read with Regulation 32 A and 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of NCLT Rules, 2016

IN THE MATTER OF
SREI EQUIPMENT FINANCE LIMITES
VERSUS
M/s VISWA INFRASTRUCTURES AND SERVICES PRIVATE LIMITED

Between:

Hemant Sharma
Liquidator of Viswa Infrastructures Services Pvt Ltd
R/o 2/263, Subhash Nagar
New Delhi - 110027

....Applicant/
Liquidator

Date of order: 18.01.2021

Coram:

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant: Shri Milan Singh Negi, Advocate

Heard on: 15.12.2020

PER: SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

ORDER

1. This Application is filed under Section 60 (5) of Insolvency & Bankruptcy Code, 2016, R/w Regulation 32A and Regulation 44 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of National Company Law Tribunal Rules 2016 by the Applicant / Liquidator seeking direction to the Applicant to sell the Corporate Debtor M/s VISHWA INFRASTRUCTURES AND SERVICES PRIVATE LIMITED as a going concern.

2. **AVERMENTS APROPOS TO THE APPLICATION IN BRIEF:-**

2.1 This Tribunal vide order dated 31.08.2018 admitted the Company Petition bearing CP (IB) NO.329/7/HDB/2018 filed by Financial Creditor/SREI Equipment Finance Limited against the Corporate Debtor M/s. VISHWA INFRASTRUCTURES AND SERVICES PRIVATE LIMITED and ordered initiation of Corporate Insolvency Resolution Process by appointing the Applicant herein as Interim Resolution Professional who was later confirmed as Resolution Professional. When no resolution plan came forth, the Committee of Creditors resolved to liquidate the Corporate Debtor. Following which, this Tribunal on 14.06.2019 passed an order in IA No. 415/2019 for liquidating the Corporate Debtor Company by appointing the Applicant herein as Liquidator of the Corporate Debtor M/s VISHWA INFRASTRUCTURES AND SERVICES PRIVATE LIMITED.

2.2 During the course of Liquidation process, the Liquidator received communication from eight secured lenders regarding relinquishment of respective security interest by December, 2019. Immediately, thereafter 1st meeting of stakeholders was held on 16.01.2020, wherein a decision was taken to get fresh valuation of the Corporate Debtor done before initiation of sale of assets of the Corporate Debtor. Consequently, two valuers were appointed in January, 2020 for valuating plant and

Machinery, Land and Building and Securities and Financial Assets of the Corporate Debtor.

2.3 It is averred by the Liquidator, the Applicant herein that owing to Covid-19 induced lockdown announced by Central Government and State Governments concerned, the Applicant faced difficulties in the Liquidation process. He has relied on the Suo Moto Writ Petition (Civil) No. 3/2020 of Hon'ble Supreme Court vide order dated 23.03.2020 wherein lockdown period to be excluded from computation of liquidation period. By relying on the Hon'ble NCLAT Suo Moto Company Appeal (AT) (Insolvency) No. 01 of 2020 dated 30.03.2020, and newly inserted Regulation 47-A of Insolvency and Bankruptcy Board of India the Applicant sought exclusion from 23.03.2020 to 31.08.2020 being covid-19 induced lockdown period. He further relied on NCLT Kolkota Bench order dated 11.05.2020 passed in CP (IB) No. 03/KB/2017 in the matter of Sri Vinod Kothari Vs. M/s Nicco Corporation Limited and NCLT Chennai Bench order dated 03.07.2020 in the matter of CA Mahalingam Suresh Kumar Liquidator of M/s Nag Yang Shoes Pvt Ltd wherein the respective NCLT Benches considered exclusion of the lockdown period.

2.4 It is the case of Applicant that information sought for by the Valuers were submitted only in the month of August, 2020. A decision was further taken by the stakeholders in the 2nd Lenders Meeting which was held on 04.09.2020 with regard to selling the Corporate Debtor as a going concern. In this context, the Applicant relied on Regulation 32 (e) of Liquidation Process Regulations, which provides for sale of assets of the Corporate Debtor as a going concern provided relinquishment of the security which is the critical factor for giving effect to any of the modes of sale of assets of a Corporate Debtor including sale of assets as a going concern. The Applicant further emphasized on Regulation 32A(4) of the Liquidation Regulations which states that in case the Liquidator is unable to sell the Corporate Debtor as a going concern or business of the Corporate Debtor as a going concern, then the Liquidator shall proceed to sell the assets on standalone basis or other methods. It is further clarified by the Applicant that in the event the Applicant is unable to sell the Corporate Debtor as a going concern, the Applicant shall follow

Clause (a) to (d) of Regulation 32 of the Liquidation Process Regulations. The Applicant further relied on clarificatory order by Hon'ble NCLAT in the matter of Binani Industries Limited vs. Bank of Baroda & Anr Company Appeal (AT) (Insolvency) No. 82 of 2018 wherein it was inferred that maximization of value of the assets of the Corporate Debtor is paramount. As such the Applicant submits the lenders preferred selling the Corporate Debtor as a going concern. The Applicant also relied on the order of NCLT Mumbai Bench in the matter of Dhinal Shah, Resolution Professional vs. Bharati Defence Infrastructure Limited in CP No. 292/I&B/NCLT/MAH/2017 wherein the NCLT Mumbai Bench rejected the Resolution Plan and ordered liquidation as a going concern considering the national importance attached to product line of the company and the customers. Therefore, the Applicant stated that sale of assets of the Corporate Debtor as a going concern shall ensure maximization of value of assets while ensuring continuity of operations of the Corporate Debtor and livelihood to employees of the Corporate Debtor.

3. The Applicant is Liquidator of M/s Viswa Infrastructures Services Private Limited/ Corporate Debtor under liquidation. We have heard the Counsel appearing for the Applicant. The instant application is filed seeking permission of the Tribunal to sell the Corporate Debtor as a going concern during liquidation. The Learned Counsel for Applicant would contend that the Liquidator can sell the assets of the Corporate Debtor during liquidation in any of the modes stated in Regulation 32 of Liquidation Process Regulations. He would contend that the Liquidator is authorized to sell the assets of Corporate Debtor as a going concern and as per Regulation 32-A(4) of the Liquidation Process Regulations, if the Liquidator is unable to sell the Corporate Debtor or its business under Clause (e) or (f) of Regulation 32 of the Liquidation Process Regulations within 90 days from the liquidation commencement date, then the Liquidator shall proceed to sell the assets of the Corporate Debtor under Clause (a) to (d) of Regulation 32 of Liquidation. For better appreciation, Regulation 32, 32A of Liquidation Process Regulations is reproduced as under:-

Regulation: 32.

32. Sale of Assets, etc. *The liquidator may sell-*

(a) an asset on a standalone basis;
(b) the assets in a slump sale;
(c) a set of assets collectively;
(d) the assets in parcels;
(e) the corporate debtor as a going concern; or
(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

32A. Sale as a going concern. *(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavor to first sell under the said clauses.*

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]

In the present case, the Applicant could not sell the assets as going concern within 90 days from the liquidation commencement date owing to the fact that security interest from eight secured lenders were relinquished only in the month of December 2019 which is a prerequisite for selling the assets under Regulation 32 (a) to (f) of Liquidation Process Regulations. As such the Liquidator is seeking appropriate directions of this Tribunal for selling the Corporate Debtor as a going concern.

4. The Learned Counsel for Liquidator has stated that as per the decision of the stakeholders, the assets of the Corporate Debtor is ordered to be sold as on going concern as per Clause (e) and (f) of Regulation 32 of Liquidation Process Regulations that would maximize the value of the Corporate Debtor and that Liquidation of the Corporate Debtor as a going concern would strike a balance between the two extreme possibilities and be in consonance with the objective of maximization of value of assets as enshrined in IBC.

5. The Hon'ble NCLAT, in the matter of Binani Industries Limited Vs. Bank of Baroda & Anr., clarified the objectives of the Code as under: "The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor" and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests".

6. The object of the Code is not for liquidation but for resolution. In the instant case, Section 60 (5) (c) empowers the Adjudicating Authority to grant necessary reliefs even during liquidation.

7. In the light of the discussion above, the Tribunal deems it fit to accord permission to the Liquidator to sell the Corporate Debtor as a going concern for the purpose of achieving the object of the Code i.e. "maximization of value of assets of the Corporate Debtor".

8. By this order we permit the Liquidator / Applicant herein to sell the Corporate Debtor as a going concern with a further direction to Liquidator to complete the said process within the time stipulated in the Liquidation Process under the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 20161Regulations.

18/01/24

(Veera Brahma Rao Arekapudi)
Member (Technical)

(K. Anantha Padmanabha Swamy)
Member (Judicial)

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