

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**IA (IB) No. 340/KB/2022
in
CP (IB) No. 723/KB/2019**

In the matter of:

*An Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with rule 11 of the National Company Law Tribunal Rules, 2016..*

CP (IB) No. 723/KB/2019

In the matter of:

Rishav Coke Product Private Limited

... Operational Creditor

Versus

Modern India Con Cast Limited

... Corporate Debtor

And

IA (IB) No. 340/KB/2022

In the matter of:

Kashvi Power & Steel Private Limited

... Applicant

Versus

- 1. Haldia Development Authority**
- 2. Sanjai Kumar Gupta**

... Respondents

Order reserved on: 12 May 2022

Order pronounced on: 13 June 2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through video conference):

For the Applicant

- : 1. Mr. Joy Saha, Senior Advocate
2. Ms. Madhuja Barman, Advocate

For Respondent No. 1

- : 1. Mr. Amit Nag, Advocate
2. Mr. Subhadeep Basak, Advocate
3. Mr. Abhishek Nag, Advocate

For Respondent No. 2

- : 1. Mr. Vikash Singh, Advocate
2. Mr. Sudha Singh, Advocate
3. Mr. Sanjai Kumar Gupta, in
person

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through video conferencing.
2. I.A. (IB) No. 340/KB/2022 has been filed by Kashvi Power & Steel Private Limited seeking direction upon the Respondent No. 1 to provide water supply to the premises of the Corporate Debtor i.e. at the Haldia unit and for quashing the demand notice dated 17.03.2022 issued by the Chief Executive Officer, Haldia Development demanding Rs.9,94,651/- (Rupees Nine Lakh Ninety Four Thousand Six Hundred and Fifty-One only) from the Corporate Debtor.

Submissions of Mr. Joy Saha, learned Senior Counsel appearing on behalf of the Applicant

3. This Adjudicating Authority *vide* order dated 04 January 2022 in I.A. (IB) No. 756/KB/2021, granted certain reliefs and concessions to the Applicant who is the successful bidder of the Corporate Debtor. The Respondent No. 1 is in contempt of the order dated 04 January 2022.
4. An extract of the order is given below

Sl No.	Prayer/ Annexure Clause No.	Particulars of the reliefs and concessions prayed	Remarks
4.	2	No action by creditors	
	2(a)	On and from the Acquisition Date, no Financial Creditors or Operational Creditors shall be entitled to take, initiate, institute or continue any suits, steps or proceedings against the said Company or its assets (whether by way of demand, legal	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.

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Sl No.	Prayer/ Annexure Clause No.	Particulars of the reliefs and concessions prayed	Remarks
		proceedings, alternative determination process including arbitration or an expert determination process, the levying of distress, execution of judgments, decree or order, or otherwise) in any court of law, tribunal, arbitration panel or other authority in any jurisdiction whatsoever including taking any action to foreclose, recover or enforce any security interest created by the said Company in respect of its property (including any action under SARFAESI) for the purpose of obtaining payment of any liability.	
5.	3	Related to Licenses/ Approvals/Contractual Rights and Benefits	
	3(a)	All subsisting consents, licences, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in	Granted subject to payment of renewal fees, if any, to the licensing authorities.

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Sl No.	Prayer/ Annexure Clause No.	Particulars of the reliefs and concessions prayed	Remarks
		favour of the said Company or to which the said Company is entitled to, including but not limited to slag procurement license, shall, notwithstanding any provision to the contrary in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the Code, in relation to the said Company be deemed to continue without disruption, for the benefit of the said Company; and	

5. Mr. Joy Saha submitted that the Respondent No. 1 is required to supply water in terms of the order and shall not be entitled to claim past dues from the Applicant.
6. The Applicant had written on 24 January 2022 and 01 February 2022 to the Respondent No. 1 requesting the Respondent No. 1 to make arrangement for water supply. The Respondent No. 1 did not reply to the said letters.
7. Supply of water is an essential service to ensure the smooth running of the Corporate Debtor as a 'going concern'.
8. The Respondent No. 1 *vide* letter dated 27 January 2022, asked for statement of account as on 31 December 2021, which was duly replied to on 22 February 2022.
9. The Applicant also met with the officials of the Respondent No. 1 on 10 January 2022, 01 February 2022, 15 February 2022, 24 February

2022 and 14 March 2022 and requested the Respondent No. 1 for supply of water.

10. The Respondent No. 1 sent a demand notice dated 17 march 2022 stating that an amount of Rs.9,94,651/- (Rupees Nine Lakh Ninety Four Thousand Six Hundred and Fifty-One only) is due from the Corporate Debtor.

Submission of Mr. Amit Nag, Learned Counsel for the Respondent No. 1

11. The Respondent No. 1 allotted 39.40 acres of land to the Corporate Debtor and according to the Lease Deed, the Lessee is not entitled to sublet or assign the land without the consent of the Lessor.
12. The Applicant wrote to the Respondent No. 1 on 24 January 2022 stating that the Applicant would continue to withdraw water as per the agreement and continue the lease from the date of possession.
13. In a meeting held on 14 March 2022, the Respondent No. 1 agreed to transfer the lease in the name of the Applicant on payment of 15% of the present value of the land.
14. The Respondent No. 1 issued a demand notice on 17 March 2022 for Rs.3,10,397/- (Rupees Three Lakh Ten Thousand Three Hundred and Ninety Seven only) as annual lease rent and previous rental dues of Rs.6,84,254/- (Rupees Six Lakh Eighty-Four Thousand Two Hundred and Fifty Four only) amounting to Rs.9,94,651/- (Rupees Nine Lakh Ninety Four Thousand Six Hundred and Fifty-One only).
15. The Respondent No. 1 in a letter dated 31 March 2022, made an offer to the Applicant to transfer the leasehold right in the name of the Applicant on payment of the transfer fee.

Analysis and findings

16. At the time of hearing, it was submitted that the water supply has restarted and the Applicant has agreed to pay the charge for the

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transfer of lease in the name of the Applicant to the Respondent and the charges for the supply of water as and when it is raised.

17. The Applicant is hereby directed to:
 - a. Make appropriate application to the Haldia Development Authority to record the change of ownership of the Corporate Debtor in the record of the Haldia Development Authority by paying appropriate fees;
 - b. The Applicant shall also pay the necessary charges in terms of supply and utilisation of water, in favour of Haldia Development Authority, accrued after the acquisition of the Corporate Debtor as a growing concern by the applicant.
 - c. The Applicant shall also make appropriate application for transfer of leasehold rights in favour of the Applicant herein by paying the appropriate fee for this purpose.
18. **IA. (IB) No. 340/KB/2022 in CP (IB) No. 723/KB/2019** is disposed of in terms of the above directions.
19. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
20. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities
21. File be consigned to the records.

**BALRAJ
JOSHI**

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BALRAJ JOSHI
Date: 2022.06.13
15:39:38 +05'30'

Balraj Joshi
Member (Technical)

**Rajasekhar
V K**

Digitally signed by Rajasekhar V.K
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Rajasekhar V.K.
Member (Judicial)

Order signed on the 13th day of June 2022.

GGRB[LRA]