THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 2777 OF 2021

Under Section 35(1)(m) & (n) of Insolvency & Bankruptcy Code, 2016

Mr. Pramod Dattaram Rasam

Liquidator/
…Applicant

In the matter of

C.P.(IB) No. 1103/MB/2017

Leo Duct Engineerings and Consultant Limited

…Corporate Applicant

Order delivered on: 11/10/2023

Coram:

Shri Prabhat Kumar	**Justice Shri V.G. Bisht**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Applicant : Ms. Dhwani Bagdai, Advocate

ORDER

Per: Prabhat Kumar, Member (Judicial)

1. This Application No. IA 2777/2021 is filed by the Applicant/Liquidator, Shri Pramod Dattaram Rasam, of the Corporate Debtor, M/s Leo Duct Engineers and Consultants Ltd., for seeking leave of this Hon'ble Tribunal to proceed with a money recovery suit filed by the Corporate Debtor in the High Court of Judicature at Madras for an amount of Rs. 1,06,15,660/- (Rupees One Crore Six Lakhs Fifteen Thousand Six Hundred and Sixty only).

1.1. The Liquidation in the matter of the Corporate Debtor commenced vide order dated 9th July 2019 passed by this Hon'ble Tribunal, and the Applicant was appointed as the Liquidator of the Corporate Debtor.

1.2. The Liquidator thereafter made public announcement in Form B inviting claims from stakeholders, which was published in two newspapers, one in English and one in vernacular newspaper. The Applicant/Liquidator submitted the preliminary report and the asset memorandum with the Hon'ble Tribunal. Accordingly, till date, seven progress reports have been prepared by the Applicant/Liquidator and have accordingly been submitted with the Hon'ble Tribunal.

1.3. It is submitted by the Liquidator/Applicant that most of the assets of the Corporate Debtor have been sold, except 2 assets and certain recoveries are expected in few cases pending, before various courts/tribunals/authorities. One such case for recovery of certain sums due to the Corporate Debtor pertain to a suit pending in the Hon'ble Madras High Court, much prior to the initiation of the CIRP and/or Liquidation against the Corporate Debtor. The suit filed in the Madras High Court is at an advance stage and the Applicant is hopeful of positive results from the said case.

1.4. As the Corporate Debtor is now under Liquidation, the respondent in the said suit had filed a memo before the Hon'ble Madras High court, asking the Hon'ble Court to direct the Applicant/Liquidator to seek permission of this Hon'ble Tribunal under Section 279 of the Companies Act 2013. The Hon'ble Madras High Court on hearing the Memo, directed the Applicant/Liquidator to seek permission of Hon'ble NCLT to proceed ahead with the suit. Thus, in compliance of the said order, the Applicant/Liquidator is moving the said application seeking leave of this Hon'ble Tribunal to continue with the suit filed by the Corporate Debtor in the Hon'ble Madras High Court.

2. We have heard the Learned Counsel and perused the materials available on records. We find that in terms of Section 33 (5) of the Insolvency & Bankruptcy Code, no suit or other legal proceedings, except as provided u/s 52 of the Code can be instituted by or against the Corporate Debtor. However, in the present case, the suit in question was initiated prior to commencement of CIRP and liquidation process. We find that Hon'ble Madras High Court has required permission of this Tribunal to proceed with the suit in terms of Section 279 of the Companies Act, 2013, which reads as under:

    "Stay of Suits etc., on winding up order 1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:
    Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

    (2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

3. We find that the words "*or if pending at the date of the winding up order'* are not made part of section 33(5) by legislature, accordingly, we feel that approval of this Tribunal is not required to proceed with the suits pending as on date of the commencement of liquidation under the Code. Further,

Section 238 of the Code overrides any provision inconsistent therewith contained in any other law for the time being in force, accordingly, the mandate of Section 279 of the Companies Act, 2013, is not applicable to the present case. Nonetheless, since specific direction has been made by the Hon'ble High Court, we permit the liquidator to proceed with the suit.

4. In view of the forgoing, the I.A. 2777/2021 is allowed with the aforesaid directions.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)