THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

I.A. 5005 OF 2023

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016

Trupal J Patel

Liquidator of Innoventive Industries Ltd.

…Applicant

Vs.

Metamorphosis Engitech India Pvt. Ltd.

…Respondents

In the matter of

C.P.(IB) No. 01/MB/2016

ICICI Bank Limited

…Operational Creditor

Vs.

Innoventive Industries Limited

…Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Liquidator	:	Mr. Saurabh Bacchawat a/w Ms. Mahima Singh & Ms. Shristi Agnihotri, Advocate
For the Respondent	:	Mr. Deep Roy a/w Mr. Dhaval Savla, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This application IA 5005/2023 is being filed by Mr. Trupal J. Patel, the liquidator ("Liquidator") of Innoventive Industries Limited ("Corporate Debtor"/ "IIL"), appointed in place of Mr. Dhinal Shah, the erstwhile liquidator of the Corporate Debtor ("Erstwhile Liquidator"), pursuant to order dated 24 December 2021 passed by this Adjudicating Authority. The Liquidator is seeking appropriate directions for concluding the sale of the shares held in Innoventive Americas Inc. ("IAI") by the Corporate Debtor ("IAI Shares"), which is the only primary asset of the Corporate Debtor that remains to be liquidated due to various litigations surrounding IAI Shares from time to time. The Application is filed in the interest of expeditious closure of the liquidation process of the Corporate Debtor which commenced on 8 December 2017 under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") and is now in its 6th year.

2. The liquidation process of the Corporate Debtor commenced vide order dated 8 December 2017 ("Liquidation Order") of this Adjudicating Authority and the Erstwhile Liquidator was appointed to conduct the liquidation process of the Corporate Debtor.

3. Based on available records, the Applicant understands that, pursuant to his duties, the Erstwhile Liquidator had conducted an electronic auction between 19 March 2018 and 18 April 2018 ("E-Auction") for various blocks of liquidation assets of the Corporate Debtor, as identified by the Erstwhile Liquidator. This included the IAI Shares which constituted Block 5. It may be noted that IAl is a wholly owned subsidiary of the Corporate Debtor, which was incorporated to acquire the stake in Salem Steels North America LLC ("Salem") which sells and distributes DOM and Seamless Tubing, purchased from manufacturers in India and China to customers in the United States. IAI is only a holding company, and the operations are done by the subsidiary i.e., Salem.

4. During the E-Auction, the Respondent, namely Metamorphosis Engitech India Pvt. Ltd. ("MEIPL") emerged as the highest bidder for IAI Shares (apart from other blocks of assets) and paid the earnest money. However, the payment of balance amount and conclusion of sale of IAI Shares could not take place due to litigations around IAI Shares before various forums at different points of time. In this regard, it is pertinent to mention that, in March 2018, the Erstwhile Liquidator had filed an application bearing M.A. No. 253 of 2018 ("Preference Application") before this Adjudicating Authority under Section 43 and Section 44 of the Code, seeking avoidance of a share pledge agreement dated 25

November 2016 ("Impugned Pledge"), under which Corporate Debtor (acting through its then Chairman and Managing Director, Mr. Chandu Laxman Chavan) had pledged the IAI Shares in favour of its related party, Innoventive Ventures Limited ("IVL"), just prior to the commencement of CIRP of Corporate Debtor. This Adjudicating Authority allowed the Preference Application by order dated 29 October 2020 ("Final Order in Preference Application") and directed the Impugned Pledge to be released and the share certificates of the IAI Shares to be handed over to the liquidator. The Final Order in Preference Application was challenged in an appeal bearing Company Appeal (AT) (Insolvency) Nos. 102-104 of 2021 ("NCLAT Appeal") filed by IVL in which an order of stay was passed by the Hon'ble National Company Law Appellate Tribunal ("NCLAT") on 17 February 2021. The NCLAT Appeal was eventually dismissed by order dated 23 December 2022 ("NCLAT Final Order"), which was then challenged by IVL in Civil Appeal No. 573-575 of 2023 ("Civil Appeal") before the Hon'ble Supreme Court. The Civil Appeal was dismissed vide order dated 17 February 2023, following which IVI, filed a review petition as well, which was dismissed vide order dated 13 July 2023 of the Hon'ble Supreme Court. The Applicant further understands that IVL has even filed a curative petition, which is currently pending before the Hon'ble Supreme Court.

5. Meanwhile, since IVL and the erstwhile promoter (Mr. Chandu Chavan) failed to release the Pledge and handover the share certificates of IAI Shares, the Liquidator filed a contempt application before this Adjudicating Authority, bearing LA. No. 1108 of 2023 ("Contempt Application"), against the wilful,

persistent and contemptuous disobedience of the Final Order in Preference Application. However, despite grant of sufficient opportunity, IVL/Mr. Chandu Chavan did not release the Impugned Pledge and hand over the certificates of IAI Shares to the Liquidator nor did they file any reply to the Contempt Application. Accordingly on 17 October 2023, this Adjudicating Authority issued notice under the Contempt of Courts Act, 1971 against IVL and Mr. Chandu Chavan and posted the Contempt Application to 23 November 2023. The Said Application is still pending before us.

6. Till date, neither has the Impugned Pledge been released nor have the share certificates of the IAI Shares been handed over to the Applicant. It is pertinent to note that the IAI Shares constitute the only major asset block of the Corporate Debtor which remains to be liquidated due to various litigations around IAI Shares and persistent failure of IVL/Mr. Chandu Chavan to release the Impugned Pledge and handover the share certificates and necessary documents/ information relating to the IAI Shares to the Liquidator. Thus, the IAI Shares is the only main impediment to the closure of the liquidation process of the Corporate Debtor.

7. Despite requests for necessary information/ documents made from time to time by the Liquidator as well as the Erstwhile Liquidator, the erstwhile promoter/ directors/ officials of the Corporate Debtor, IAI and Salem have not co-operated. As a result, there is neither any visibility regarding IAI (the subsidiary of the Corporate Debtor) nor Salem (the downstream operating entity), both of

which are U.S. based entities. In the absence of necessary documents/ information relating to IAI and Salem, the Liquidator may need to institute appropriate legal proceedings in the relevant jurisdictional court of U.S.A. against IAI, Salem and their managements for necessary reliefs, which will not only be a time-taking exercise but will also significantly increase the liquidation costs. Further, if such proceedings are instituted by the Liquidator in U.S.A., it will only delay the closure of the liquidation process of the Corporate Debtor even further with no certainty regarding the outcome and associated timelines, apart from leading to substantial increase in liquidation costs to the detriment of stakeholders.

8. It is submitted that MEIPL, which emerged as the highest bidder for IAI Shares during the E-Auction conducted by the Erstwhile Liquidator, is willing to proceed with the transaction after the Final Order in Preference Application has been upheld by the Hon'ble Supreme Court. MEIPL has expressed its readiness to conclude the sale of IAI Shares, procure all regulatory approvals (including RBI approvals as may be necessary) and work towards procuring the release of IAI Shares, if necessary support and cooperation is provided by the Liquidator. Subject to this and subject to receipt of adequate regulatory approvals required for the transfer of IAI Shares (including RBI approvals), MEIPL has confirmed its willingness to pay the balance sale consideration for IAI Shares (i.e., INR 9.5 Crores), as agreed pursuant to the E-Auction and the bid submitted by MEIPL.

9. Given the peculiar facts and circumstances of the present case, where IVL and the erstwhile promoter have neither released the

Impugned Pledge nor handed over the share certificates of IAI Shares to the Liquidator, coupled with complete lack of visibility regarding IAI and Salem (which are entities based in U.S.A.) as well as the fact that the sale of IAI Shares is the only major impediment to the closure of the liquidation process of the Corporate Debtor which is now in its 6th year, the Applicant has prayed that it would be in the best interests of all the concerned stakeholders if this Hon'ble Adjudicating Authority permits the Liquidator to proceed with concluding the sale of the IAI Shares in favour of MEIPL after MEIPL procures the required approvals (including RBI approvals as may be necessary) and pays the balance sale consideration of INR 9.5 Crores for IAI Shares in terms of the bid submitted by MEIPL. It is also prayed that this Adjudicating Authority may issue directions to the concerned authorities (including RBI) to expeditiously grant the approvals, as may be necessary, for the purpose of sale of the IAI Shares to MEIPL.

10. We have heard the learned Counsel and perused and the material available on record.

11. We find that the Block 5 of Liquidation Estate was auctioned by the erstwhile Liquidator to MEIPL subject to outcome in the Application for Avoidance of Preferential transactions u/s 43 of the Code filed before us and the order passed thereunder has been upheld by the Hon'ble NCLAT as well as Supreme Court, though one review application is stated to be still pending before the Hon'ble Supreme Court. We further find that MEIPL is willing to consummate the sale on "*As is where is basis*", "*As is what is basis*", "*Whatever there is basis*" and "*No recourse*" basis. Accordingly, we have no hesitation to allow the consummation of said sale.

12. In view of aforesaid, we allow the Applicant to assign all rights, title and interest of the Corporate Debtor in IAI Shares (including right to pursue any further litigations/ proceedings in respect of IAI Shares) ("**IAI Shares Rights**") on "*As is where is basis*", "*As is what is basis*", "*Whatever there is basis*" and "*No recourse*" basis to the Respondent/MEIPL against payment of balance consideration by MEIPL and subject to the RBI approval. We further direct the Reserve Bank of India to expedite the approval of transaction of said sale to MEIPL by the Liquidator in accordance with law.
13. In view of the aforesaid discussion, this IA 5005/2023 is disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)