

NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI
BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD ON
09-09-2022 AT 10.35 A.M THROUGH VIDEO CONFERENCING:

PRESENT: SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

IN THE MATTER OF : M/s Bhatia Coke & Energy Ltd

PETITION NUMBER : IBA/307/2019

APPLICATION NUMBER: [201] a) IA(IBC)/948(CHE)2022 (FRESH)
in IA(IBC)/830(CHE)2022
b) IA(IBC)/830/CHE/2022

COMMON ORDER

101)(b)IA(IBC)/830/CHE/2022 IN IBA/307/2019

Ld. Counsel Mr. S. Ravi appears on behalf of the Applicant. Learned RP Mr. S. Dehaleesan appears in person. Ld. Counsel Mr. Avinash Krishnan Ravi represents the RP. Ld. Counsel Mr. Sumesh Dhawan represents the majority Lenders (CoC).

By order dated 07.09.2022, this Tribunal had directed the Successful Resolution Applicant as under :

- a. *The Successful Resolution Applicant to deposit a sum of Rs.30.00 Crores in any bank account of the Company which is presently being operated by the RP within 24 hours of this order and report compliance by way of Affidavit before the next date of hearing.*
- b. *The Successful Resolution Applicant to obtain a binding offer from M/s. Aqua Terra Logistics Private Limited and place the same before this Tribunal along with an affidavit of the Successful Resolution Applicant before the next date of hearing.*
- c. *To clarify the timing of investment of Rs.4.00 Crores to make the unit operational.*

Ld. Counsel Mr. S. Ravi for the Applicant states that a sum of Rs.30.00 Crores (Rupees Thirty Crores only) had been deposited in the bank account controlled by the RP by way of RTGS. He further seeks time to file compliance by way of an affidavit. The request is accepted.

The Applicant is directed to file affidavit before the next date of hearing with copy to Respondents.

Ld. Counsel Mr. S. Ravi for the Applicant further submits that no binding offer has been filed since it will take some time. It was further stated that submissions have been made in the affidavit regarding payment of Rs.4.00 Crores (Rupees Four Cores only). Unfortunately, the same could not be filed in hard copy before this Tribunal due to logistical reason. It was further stated that the Bank Guarantee of Rs.10.00 Crores (Rupees Ten Crores only) has since been extended upto 10.06.2023 and the same is available with the Ld. Counsel for the Applicant.

Ld. Counsel Mr. S. Ravi further submitted that some mail was received from State Bank of India and Punjab National Bank regarding escrow account, however, no escrow account has been opened.

Ld. Counsel Mr. Sumesh Dhawan representing the majority Lenders (CoC) states that (a) misrepresenting the orders of this Tribunal dated 07.09.2022, some mail was sent by the RP, Chairman of the Interim Monitoring Committee (IMC) to establish an escrow account. However, they are not ready and willing as of now to open any escrow account; (b) another point raised by Ld. Counsel Mr. Sumesh Dhawan was regarding the physical custody of the Bank the Guarantee; (c) As regards the deposit of Rs.6 Crores with Axis Bank Ltd and Rs.4.00 Crores with ICICI Bank Limited, an issue was raised that the deposit is not available with the RP and is not under the control of the RP; and (d) Ld. Counsel Mr. Sumesh Dhawan further demanded distribution of Rs.30.00 Crores.

The RP appearing in person states as follows:

- a) The RP confirms that an amount of Rs.30.00 Crores has been received.
- b) The RP states that he is yet to receive the extended Bank Guarantee in hard copy from the Resolution Applicant.

- c) The RP confirms that an amount of Rs.10.00 Crores deposited in Fixed Deposits i.e. Rs.6.00 Crores with Axis Bank Limited and Rs.4.00 Crores with ICICI Bank Limited are not under the control of the RP and no lien is marked on the same which can be exercised by the RP.

Having taken the stock of the situation, the following directions are issued to the concerned parties:

- (i) A detailed list of such documents required for 29A compliance should be provided by the RP **within one day from the date of this order** to the Resolution Applicant.
- (ii) The Applicant is directed to file an affidavit along with binding offer supporting papers for Section 29A compliance; proof of funds, financial statements etc. of proposed investor.
- (iii) The RP is directed to keep the entire amount of Rs.30.00 Crores (Rupees Thirty Crores only) received from the Resolution Applicant in the Fixed Deposit with any nationalized bank who is party to IMC, till further instructions of this Tribunal in this regard.
- (iv) As regards the deposit of Rs.6 Crores and Rs.4 Crores with Axis Bank Limited and ICICI Bank Limited respectively, the Resolution Applicant is directed to deposit the same amount in the bank account controlled by the RP **within two working days from today**.
- (v) If any assistance is required by the Resolution Applicant from the RP to take custody, control and for the purpose of transfer of above amounts, the RP is directed to provide assistance forthwith without any hesitation and demur. In the totality of the situation, the entire amount of Rs.42 Crores (Rupees Forty Two Crores only) paid by the Successful Resolution Applicant so far should be under the control of the RP, henceforth.

- (vi) The RP is further directed to keep the above amounts in Fixed Deposits with any nationalized bank who is party to IMC, till further instructions of this Tribunal in this regard.
- (vii) All the parties i.e. CoC, the Resolution Applicant and the RP are directed to file their affidavits before the next date of hearing in terms of compliance of the order dated 07.09.2022 and in compliance of today's order.
- (viii) Ld. Counsel Mr. S. Ravi for the Applicant is directed to forthwith provide the physical copy of the extended Bank Guarantee to the RP **within a period of 24 hours from the date of this order.**

List this matter on **20.09.2022** for further hearing.

**101)(a)IA(IBC)/948(CHE)/2022 IN IA(IBC)/830/CHE/2022
IN IBA/307/2019**

Ld. Counsel Mr. S. Ravi appears on behalf of Applicant. Ld. Counsel Mr. Karthik Seshadri appears on behalf of the Ex. Directors.

The Registry is directed to issue notice to the Respondents.

The Respondents are at liberty to file their counter before the next date of hearing.

List this matter on **20.09.2022** for further hearing.

Sd-

SAMEER KAKAR
Member (Technical)

Sd-

BACHU VENKAT BALARAM DAS
Member (Judicial)

vs