

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 372 OF 2021

Under Section 60 (5) of Insolvency and
Bankruptcy Code, 2016

Bansal Ship Breakers

...Applicant

V/s

Great United Energy Pvt Ltd

... Respondents

I.A. 820 OF 2021

Under Section 60 (5) of Insolvency and
Bankruptcy Code, 2016

Rajesh Kumar Mittal

...Applicant

V/s

Bansal Ship Breakers

... Respondents

In the matter of

C.P.(IB) No.2104/MB/2018

Aqua Omega Services Pvt Ltd

...Operational Creditor

V/s.

Great United Energy Pvt Ltd

... Corporate Debtor

Order delivered on: 22/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Anil Dubey,
Advocate

Liquidator : Mr. Rajesh Mittal

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA 372/2021 is filed by M/s Bansal Ship Breakers, A proprietorship of Sh. BidhiChand Kakaram Bansal through its Constituted Attorney Sh. Punit Pankaj Agrawal ("Auction Buyer") in the Liquidation Proceedings of M/s Great United Energy Pvt Ltd. (In Liquidation) ("Corporate Debtor") for directions to Sh. Rajesh Kumar Mittal, the Liquidator of the Corporate Debtor ("Liquidator") to refund the amount of Rs. 59.58 Lakhs (collected towards 18% GST against the sale of the Vessel 'Adinath One (IMO-9019286) Flat-India') alongwith interest thereon as well as additional costs of Rs. 12,65,777/- and Rs. 1,48,950/- incurred due to non-compliance by the Liquidator.
2. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("CIRP") vide order dated 26.6.2018 passed by this Tribunal, and the Respondent was appointed as Resolution Professional. Thereafter, the Corporate Debtor was ordered to be liquidated vide Order dated 13.2.2019, and the Respondent was continued as the Liquidator.
3. A tender document dated 20.12.2019 was issued for e-auction for the sale of the vessel named 'Adinath One (IMO-9019286) Flat-India' for sale on 'as is where is basis, as is what is basis, whatever there is and No recourse

basis'. The Auction Buyer was declared as successful bidder on 2.1.2020 and was asked to submit the balance amount, but the Auction Buyer failed to pay the balance amount within the stipulated time, hence the amount deposited was forfeited by the Liquidator vide email dated 8.1.2020, and upon forfeiture of the amount, the Auction Buyer file MA 200/2020 seeking direction for the payment of balance amount along with 5% GST instead of 18% GST, which was dismissed by this Tribunal directing the Auction Buyer to deposit GST @ 18% after finding that the vessel is purchased for breaking up purpose. The Auction Buyer paid the amount of GST of Rs. 59.58 lacs as well auction price of Rs. 331.00 lacs, and the Liquidator issued the revised Sale Certificate on 26.02.2020.

4. It is the case of the Auction Buyer that despite completing all his obligations, the Liquidator failed to handover the physical possession of the said Vessel which yielded no resolve, accordingly, the Auction Buyer asked the Liquidator vide email dated 18.3.2020 either to deliver the possession of the said Vessel or refund the total amount deposited with the Liquidator along with interest @ 24%. Thereafter, the Auction Buyer is stated to have filed an IA 2104/2018 for direction to the Liquidator to either handover the possession of the vessel, or in alternative, to refund the amount paid by the Auction Buyer towards the Vessel along with interest. Finally the delivery of the Vessel was received, and IA 1869/2020 came to be dismissed as withdrawn.

- 4.1. The Customs Department didn't allow the removal of Vessel due to non-payment of GST amount. The Auction Buyer filed Bill of Entry for Home Consumption declaring assessable value as Rs. 3,90,58,000/- (Rs. 331.00 lakhs plus Rs. 59.58 lakhs), accordingly, assessed the Custom duty @ 2.5% on price as per sale certificate amounting to Rs. 9,76,450/-; Social Welfare Charges thereon @ 10% amounting to Rs. 97,645/-, and IGST amounting to Rs. 72,23,777/- @ 18% on assessable value. These amounts were deposited by the Auction Buyer and Vessel was cleared from the

Customs. It is this difference of taxes paid on higher assessable value that the Auction Buyer is seeking refund from the Liquidator.

5. The Liquidator has filed the reply, and has disputed the claim for payment of additional costs and refund of GST amounts. It is contended that the Custom Department had collected the Custom Duty in the form of IGST on vessel for home consumption and the Liquidator collected GST on the sale of the vessel. It is further stated that GST deposit is delayed due to non availability of input tax credit for the GST paid on the bill of Dighi Port Ltd. as Liquidator is unable to claim due to non filing of GST returns by the Dighi Port Ltd. Therefore, the Liquidator has submitted that no refund is due to the Auction Buyer and the Auction Buyer has the option to approach to the GST department for the eligibility to claim the refund after payment of custom duty/IGST to the Custom Department. It is further stated that if the Liquidator is liable to refund the GST to the Auction Buyer then the Auction Buyer is required to obtain no objection (NOC) from GST Department to avoid double payment of GST.

IA 820/2021

6. The Liquidator have filed one IA 820/2021 seeking directions to the Auction Buyer for payment of Rs. 42,90,161/- towards port charges for the period from January 2020 till December, 2020 in terms of clause 4.18 of tender documents, as the liability to pay such charges after the declaration of buyer as successful bidder was on the Auction Buyer.
7. The Applicant in IA 372/2021 i.e. Auction Buyer is Respondent in IA 820/2021, and has submitted that the delay in payment and delay in taking delivery of vessel occurred on account of confusion created in the value of attractable tax in case of breaking down of ship and the Auction buyer has accepted the balance amount thereafter and issued a sale certificate dated 26.2.2020. It has been pleaded that the essence of the tender document is subject to timely delivery without any encumbrances and Auction Buyer shall not be liable to pay any arrears or dues or

charges to any authority. It has been submitted that it is crystal clear from the tender document that any charges and/or liability to Dighi Port against the said vessel was to be borne by the Liquidator and not by auction buyer, and the claim of Rs. 42,90,161/- is a desperate attempt by the Liquidator to defeat the application of the Liquidator.

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

8.1. We find that the taxes paid pursuant to Bill of Entry for Home Consumption for removal of Ship were paid on the total consideration of Rs. 390.58 Lakhs, which included a GST component of Rs. 5.9.58. Both of these components were clearly reflected in the Asset Sale Certificate and were in knowledge of the Auction Buyer. It is settled legal proposition that custom duty or IGST is payable on the gross value of goods and it does not include taxes chargeable on import of such goods in Indian Territory u/s Section 15 of the Central Goods and Services Tax Act, 2017. Accordingly, it was mistake of the Auction Buyer and his Clearing Agent to have filed bill of entry for home consumption for assessable value of Rs. 390.58 Lakh instead of Rs. 321.00 Lakhs. We are of considered opinion that the Auction Buyer has paid the additional taxes on account of their mistake and payment of such excess taxes is liable for refund from the Customs Department. Accordingly, the Auction Buyer may pursue their remedy with the Custom Department for refund of Rs. 12,65,777/- and Rs. 1,48,950/- incurred due to non-compliance by the Liquidator. Since, these payments are in nature of erroneous tax collection by the Custom Department, the law of limitation may not apply. Accordingly, we do not find any merit in this prayer.

8.2. As far as payment of GST on Rs. 321.00 lacs is concerned, we find that the Liquidator ought not have collected this amount from the auction buyer as this sale has been subjected to IGST in terms of

Section 5 of Integrated Goods & Service Tax Act, 2017, and proviso therein reads as “*the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962*”. Since the auction sale has suffered tax at the time of removal thereof from the Port, the same can not be subjected to tax again. We do not find any merit in the contention of the Liquidator that “the Custom Department had collected the Custom Duty in the form of IGST on vessel for home consumption and the Liquidator collected GST on the sale of the vessel”, as this contention is against the provisions contained under GST law. Accordingly, the Liquidator is directed to refund this amount of Rs. 59.58 lacs having been collected as GST under mistaken belief of law. We consider that the Liquidator ought to have sought appropriate legal opinion in this respect while demanding the GST component.

8.3. As regards Liquidator’s claim for the Port charges, we find that the Sale was concluded on the ‘as is where is basis, as is what is basis, whatever there is and No recourse basis’, and the Auction Buyer was liable to bear the port charges after issuance of sale certificate. In the present case the sale certificate was issued on 26.02.2020, the port charges after this date are payable by the Auction buyer. The Liquidator may appropriate the amount of Port charges determined accordingly and set off against the GST amount held refundable as aforesaid.

9. In view of aforesaid discussion, IA 372/2021 is partly allowed, and IA 820/2021 is also partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)