

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

I.A. 2405 OF 2020

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 34 of
NCLT Rules, 2016

Abhay Narayan Manudhare
Liquidator of Gupta Coal India Pvt. Ltd.
...Applicant

Vs.

C. Balamauli

Liquidator of M/s Gupta Global
Resources Pvt. Ltd.

...Respondent

In the matter of

C.P.(IB) No. 31/MB/2017

M/s Coal India Pvt. Ltd.

Corporate Debtor

Order delivered on: 22.11.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

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

For the Applicant : Mr. P.S. Thakre, PCS

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

I.A. 2405 OF 2020

For the Respondent : Ms. Shaivi Bhamaria, Advocate

ORDER

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

1. This IA 2405/2020 is filed by Sh. Abhay Narayan Manudhane, Liquidator of the Gupta Coal India Pvt. Ltd. (“Applicant”) for direction to the Liquidator of Gupta Global Resources (“Respondent”) to provide the possession of stock of coal of Gupta Coal India Pvt. Ltd. (“Corporate Debtor”) to the Applicant; and in case the Respondent has disposed of the stock of coal of the Applicant then to provide the proceeds of such sale of stock of coal lying in the premises of Respondent Corporate Debtor i.e. (Gupta Global Resources Private Limited).
2. The Corporate Insolvency Resolution Process (“CIRP”) in the matter of Gupta Coal India Pvt. Ltd., the Corporate Debtor, commenced on 9.3.2017 in terms of Order passed by this Tribunal on an Application u/s 10 of the Insolvency & Bankruptcy Code, 2016 (“Code”), and thereafter liquidation process commenced on 1.12.2017 wherein the Applicant was appointed as Liquidator. The Corporate Debtor is part of Gupta Group and was in the business of trading coal, while the Respondent Corporate Debtor (“GGRPL”) was in the business of washing coal supplied by the Corporate Debtor.
3. Since the Corporate Debtor was a trading company and had no storage place to store its coal, the same was stored in the locations/premises of GGRPL. A board of ownership of coal stock at various locations belonging to GGRPL was placed at such location, and the applicant was continuously following with the Respondent to allow to remove the Corporate Debtor’s stock of coal.

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

I.A. 2405 OF 2020

4. The Respondent Liquidator has filed reply stating that it is the Applicant who has failed to any further action to lift the stock of coal even after a no-objection certificate in favor of the Applicant was issued on each and every occasion, and the inaction of the Applicant by not removing the Boards at the Washery Locations caused loss delaying the realisations of the movable Assets of GGRPL. Further, the Applicant was told that the cost with respect to the uplifting the stock was to be borne by the Applicant as communicated flatly to him and the Applicant has to take upon himself to remove the same from the premises of GGRPL, however the Applicant had remained unresponsive on this.
 - 4.1. Further the Respondent had never denied the Applicant for filing FIR for the loss of the Coal stock nor in anyway obstructed the Applicant from such filing, however, the CoC did not approve the cost for protecting or deploying security guards at the premises of GGRPL.
 - 4.2. It has also been submitted that the Applicant's submission that the entire stock belonged to Corporate Debtor is also untrue, and the Applicant had placed a board that entire coal stock belonged to the Corporate Debtor, whereas the Applicant's failure to segregate Corporate Debtor's stock resulted into non-completion of valuation of Coal Stock belonging to GGRPL in its CIRP process.
 - 4.3. The Respondent had withdrawn MA 1507 of 2018, inter alia, after Representatives of both the Liquidators visited the GGRPL washeries on 5.9.2019 and identified that negligible quantity of coal stock was actually available as compared to quantity recorded in the books of both the companies for the Financial Year 2017-18 whereafter a joint inspection report was prepared on 6.9.2019 and signed by both the Liquidators.
5. We have heard both the Counsel, and perused the material available on record.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 2405 OF 2020

- 5.1. We find that the joint inspection report dated 6.9.2019 clearly states the coal quantities found at washeries of GGRPL, and it is explained in the notes appended thereto that such coal was much less than the quantity shown in the books of accounts, and most of coal was carpet coal or in inferior in quality. In substance, most of the coal was found missing, but apparently no action was taken by the Liquidator.
- 5.2. In view of foregoing discussion, we find that the Respondent shall allow the Applicant to carry out auction of Coal lying at Washerries, as per joint inspection report, and allow the person to remove them under instruction of the Applicant. We do not find it fit case to direct the Respondent to pay for the missing coal quantities, as the Applicant as well as the Resolution professional of the Corporate Debtor has miserably failed to protect the assets of the Corporate Debtor.
- 5.3. It is astonishing to note that CIRP commenced on 9.3.2017, and thereafter the liquidation commenced on 1.12.2017, however, neither the Resolution Professional nor the Liquidator visited the coal washeries of GGRPL to take over the possession and control of Coal and put in place adequate measures to protect the property of the Corporate Debtor. It is the case of the Respondent that the applicant was never obstructed or denied the entry to the premises of the Coal washeries of GGRPL, and it is duty of the Applicant to secure the physical coal at their premises at their own cost. We are also amazed that no FIR in relation to missing coal came to be filed by the Applicant, not to speak about the insurance of such coal or if such insurance was there, the claim for loss of coal. It appears that the conduct of the Resolution Professional as well as Liquidator of the Corporate Debtor have been negligent, and they have failed to exercise due diligence expected from them in terms of provisions of Section 25 and Section 35 of the Code. In view of foregoing, we

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

I.A. 2405 OF 2020

direct the Stakeholder's committee of Corporate Debtor to carry out inquiry into this aspect, and fix accountability.

- 5.4. The Liquidator may also consider filing appropriate application against the suspended management for the missing coal quantity in the meanwhile.
6. With aforesaid directions, IA 2405/2020 is partly allowed.

SD/-

Prabhat Kumar
Member (Technical)

SD/-

Justice V.G. Bisht
Member (Judicial)