

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

I.A. 1108 OF 2024

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Regulations 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016

Mr. Vijaykumar V. Iyer,
Liquidator of Bharati Defence and Infrastructure Ltd.

...Applicant

Vs.

Exicom Technologies India Private Limited & Anr.

...Respondents

In the matter of

C.P.(IB) No. 292/MB/2017

Edelweiss Asset Reconstruction Company Ltd.

Financial Creditor

Vs.

Bharati Defence and Infrastructure Limited

Corporate Debtor

Order delivered on: 29.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Pulkit Sharma a/w Mr. Naman
Kamdar, Advocate

For the Respondent : None

ORDER

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

1. The present Interlocutory Application is filed by the Applicant/Liquidator of Bharati Defence and Infrastructure Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016, seeking, *inter alia* the following:

- a. approval of sale of the Corporate Debtor as a whole on a going concern basis alongwith Part A Litigations to the Respondent No. 1 / Exicom Technologies India Private Limited ("Successful Bidder"), on an "as is where is", "as is what is", "as is how is", and a without recourse basis;

- b. grant of certain reliefs and concessions in favour of the Successful Bidder for enabling smooth takeover of the Corporate Debtor as a going concern; and
 - c. approval of treatment of certain assets and litigations excluded from the abovementioned sale.
2. It is submitted that Pursuant to the Eighth (8th) round of e-auction process conducted on 15.02.2024, the Respondent No. 1/ Exicom Technologies India Private Limited was declared as the Successful Bidder for the sale of the Corporate Debtor as a going concern and was accordingly issued a letter of intent on 20.12.2023. Thereafter, in terms of the process document dated 14.11.2023 ("Process Document"), the Respondent No. 1 deposited INR 3,44,95,935, i.e., 25% of the total sale consideration (i.e., INR 13,79,83,750), as advance consideration into the liquidation account of the Corporate Debtor, on 21.12.2023.
- 2.1 The Process Document stipulates that upon receipt of the advance consideration from the Successful Bidder, the Liquidator shall file an Application before this Tribunal for seeking approval of sale of the Corporate Debtor as a going concern and for grant of certain reliefs as mentioned above. Pursuant thereto, the Liquidator has filed the present Application.
 - 2.2 In relation to the sale of the Corporate Debtor as a going concern under Parcel 1, all the litigations where the Corporate Debtor / the Liquidator of the Corporate Debtor is a party, and which are pending as on the date of closure of the liquidation process of the Corporate

Debtor have been categorised into two (2) different categories - Part A Litigations and Part B Litigations.

3. Further, the Applicant/Liquidator of the Corporate Debtor seeks the following non-conditional reliefs, concessions, directions, approvals and exemptions from this Tribunal, in favour of the Respondent No. 1/Successful Bidder to handover the Corporate Debtor as a going concern, on a clean slate basis, the grant of which would be an enabler for the Respondent No.1/Successful Bidder towards a smooth and clear takeover of the Corporate Debtor as per the letter and spirit of the Code.

4. Heard learned counsel for the both sides and perused the records.

4.1 In this case, the Corporate Debtor's assets were liquidated in Parcels and thereafter, remnant Corporate Debtor in consultation with the members of the SCC of the Corporate Debtor was put for sale as the going concern by the Liquidator. The sale proposal contemplated exclusion of certain assets i.e. the Excluded Assets alongwith the Part B Litigations from the scope of remnant Corporate Debtor. Respondent No. 1 was declared as Successful Bidder on 18.12.2023 and is stated to have been paid 25% of the Bid Money on 21.12.2023, after issuance of Letter of Intent in their favour in accordance with the process note. It was also clarified by the Liquidator that the payment of remaining 75% of

consideration is not contingent upon grant of relief and concessions separately prayed in this Application.

4.2 In view of this, this Tribunal accords its approval to sale of the Corporate Debtor as a whole on a going concern basis alongwith Part A Litigations to the Respondent No. 1 / Exicom Technologies India Private Limited ("Successful Bidder"), on an "as is where is", "as is what is", "as is how is", and a without recourse basis. However, the following assets as more particularly provided in Annexure IV of the Process Document shall be kept outside this sale.

- i. Cash and cash equivalents and / or any proceeds thereof (including cash in hand, all bank accounts of the Corporate Debtor, liquidation account, investment in 750 shares of face value of INR 2 each of ICICI Bank Limited and provision created with respect to certain excluded litigations) be distributed to the stakeholders as per the provisions of the Code;*
- ii. Receivables from L&T under the Service Agreement be distributed to the stakeholders as per the provisions of the Code;*
- iii. Assets at Bhoir Dredging Company Private Limited's warehouse will be treated in accordance with the directions of this Hon'ble Tribunal by its order dated 14.02.2024 in IA No. 2867 of 2023 filed by the Liquidator, inter alia, for disclaimer of such assets and as per the Process Document; iv. Part B Litigations (i.e., all pending litigations other than Part A Litigations) be allowed to be pursued by the Respondent No. 2 / EARC, a creditor of the Corporate Debtor on behalf of the*

stakeholders, as deliberated and decided in the meetings of the SCC dated 16.01.2024 and 09.02.2024, in accordance with applicable law and the terms of the Process Document and the proceeds thereof (net of the costs incurred in pursuing the Part B Litigations) be distributed to the stakeholders in accordance with Section 53 of the Code;

- iv. Creation of a corpus for an amount of INR 3,00,00,000/- from the amount to be distributed to the Financial Creditors, from the realization of sale proceeds from Parcel 1: Corporate Debtor as a going concern, to pursue and continue all the Part B Litigations by the Respondent No.2/EARC, on behalf of and for the benefit of the Stakeholders of the Corporate Debtor, in terms of the Process Document.*

4.3 The Applicant has also sought certain reliefs and concessions in connection with sale of the Corporate Debtor as a going concern. It is trite law that the Successful Buyer is entitled to the assets on clean slate basis. Accordingly, we hold as follows in respect of each reliefs and concessions.

| S. No. | Particulars of the reliefs and concessions | Comments of the Adjudicating Authority |
|---------------|--|---|
| 1. | All liabilities or debts of the Corporate Debtor, whether crystalized or uncrystallized, contingent (including bank guarantees and letters of credit issued by the Corporate Debtor), monetary, non-monetary, known or unknown, filed, not | Allowed on Clean Slate Principle |

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| | filed, verified or not verified, admitted or not admitted, disputed or undisputed or otherwise for the period prior to the liquidation commencement date, shall be deemed to be extinguished, fully discharged and settled in accordance with the provisions of the Code and Corporate Debtor and Successful Bidder will not be liable for the same. | |
| 2. | The sale of Corporate Debtor as a going concern basis shall be binding on all stakeholders including utility providers and all utility providers shall continue to supply the utilities as may be required and as per applicable law(s), for the operation of the Corporate Debtor as a going concern. | Allowed, however, utility providers shall continue the supply provided the necessary formalities in relation to procedure as well as prescribed payments are complied with. |
| 3. | The benefit of Section 32A of the Code be granted to the Successful Bidder, i.e., Exicom Technologies India Private Limited. | Allowed on Clean Slate Principle |
| 4. | No action by the government authorities against the Corporate Debtor for any non-compliance relating to the period prior to liquidation commencement date shall be maintainable under the applicable law(s). | Allowed on Clean Slate Principle |
| 5. | The Successful Bidder or the Corporate Debtor shall not be liable for any violations, penalties or fines relating to the period prior | Allowed. |

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| | to the commencement of the liquidation proceedings, with respect to or pursuant to the Corporate Debtor not having in place requisite licenses or approvals required to undertake its business as per applicable law, or for any non-compliance of applicable law by the Corporate Debtor. | |
| 6. | Successful Bidder be allowed to obtain / renew any requisite approvals as per procedure set out under applicable law(s) within a reasonable time period and liberty may be granted for the Successful Bidder to approach the relevant authority for the same with request for not imposing any costs / fine for the same. | requisite approvals shall be granted by the concerned authorities after fulfilment of necessary procedural formalities as well as payment of prescribed fee/cost. |
| 7. | All investigations / inquiry / assessments, regulatory or administrative proceedings (including show cause notices), proceedings initiated in relation to any tax related liabilities (including but not limited to income tax, sales tax, goods and services tax, duties / costs / charges related to customs) before any court, tribunal, authority or office, pending against the Corporate Debtor pertaining to the period prior to the liquidation commencement date, shall stand abated / withdrawn / | Allowed |

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| | cancelled / settled and / or extinguished in accordance with the applicable laws. | |
| 8. | Extinguishment of the existing paid-up share capital of the Corporate Debtor and issuance of fresh share capital at par value to the Successful Bidder, be allowed, provided that the Successful Bidder obtains the necessary consents, approvals, waivers, no-objections from the Securities and Exchange Board of India ("SEBI") and / or the relevant stock exchanges (being the National Stock Exchange of India Limited and BSE Limited). The Corporate Debtor, the Successful Bidder and / or the Liquidator, as relevant, be authorized, to undertake all the necessary actions for extinguishment of the existing share capital of the Corporate Debtor, to the extent and in the manner permitted by the SEBI and the relevant stock exchanges, on and from the later of the date of such approvals / consents waivers etc. from the SEBI or the relevant stock exchanges or the date of the order passed by this Hon'ble Tribunal in this Application. | The existing paid-up capital of the Company shall be extinguished subject to necessary consents, approvals, waivers, no-objections from the Securities and Exchange Board of India ("SEBI") and / or the relevant stock exchanges. The issuance of fresh share capital shall be permissible; however, the Successful Buyer shall seek necessary approval from SEBI and / or the relevant stock exchanges for listing of shares so issued. |
| 9. | The suspended board of directors of the Corporate Debtor would stand removed / discharged from date of issuance of the sale | Allowed |

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| | certificate and such persons as nominated by the Successful Bidder be deemed to be appointed on the board of the Corporate Debtor. The Successful Bidder be directed to make all such filings and compliances as are needed in relation to the removal of existing directors and appointment of new directors on the board of directors of the Corporate Debtor, as the case maybe in accordance with the applicable law(s). | |
| 10. | The relinquished security interest created in favour of secured creditors of the Corporate Debtor shall stand extinguished as on the date of issuance of certificate of sale and such security cannot be enforced by the secured creditors except for any right to enforce third party security including personal guarantee, corporate guarantee, letter of comfort etc., as may be provided by promoter group and / or any third party for securing the debt provided by the secured creditors of the Corporate Debtor. | Allowed |

5. In view of the aforesaid, the Interlocutory Application bearing IA No. 1108 of 2024, is disposed of as Allowed. There will, however, be no order as to costs.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)