

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH,
COURT – V
IA-(IB) No.2708/2022
IN
CP (IB)-160/PB/2017**

An Application under Section 35(1)(n) r/w 60(5) of the Insolvency and Bankruptcy Code, 2016 and Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations), 2016 and read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

M/S LEVCON VALVES PRIVATE LIMITED

6th Floor 13 Camac Street,

Kolkata, West Bengal-

700017

.....Operational Creditor

Versus

M/S ENERGO ENGINEERING PROJECTS LIMITED

.....Corporate Debtor

AND IN THE MATTER OF:

ARVIND GARG

Liquidator

M/s. Energo Engineering Projects Limited.

....Applicant

Versus

MR. SUBHASH GUPTA

Successful Auction Purchaser

... Respondent

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 04.08.2023

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. The Application I.A. (IB) No. 2708/2022 in C.P. (IB) No. 160/PB/2017 filed by Mr. Aman Garg ('Applicant'), liquidator of M/s. Energo Engineering Projects Limited under section 35(1)(n) read with Section 35(1)(d) & (e) of the Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT") seeking relief as follows:-
 - a. *"Allow the present Application; and*
 - b. *Approve/ratify the sale of the Corporate Debtor as a 'going concern' to Mr. Subhash Gupta pursuant to the e-auction conducted by the Liquidator on 12.05.2022; and*
 - c. *Hold and declare that in the facts and circumstances, the dissolution of the Corporate Debtor is dispensed with and the Liquidator is not required to move any application under Section 54 of the IBC to seek dissolution of the Corporate Debtor, and grant further liberty to the Liquidator to move appropriate application under Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 after the conclusion of the sale process under the e-auction held on 12.05.2022; and*
 - d. *Pass any other/ further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice."*

2. Briefly stated, the facts of the present case as averred by the Applicant are that the Corporate Debtor was engaged in the business of Engineering Procurement and Construction and had been executing projects in many states of India. The Applicant further submitted that after the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 05.09.2017. The liquidation was initiated against M/s. Energo Engineering Projects Limited ('Corporate Debtor') vide this Adjudicating Authority order dated 21.08.2018 and Mr. Arvind Garg was appointed as the Liquidator ('Applicant') of the Corporate Debtor. It is submitted that the business of the Corporate Debtor has been carried on during the CIRP and Liquidation process period for beneficial liquidation of Corporate Debtor. It was submitted that execution of only projects awarded to Corporate Debtor prior to insolvency commencement date has been carried on and no new contract for project execution has been entered into, either during CIRP or during liquidation process periods.
3. The applicant submitted that on the first meeting of the Stakeholder's Consultative Committee ('SCC') conducted on November 29, 2018, the applicant has informed all the financial creditors that "the operations of the Corporate Debtor are still continuing and the Corporate Debtor is functioning as a going concern".
4. Further, the applicant submitted that the applicant had preferred an Application bearing IA No. 5561 of 2021 under Sections 35(1)(n) and 60(5)(c) seeking permission from this Adjudicating Authority to carry out the sale of the Corporate Debtor as a going concern and the same has been allowed by this Adjudicating Authority vide order dated 21.03.2022. It was further submitted that pursuant to the order dated

21.03.2022, the Applicant had issued Sale Notice dated 25.04.2022, wherein the reserve price for the Corporate Debtor (as a going concern) was fixed as Rs. 4,53,00,000/- (Rupees Four Crores Fifty Three Lacs Only) and the same has been published in the Financial Express & Jansatta newspapers, inviting bids for the Corporate Debtor as a going concern through the method of E-auction, in terms of Regulations 32(e) and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

5. The applicant submitted that the bids from two participants were received during the e-auction and Mr. Subhash Gupta ('Respondent') emerged as the successful bidder with the highest bid of Rs.4,57,00,000/-. Moreover, it was submitted that the SCC of the Corporate Debtor was also duly informed of the sale of the Corporate Debtor as a 'going concern' through e-auction in 11th SCC meeting held on 20.05.2022.
6. Accordingly, the applicant submitted that under Section 35(1)(n) of the Code, 2016, this Adjudicating Authority has the necessary power to pass appropriate orders as may be necessary for the liquidation of the Corporate Debtor and hence, the Corporate Debtor through the Liquidator has approached this Hon'ble Tribunal for approval/ratification of the sale of the Corporate Debtor as 'going concern' to Mr. Subhash Gupta.
7. Heard the submissions made by the Learned counsel for the Liquidator. Record annexed with the application are meticulously perused.

8. From the records, it is seen that the Applicant had vide Interlocutory Application i.e., I.A./5561/2021 had sought permission from this Adjudicating Authority to carry out the sale of the Corporate Debtor as a 'going concern' in terms of Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 and same was allowed by this Adjudicating Authority vide order dated 21.03.2022.
9. Further, we observed that the Stakeholder Committee in its meeting held on 11.11.2021 had approved the proposal of sale of Corporate Debtor as going concern with more than 83.37% voting share and the SCC in its 11th Meeting held on 20.05.2022 was duly informed of the sale of Corporate Debtor as a 'going concern' through e-auction.
10. The Applicant had already sold the Corporate Debtor as a going concern to the Respondent herein and has filed this application again for seeking approval of the sale as 'Going Concern' which was already allowed by this Adjudicating Authority vide order dated 21.03.2023.
11. This Adjudicating Authority would like to highlight to the Liquidator i.e., Applicant herein that it would be a matter of applying facts to the law. The Applicant had already sought the permission from this Adjudicating Authority for the sale of Corporate Debtor as 'Going Concern' and filing the present application seeking the prayer (b) is not appreciated by this Adjudicating Authority. The prayer (b) stands infructuous.
12. Considering the above facts and circumstances, we direct the Successful Bidder/ Applicant to deposit the Balance Consideration, if any as per the terms of the LOI and the applicable regulations and the

said sale consideration shall be distributed by the Liquidator in terms of Section 53 of the Code.

13. Moreover, with regard to the prayer (c) of the present application, it is pertinent to invite the attention of the Liquidator that Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 provides that, “the liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for – (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern.
14. On a mere perusal of the Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016, it is evident that the liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern, therefore, there seems to be no cogent reason to specifically grant liberty to the Liquidator to move appropriate application under Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 after the conclusion of the sale process under the e-auction held on 12.05.2022. Therefore, the prayer (c) stands disallowed.
15. Accordingly, in the above facts and circumstances, the Liquidator is directed that the Liquidation Process of the Corporate Debtor to be conducted in the manner indicated in the Insolvency and Bankruptcy Code, 2016 and relevant Regulations and the sale of Corporate Debtor as going concern be concluded as per the provisions of the IB Code and relevant Regulations.

16. The Application i.e., **IA-(IB) No.2708/2022 in CP (IB)-160/PB/2017** **stands dismissed** without costs.

Sd/-

(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-

(SHRI P.S.N. PRASAD)
MEMBER (JUDICIAL)