

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (COURT-II)
KOLKATA**

IA/643/KB/2021
In
C.P (IB) No.96/KB/2018

In the matter of

An application under section 60 (5) Insolvency and Bankruptcy Code, 2016 .
And

In the matter of:

Shyamal Kumar Bhattacharjee , Liquidator of A S Sales And Exports Private
Limited *... Applicant*

Versus

Chief Executive Officer, Steel Authority of India Limited & Another

...Respondents

Date of hearing :12/12/2022

Order Pronounced on : 27/12/2022

Coram:

Mrs. Bidisha Banerjee, Member (Judicial)
Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference

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|---|------------------|
| 1. Mr Shaunak Mitra, Adv. |] For Liquidator |
| 2. Mr. Vikash Singh, Adv. |] |
| 3. Ms. Zeenat Shabab, Adv. |] |
| 4. Mr. Shyamal Kumar Bhattacharjee, Liq.in person | |

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|---------------------------|-------------------------------------|
| 1. Mr. Sauvik Nandy, Adv. |] For the Respondent in IA/643/2021 |
| |] & Applicant(SAIL) in IA/10/2022 |

ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court is convened by video conference today.

2. This application has been filed under section 60 (5) Insolvency and Bankruptcy Code, 2016 by the Liquidator seeking directions SAIL/DSP to release the payment outstanding for long period in the Bank Account of “A S Sales and Exports Private Limited –in Liquidation” to the extent of Rs.6,63,499.98 and to return the materials rejected valued at same amount as claimed in the custody of the liquidator so that these may be sold with the directions:-

“ To direct SAIL/DSP to release payment outstanding for a long period in the Bank Account of A S Sales and Exports Private Limited- in liquidation to the extent of Rs. 6,63,499.98 plus interest @ 12% from the date of deduction by SAIL/DSP.

To return the material (Inserts) rejected valuing Rs. 6,63,499.98, as claimed, in the custody of the liquidator so that these may be sold through auction”.

3. It has been submitted by the Ld. Counsel appearing for the Liquidator that SAIL had deducted Rs. 6,63,499.98 from the other outstanding bills of the Corporate Debtor which has was not correct, in the light of the terms of the agreement or the supply order.

4. Ld. Counsel appearing for the Respondent-SAIL led us through the reply affidavit wherein General Commercial Terms & Conditions for Purchase Contracts at page 43 in Clause 17 provided that;

*“ **Recovery of Sums due:** Whenever under this contract any sum of money is recoverable from and payable by the Supplier, the Purchaser shall be entitled to recover such sum by appropriating, in part or whole the security deposited by the Supplier, if a security is taken against the contract. In the event of the security being insufficient or if no security has been taken from the Supplier, then the balance or the sum recoverable, as the case may be, shall be deducted from any sum when due or which at any time thereafter may become due to the Supplier under this or any other contract with the Purchaser/ Company. Should this sum be not sufficient to cover the full amount recoverable the Supplier shall pay to the Purchaser/ Company on demand the remaining balance due”.*

Placing the aforesaid, Ld. Counsel would aver that the SAIL was within its right to recover the said amount from the other contracts of the Corporate Debtor in terms of the contract and as such nothing is payable to the Corporate Debtor by SAIL.

5. We have gone through the documents placed on record and find no infirmity in the contention of the Respondent that it was within its rights to adjust the amount against the supply made in other supply order, in terms of the contract. Noting that this adjustment had been made on 27th August, 2020, which was much earlier to the initiation of the CIRP, this shall fall under the normal operation of the contract and as such can not be a matter to be considered under Section 60(5).

6. It was contended by the Ld. Counsel for the SAIL that after adjusting this amount, the fact is that an amount of Rs.1,79,149.56 is still pending to be recovered from the Corporate Debtor and as such the same be reimbursed through SAIL.

7. In view of the above, we do not find any merit in the application/letter and accordingly, application **IA/643/KB/2021** is hereby **rejected**.

8. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 27th day of December, 2022

PJ