

NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI
BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD ON
07-09-2022 AT 10.30 A.M THROUGH VIDEO CONFERENCING:

PRESENT: SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)
SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

IN THE MATTER OF : M/s Bhatia Coke & Energy Ltd

PETITION NUMBER : IBA/307/2019

APPLICATION NUMBER: [201] a) IA(IBC)/949(CHE)2022 (FRESH)
in IA(IBC)/830(CHE)2022
b) IA(IBC)/830/CHE/2022

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201) a. IA(IBC)/949(CHE)2022 IN IA(IBC)/830(CHE)2022
IN IBA/307/2019

201) b IA(IBC)/830(CHE)2022 IN IBA/307/2019

ORDER

Ld.Counsel Mr.S.Ravi appears on behalf of the Applicant. Ld.Counsel Mr.Sumesh Dhawan appears on behalf of the CoC. Ld.Resolution Professional, Ld.Counsel Mr.Avinash Krishnan Ravi appears for RP and Mr.S.Deheeesan appears in IA(IBC)/830(CHE)2022. Ld.Counsel Mr.Karthik Seshadri appears on behalf of the Ex-Directors. Ld.Senior Advocate, Mr.E.Om Prakash appears for Rare ARC.

This application has been filed by the Successful Resolution Applicant seeking the following prayers:-

- "1. To allow the Application to implement the Resolution Plan dated 13.05.2021 with an extension of the timeline for a further period of 60 days (i.e., from 19.07.2022 till 18.09.2022) for payment of the proposed settlement as particularly stated in para 4.9 (Section V, Section VII and Annexure-1 of the Resolution Plan) of the instant application or from the date of the order, whichever is later;*
- 2. Pass an order extending the timeline for Section V, Section VII and Annexure-1 of the Resolution Plan dated 13.05.2021 being Annexure "B" herein by a further period of 60 days from 19.07.2022 i.e., the last date of making payment in terms of the resolution plan or for such other period as to this Hon'ble Tribunal may deem, fit and proper;*
- 3. Amendment of the Resolution Plan dated 13.05.2021 in so far as Section V: Term of Resolution Plan and its Implementation, Section VII: Acquisition of Going Concern and Annexure-I, more particularly stated in paragraph 4.9 herein in the instant application;*
- 4. If necessary, direction be given on the Respondents to approve the extension of timeline in so far as Section V:*

Term of Resolution Plan and its Implementation, Section VII: Acquisition of Going Concern and Annexure-I are concerned by a further period of 60 days in addition to the period mentioned therein;

- 5. Stay of all further proceedings in the implementation of the Resolution Plan dated 13.05.2021 in the matter of C.P.No.IBA/307/2019 until consideration of the instant application by this Hon'ble Tribunal.*
- 6. Ad-interim reliefs in terms of prayer (A) to (E) above, and*
- 7. Such other or further reliefs as this Hon'ble Tribunal may deem fit."*

It is stated that by an Order of this Tribunal dated 20.06.2022, the Resolution Plan was approved with respect to the Corporate Debtor in favour of Successful Resolution Applicant, the Applicant herein. As per the approved Resolution Plan a sum of Rs.190.25 crores was to be paid by the Successful Resolution Applicant within 30-days from the date of approval of the Plan by this AA. Further, a sum of Rs.22.00 crores was to be paid by the Successful Resolution Applicant to the Financial Creditor on the Second anniversary of the effective date under the plan.

It is also reported by the Successful Resolution Applicant that so far they have deposited Rs.12.00 crores (Rs.10.00 crores by way of Bank FD under lien with two banks and Rs.2.00 crores towards Earnest Money Deposit). Besides that, an amount of Rs.10.00 crores has been provided as Performance Bank Guarantee and the same is valid till 10.09.2022. The last date for lodging claims under the said Bank Guarantee is 10.09.2023.

Mr.S.Ravi, Ld.Counsel for the Applicant states that the Resolution Plan was approved by CoC on 02.06.2021 and by this Tribunal on 20.06.2022. Due to efflux of time and change in business situation, the Financial Partner, M/s Nithia Capital and Narayani Resources Private Limited are no more interested to continue with the Plan and hence, the Successful Resolution Applicant (SRA) has found another investor by name, M/s Aqua Terra Logistics Private Limited who is ready to invest the balance amount. Mr.Ravi made following further submissions:-




- a. The interest shown by the new investor to continue with the plan is bonafide and that he is ready and willing to deposit a sum of Rs.30.00 crores which is lying in the Current Account with Axis Bank.
- b. The Unit is presently lying closed. The Unit was earlier operational and was a going concern. During the month of May 2022, the Unit was closed. Mr.S.Ravi submits that the SRA is interested to make the unit operational. He further submitted that he is ready and willing to further invest a sum of Rs.4.00 crores to make the Unit operational, in addition to depositing Rs.30.00 crores.

The Ld. RP confirmed that presently, a sum of Rs.10.00 crores is lying in the Fixed Deposit which are under lien. Further, a sum of Rs.2.00 crores is available with the RP as EMD and Rs.10.00 crores is lying with the RP as Performance Bank Guarantee.

Looking at the situation, this Tribunal is of the view that the bonafides of the Successful Resolution Applicant may be further proved.

Based upon the submissions made by the SRA, we hereby direct as under:-

- a. the Successful Resolution Applicant to deposit a sum of Rs.30.00 crores in any Bank Account of the Company which is presently being operated by the RP within 24- hours of this Order and report compliance by way of Affidavit before next date of hearing.
- b. the Successful Resolution Applicant to obtain a binding offer from M/s Aqua Terra Logistics Private Limited and place the same before this Tribunal along with an affidavit of the Successful Resolution Applicant before the next date of hearing.
- c. to clarify the timing of investment of Rs.4.00 crores to make the unit operational.

All other issues related to the CD shall be considered during the next date of hearing.

 
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IA(IBC)/949(CHE)2022 is an urgent hearing application filed for listing
IAIA(IBC)/948(CHE)2022 .

Accordingly, IA(IBC)/949(CHE)2022 is **allowed**.

List IA(IBC)/830(CHE)2022 and IA(IBC)/948(CHE)2022 on **09.09.2022** for
further hearing.

The Registry of this Tribunal is directed to email this order to the Ld.Counsel of
the Applicant and all the Respondents in the matter. Certified copy of this order
may be issued on request made in this regard expeditiously.

-Sd-

[SAMEER KAKAR]
MEMBER (TECHNICAL)

-Sd-

[BACHU VENKAT BALARAM DAS]
MEMBER (JUDICIAL)

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