THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 4041 OF 2023

I.A. 4042 OF 2023

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules 2016

Square Port Shipyard Private Limited
Wholly owned Subsidiary Company of Square Four Housing and Infrastructure Development Private Limited

...**Applicant**

V/s

Mr. Vijay Kumar Iyer
Resolution Professional

…**Respondent**

In the matter of

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

Edelweiss Assets Reconstruction Company Limited

. **Financial Creditor**

Vs.

Bharti Defence and Infrastructure Limited

…**Corporate Debtor**

Order delivered on: 27.02.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Anil Jarial, Advocate

For the Liquidator : Mr. Pulkit Sharma, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Applicant Square Port Shipyard Private Limited has filed application Nos. IA 4041/2023 and IA 4042/2023 in the matter of Bharati Defence and Infrastructure Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs: -

   IA 4041/2023

   a) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 1 to make necessary payment of dues i.e. NA Charges amounting to Rs. 95,07,097/- (Rupees Ninety-Five Lakhs Seven Thousand and Ninety-Seven Only) to Respondent No. 2 i.e. Tahsildar & Executive Magistrate Dapoli

   b) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 2 not to take any action as against the Applicant and/or Property/Land of the Applicant, in order that the Applicant be able to function smoothly and effectively the on-going concern.

c) Pending the hearing and final disposal of this Interlocutory Application This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 2 not to take any action as against the Applicant and/or land in order that the Applicant be able to function smoothly and effectively the on-going concern.

d) Pending the hearing and final disposal of this Interlocutory Application This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 2 not to take any action as against the Applicant and/or land in order that the Applicant be able to function smoothly and effectively the on-going concern pending payment of dues of Respondent No. 2 by Respondent No. 1.

<u>4042/2023</u>

a) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 1 to make necessary payment of dues i.e. Property Tax amounting to Rs. 76,53,975/- to Respondent No. 2 i.e. Gram Panchayats of Village Usgaon

b) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 1 to make necessary payment of dues i.e. Property Tax amounting to Rs. 23,79,543-3/- Respondent No. 3 i.e. Gram Panchayats of Village Nawase

c) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 1 to make necessary payment of dues i.e. Property Tax Property Tax amounting to Rs. 2,37,029/- to Respondent No. 4 i.e. Gram Panchayats of Village Vanoushi T Panchandi.

d) This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent Nos. 2 & 4 not to take any action as against the Applicant and/or Property/Land of the Applicant, in order that the Applicant be able to function smoothly and effectively the on-going concern.

e) Pending the hearing and final disposal of this Interlocutory Application This Hon'ble Tribunal be pleased to pass necessary orders and/or directions directing the Respondent Nos. 2 & 4 not to take any action as against the Applicant and/or land in order that the Applicant be able to function smoothly and effectively the on-going concern.

<u>Facts of the Case:</u>

2. The Applicant submits that the Applicant is the Auction Purchaser in respect of M/s. Dabhol Shipyard (a unit of M/s. Bharati Defence and Infrastructure Limited i.e. Corporate Debtor} including its Land and building, plant & Machinery, Inventory, Semi-Constructed Vessel and various other movable assets as mentioned in the said Sale Certificate dated 10th May 2023. It is pertinent to note that as there were some discrepancies in the Sale Certificate, the Applicant through its Advocate had addressed a Letter dated 13th July 2023 inter alia pointing out the said discrepancies in the

Sale Certificate with a request to issue a Fresh Sale Certificate. There was some mistake in the Sale Certificate. As per the request of the Applicant the Respondent No. 1 issued an addendum to the Sale Certificate rectifying the said mistake. The Applicant craved leave to refer to and rely upon the said Letter dated 13th July 2023 when produced.

2.1. The applicant pursuant to the order dated 7th April 2023 passed by NCLAT, paid an amount Rs. 184,51,92,273/-and Respondent No. 1 issued Sale Certificate dated 10th May 2023 in respect of "Dabhol Shipyard Land & Building, Plant & Machinery, Inventory, Semi Constructed Vessels and other movable assets and agreement with Larsen & Toubro Limited and L &T Construction in relation to the assets with all rights and interest therein" and more particularly sated in the said Sale Certificate.

2.2. The Applicant further submits that the Counsel appearing for the Respondent No. 1 in the matter before the National Company Law Appellate Tribunal at Delhi had made a statement and the same was recorded in the said order dated 16th May 2023 in Verbatim "Learned counsel for the Liquidator submits that Liquidator shall extend his assistance for the above purposes so that Corporate Debtor may run as a going concern". The paragraph Nos. 6, 7 & 8 of the said Order dated 16th May 2023 are reproduced in verbatim.

> *6. In view of the aforesaid, we are of the view that prayers of the LA. No. 25 of 2023 stand satisfied.*

7. Learned Counsel who has filed I.A. No. 1268 & 1269 of 2023 prays that he may be permitted to withdraw this application. Application is permitted to be withdrawn.

8. Learned Counsel for the Appellant submits that the Appellant has purchased the corporate debtor as a going concern, certain licenses and other process are required for running the concern. counsel for the liquidator submits that liquidator shall extend his assistance for the above purposes so that corporate debtor measured as a going concern we make it clear that entire amount having been paid liquidator shall disburse the amount in accordance with law.

2.3. The Applicant next submits that the Applicant took the possession of the said Dabhol Shipyard as the on-going concern on or about May 2023 in presence of representative of Respondent No. 1. Tahsildar & Executive Magistrate Office Dapoli issued letter dated 28th June 2023 to the Applicant inter alia informing that there is an amount of Rs. 95,07,097/- {Rupees Ninety-Five Lakhs Seven Thousand and Ninety-Seven Only} towards NA Charges.

2.4. The Applicant had addressed a letter dated 18th July 2023 to the Respondent No.1 requesting the Respondent No. 1 to make payment of unpaid NA Charges to Respondent No. 2 for an amount of Rs. 95,07,097/- (Rupees Ninety-Five Lakhs Seven Thousand and Ninety-Seven Only} towards NA Charges along with interest in respect of the independent Unit and on-going concern i.e. Dabhol Shipyard.

2.5. According to the Applicant the Respondent No. 1 had taken possession of the said Dabhol Shipyard as the Liquidator since 2019 and to the reasons best known to the Respondent No. 1, has not paid the dues of Rs. 95,07,097/-(Rupees Ninety-Five Lakhs Seven Thousand and Ninety-Seven Only) towards NA Charges.

2.6. It is pertinent to note that because of non- payment of dues by Respondent No. 1 to Respondent No. 2, the Applicant should not be made to suffer and/or should not be made to pay the said dues. The non payment of Property could result into action of "Tahsildar & Executive Magistrate Office Dapoli" which may result into attachment of Property of the Applicant. In the circumstance as stated above the Applicant submits that this Tribunal be pleased to pass necessary orders and/or directions directing the Respondent No. 1 to make necessary payment of dues of Respondent No. 2 as stated herein above in order that the no action be taken by Tahsildar & Executive Magistrate Office Dapoli and the Applicant be able to function smoothly and effectively as the on-going concern.

<u>Respondent No.1 submissions</u>

3. The Respondent Liquidator has filed his affidavit in reply in IA 4041/2023 stating that the present application is nothing but an attempt to pressurize the liquidator of the Corporate Debtor to pay the dues of the Respondent in violation of distribution mechanism provided u/s 53 of the Code. Further, the issue sought to be raised by the Applicant no longer pertains to the liquidation process of the Corporate Debtor and are categorically dehors the liquidator

process of the Corporate Debtor because after conclusion of sale of Dabhol Shipyard of the Corporate Debtor to the Applicant herein. the Respondent No.1 is no longer in control of that shipyard. The sale of Dabhol Shipyard stood concluded upon issuance of sale certificate dated 10.05.2023 and thereafter all risks and reward in relation to Dabhol Shipyard are to the account of the Applicant. Besides this the Applicant acquired the shipyard on "as is where is", "as is what is" "as is how is", "whatever there is" and "without any recourse" basis in terms of the processed documents under sale certificate.

3.1. It is further stated that out of the NA charges alongwith interest amounting to Rs.95,07,097/- stated to be payable to Respondent No.2, a sum of Rs.52,04,857/- pertains to the dues of the Corporate Debtor and the remaining amount pertains to the dues of entities, other than the corporate debtor, as can be ascertained from the letter dated 28.06.2023 of the Respondent No.2.

3.1.1. Further, the NA dues (Non-agricultural assessment tax) amounting to Rs.10,77,611/- for the CIRP period from 06.06.2017 to 13.01.2019 and for the liquidation period from 14.01.2019 to 10.05.2023 amounting to Rs.46,89,257/- have already been paid. Thereafter, only a sum of Rs.89/- remains to be paid and shall be paid as part of liquidation cost.

3.2. The Respondent Liquidator has filed his affidavit in reply in IA 4042/2023 stating that Respondent No.2 filed the claim on 25.02.2019 much later than last date for submissions of claims by stakeholders being 13.02.2019. Therefore, the liquidator could not verify the claim submitted by Respondent No.2 and accordingly no amount pertaining to pre-CIRP period was admitted in favour of Respondent No.2. Accordingly, no pre-CIRP dues are payable to Respondent No.2.

3.2.1. The Respondent No.3 filed the claim form within prescribed timelines claiming INR 16,41,714/-. After verification an amount of Rs. 1,46,507/- was admitted and the said amount shall be paid in accordance with section 53 of the Code out of the recovery from the liquidation estate. Further, the Respondent No.4 filed no claim for the pre-CIRP period and accordingly no CIRP dues are payable to them.

3.2.2. In so far as CIRP dues are concerned the dues of Respondent No.2 to 4 for the period form 06.07.2017 to 13.01.2019 have been fully paid, and nothing remains. Further, the dues of Respondent No.3 and 4 for the liquidation period from 14.01.2019 to 10.05.2023 have also been paid in full, however, Respondent No.2 has paid only Rs.63,40,297/- as against claim of Rs.83,38,422/- thus leaving of balance of Rs.19,98,125/-.

Finding and Decision

4. Heard learned counsel for both sides and perused record.

4.1. It is clear from the reply of Respondent Liquidator that the dues of the Respondent No.2 in IA 4041/2023 and Respondent No.2 to 4 in IA 4042/2023 have been paid and the amount remaining to be paid in relation to period upto 10.05.2023 have been admitted as claim. It is trite law that the creditors have to file claim in liquidation process of the Corporate Debtor and non-filing of the claim by any creditor results into extinguishment of the liability of the Corporate Debtor in the liquidation process. Further, liquidation process the settlement of claims is based on the claims filed by the creditors. Accordingly, in so far as Respondent No.2 to 4 are concerned, to the extent they have failed to file claim, cannot demand any money in respect of period upto 10.05.2023. Further, amount remaining to be paid in the liquidation process as admitted by the liquidator shall be paid to the Respondent 2 in IA 4041/2023 and Respondent No.2 to 4 in IA 4042/2023 to the extent such amount remains unpaid in the liquidation process with the liquidator.

4.2. It is clarified that any liability of tax or charges in respect of period from issuance of sale certificate shall be recoverable from the applicant by the Respondent 2 in IA 4041/2023 and Respondent No.2 to 4 in IA 4042/2023. It is further clarified that the Applicant shall not be liable to make any payment in relation to the liability on account of tax or charges in relation to the period upto the date of issuance of sale certificate, as the same is to be dealt in accordance with the provisions of code and the same is stated to be dealt with by the liquidator.

4.3. Subject to payment of tax or charges in respect of period from issuance of sale certificate, the Respondent 2 in IA 4041/2023 and Respondent No.2 to 4 in IA 4042/2023 shall not take any action as against the Applicant and/or Property/Land of the Applicant.

4.4. The Respondent No.1 is directed to provide the details of all these payments made by them to the Applicant alongwith necessary evidence.

4.5. In view of above, the IA is 4041/2023 and IA 4042/2023 are partly allowed.

Sd/	**Sd/-**
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)