



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.02
IA-208/2023
In
IB-900(ND)/2020

IN THE MATTER OF:

P.R rolling Mills Pvt Ltd. Operational Creditor/Applicant

Versus

Hema Engineering Industries Ltd. Corporate Debtor/Respondent

AND

IN THE MATTER OF:

M/s. Marquee Digital Services Pvt. Ltd. Applicant

Versus

Mr. Vikas Garg

Liquidator of M/s Hema Engineering Industries Ltd. Respondent

SECTION

U/s 9 IBC code 2016

Order pronounced on 16.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets.

IA-208/2023 is **disposed of**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT-III)**

Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016,
read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IA-208/2023
In
IB-900/ND/2020

IN THE MATTER OF:-

P.R rolling Mills Pvt. Ltd. Operational Creditor/Applicant

Versus

M/s Hema Engineering Industries Ltd..... Corporate Debtor/Respondent

AND

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Mr. Vikas Garg

Liquidator of M/s Hema Engineering Industries Ltd. Respondent

Pronounced on: 16.06.2023

CORAM:-

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:-

For the Applicant : Mr. Nitesh Jain, Mr. Vatsal Chandra,
Advocates.
For the Liquidator : Mr. Vishal Ganda, Ms. Akanksha
Mathur, Ms. Tanya Hasija, Advocates.



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by the ***M/s Marquee Digital Services Private Limited***, the Applicant herein seeking the following prayers:-

- a. ***“Direct the Liquidator/ respondent herein, to secure the Corporate Debtor's Assets to the extent of "Plant & Machinery including inventories - Dharuhera Unit- II" at 69th KM, Delhi-Jaipur Highway, Dharuhera, Rewari - 123106 (Haryana), as already sale was confirmed in favour the applicant.***
- b. ***Direct the Liquidator to take appropriate steps, including taking the help and assistance of local police/ administration, to remove all the persons/ ex-employees of CD, from the way of excess to the Plant and Machinery of CD lying at Dharuhera Unit - II, who are stopping, giving dharna, not allowing the P&M to be removed and on the contrary, giving threats of dire consequences to the representatives of applicant.***
- c. ***Grant extension of 4 weeks to the applicant, from the last date to deposit balance i.e. 17.01.2023, to pay the balance sale consideration towards the purchase of Assets, so that in such time, the Liquidator may able to provide remove the obstructions, from the excess of the Plant and Machinery of CD lying at Dharuhera Unit - II, for the smooth implementation of the sale of the subject P&M including inventories.***
- d. ***Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper.”***

2. This application was heard on 17.01.2023 and the following order was passed:-

IA-208/2023:-

“This is an application filed by the Applicant (M/s Marquee Digital Services Pvt. Ltd.)/Successful bidder/auction purchaser of plant and machinery

Page | 2



including inventories at Dharuhera Unit – II at 69th KM, Delhi – Jaipur Highway, Dharuhera, Rewari – 123106 (Haryana).

The Applicant has prayed for directing the Liquidator to take necessary steps including assistance of local police/administration, to remove the ex-employee of the Corporate Debtor who are stopping, giving dharna, not allowing the Applicant to remove the plant and machinery from the site. It is submitted that in the e-auction sale notice dated 20.09.2022, the applicant participated in the bidding process and was declared as the successful bidder. The Applicant is required to pay an amount of Rs.11,45crores along with GST within a period of 90 days as stipulated under Regulation 33 read with Schedule 1 of IBBI (Liquidation Process) Regulations, 2016.

Vide order dated 13.01.2023, the Tribunal recorded the submissions of Learned Counsel appearing for the Applicant that “on or before 17.01.2023, the auction purchaser would deposit an amount of Rs. 6 crores so as to reach total payment of 8.86 crore out of 11.45 crores.” In compliance with the said order, the Applicant has stated to have deposited a sum of Rs. 5,72,05,000/- yesterday. This fact is not disputed by the Liquidator.

Learned Counsel appearing for the Applicant states that the time stipulated under Regulation 33 may be extended and direction be given to the Liquidator to take necessary steps to remove the alleged ex-workers from the disputed site. In the facts and circumstances of the case, we therefore deem it appropriate to direct the Applicant to take necessary steps with the concerned police authorities to remove the alleged ex-workers from the site within two weeks. We also direct the local police authorities to extend cooperation and assistance to the Liquidator in this regard. We further extend the time for depositing the balance amount of Rs. 2,86,25,000/- and direct the Applicant to make the payment within three days after removal of obstructions and file a compliance report with this Tribunal within three days thereafter.



Mr. Vishal Ganda, Learned Counsel appearing for the Liquidator submits that the Applicant should be liable to pay interest for the balance amount to be deposited by him. This issue with regard to the interest shall be considered on the next date of hearing.

The Applicant is directed to serve a copy of this order to the local police authorities for taking necessary action.

List the matter on 06.02.2023.”

3. Accordingly, we have heard the submissions made by Ld. Counsel appearing on behalf of both the parties on the issue of payment of interest.
4. Ld. Counsel appearing for the Applicant has stated the following facts and events on the basis of which he is seeking waiver of the interest
 - a. *“On 19.10.2022, the applicant was declared the highest bidder for P&M including inventories at sale consideration of Rs. 11,45,00,000/-. Out of the said amount 25% of the said bid amount to the effect of Rs. 2,86,25,000/- was admittedly being received by the liquidator on the date of confirmation and the balance amount i.e. Rs. 8,58,75,000/- was required to be deposited within 30 days i.e. by 18.11.2022. Further, in case the balance consideration is not deposited by 18.11.2022, any amount outstanding after 18.11.2022 shall be deposited along-with interest @12% till 17.01.2023. As per the confirmation of sale, the applicant would be granted 3 month’s time from the execution of the sale certificate for removal of P&M from the site, in case of delay in removing machinery the applicant would be liable to deposit penal charges of Rs. 10,000/- per day.*
 - b. *Soon after the confirmation of the sale i.e. on 25.10.2022 (6 days after the confirmation) there was a theft at the site in question and the liquidator was duly informed by the applicant vide email.*
 - c. *Thereafter, on 10.11.2022, which is also within 30days from the confirmation of the sale, there was continuous dharna by the ex-employees of the corporate debtor, who had gathered right outside the gate of the said unit and have completely stopped the ingress and egress of the applicants*



representatives and security guards for the removal of machinery from the said unit. The liquidator was duly informed about the same and the applicant sought help from the liquidator so that the site become unencumbered, as there was a clear threat from the ex-employees that they will not let any material to be taken out from the premises.

- d. On 11.01.2023, the applicant again wrote to the liquidator and requested to take appropriate steps in order to remove all the persons, who are stopping, giving dharna and giving threats of dire consequences, from the way of access to the P&M.*
- e. As no action was taken by the liquidator, the applicant was constrained to approach this Hon'ble Tribunal vide I.A. No. 208 of 2023, whereby this Hon'ble Tribunal after considering the facts and circumstances of the present case, vide order dated 17.01.2023 have directed the liquidator to provide all necessary assistance in removing the dharna from the site. Further, this Hon'ble Tribunal vide the same order extended the time beyond 90 days for making the balance consideration and only upon the site in question being become unencumbered.*
- f. It is an admitted position that after the said order the entire balance consideration was paid by the applicant and the sale certificate was also issued by the liquidator.”*

5. The Ld. Counselsubmitted that the Applicant was following up with the Liquidator to get the siteunencumberedand free from all Dharna so as to enable him to take possession of machineries but because the site was unencumbered, the Applicant could not pay the balance consideration within 30 days as there was a genuine apprehensionthat the entire money would get stuck and the Applicant would not be able to get the machineries removed from the site.

6. The Applicant therefore has prayed for waiver of the levy of interest @12% on the balance bid amount, as levy in terms of sub-regulation 12 of Regulation 1 of Schedule-I[Under Regulation 33 of the IBC (liquidation process) Regulations, 2016].



7. The Ld. Counsel appearing for the Liquidator has submitted that the Applicant was duly informed vide letter dated October 19, 2022 that the balance sale consideration of Rs. 8,58,75,000/- applicable GST has to be deposited within 30 days i.e. by November, 18, 2022 and in case the balance amount is not deposited by November 18, 2022, interest@ 12% per annum maximum up to 90 days from the date of confirmation of sale i.e., January 17, 2023 shall be leviable.
8. The Liquidator also informed the Applicant that the transaction will be cancelled if the consideration amount was unpaid within 90 days from the date of the sale in terms of clause 10 of the bid document for sale through E-Auction of the Corporate Debtor.
9. The Ld. Counsel further submitted that the said terms and conditions did not include a Force Majeure Provision and therefore the Applicant is bound by the terms and conditions of the bid amount and is liable to pay interest on the consideration for non-payment of sale consideration.
10. We have heard the submissions made by Ld. Counsel appearing for both the parties and perused the relevant documents.
11. It is not in dispute that ex-employees of the Corporate Debtor were on Dharna and the Applicant was not able to remove the plant and machinery from the site and therefore this Tribunal had to issue a direction to the local police to extend co-operation and assistance to the Liquidator and also directed the Liquidator to take steps to remove the alleged ex-workers from the disputed site. This Tribunal also extended the time for depositing the balance amount of Rs. 2,86,25,000 vide order dated 17.01.2023.
12. Considering the facts and circumstances of the case, we are of the considered view that the Applicant was prevented by Force Majeure circumstances and therefore could not deposit the balance amount within the time granted under the provisions of the



Code. We therefore, direct, that the interest @12% shall stand waived. The Liquidator is directed to accept the amount which has already been deposited by the Applicant and not to change any interest for the delayed payment.

13. In terms of the above order, the IA is **disposed of**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**