

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (Court-I)

KOLKATA

I.A.(I.B.)No. 1096/KB/2022

In

C.P.(I.B.) No. 2171/KB/2019

An application under Section 60(5) read with clauses (f) and (n) of Section 35(1) of the Insolvency and Bankruptcy Code, 2016 read with sub regulation (e) of regulation 32 and regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

In the matter of:

Darkwell Merchandise Private Limited

..... Operational Creditor

Versus

SKP Steel Industries Private Limited

..... Corporate Debtor

And

In the matter of:

Soumitra Lahiri, Liquidator of SKP Steel Industries Private Limited

..... Applicant

Appearances via Hybrid mode:

Mr. Vikram Wadhwa, Advocate : For the Liquidator

Mr. Soumavo Ghosh, Advocate

Mr. Soumitra Lahiri, Liquidator

Mr.S. Mitra, Advocate : For Punjab National Bank

Mr. D Chakraborty, Advocate

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Mr. Joy Saha, Senior Advocate : For Balmukund Cement & Roofing Pvt. Ltd.

Mr. Arik Banerjee, Advocate

Mr. R Mullick, Advocate

Mr. R. Sarkar, Advocate

Coram:

Rohit Kapoor : Member (Judicial)

Balraj Joshi : Member (Technical)

Date of pronouncement: 25/07/2023

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This IA has been filed by Liquidator seeking approval of this Adjudicating Authority, for sale of Liquidation Estate, applicant has stated that he has managed to have successful e-auction pertaining to selling of liquidation estate of the Corporate Debtor as a going concern as defined under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
2. The primary relief sought by the Applicant is to “(a) *Pass an order approving sale of the Liquidation estate of SKP Steel Industries Private Limited ‘in Liquidation’ on “AS IS, WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS” as a Going concern as defined in sub regulation (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*” which cannot be granted.
3. Further, the applicant has sought reliefs, to grant certain waivers and concessions as a consequence of sale of Corporate Debtor in liquidation. The reliefs are as follows:

“(b) Pass an order permitting the successful Purchaser, Balmukund Cement & Roofings Private Limited, to take over the Liquidation estate of the Corporate Debtor with a clean state without burdened with any pre-liquidation liabilities of the Corporate Debtor;

(c) Pass an order that the Successful Purchaser has assumed that upon approval of this sale as a Going Concern by the Hon’ble Adjudicating Authority all subsisting consents, licenses, approval, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled accustomed to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor.

(d) Pass an order that the successful purchaser shall stand discharged from pre-liquidation claims and on and from the approval of the sale as Going Concern by the Hon’ble Adjudicating Authority all such claims which are not a part of E-Auction Process memorandum shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the E Auction Process Memorandum.

(e) Pass an order that upon approval of this Going Concern sale by Hon'ble Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Successful Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority.

(f) Pass an order that upon approval of this Going Concern sale by the Hon'ble Adjudicating Authority all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Successful Bidder over the Corporate Debtor pursuant to this Going Concern sale.

(g) Pass an order that all contracts between the Corporate Debtor and related parties (as defined in Section 5(24) of the Code shall stand terminated with effect from the Completion Date unless otherwise notified by the Successful Bidder by the Completion Date, and the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to, any claims, penalty, damages (liquidated or otherwise), arbitration claims, claims for specific performance or claims for interim relief

(h) Pass an order that all financial obligations under any contract to which the Corporate Debtor is a party, relating to a period prior to the Liquidation commencement date, if not provided for under this e- auction Process Memorandum, shall stand extinguished.

(i) Pass an order that all matters requiring any shareholder approval or approval of the Board for implementation of the Going Concern Sale shall be deemed to be granted. However, all filing- related compliances shall be completed and no waiver can be granted in this regard.

(j) Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.¹

4. The reliefs as asked for which are mentioned above, are in a very generalised manner. Such *carte blanche* cannot be granted. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act, 2013 (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concession. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the code (IBC 2016).
5. The reliefs, waivers and concessions shall be consistent with extant law. Further since this is a 'Going concern sale', the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider granting the same keeping in mind the objectives of the Code which is concerned with resolving of the insolvency of the Corporate Debtor.
6. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd***² wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in

¹ Pg 34-38 of the Application

²2021 SCC OnLine SC 313 decided on 13.04.2021.

the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

7. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India &ors*,³ wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.
8. Now, the only question that craves answer is the applicability of the ratio of above two judgements to the present question where the Corporate Debtor has been sold as a going concern. In our opinion, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the judgments are applicable in the present case of a going concern sale too, shall therefore be applicable in the present case as well.
9. In view of the position brought out in para 4 above, this IA being **I.A.(I.B.) No. 1096/KB/2022** is allowed to the extent hereinabove and is accordingly **disposed of**.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 25th day of July, 2023

(GGRB_LRA, FA_LRA)

³ 2021 SCC OnLine SC 396 decided on 21.05.2021.