

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

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IA No. 447/MB/2021
in
CP (IB) No. 1561/MB/2017

(An Application under Sections 35(1)(f), 35(1)(n) & 60(5)(c) of the
Insolvency and Bankruptcy Code, 2016)

Shantanu T. Ray, Liquidator of
Conros Steels Pvt. Ltd. (in Liquidation)
301, A Wing, BSEL Tech Park, Sector 30A,
Opp. Vashi Railway Station, Vashi,
Navi Mumbai – 400 705.

... *Applicant/Liquidator*

V/s

1. Grup Grampanchayat Tambati
At: Tambati, Post: Donvat, Taluka: Khalapur,
District: Raigad, Maharashtra – 410 203.
2. The Tahsildar and Executive Magistrate,
Office of Tahsildar and Executive Magistrate
Taluka: Khalapur, District: Raigad, Bunglow Society,
Old Panvel, Panvel, Navi Mumbai – 410 206.

... *Respondents*

In the matter of:

Punjab National Bank

... Financial Creditor

V/s

Conros Steels Private Limited

... Corporate Debtor

Order Dated: 27.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Ms. Rubina Khan with Ms. Nidhi Bajpai, Advocates
i/b Fortis India Law.
For Respondent No. 1: Mr. Vinit J. Mehta, Advocate.
For Respondent No. 2: None.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

This is an Application by the liquidator of the Corporate Debtor seeking orders of lifting of lien marked by the Respondents over the properties of the Corporate Debtor.

2. The facts averred in the Application are that the above Company Petition No. 1561 of 2017 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) was admitted on 19.12.2017, initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Subsequently upon failure of the Resolution Process this Tribunal by order dated 21.08.2018 directed liquidation of the Corporate Debtor. The Applicant herein was appointed as the liquidator.
3. During the process of liquidation, the liquidator sold the factory premises corresponding to Survey Nos. 12, 26, 27, 28 & 29 of Village Vanavathe, Ajiwali Phata, Khopoli-Pen Road, Khalapur, Raigad – 410 203 (hereinafter referred to as the property) on 07.09.2020 and Sale Certificate to that effect was issued to the successful purchaser viz. Bharat Agarwal on 05.02.2021 and possession thereof was handed over to him. Meanwhile the Respondent No. 2 (R2) issued a letter / notice dated 01.12.2020 to the Applicant raising a claim of ₹. 72,37,002/- towards 'Property Tax' in respect of the property for the period 2010-11 to 2019-20. Failing which appropriate proceedings under Maharashtra Land Revenue Code, 1966 was indicated to be taken. The

Applicant under his letters between 02.12.2020 and 12.02.2021 informed the Respondents that the Corporate Debtor was under liquidation and the Respondents could submit their claim in Form-C as required under law. On 25.01.2021, the Applicant received claim from the Respondent No. 1 (R1) in Form-C.

4. Despite submitting the claim, the Respondents marked their lien over the property records on the basis of the outstanding Property Tax. Consequently, the Sale Certificate could not be registered as the Sub-Registrar of Assurances, Khalapur, declined to register the same. Request by the Applicant to lift the lien fell on deaf ears. R2 went ahead and issued a notice dated 23.12.2020 for hearing on 08.01.2021 on the Notice dated 01.12.2020. The Applicant attended the hearing with his reply. But the hearing could not be taken up due to the absence of R2. Hence this Application.
5. The Respondent No. 2 was not represented during the hearing. R1 appeared through a counsel and filed reply to the Application denying the averments made therein. It is submitted that the Application suffers from non-joinder of Sub-Registrar of Assurances, Khalapur, District - Raigad, as a party. R1 is competent to levy taxes on the Corporate Debtor in respect of the property falling within its jurisdiction. The Corporate Debtor has been in arrears of ₹.72,37,002/- for the period from 2010-11 to 2019-20. Respondent had initiated proceedings before the Public Court of Khalapur, Taluka Judicial Cell (Lok Adalat) for recovery of the Property Tax.
6. Besides the Respondent had taken up the matter of arrears with one Mr. Shabbir Hemani, Managing Director of the Corporate Debtor. He had assured to clear the dues. He however expired before the dues could be cleared. The Respondent again took up the matter with his son Mr. Shahzad. But despite assurances the arrears were not cleared. The Respondent came to

know about the CIRP proceedings only on 04.08.2019. Thereafter, it moved the Collector of Alibag on 30.11.2019, under Section 129(8) of the Panchayat Act, seeking recovery of the dues. The Application however has not been disposed of due to the situation arising out of Covid-19 pandemic. The Collector of Alibag by an order dated 22.12.2020 directed R2 to create a lien on the said property. The so-called public auction in respect of the property was without knowledge and consent of the Respondent and accordingly could not be binding on it. The Respondent has no objection for lifting up the lien in case the property dues are cleared. Before the payment of the property dues a lien may not be vacated. The Application accordingly has no merits and is liable to be dismissed. The defence taken by R1 essentially covers the cause of the Respondent No. 2 as well.

7. We have heard the counsels appearing for both the parties and have perused the records. The Corporate Debtor was ordered into CIRP on 19.12.2017. The unpaid dues towards Property Tax are pre-CIRP dues and would have to be regarded as 'Operational Dues' of the Corporate Debtor.
8. This Tribunal by order dated 21.08.2018 directed the liquidation of the Corporate Debtor. The moratorium under Section 14 of the Code was in force till 21.08.2018. During the CIRP as well as Liquidation Process public announcements were made intimating the general public regarding the Corporate Debtor going through CIRP and/or liquidation. The Respondents represent the Government as far as the property dues are concerned. Thus the creditors, of which the Government of Maharashtra is one, had adequate notice of the CIRP or liquidation, as the case may be.
9. Therefore, the Government of Maharashtra through, the instrumentality of the State, was statutorily bound to submit its claims before the RP or the Liquidator for payment. Now the Company have been gone into liquidation.

The Proceeds of the liquidation have to be distributed under Section 53 of the Code. The amount due to the State Government / Respondent is liable to distributed under section 53 and the dues have priority as provided under Section 53(1)(e) of the Code. As is evident the Applicant has already received the sale consideration in respect of the property and the Respondents have already submitted their claim for the property dues under Form-C.

10. The Hon'ble Apex Court in *Innoventive Industries Ltd. v. ICICI Bank and Anr.*: (2018) 1 SCC 407 have observed that the Code in itself is a complete and comprehensive legislation. Section 238 of the Code provides that the Code shall override other laws. Therefore, any action taken under the Code accordingly shall override any action taken under any other law in relation to a Corporate Debtor. Besides when the claim has already been filed before the liquidator of the Corporate Debtor, the liquidator would be statutorily bound to take into account the claim while distributing liquidation proceeds under Section 53 of the Code.
11. The order of liquidation is passed in order to protect the interest of all the stakeholders including the creditors. The successful bidder has purchased the property after investing substantial amount (₹. 9 Crores). Any action affecting his right of unhindered enjoyment of the property would be deleterious and if allowed to continue would prejudicially affect the successful bidder and is likely to scare off other prospective purchasers in a liquidation process. Since the payment of the property dues is assured under Section 53 of the Code, in our considered opinion the lien on the property deserves to be lifted. The Applicant is accordingly entitled to protection in terms of Section 60(5) of the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016. Hence ordered.

ORDER

The Application be and the same is allowed on contest against R1 and without contest against R2. The lien marked by R2 over the property shall be lifted forthwith. The Sub-Registrar of Assurances, Khalapur, District Raigad, shall register the Sale Certificate dated 05.02.2021. The Applicant may take appropriate steps accordingly. There would however be no order as to costs.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Janab Mohammed Ajmal
Member (Judicial)