IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IA(IBC)/1005/CHE/2021
in
TCP/130/IB/2017

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of The National Company Law Tribunal Rules 2016)

In the matter of ***Auro Mira Biopower India Private Limited.***

M/s. SRI GOMATHI ENERGY (P) LTD.,
Represented by its Authorized authority,
Mr. P. Mohammed Ali, S/o. Mr. Ismayil,
having its Registered Office at
10-2-46, Plot No.3, Street No.7, West Marredpally,
Secundrabad – 500 026.

... Applicant

Vs.

1. Mr. L.K. Sivaramakrishnan,
Liquidator,
M/s. Auro Mira Biopower India Private Limited,
IBBI/IPA-001/IP-P00045/2017-18/10119,
Rajparis, Ist Floor, 147, G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

2. Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO Maharaja Nagar,
Tirunelveli – 627 011.

3. Electrical Inspectorate Government of Tamil Nadu,
Thiru. Vi. Ka Industrial Estate,
Guindy, Chennai,
Tamil Nadu – 600 032.

4. The District Collector,
Collectorate,
Railnagar, Tenkasi,
Tamil Nadu 627 811.

5. The Thasildhar,
Taluk Office, Veerakeralampudur,
Tenkasi District, Tamil Nadu – 627 860.

6. The Sub Registrar, Uthumalai,
Door No.279/13, Near Police Station, Uthumalai,
Tenkasi District, Tamil Nadu – 627 860.

... Respondents.

And

IA/241(CHE)/2021
in
TCP/130/IB/2017

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of The National Company Law Tribunal Rules 2016)

Mr. L.K. Sivaramakrishnan,
Liquidator for M/s. Auro Mira
Biopower India Private Limited,
Rajparis, Ist Floor, 147, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Applicant

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to
Government, Energy Department,
Fort St. George,
Chennai - 600 009.

2. The Tahsildar,
Taluk Office, Veerakeralampudur,
Tirunelveli District,
Tirunelveli – 627 860.

3. The Sub-Registrar,
Uthumalai, Door No.279/13,
Near Police, Station Uthumalai,
Tenkasi District,
Tirunelveli – 627 860.

4. Sri Gomathi Energy Private Limited,
Represented by its Managing Director,
Mr.P.Srinivas Rao,
Having registered office at 10-2-46,
Plot No.3, Street No.7, West
Marredpally, Secunderabad,
Andhra Pradesh – 500 026.

... Respondents.

Along with

IA/1337/IB/2021
in
TCP/130/IB/2017

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 44(2) of the IBBI (Liquidation Process) Regulation 2016)

Mr. L.K. Sivaramakrishnan,
Liquidator for M/s. Auro Mira
Biopower India Private Limited,
Rajparis, Ist Floor, 147, G.N.Chetty Road,
T.Nagar, Chennai – 600 017. *... Applicant*

Order Pronounced on 01st June 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Counsels Appeared: Mr.Jesus Morris Ravi, Advocate
Mr.Aravind Sreevasta, Advocate
Mr.V.V.Sivakumar, Advocate

ORDER

***Per:* JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

1. IA(IBC)/1005/CHE/2021

1.1. This Application, is filed under Section 60(5) the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of The National Company Law Tribunal Rules 2016 by Sri Gomathi

Energy (P) Ltd., against the Liquidator of the Corporate Debtor viz.Auro Mira Biopower India Limited and 5 others seeking reliefs as follows,

a) Direct the 2^{nd}, 3^{rd}, 4^{th}, 5^{th} and 6^{th} respondents to raise the attachment made on the Schedule mentioned property purchased by the Applicant from the 1^{st} Respondent herein.

b) Pass appropriate order / Directions to the 2^{nd} and 3^{rd} respondent restraining and restricting them from taking any further act of recovery proceedings against the Schedule mentioned Property purchased by the Applicant.

c) Direct the 2^{nd} and 3^{rd} respondents restraining them from causing any hurdle for the functioning of the factory at the schedule mentioned property.

d) Pass appropriate orders directing the 1^{st} respondent to handover the Schedule mentioned property encumbrance free to the Applicant.

e) And pass such other order, orders, direction, directions that this Tribunal may deem fit proper and thus render Justice.

1.2. It is averred in the application that the Applicant is the purchaser of the schedule mentioned properties (hereinafter referred to as 'the Properties') of the Corporate Debtor in accordance with the letter of intent for sale dated 21.01.2020, issued by the 1st Respondent.

1.3. It was further averred that pursuant to the above-said letter the Applicant had paid the entire sale consideration of Rs.10,83,60,000/- and the purchase agreement dated 15.03.2021 was entered into between the Applicant and the 1st Respondent. Thereafter, the 1st Respondent came forward to execute a sale deed dated 12.02.2021 w.r.t. the Properties before the 6th Respondent.

1.4. After receiving the documents and the Registration fees Rs.8,20,500/- the 6th Respondent issued a receipt No.510/2021 dated 12.02.2021 but failed to register the sale deed denoting the attachment order vide letter dated 25.09.2019, bearing letter No.A5/2605/2019, issued by the 5th Respondent under the instructions of the 3rd and the 4th Respondent.

1.5. It was submitted by the learned Counsel for the Applicant that the attachment made by the 5th Respondent was not reflected in the encumbrance certificate issued by the 6th Respondent.

1.6 It was further submitted that in clause 1.4 of the asset purchase agreement dated 15.03.2021 the 1st Respondent has mentioned that "the seller hereby agrees to facilitate to the buyer to the extent possible, in getting approval /clearance/connection such as pollution clearances, electricity connection etc.

1.7. It was further submitted that 1st Respondent has suppressed the fact charges already created on the Properties and sold it to the Applicant. It was further contended that in such circumstances any proceedings of the 2nd to 6th Respondents regarding any encumbrance already created are liable to be set aside and sought to restrain the recovery proceedings against the Property.

1.8. In view of the above submissions the Applicant prays to direct the 6th Respondent to register the sale deed in this respect and sought to set aside all the proceedings initiated by the 2nd to 6th Respondent.

1.9. It was submitted by the Learned Counsel for the 2nd Respondent that there is no attachment made by 2nd Respondent on the Property and pleaded prayer (a) sought by the Applicant is not maintainable.

1.10. It was further argued that 2nd Respondent is governed by the Electricity Act, 2003 more particularly Tamil Nadu Electricity Supply Code ('Supply Code') and the amounts due and payable by the Corporate Debtor are statutory dues and recoverable under the provisions of supply code. Further, submitted that the 2nd Respondent performed only his statutory duty and the Corporate Debtor is bound to pay the due payable under the supply code and the prayer sought in the application is not maintainable.

2. IA/241(CHE)/2021

2.1 This Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of The National Company Law Tribunal Rules 2016 by the Liquidator of the Corporate Debtor viz. Auro Mira Biopower India Limited seeking relief as follows,

> *a) Direct the 1st Respondent and the 2nd Respondent to raise / life the de-facto attachment created vide letter bearing reference number Na. Ka. No. A5/2605/2019 dated 23.12.2020, over the Immovable Property of the Corporate Debtor admeasuring of 8 Hectares and 95 Ares i.e., 22.11 Acres as per Patta 25.66 Acres and comprised in various Revenue Survey Numbers of Melamaruthappapuram Village, Veera Keralapudur Taluk, Tenkasi District, Tirunelveli, Tamil Nadu within the Registration District of Tenkasi and Sub Registration District of Uthumalai;*
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> *b) Direct the 3rd Respondent to register the Sale Deed dated 12.02.2021 executed between the Corporate Debtor and the 4th Respondent within such time as may be fixed by this Hon'ble Tribunal; and*
>
> *c) pass any such other order / direction as deemed appropriate in the fact and circumstances of this case.*

2.2. It was averred in the application that CIRP in respect of the Corporate Debtor has been initiated on 01.09.2017;

consequently moratorium period has been commenced on the same day. Since no viable resolution plan was received, this Adjudicating Authority, on the application made by the Resolution Professional, ordered Liquidation of the Corporate Debtor vide order dated 16.07.2018 and appointed the Applicant herein as a Liquidator.

2.3. It was submitted by the Learned Counsel for the Liquidator that vide order dated 27.09.2019, the Liquidator was permitted to conduct a private sale of the assets of the Corporate Debtor.

2.4. It was further submitted that the 4th Respondent herein expressed interest in purchasing the Property vide letter dated 27.12.2019 and 06.01.2020, and offered Rs.10,53,60,000/- for purchasing the Property.

2.5. It was further submitted that the secured creditors of the Corporate Debtor viz., Bank of India and Phoenix ARC Private limited, who are holding charge on the Property relinquished their security interest and agreed to receive proceeds from the sale of assets by Liquidator.

2.6. Thereafter, a Letter of Intent dated 21.01.2020 was executed between the Liquidator and the 4th Respondent, wherein it was agreed that the payment of Rs.10,53,60,000/- shall be made by the 4th Respondent in 3 tranches on the specific agreed dates. It was submitted that the 4th Respondent failed to make the agreed payment on time and filed an application before this Tribunal seeking exemption of penal interest for the default, which was dismissed by this Tribunal. Subsequently, the 4th Respondent preferred to appeal against this Tribunal order, wherein the Hon'ble NCLAT allowed the appeal with the cost for the delay caused.

2.7. In compliance with the Hon'ble NCLAT's order, the 4th Respondent had paid the agreed consideration of Rs.10,83,60,000/- (along with cost), and the sale deed dated 12.02.2021 has been executed between the Liquidator and the 4th Respondent herein.

2.8. It was further submitted that the said sale deed was lodged with the 3rd Respondent, after accepting the registration fee of Rs.8,20,560/- he refused to register the sale deed and reasoned that No objection Certificate from the 2nd Respondent is required. Upon enquiring, the Applicant was informed that under the instruction of the 1st Respondent, the 2nd Respondent issued a letter dated 23.12.2020 to the 3rd Respondent to not to register any document pertaining to the Property, for the alleged default in payment of tax Rs.3,04,16,748/- on the electricity consumed by the Corporate Debtor for the period between July 2011 and March 2014. The 2nd Respondent was directed by the

1st Respondent to collect the said amount as arrears of land revenue under Section 7(1)(b) of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. In view of the above, the 3rd Respondent refused to register the sale deed dated 12.02.2021 and demanded a No Objection Certificate from the 1st and 2nd Respondent.

2.9. It was further submitted that the Applicant has not received any proof of claim from the 1st & 2nd Respondent till date. Moreover, no legal attachment has been created on the Property and no charge has been reflected in the Encumbrance Certificate.

2.10. It was further submitted that the *de facto* attachment created by the 1st and 2nd Respondents on 23.12.2020 for the arrears of tax is also after the Liquidation ordered by this Tribunal on 16.07.2018. It was further argued that to the effect of the liquidation order passed, it would result in a moratorium on initiation and continuation of legal proceedings against the Corporate Debtor.

2.11. It was further submitted that Section 36(3)(b) of the Insolvency and Bankruptcy Code, 2016, even if the said *de facto* attachment constitutes an encumbrance on the Property, it still does not have the effect of taking it out of the purview of the said provision. It was further argued that IBC, 2016 will override the provisions of electricity laws, which authorises the Respondents to proceed with the de facto attachment.

3. IA/1337/IB/2021

3.1 This Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 44(2) of the IBBI (Liquidation Process) Regulation 2016 by the Liquidator of the Corporate Debtor viz. Auro Mira Biopower India Limited seeking relief as follows,

> *a) To Extend the Liquidation period for 3 months from 24th December 220, for successful completion of the sale transaction.*
> *b) To issue such other order or orders as this Tribunal may deem fir and proper in the circumstances of the case.*

3.2. In this application it is seen that the Applicant had prayed for an extension of the Liquidation period for 3 months from 24th December 2020, which is now turned infructuous and stands closed.

4. Heard the submissions made by the Learned Counsels for both the parties, from the submissions of the Counsels and on perusing the documents in detail, we see that in para 4 of the counter filed by the 2nd Respondent in IA/1005/2021, it was submitted that no attachment made by the said Respondent on the Property. Moreover, it appears that no charge specified by the 5th Respondent in IA/1005/2021, has been reflected in the encumbrance certificate of the Property.

5. It can be seen from the letters dated 24.12.2020 and 10.02.2021, exchanged between the 5th and 6th Respondents in IA/1005/2021, that the claim raised in the *de facto* attachment was occurred in the period between July 2011 and March 2014. Whereas, the Corporate Debtor was admitted into CIRP on 01.09.2017, in furtherance to that Liquidation was ordered on 16.07.2018, the paper publication regarding Liquidation of the Corporate Debtor was published on 18.07.2018, it is pertinent to note that no claim has been submitted by the Respondents 2 to 5 in IA/1005/2021, before the Resolution Professional or the Liquidator during the CIRP and the Liquidation process.

6. It is also noted that 1st, 2nd and 3rd Respondents in IA/241/2021 have not represented this case and in the course of hearing on 19.07.2021 and 08.11.2021, the Applicant was directed by this Tribunal to take private notice to the Respondents. Complying the same, Affidavits of Service dated 27.07.2021 and 19.11.2021 has been filed by the Applicant, even at the last chance of hearing on 10.01.2022 1st, 2nd and 3rd respondents in IA/241/2021 had not entered their appearance.

7. Considering the facts and circumstances of the case, in light of the above observations, this Adjudicating Authority is of the considered opinion that the Sub Registrar of Uthumalai's demand

of No Objection Certificate from the Tahsildar, Veerakeralampudur for registering the sale deed dated 12.02.2021 entered into between Sri Gomathi Energy (P) Ltd and the Liquidator of the Corporate Debtor, reasoning alleged *de facto* attachment made on the Property is unjustifiable at this stage of Liquidation. Moreover, the Property sold to the Sri Gomathi Energy (P) Ltd was in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

8. However, we fail to appreciate the prayer of Sri Gomathi Energy (P) Ltd in the Application IA/1005/2021 seeking directions against the 2nd and 3rd Respondents therein restraining and restricting them from taking any further act of recovery proceedings against the Property Purchased by them and which will hinder them in getting fresh electricity connection from the 2nd Respondent in IA/1005/2021, for the reason that in clause 8 of the sale deed dated 12.02.2021, it was agreed by the Sri Gomathi Energy (P) Ltd and the Liquidator of the Corporate Debtor as follows

> "8. *The PURCHASER has satisfied himself as to the title of the VENDOR company over the said lands and is aware that as per the Letter of Intent mentioned above, the Schedule Property is being sold on 'As is where is, whatever there is' basis."*

reading the above clause clarifies that the sale was executed as 'As is where is, whatever there is' basis and the principle of caveat emptor is squarely applicable to this auction purchaser viz., Sri Gomathi Energy (P) Ltd., that it should be aware of the status of the Property which is being sold to it.

9. Here it would be relevant to refer the decision of Hon'ble Apex Court ***in Telangana State Southern Power Distribution Company Limited & Anr Vs. Srigdhaa Beverages*** wherein it was held that

> *"15. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized: A. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature. B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser). C. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.*
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> *16. In view of the aforesaid legal position, which has emerged, we are of the view that the impugned orders cannot be sustained and are accordingly set aside while opining that appellant No.1 would be well within its right to demand the arrears due of the last owner, from the respondent-purchaser.*
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> *17. The appeal is accordingly allowed, leaving the parties to bear their own costs."*

The above decision also makes clear that, the purchaser is has to bear the cost for any due of the erstwhile owner.

9. Under the said circumstances, this Adjudicating Authority pass the following

ORDER

(i) The Sub Registrar, Uthumalai is directed to register the sale deed dated 12.02.2021 entered between Sri Gomathi Energy (P) Ltd and the Liquidator of the Corporate Debtor.

(ii) We hereby make it clear that the liability in respect of the Property is not extinguished.

10. With the above said observations the applications IA(IBC) /1005/CHE/2021, IA/241(CHE)/2021 and IA/1337/IB/2021 are **disposed off.**

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

JUSTICE (RETD) S.RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar D