IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

I.A. (IB) No.294/KB/2022
In
C.P.(IB) No.45/KB/2018

An application under regulation 60(5) of the Insolvency and Bankruptcy Code 2016

In the matter of
Indian Overseas Bank … Financial Creditor

Versus

In the matter of
DC Industrial Plant Services Private Limited… Corporate Debtor

and

In the matter of
Karnveer Singh Yadav Enterprises Private Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at Q/2, 2nd Floor, Grand Chandi Vyapar Bhawan, Exhibition Road, Patna-800001

… … Applicant

Versus

1. Ram Ratan Modi, Liquidator of DC Industrial Plant Services Private Limited, having his office at Merlin Links, 2nd Floor, Room No.2F, 166B, S.P. Mukherjee Road, Kolkata-700026.

2. Kolkata Municipal Corporation, No.5, S.N. Banerjee Road, Kolkata-700013.

3. Department of Land and Land Reforms, Department of Land Records, Survey, 35, Survey Building, Gopal Nagar Road, Kolkata-700027.

… Respondents

Date of hearing: 20.04.2022

Date of pronouncement: 18.05.2022

Coram:

Mr. Rajasekhar V.K	:	Member (Judicial)
Mr. Balraj Joshi	:	Member (Technical)

Appearances (through video conferencing);

For the Applicant	:	Mr Shaunak Mitra, Advocate Mr Sayantak Das, Advocate Mr Amardeep Singh, Advocate

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For the Respondent No.1	:	Ms. Urmila Chakraborty, Advocate
For Respondent Nos.2 & 3	:	No representation

O R D E R

Balraj Joshi, Member (Technical)

1. This is an application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 filed by the successful purchaser of the corporate debtor viz., Mr. Karnveer Singh Yadav Enterprises Private Limited *(Successful Purchaser or Applicant)* seeking the following reliefs:

(a) Order be passed directing the Respondent No.1 to assist the Applicant and take necessary steps in procuring Valid Factory License and Valid Fire NOC for the Corporate Debtor by making payments from the Sale Consideration received by the Applicant;

(b) Order be passed directing Respondents No.2 to extinguish Property Tax/ Municipal Tax dues qua Corporate Debtor's properties located in Anandapur, Kolkata accruing before 11.08.2021 against the Applicant and the Corporate Debtor and directing Respondent No.2 to accept Property Tax/ Municipal Tax dues accruing from 11.02.2021;

(c) Order be passed directing Respondent No.3 to extinguish Land Revenue Tax dues qua Corporate Debtor's Factory Land and on its other properties located in Ganganagar, Madhyamgram, West Bengal accruing before 11.08.2021 against the Applicant and the Corporate Debtor and directing Respondent No.3 to accept Land Revenue Tax dues accruing from 11.08.2021;

(d) Order be passed directing Respondents No.2 and Respondents No.3 to refund the Tax/Municipal Tax and Land Revenue Tax for period before 11.08.2021 in case the Applicant/Corporate Debtor is compelled to pay the same for period before 11.08.2021 under protect to expedite the BG formalities;

(e) Order be passed directing the Respondent No.1 to bear all the liabilities relating to the ongoing and/ or closed projects as per clauses 17 and 18 of the sale certificate accrued on or before 11.08.2021;

(f) *Ad-interim orders in terms of prayers above;*

(g) *Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper.*

2. The Liquidator who is Respondent No.1 in the application has filed his reply affidavit in the matter whereas the Respondent No.2 and Respondent no.3 have neither filed any reply nor have cared to attend the hearing despite notices to this effect being given by this court and also by the applicant. The affidavit of service has been furnished by the applicant in this regard.

3. The applicant has prayed for grant of the reliefs sought failing which he will suffer irreparable loss , injury and prejudice.

Brief facts of the case:

4. The corporate debtor was sent in to liquidation *vide* order dated 19.6.2019 by this Adjudicating Authority. Further the corporate debtor was sold as a going concern in accordance with Regulation 32 A of the IBBI (Liquidation process) Regulations 2016. Subsequently this Adjudicating Authority had vide order dated 13.8.2021 approved the MOU between the Liquidator and the applicant which inter-alia granted operational control to the successful auction purchaser viz. applicant pending the deposition of the entire sale considerations and for enabling the Successful purchase to commence operation in view of the pending projects of the corporate debtor.

5. Subsequently a Sale Certificate, in line with the postulates of the MoU, was issued by the Liquidator, Mr. Ram Ratan Modi on 30.12.2021, after the entire sale consideration of the ₹30,00,00,000/- (Rupees thirty crore only) was deposited by the successful bidder (Applicant).

6. Now, in the instant IA, the Applicant has contended that in order to continue the operations of the corporate debtor as a going concern it needs to generate business through new contracts. For securing new contracts , it needs to raise

the funds for depositing Bank Guarantees, which the banks are willing to issue against collateral security for which the properties of the corporate debtor, now in possession of the applicant, have to be mortgaged. However such a mortgage cannot be made without latest property/municipal tax payments receipts and latest land revenue tax receipts being furnished to the banks.

7. The said NOC is to be issued by R-2 and R-3 who have demanded payment of the arrears of such taxes even for the period prior to 11.8.2021 *i.e.,* the date of MoU.

8. The applicant has referred to Para 7 of the sale certificate which reads as under:

" Upon the issuance of this sale Certificate, the Purchaser has in an unqualified manner, become, the sole, legal and beneficial owner of the Corporate Debtor, with all rights, titles and entitlements to the Corporate Debtor, free and clear of all encumbrances and/or liabilities, of any nature, whatsoever".

9. Further Para 9 of the sale certificate provides that :

"The Corporate Debtor has been sold by the Liquidator to the purchaser without any existing encumbrances, whatsoever known to the Liquidator. However, the purchaser has conducted due diligence on all aspects related to the properties of the Corporate Debtor to his satisfaction. The purchaser shall not be entitled to make any claim against the Liquidator and Secured Creditor in this regard later. The Liquidator and the Secured Creditor shall not be responsible in any way for any third-party claims/ rights/ dues."

Submissions by Respondent No.1

10. The liquidator who is R-1 in the IA has denied the averments made by the applicant and has pleaded for outright rejection of the reliefs sought.

11. It is stated that the factory license has expired in January 2019 and the fire NOC has expired in December 2018, which are much prior to the liquidation order i.e. 19.6.2019. As such the liquidator has no liability apropos the said factory licence and the fire NoC.

12. The mainstay of the pleadings of the liquidator is that the corporate debtor was sold on "As is Where is basis" & "As is what is basis" , "Whatever there is basis" & " No recourse" basis. It is averred that the applicant has carried out due diligence before participating in the E-Auction to buy the corporate debtor as a going concern.

13. It is submitted by the Ld. Counsel that the liquidator has already become *functus officio* after due discharge of all his obligations with all the documents duly handed over to the applicant. The process of liquidation has been closed by the order of this Adjudicating Authority *vide* order dated ____. As such, there is no question of the liquidator arranging the NoCs for the applicant.

Analysis and Finding

14. The Hon'ble Supreme Court, in *Ghanshyam Mishra & Sons Vs. Edelweiss Reconstruction Company Limited* has observed as under:

"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved."

15. While it is true that the facts of each case need to be seen on their own merit and preferably on a standalone basis, it is equally true that the main objective of the Code should not be lost sight of. In the instant case, the corporate debtor has been sold as a going concern and is well functioning , in that it is on its way to complete the projects left halfway by the previous management and is

trying to turn the so called corporate debtor into a viable enterprise. Any past liabilities that are sought to be raised by R2 & R3 would burden the enterprise and may even push it back to the insolvency from which it has been successfully retracted by the Code.

16. The liquidator had followed the complete algorithm as enshrined in the Code for carrying out the liquidation process, which included public announcement for invitation for the claims. Despite that R2 & R3 have not cared to lodge their claim, if any, before the liquidator and have not taken any steps to approach this Adjudicating Authority in good time to make any representation in this regard and therefore now they are estopped from raising the claims at this date.

17. In this context it would be relevant to refer to Para 17 of the sale certificate which provides as under:

‘*The Purchaser shall not be liable for any known or unknown, claimed or unclaimed, disclosed or undisclosed, seen or unforeseen tax liabilities or other liabilities/obligations/government dues/local authority dues/ claims under any statute in force in relation to any period prior to 11.08.2021 including but not limited to any past tax litigations/statutory dues such as income tax, TDS, TCS, GST, Custom Duty & Octroi Tax, Local Taxes, Entry Tax, Sales Tax, CST, VAT, Service Tax, Excise Duty, Property Tax, Cess, Penalty, DGFT dues etc. which relate to the period prior to 11.08.2021. All such liabilities of the Corporate Debtor and its Business Undertaking which relate to the period prior to 11.08.2021 shall be extinguished as also mentioned in MoU Dated 11.08.2021 entered between the Liquidator and the Purchaser and approved by National Company Law Tribunal, Kolkata bench on 13.08.2021.*’

18. In the above conspectus and considering the urgency of the matter as brought out by the petitioner that he would not be in a position to bid for the two prospective contracts in case is not able to arrange the bank guarantees to be furnished by him for applying for these contracts, we are of the view that the reliefs sought at prayers (b) & (c) of the application must be granted in order to ensure that the corporate debtor is not condemned again to the whirlpool of insolvency. We accordingly hold that the claims of R2 & R3 for the period

prior to 11.8.2021 shall stand extinguished and they are directed to issue necessary NOC to the Applicant.

19. We are however not inclined to grant any other relief sought for in the application.

20. With these directions IA No.294 /KB/2019 shall stand disposed of .

BALRAJ JOSHI Digitally signed by BALRAJ JOSHI Date: 2022.05.18 17:15:54 +05'30'

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.05.18 18:50:10 +05'30'

Balraj Joshi
Member (Technical

Rajasekhar V.K.
Member (Judicial)