

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA/174/2022

in

CP/511/IB 2017

(filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **Cethar Limited***

Asset Reconstruction Company (India) Ltd.
(in its capacity as Trustee of ARCIL AST-1 Trust)
Having Registered Office at,
The Ruby, 10th Floor,
29 Senapathi Bapat Marg, Dadar (West),
Mumbai – 400 028

... Applicant

-Vs-

1. Venkatramanrao Nagarajan,
(V.Nagarajan),
Liquidator,
In respect of Cethar Ltd., (under Liquidation),
New No.29, Kavarai Street,
West Mambalam,
Chennai – 600 033
2. JM Financial Asset Reconstruction Co. Ltd.,
Rep. by its Senior Vice President,
Third Floor 'B' Wing, Suasish IT Park,
Plot No.68E, Off Dattapada Road,
Opp. TATA Street,
Borivali Mumbai – 400 066
3. WINWIND Power Energy Pvt. Ltd.,
322/10, Vallal RCK Nagar,
Trivallur Taluk & District,
Thiruvallur – 601 103

4. ICICI Bank, Canada,
150 Ferrand Drive,
Suite 1200,
Toronto, Ontario,
Canada,
Postal Code – M3C3E5

...Respondents

Order Pronounced on 03rd March 2022

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

*For Applicant : Abitha Banu, Advocate,
Mr.Syed Datha Jaffar Hamed, Advocate.*

*For Respondent : Mr.R.Subramanian, Advocate,
Mr.Sugumar, Advocate,
Mr.Srinath Sridevan, Advocate,
Mr.Shivkumar, Advocate
Mr.Suresh, Advocate,
Mr.Venkatramanrao Nagarajan, IRP*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

The above application has been preferred by Asset Reconstruction Company (India) Ltd., under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") sought to record the Joint Compromise Memo dated 14.02.2022 entered into between the parties and pass such further orders as this Tribunal may deem fit and proper.

2. The Learned Counsel for the Applicant submitted that the Applicant is a Company incorporated under the Companies Act, 1956

and is also a Reconstruction Company as defined under the Provision of SARFAESI Act, 2002 and has been registered with Reserve Bank of India as mandated by the said Act.

3. It was further submitted that CIRP in respect of the Corporate Debtor (Cethar Limited) was ordered by this Tribunal on 16.06.2017 and the 1st Respondent herein was appointed as Interim Resolution Professional (IRP). Since, no resolution plan was approved by the CoC, on the application filed by the 1st Respondent in MA.No.32/IB/2018, this Tribunal has ordered Liquidation of the Corporate Debtor and appointed the 1st Respondent as the Liquidator vide order dated 25.04.2018.

4. It was further submitted that the Applicant is a secured creditor. The property at Boothagudi and Melapachagudi Village, Illupur Taluk, Viralimalai, via Pudukottai District, a Factory Unit (Unit-VII which is now closed), in an extent of 85 acre is mortgaged with the Applicant. The Plant & Machinery available inside the said Unit is also hypothecated to the Applicant.

5. It was further submitted that the Applicant Company being a secured creditor has opted to stand outside the purview of the

liquidation proceedings under Section 52 of the Insolvency and Bankruptcy Code.

6. It was further submitted that the Applicant filed an application in M.A.No.457/2018 sought a direction against the 1st Respondent to hand over physical possession of the property. In the said Application, the Applicant filed an interim application in IA.No.798/2020 sought a stay of the sale which was to be conducted by the Liquidator, which was allowed by this Tribunal vide order dated 05.03.2021.

7. It was submitted that based on the above order, on 11.03.2021, the Applicant issued a Public Notice for the sale of said property. The said Public Notice was published by the Applicant with an indication that the constructive possession of the said property (hereinafter referred to as the 'Factory Unit') remained with the Applicant and the 4th Respondent, while the physical possession remained 1st Respondent herein. It was also indicated that the property is sold pursuant to the orders of this Tribunal.

8. It was further submitted that the 3rd Respondent herein, placed its offer and participated in the e-auction. In the said Auction, the 3rd Respondent bid an amount of Rs.62,02,00,000/- and was declared as

the successful bidder. It was further submitted that the Applicant has confirmed that the 3rd Respondent was the highest bidder vide its letter bearing no. BGCWG/JL/FY21/1301 dated 27.03.2021.

9. Thereafter on 30.3.2021, the 3rd Respondent herein deposited 25% of the bid amount vide letters bearing no. BGCWG/JL/FY21/10 and BGCWG/JL/FY21/11 dated 03.04.2021. Further, the Applicant issued a Letter of Confirmation of Sale to the 3rd Respondent. It was also informed that the Sale Certificate would be issued after payment of full consideration.

10. It was further submitted that thereafter on 15.4.2021, the 3rd Respondent has requested an extension of time for the payment of balance consideration.

11. It was further submitted that this Tribunal vide order dated 01.04.2021 had disposed of the Application MA No.457 of 2018 by directing the Liquidator to conduct an enquiry whether the Applicant was an exclusive charge holder. The said order has been challenged by the 3rd Respondent, 1st Respondent and the Applicant in CA.No.125 of 2021, CA No.128 to 130 of 2021 and CA No.131 of 2021 respectively.

12. It was further submitted that when matters were pending, the Applicant and the Respondents herein, with a view to maximising the value of the assets of the Corporate Debtor, entered into a Joint Compromise.

13. It was further submitted that under the said Compromise, all the parties have recognized the sale conducted by the Applicant and therefore, the only pending dispute would be the apportionment of the sale consideration given by the 3rd Respondent herein.

14. The Joint Compromise Memo entered into between the parties was initially filed before the Hon'ble NCLAT in Appeal No. 125 of 2021. The Hon'ble NCLAT at the hearing dated 11.2.2022 took the view that Section 60 (5) of the Code would apply. In these circumstances, the parties herein have approached this Tribunal to record the Joint Compromise Memo dated 14.02.2022, in order to receive the maximum value for the assets of the Corporate Debtor.

15. We have heard learned counsel for both sides and perused all the documents placed on record. It is seen that both the parties were entered into a Joint Compromise Memo dated 14.02.2022. We see that all the parties have signed the said memo under their seal which portrayed hereunder.

WHEREFORE IT IS PRAYED THAT this Memorandum of Compromise be recorded and IA No ___/2021 be disposed in terms hereof. 52

Dated at Chennai this the 14th day of February 2022

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|  Authorized Officer Asset Reconstruction Corporation of India Ltd (for self and for ICICI Bank, Canada) |  Counsel for Applicant |
|  Liquidator, (V.NAGARAJAN) LIQUIDATOR |  Counsel for 1 st Respondent |
|  JM Financial Asset Reconstruction Company Ltd. |  Counsel for 2 nd Respondent |
|  Winwind Power Energy Pvt. Ltd. |  Counsel for 3 rd Respondent |

16. Further, the above-said memo was taken on record by this Tribunal on 22.02.2022, Clause 10 and 12 of the above-said memo stated as follows,

"10. Within 15 business days of the present Memo of Compromise being recorded by this Hon'ble Tribunal, the parties hereto shall do the following:

- a) The 3rd Respondent shall deposit the balance amount of Rs.46,51,50,000/- (Rupees Forty Crore Fifty One Lakhs and Fifty Thousand only) being the balance consideration payable in respect of the Schedule A Property with the Hon'ble Tribunal at Chennai in an appropriate account.
- b) The 3rd Respondent shall remit the amount of Rs.8,52,00,001/- (Eight Crore Fifty Two Lakh and rupee one only) to the 1st Respondent Liquidator,

towards full and final sale consideration in respect of the Schedule B Property.

12. *The Applicant and 1st Respondent will seek leave of this Hon'ble Tribunal to have the proceeds deposited in an interest bearing deposit with any Nationalised Bank as may be deemed fit by the Hon'ble Tribunal"*

17. Thus, considering circumstances and submission made by the Learned Counsel for the parties, we hereby permit

i) The 3rd Respondent to deposit the balance amount of Rs.46,51,50,000/- (Rupees Forty-Six Crore Fifty-One Lakhs and Fifty Thousand only) in respect of the Schedule A Property mentioned in the Joint Compromise Memo dated 14.02.2022, in Fixed Deposit in the name of **WinWind Power Energy Private Limited – NCLT Company petition in CP/511/IB/2017** with the Axis Bank RA Puram Branch, within 15 business days from the date of the above-said memo taken on record and the said FDR to be deposited with Deputy Registrar NCLT, Chennai.

ii) The 3rd Respondent to remit the amount of Rs.8,52,00,001/- (Rupees Eight Crore Fifty-Two Lakh and one only) to the 1st Respondent Liquidator, towards full and final consideration in respect of Schedule B Property mentioned in the Joint Compromise Memo dated 14.02.2022 within 15 business days from the date of the above-said memo taken on record.

18. With the above said directions this Application stands **disposed of.**

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)