

**IN THE NATIONAL COMPANY LAW TRIBUNAL
(COURT IV) NEW DELHI**

IA No. 3169 of 2020

IN

CP (IB) – 201/ (PB)/2019

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

In the matter of:

M/s. AAR AAR Technoplast Private Limited

...Buyer/Applicant

Vs.

**1.Haryana State Industrial and Infrastructure Development
Corporation Ltd.**

...Respondent / Non-Applicant No.1

2.Yogesh Kumar Gupta

(Liquidator of Noesis Industries ltd.)

...Respondent / Non-Applicant No.2

IN THE MATTER OF:

VINOD KUMAR

...Applicant

VERSUS

NEOSIS INDUSTRIES LTD

(Formerly known as M/s Media Video Limited)

...Corporate Debtor

ORDER PRONOUNCED ON:12.11.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

IN THE MATTER OF:

M/s AAR AAR Technoplast Private Limited

18/1, Mathura Road,

Faridabad Haryana-121007

Email-accounts@aaraartechnoplast.com

...BUYER/APPLICANT

VERSUS

**1. Haryana State Industrial and Infrastructure Development
Corporation limited**

IMT Manesar District, Gurugram

Email ID: hsiidcmanesar1@gmail.com

...Respondent No.1/ Non- Applicant

2. Yogesh Kumar Gupta

Liquidator of Noesis Industries Limited

C-17B, Kalkaji, Basement

New Delhi – 110019

IP Reg No. **IBBI/IPA-003/IP-P00078/2017-18/10701**

Email: liquidator.noesis@gmail.com/ykgupt64@yahoo.co.in,

...Respondent No.1/ Liquidator/Non- Applicant

FOR THE APPLICANT : Mr. Achin Goel, Adv.

FOR THE RESPONDENT : Mr. Manohar Malik, Adv.

Ms. Kajal Bhatia, Adv.

ORDER**PER-DR. DEEPTI MUKESH, MEMBER (J)**

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') by M/s Aar Aar Technoplast Private limited (for brevity 'Applicant'), who is the Auction purchaser/buyer of the property of Noesis Industries ltd, formerly known as M/s Media Video Limited) (for brevity 'Corporate Debtor') through its Managing Director Shri Ravi Patra, authorized vide board resolution dated 26.05.2020 with a prayer to direct the Respondent no.1 herein to acknowledge and record transfer of ownership of property in the name of the applicant.
2. The applicant is a private limited company incorporated on 31/03/1999 under the provisions of Companies Act, 1956 bearing CIN:U25209DL1999PTC099087 and is having its registered office at 307, Pooja Complex, 22 Veer Savarkar Block, Shakarpur, Near Metro Pillar No.59, New Delhi - 110092. The Company is involved in the business of manufacturing plastic products.
3. The applicant states that CIRP was initiated against the corporate debtor Neosis Industries Ltd (Formerly known as M/s Media Video Limited) vide order dated 28.09.2018 and appointed Mr. Yogesh Kumar Gupta, as Interim Resolution Professional, who was later confirmed by COC as RP.
4. That the Resolution Professional filed an application CA 568/ND/2019 for liquidation of the corporate debtor and this Hon'ble Tribunal vide its order dated 28.11.2019, passed an order for initiation of the liquidation process and appointed Mr. Yogesh Kumar Gupta as Liquidator of the corporate debtor.

5. The applicant submits that the liquidator published sale notice in the newspaper financial express (English) and Jansatta (Hindi) on 05.03.2020 and declared that the proposed date for e-auction of the property located at “Plot No.112, Sector 08, IMT, Manesar District, Haryana-122051, admeasuring 4050 sq. mts and the constructed building basement, Ground Floor, First Floor, Second Floor aggregating 2552 Sq.mts” (hereinafter referred to as the “Sale Property”) of the corporate debtor has been fixed for 17.03.2020 at minimum reserve price of Rs.6,50,00,000/- for the sale of the said property.
6. The applicant submits that he submitted BID dated 13.03.2020 along with the EMD amount of 65,00,000/- via DD dated 12.03.2020 to the liquidator in accordance with the e- tender document. The e-auction was conducted on 17.03.2020 and the applicant made the highest bid price of Rs7,57,00,000/- for the aforementioned property of the corporate debtor.
7. The applicant paid Rs.50,00,000/- via DD dated on 18.03.2020 and was thereafter declared a successful bidder by the liquidator and a letter of intent dated 18.03.2020 was also issued in the name of applicant. The applicant paid the final installment of Rs. 6,49,43,000/- net of TDS @ 1% i.e. Rs. 7,57,000/- via RTGS on 06.06.2020 to the liquidator of the corporate debtor. The liquidator on receiving full consideration of the property issued a possession letter dated 08.06.2020, handing over the possession of the property to the applicant. A sale deed dated 09.06.2020 for transfer of ownership of property of the corporate debtor in favour of the applicant was duly registered with the sub- Registrar, Manesar vide Registration Number 361 dated 09.06.2020.
8. The applicant submits that the liquidator issued a sale certificate showing the manner of payment of sale consideration and confirming the transfer

of ownership of property in favor of the applicant. Thereafter the applicant sent a letter dated 10.06.2020 to the respondent No.1 intimating the auction sale and purchase of this property through liquidator. The said purchase was duly recorded with the office of sub registrar through sale deed and hence requested to record the ownership of property in favour of the applicant.

9. In response to the said letter the respondent issued a letter number HSIIDC/IMT/ESTATE/2020/358 dated 19.06.2020 in which it raised a demand of Rs. 4,46,35,445/- (Rupees Four Crore Forty- Six Lacs Thirty- Five Thousand Four Hundred and Forty- Five only) plus other water and sewer charges and additional interest applicable after 04.03.2020 for allowing transfer of property in favour of the applicant. Hence this application.
10. The Respondent No.1, being the Haryana State Industrial and Infrastructure Development filed reply through Ms. Priya Sardana, being the Estate Manger authorized and raised the following:
 - a) The objection with regards the maintainability of the application and with respect to the jurisdiction of the Hon'ble tribunal.
 - b) The auction notice stated that the auction is on "As is where is" and "on Non- Recourse basis". The intending bidder is required to make an independent inquiry regarding the encumbrances on the title of property put on auction and claims/rights/ dues affecting the property prior to submitting their bid and the assets of the corporate debtor are being sold with all the existing and future encumbrances.The respondent has relied upon the judgment of *Hon'ble Supreme Court titled as Telangana State Southern Power Distribution Company Ltd. & Anr. Vs. M/s. Srigdhaa Beverages wherein it stated*

“.....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 10 (supra) 12 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”

- c) The respondent submits that the corporate debtor failed to honor demands raised by the respondent, in spite of repeated notices therefore interest was imposed. Accordingly, total of Rs.4,76,79,976/- was due and payable by the corporate debtor to the Respondent No.1. The respondent further states the unpaid sale consideration is a lien attached to the property and hence the auction purchaser in light of the auction notice is liable to pay the dues and the application filed by the auction purchaser should be dismissed.

11. The Respondent No.2, being the liquidator, Mr. Yogesh Kumar Gupta, filed reply to the said application and stated the following:
- a) The liquidator has supported the stand of the applicant and accepted the right of the applicant as the owner to this property.
 - b) The liquidator submits that before e-auction, several emails requesting the respondent No.1 to provide details of outstanding dues, if any regarding the property in question were sent but the respondent No.1 never responded to the said emails and failed to present any claim of outstanding dues.
 - c) The liquidator further submits that the funds of the liquidation process have been disbursed in terms of the waterfall mechanism in terms of Section 53 of the IBC 2016.
 - d) The liquidator submits that the respondent No.1 is a stakeholder and in the liquidation process has been categorized as a creditor for operational debt. Hence, is entitled to recover its due only from the corporate debtor. The conduct of the respondent No.1 restraining the transfer of property is not justified, and the respondent has prayed this Hon'ble Tribunal to acknowledge the auction purchase of the property by the applicant.
12. The applicant filed rejoinder to the reply filed by the Respondent No.1 and submitted the following:
- a) That the applicant is liable to discharge the dues relating to the property being put to auction accrues only from the date when the sale is confirmed and the prior dues are to be discharged by the liquidator out of the sale proceeds, as per Section 53 of IBC 2016.
 - b) The application stated that the auction purchaser cannot be held liable with regards the liability relating to the pre-sale confirmation period as the auction purchaser was neither the owner of the property nor was in possession thereof and the Notice for sale was silent, hence the auction purchaser shall not be made liable to discharge the said dues.

c) The applicant has relied upon the following judgments:

- **Official Liquidator, High Calcutta Vs. Ujjain Nagar Palka Nigam (2009)2 Cal LJ 360**, wherein the high Court held that the liability with respect to payment of the property tax and water tax was a post liquidation liability and was to be borne by official liquidator in absence of a clear provision in the sale notice. The high Court further held that the expression “as is where is whatever there is basis” does not comprise within its ambit the liability to clear statutory charges as might have accrued and are in arrears. It would be thoroughly unreasonable to foist the liability on purchaser without first letting him know prior to sale about such liability.
- **Gaurav Kanvarjuneja and Ors. Vs. Surat Municipal Corporation and Ors., 2016 SCC**
- **AI Champdany Industries Ltd. Vs. official liquidator, (2009) 4 SCC 486**, wherein the Supreme Court defined the term ‘encumbrance’ and stated that either the companies Act or any other law does not impose any additional obligation upon the purchaser to make an enquiry with regard to the liabilities of the companies other than those which would impede their value.

d) The applicant further states that Section 100 of the Transfer of Property Act 1882, unambiguously indicates a charge, may not be enforced against a transferee if he/she has no notice of the same. Further also relied on Section 238 of IBC, which provides for an overriding effect of the code over anything in consistent therewith contained in any other law for the time being in force or any instruments having effect by virtue of any such law and accordingly claimed that the action for recovery undertaken by Respondent No. 1 become void as its claim is required to be settled in terms of provision of section 53 IBC as the debt

due with regards the respondent No.1 is the operational debt within the meaning of Section 5(21) of the code.

13. Considering the documents on records and submissions made and after perusing the judgments placed before us, we are of the view that the present claim of respondent No.1 raised against applicant is unjustified. The opportunity was given to respondent No.1 and claim was filed by it, which falls under category of operational debt under the provisions of IBC. Whatever claim was verified was considered and the same can be paid as per the provision of liquidation and waterfall mentioned therein. In present Scenario Section 238 of IBC mandates the IBC to prevail over other laws. Therefore, in liquidation for this kind of operational debt, the waterfall mechanism is applicable and accordingly the dues are required to be settled. The applicant herein cannot be made liable for any dues arising on the property on or before the purchase of the said property. Therefore, it can be concluded that the applicant has succeeded in convincing us to allow the application and the respondent No. 1 has failed to establish the legality to deny the transfer of property in the name of the applicant. Accordingly, the application is allowed.

14. A copy of the order shall be communicated to the parties above named.

IA/3169/2020 is allowed and disposed of in terms of above order.

Sd/-

SUMITA PURKAYASTHA
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)