

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.161- IA/561(AHM)2022 AND
ITEM No. 162- IA/594(AHM)2022 in IA/561(AHM)2022
in CP(IB) 487 of 2018

Proceedings under Section 60(5)(C) r.w Reg 32A of IBBI,2016 & rule 11 of NCLT,2016

IN THE MATTER OF: IA/561(AHM)2022

Jindal Power Ltd

.....Applicant

V/s

Dushyant C Dave Liquidator of Shirpur Power Pvt Ltd

.....Respondent

AND

Proceedings under Section 60(5)(C) r.w Reg 31A of IBBI,2016 r.w. rule 11 of NCLT,2016

IN THE MATTER OF: IA/594(AHM)2022 in IA/561(AHM)2022

State Bank of India & Ors

.....Applicant

V/s

Jindal Power Ltd & Anr

.....Respondent

Order delivered on .02/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/561(AHM)2022 AND IA/594(AHM)2022 in IA/561(AHM)2022

Both cases are fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

IA/561(AHM)2022

AND

IA/594(AHM)2022 in IA/561(AHM)2022

IN

CP(IB) No. 487/NCLT/AHM/2018

IA/561(AHM)2022

[An application under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016]

Jindal Power Limited

A Company registered under the Companies Act, 1956,

Through its authorized signatory

Mr. Souvik Khamrui

Having its address at:

Plot No. 2, Sector 32,

Gurgaon-122001 (Haryana)

....Applicant

Versus

Dushyant C. Dave

Liquidator- Shirpur Power Private Limited

Having its address at:

1101 Dalamal Tower Nariman Point,

Mumbai-400021.

....Respondent

AND

IA/594(AHM)2022 in IA/561(AHM)2022

[An application under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016]

1. State Bank of India

Having its address at:

Corporate Centre

State Bank Bhavan,

Madam CAMA Road, Nariman Point,

Mumbai-Maharashtra-400021

And

Stressed Assets Branch,

2nd Floor, Param Siddhi Complex,

Ellisbridge, Ahmedabad-380006.

2. Bank of Baroda

Having its address at:

R. C. Dutt Road, Alkapuri,

Baroda-390007 (Gujarat).

3. Industrial Developments

Bank of India (IDBI)

Having its address at:

IDBI Complex, Lal Bungalows,

Off C. G. Road, Ahmedabad,

Gujarat-380006.

....Applicants

Versus

1. Jindal Power Limited

A Company registered under the Companies Act, 1956,

Through its authorized signatory

Mr. Souvik Khamrui

Having its address at:

Plot No. 2, Sector 32,

Gurgaon-122001 (Haryana)

2. Dushyant C. Dave

Liquidator- Shirpur Power Private Limited

Having its address at:

1101 Dalamal Tower Nariman Point,

Mumbai-400021.

....Respondents

IN THE MATTER OF:

C.P.(I.B.) No. 487/7/NCLT/AHM/2018

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

State Bank of India & Anr.

....Financial Creditor

Versus

Shirpur Power Pvt. Ltd.

....Corporate Debtor

Order reserved on: 19.07.2022

Order pronounced on: 02.08.2022

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)

KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

Appearance:

For the Applicant/Successful bidder: Ld. Sr. Adv. Mr. Kamal Trivedi
along with Ld. Adv. Mr. Anuj K.
Trivedi, Ld. Adv. Mr. Vinay
Baigra, and Ld. Adv. Ms. Vaidehi
Parikh [applicant in
IA/561(AHM)2022]

For the Stakeholders Committee : Ld. Sr. Adv. Mr. Saurabh Soparkar
[applicantin IA/594(AHM)2022]

For the Liquidator : Ld. Adv. Ms. Prachiti Shah along
with Ld. Adv. Mr. Urjit Dave [for
the Liquidator]

ORDER

[PER: MADAN. B. GOSAVI, MEMBER (J)]

1. The application (IA/561(AHM)2022) is filed by the applicant - successful bidder with request to direct the liquidator to treat the sale of the corporate debtor as a going concern and allow the applicant to have all benefits as of approved resolution plan as per sections 31 and 32A of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”).

2. The application (IA/594(AHM)2022 in IA/561(AHM)202) is filed by the stakeholders' committee of the corporate debtor with a request to implead them as a party-respondent in IA/561(AHM)2022 as they wish to oppose the application filed by the successful bidder.

3. The following facts are not in dispute:

- (i) On 04.03.2020, the corporate debtor was admitted in the Corporate Insolvency Resolution Process (“CIRP”). During the CIRP, the Resolution Professional (“RP”) and the Committee of Creditors (“CoC”) did not receive any resolution plan, worth to be accepted.

- (ii) On 03.02.2021, the CoC passed a resolution recommending the order of liquidation of the corporate debtor. On 15.03.2021, the liquidation process of the corporate debtor was started. During the liquidation process, the liquidator published the first notice dated 05.04.2021 for the sale of the corporate debtor as a going concern. The reserve price was fixed as Rs. 5,66,23,00,000/-. The liquidator did not get a response from any bidder, hence, he reduced the reserve price by 15% and republished a notice for sale of the corporate debtor as a going concern. The liquidator did not get any response. This happened on three occasions i.e., on 20.04.2021, 15.06.2021, and 29.06.2021, though, the liquidator went on reducing the reserve price by 10% and 15%. Despite the reduction of the reserve price almost by 25%, the liquidator did not get any bidder. Hence, he gave up an idea of the sale of the corporate debtor as a going concern and published a fresh notice dated 20.07.2021 declaring the slump sale of the corporate debtor. The reserve price for slump sale was fixed for Rs. 4,77,84,50,000/-. Even thereafter the liquidator did not get any bidder for six consecutive times and at every time he reduced the sale price either by 10% or by 5% and fixed reserve price as Rs. 3,14,38,49,770/-.
- (iii) It is also not in dispute that the applicant accepted the bid of the corporate debtor as a slump sale for a sum of Rs. 3,14,38,49,770/- i.e., the minimum price fixed by the liquidator. Pending the hearing of this application, the applicant deposited the bid amount with the liquidator.

4. The applicant filed this application requesting this Adjudicating Authority to convert the slump sale of the corporate debtor into the sale as a going concern and direct the liquidator to issue the sale certificate accordingly.

5. We called upon the liquidator to file the say. Accordingly, he filed the same. As pointed above, the stakeholders' committee of the corporate debtor filed IA/594(AHM)2022 in IA/561(AHM)2022 to get implead them as a party-respondents in this application. The stakeholders' committee wishes to oppose this application. During the hearing of this application, we heard learned senior counsel Mr. Saurabh Soparkar for the stakeholders' committee at length. In view of this, we hold that since we heard the stakeholders' committee's grievance, IA/594(AHM)2022 in IA/561(AHM)2022 becomes infructuous. Accordingly, it stands disposed of.

6. We heard learned senior counsel Mr. Kamal Trivedi for the applicant, learned counsel Ms. Prachiti Shah for the liquidator, and learned senior counsel Mr. Saurabh Soparkar for the stakeholders' committee.

7. Learned senior counsel Mr. Kamal Trivedi appearing for the applicant submitted that the applicant is a successful bidder. He has now deposited the bid amount. His request is only to direct the liquidator to sell the corporate debtor as a going concern instead of confirming the sale as a slump sale. He would further submit that it is the main object of the Insolvency and Bankruptcy Code, 2016 to promote entrepreneurship and preserve the existence of the corporate debtor. If the liquidator is directed to treat this sale as a going concern then all stakeholders would be benefited, and employment will be generated. It is the say of the learned senior counsel that this Adjudicating Authority has held very recently while passing the order in

IA No. 238 of 2022 in CP(IB) 320 of 2018 that it is the duty of the liquidator to protect the existence of the corporate debtor as far as possible and to avoid its death by pushing the corporate debtor to be dissolved. According to him, if the liquidator is directed to treat the slump sale as sale as a going concern, no one, even the stakeholders' committee, will not be affected prejudicially.

8. Learned counsel Ms. Prachiti Shah appearing for the liquidator submitted that the liquidator had published the notice of the sale of the corporate debtor as slump sale and in response thereto the applicant accepted the bid for a sum of Rs. 3,14,38,49,770/- which is the minimum price for a slump sale. The sale is concluded. Now, the applicant cannot turn around and put the condition asking the liquidator to issue the sale certificate to treat the sale as a going concern. The liquidator has consulted the stakeholders' committee and the stakeholders' committee suggested that let the purchasers deposit the bid amount then the committee will take a call on the applicant's request. According to learned counsel for the liquidator, the liquidator has no authority to convert the slump sale into the sale as a going concern and this application is not maintainable, hence, may be rejected.

9. Learned senior counsel Mr. Saurabh Soparkar for the stakeholders' committee submitted that initially when the liquidator published the sale notice of the corporate debtor as a going concern for the reserve price of Rs. 5,66,23,00,000/-, the applicant did not opt for the same. Now, having reduced the price, as there was no buyer, the applicant has conveniently accepted the bid for less amount under the slump sale but now requesting this Adjudicating Authority to treat the sale of the corporate debtor as a going concern. The prayer is unknown to the law. The rights of the members of the stakeholders' committee

will be greatly affected if such prayer is allowed by this Adjudicating Authority. Since the sale is concluded as a slump sale, the same cannot be converted into a sale of the corporate debtor as a going concern unilaterally without consultation of the stakeholders' committee. He prayed for the rejection of the application.

10. In view of material on record and submissions of learned counsels for all parties above, the limited point that arises for our determination is as follows:

“Whether having accepted the corporate debtor in a slump sale, the bidder can request to treat that sale as a sale of the corporate debtor as a going concern?”.

Our answer to this point is in “the negative”.

11. There is no dispute to the fact that as per the object of the IBC, 2016, the liquidator's first effort should be to sale the corporate debtor as a going concern. In this case, the material on record shows that the liquidator took all possible steps to sale the corporate debtor as a going concern but he did not get any response. The applicant herein also missed that opportunity, we do not know the reasons as to why the applicant did not accept the bid of the corporate debtor as a going concern at the first point of time.

12. Learned senior counsel Mr. Kamal Trivedi brought to our notice our order passed in IA No. 238 of 2022 in CP(IB) 320 of 2018 but the facts therein were altogether different. In that case, the liquidator had undertaken both process of slump sale as well as sale of the corporate debtor as a going concern simultaneously. Two bidders accepted the bid for the same price. One had opted for the bid of slump sale and the other accepted the bid to sale as a going concern. We directed the liquidator the accept the bid of the purchaser who was ready to

purchase the corporate debtor as a going concern as it is the object of the Insolvency and Bankruptcy Code, 2016. In this case, the sale is concluded by one process i.e., slump sale of the corporate and applicant accepted the bid.

13. Learned counsel for the liquidator also relied on the order of Hon'ble NCLAT in case of M/s. Visisth Services Limited Vs. S. V. Ramani and Ors in Company Appeal (AT) (Insolvency) No. 896 of 2020 dated 11.01.2022. We have gone through that order. The Hon'ble NCLAT was dealing with the facts “whether the bidder can put certain conditions while accepting the bid and in case the conditions are not complied with then it can cancel the sale itself claiming the EMD amount?”. The Hon'ble NCLAT held that it cannot be done. However, such facts are not involved in this proceeding.

14. In this case, the applicant had not put any condition when he accepted the bid to purchase the corporate debtor as a slump sale. The applicant, in this case, wanted us to issue the direction to the liquidator to convert the slump sale into the sale as a going concern. In our considered opinion this cannot be done. The price of the corporate debtor in the sale as a going concern was fixed at Rs. 5,66,23,00,000/- as maximum and Rs. 4,33,16,59,500/- as a minimum whereas the price of slump sale of the corporate debtor was fixed at Rs. 4,77,84,50,000/- as maximum and Rs. 3,14,38,49,770/- as a minimum. The applicant accepted the corporate debtor in slump sale for a minimum price of Rs. 3,14,38,49,770/-. There is a vast difference between the sale price of the corporate debtor as a going concern and the sale price of the corporate debtor in a slump sale. If we allow the applicant's request then certainly the rights of members of the stakeholders' committee will affect prejudicially. We cannot permit this to happen at the instance of the successful bidder. In view of this, we

hold that this application is not maintainable. We pass the following orders:

ORDER

- I.** The application (IA/561(AHM)2022) filed by the successful bidder stands rejected and disposed of.
- II.** The application (IA/594(AHM)2022 in IA/561(AHM)2022) filed by the stakeholders' committee also stands disposed of.
- III.** Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer