

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 382(KB) of 2024

In

Company Petition (IB) No. 1412/KB/2018

IN THE MATTER OF:

Punjab National Bank

... Financial Creditor

Versus

**Divine Alloys and Power Co Limited
(CIN: U40102WB2007PLC118068)**

... Corporate Debtor

And

I.A.(IB) No. 382/KB/2024

***An application under Section 60 (5) and Section 35(1)(n) of the
Insolvency and Bankruptcy Code, 2016 along with
Regulations 32 and 33 of the IBBI (Liquidation Process)
Regulations, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

Rajesh Kumar Agrawal

... Applicant/Liquidator

Date of Pronouncement: April 16, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Liquidator:

Mr. Shaunak Mitra, Adv.

Mr. Ritoban Sarkar, Adv.

Mr. R. K. Agarwal

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In
C.P. (IB) No. 1412/KB/2018

ORDER

Per: D. Arvind, Member (Technical):

1. This Court congregated through hybrid mode.
2. This application filed by **Mr Rajesh Kumar Agrawal** (hereinafter referred as **Applicant/Liquidator**) under Section 60(5) and Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" along with Regulations 32 and 33 of the IBBI (Liquidation Process) Regulations, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking following reliefs:

*"a. To approve the **Private sale** of the corporate debtor as a Going concern under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in favour of Orissa Metaliks Private Limited at the bid price of Rs. 38.50 crores on "as is where is whatever there is and without recourse basis;*

b. Ad interim orders in terms of prayer above;

c. Such further and/or other order or orders as this Hon'ble Tribunal may deem fit and proper;"

Factual Matrix:

3. The financial creditor filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the corporate debtor *vide* C.P.(IB) No. 1412/KB/2018, which was admitted on 07.03.2019. Thereafter, the corporate debtor was ordered for liquidation on 11.05.2021 *vide* order passed by this Adjudicating Authority.

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4. Pursuant to the order dated 11.05.2021, public announcement was made by the applicant under the applicable regulations of the Insolvency and Bankruptcy Code, 2016 via paper publication through “The Telegraph” and “Ananda Bazar Patrika” Kolkata edition and through “Prabhat Khabar” and “The Times of India” Jharkhand Edition” on 13.05.2021. Meanwhile, lockdown was declared by the Government of West Bengal on 15.05.2021, due to the ongoing Covid situation which was extended further up to 15.08.2021, with several restrictions. The situation was quite the same in the State of Jharkhand.
5. The applicant formed the Stakeholders Consultation Committee (hereinafter referred as ‘SCC’) and accordingly, filed the progress reports from time to time in accordance with the provisions of IBC, 2016 and the applicable regulations.
6. The applicant convened the Stakeholders Consultation Committee (SCC) meeting on 14.07.2021, for discussion on
 - a) The matter of liquidation of the corporate debtor as a going concern.
 - b) The mode of sale of the corporate debtor.
 - c) About the timeline for auction of sale of corporate debtor as going concern and
 - d) Other matters.
7. This Adjudicating Authority *vide* its order dated 13.09.2021, allowed exclusion of period from 16.05.2021 to 15.07.2021,

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keeping in mind the lockdown situation and finally 90 days period from the date of commencement of liquidation expired on 08.10.2021 instead of 08.08.2021. Several times the extension was allowed by this Adjudicating Authority and the last extension was granted on 12.05.2023, for sale of corporate debtor as going concern and further 90 days period was expired on 09.08.2023 and period of liquidation completed on 11.05.2023.

- 8.** According to the Sale Notice dated 06.09.2022, the date of submission of EMD was on 29.09.2022. On or before 29.09.2022, EMD was received from one of the Eligible Bidders who has participated in the E-Auction held on 29.09.2022. Thereafter, Letter of Intent (LoI) was issued and unconditionally accepted by the successful Bidder on 30.09.2022.
- 9.** In accordance with the process documents along with the applicable Liquidation Process Regulations, the successful bidder was to pay the sale consideration/final consideration within 90 days from the date of issuance of Letter of Intent which they failed to do so.
- 10.** This Adjudicating Authority on 01.02.2023, heard I.A. No. 210/KB/2023 where the Bench allowed the application for extension of period for sale of corporate debtor as going concern by 90 days and liquidation period by one year vide order dated 12.05.2023. The period of liquidation ended on 09.08.2023. This Adjudicating Authority heard IA No. 1535/2023 and in

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terms of the Order dated 06.10.2023, allowed the application for extension of period of sale of corporate debtor as going concern by 90 days which was completed on 03.01.2024.

Submissions of the Learned Counsel for the Liquidator:

- 11.** Ld. Counsel, Mr. Shaunak Mitra appearing on behalf of the liquidator submits that liquidator from time to time published the sale Notice in newspaper and thereafter, several times, the sale through e-auction was discussed in the Stakeholders Consultation Committee Meeting and till date, 32 SCC Meetings have been held and total 19 e-auctions have been failed.
- 12.** Ld. Counsel submits that liquidation process is a time bound process and under Regulation 44(1) it is to be completed within one year from commencement of the liquidation process or such extended period as allowed by this Adjudicating Authority from time to time. The extension period of Liquidation of one year as allowed by this Adjudicating Authority in terms of Order dated 12.05.2023 is completing on 11.05.2024.
- 13.** Further, it is submitted that the e-auction for sale of corporate debtor as going concern was conducted 19 (nineteen) times which have failed except once as stated above when the successful bidder did not deposit the balance consideration within the stipulated period as provided in the regulation. Consequently, the amount deposited by the successful bidder was forfeited and the sale was cancelled by the applicant and

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the last reserve price of the assets for sale of corporate debtor as going concern is Rs. 38.30 crore.

- 14.** That, the stakeholders in the meeting discussed about the sale of assets on part and parcel basis due to failure of repeated auction. In the meantime, the applicant received a bid offer over mail from one of the prospective bidders named M/s Orissa Metaliks Private Limited who has shown interest to acquire the corporate debtor as going concern by way of private sale and whose bid offer is higher than the last failed auction price.
- 15.** The applicant on receipt of the said proposal, placed before the Stakeholders Consultation Committee for their consideration in the 32nd SCC meeting where the stakeholders discussed and consented to the private sale in favour of M/s Orissa Metaliks Pvt Ltd, whose bid offer is higher than the last failed auction price.
- 16.** Ld. Counsel for the liquidator asserts that in terms of Regulation 33, which deals with the mode of sale along with Schedule 1(2) of the IBBI (liquidation process) Regulations, 2016, the prior permission has to be obtained for such sale.
- 17.** We have duly considered the submissions of the Ld. Counsel for the applicant and perused the documents placed before us.

Findings:

- 18.** We have noted that vide an affidavit dated January 25, 2024, annexed at Pages 77-78, to the application, M/s Orissa

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Metaliks Pvt Ltd, has expressed its interest for purchase the Corporate Debtor as going concern and agreed to pay 10% EMD by way of NEFT/ RTGS within 3 days of SCC's offer and to pay the rest amount within 10 days of the receipt of the final approval from this Adjudicating Authority. Regarding the issue relating to the land, M/s Orissa Metaliks Pvt Ltd, states that:

“Land clarity :- We understand that the DRI Plant land is not owned by the Corporate Debtor. There is a dispute of 5.67 acres of land owned by the company. We understand entrance is not owned by the Company. We have done our due diligence and our offer is **"As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis"**

We will continue the aforesaid litigation as our offer is "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis".

This offer is valid for consideration by SCC for 30 days and thereafter we understand liquidator need to take approval of Hon'ble NCLT and till final order of the Hon'ble NCLT.”

- 19.** Further, through Bid Application Form dated February 05, 2024, annexed at Page 79-85 to the application, M/s Orissa Metaliks Pvt Ltd, communicated their desirous in participating in the E-Auction of the Corporate Debtor.

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20. Further, we have noted that in 32nd SCC meeting convened on 20.01.2024 (minutes of 32nd SCC meeting is annexed at pages 98-115) wherein the stakeholders consented for private sale of the Corporate Debtor as **“Going Concern”, “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse basis”** in favour of the **M/s Orissa Metaliks Pvt Ltd**. The extract of the minutes of the 32nd SCC meeting is reproduced hereunder:

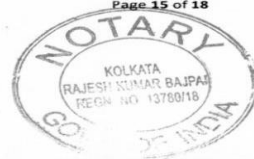
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Divine Alloys and Power Co Limited - In Liquidation by order of Hon'ble National Company Law Tribunal (NCLT), Kolkata Bench
Minutes of Thirty-Second meeting of Stakeholders Consultation Committee (SCC) of Divine Alloys & Power Co Limited - In Liquidation held on Saturday, 20th January, 2024 and the 01st Adjourned Thirty Second Meeting of Stakeholders Consultation Committee held on Monday, 22nd February, 2024 and the 2nd Adjourned Thirty Second Meeting of Stakeholders Consultation Committee held on Thursday, 25th January, 2024

Sr.No	List of matters discussed / noted
15	<p>a. Sangharsh Commercials Private Limited (Operational Creditor); and b. Representative of Workmen and Employees. So, the chairperson confirmed the quorum and called the meeting to order.</p> <p><u>To discuss on the Sale Process of the Corporate Debtor during the Liquidation Period:</u></p> <p>The Liquidator briefed the stakeholders as decided previously in the meeting where the representative of Bank of India informed that one of the parties has shown interest for Sale of CD as Going Concern but no positive response was received.</p> <p>Further, Orissa Metaliks Private Limited (party) approached the Liquidator for Private Sale for taking the Company for sale of CD as Going Concern and a letter from Orissa Metaliks Private Limited was received over mail which was presented by the Liquidator in the Meeting and briefed the point as stated in the letter regarding the payment consideration, excluded assets, excluded liabilities, Land clarity etc. Copy of the letter is attached with the minutes.</p> <p>The Payment consideration as proposed by the Orissa Metaliks Pvt Ltd is Rs 38.50 Crores which is higher than the reserve price of last failed auction (Rs 38.30 Crores) on the terms and conditions as stated in the letter.</p> <p>The Liquidator stated that the major concern is the land issue where the Hon'ble Bench by order dated 21st September, 2023 directed to get the mutation certificate and that process is taking time.</p> <p>In para 7.25 of the order related to land "Further, in new E-Auction Process Information Memorandum, the Liquidator has to ensure the location, acreage and other relevant information relating to the DRI Plant and in that respect, the Liquidator shall furnish the Government authorized report including mutation certificate of the respective land and construction. Further, the Liquidator shall verify all the Sale Deeds and documents with the Authorized Body to confirm the sale of the Corporate Debtor as a going concern."</p> <p>The Liquidator took view of the Stakeholders one by one:</p> <p>Representative of Bank of India stated that by way of above letter, it seems that the Party is ready to takeover the Corporate Debtor on going concern basis including land in private sale and the value is higher than the previous reserve price, as such, the representative of Bank of India consented to sale the assets of the Corporate Debtor on going concern basis to the above party</p>

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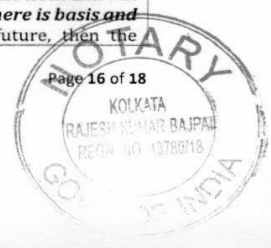
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Sr. No	List of matters discussed / noted
	<p>in private sale.</p> <p>Representative of Canara Bank stated that the Proposal offered by Orissa Metaliks is higher than the present reserve price and the Corporate Debtor is for sale as going concern along with land, it is good value for the stakeholders to consider such proposal and the representative of Canara bank consented to it.</p> <p>Representative of UCO bank stated that the amount as proposed by Orissa Metaliks Pvt Ltd is better in value and further, the land related issues will be taking care by the Orissa Metaliks Pvt Ltd on their own. As such, Representative of UCO bank consented to the above proposal.</p> <p>Representative of Union bank of India agreed with the view of Canara Bank and Bank of India. Thereafter, the representative of Union Bank of India consented to the above proposal.</p> <p>Representative of Punjab National Bank stated that the stakeholders have shared their view and if Orissa Metaliks Pvt Ltd is serious to bid in the Process and want to takeover the Company on Going Concern, then it is the best opportunity for the Stakeholders to sale the CD as going Concern with all assets including Land. As such, representative of Punjab national Bank consented to such proposal.</p> <p>Further, Orissa Metaliks Pvt Ltd is ready to pay the full amount as per the terms and condition as stated in the letter where the Stakeholders want the period of payment terms to be reduced and the amount as proposed to be increased.</p> <p>The whole process is to be done at the earliest so that the Stakeholders can get the realization at the earliest without any ado.</p> <p>In this, the Liquidator stated that the whole process will take time as the prior approval from Hon'ble NCLT is required as per the Liquidation Process Regulation and further, there is land related issue in which the Hon'ble Bench directed to get the mutation certificate along with Government authorized Report, the process is taking time.</p> <p>Further, the completion of the process also depends upon the cooperation of Orissa Metaliks Limited that at a. time taken for submission of the papers/documents and b. assurance regarding the Land related issues/ litigation since they have the proper due diligence.</p> <p>In this, the Stakeholders suggested to get the affidavit from Orissa Metaliks Private Limited regarding that they are well aware of the Land issue and will purchase the company on as is where is basis, whatever there is basis and no recourse basis. If any further litigation arises in future, then the</p>

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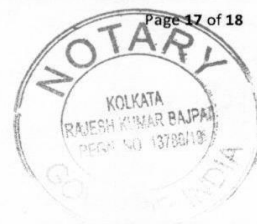
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Sr. No	List of matters discussed / noted
	<p>Liquidator may not be held responsible as the independent due diligence is to be done by the Orissa Metaliks Pvt Ltd.</p> <p>The Liquidator stated that if the Stakeholders wants, then the liquidator may invite the representative of Orissa Metaliks Private Limited (OMPL) in the meeting which all the members agreed to it.</p> <p>With the consent of the Stakeholders, the Liquidator shared the Link to the representative of Orissa Metaliks Pvt Ltd. Thereafter, the representative joined the meeting.</p> <p>The Liquidator welcomed the representative of Orissa Metaliks Pvt Ltd in the meeting room. Mr Rahul Bhiwaniwala and Mr Manish Kumar Jain attended the meeting and the Liquidator confirmed from them that there were no other person in the meeting room other than them, which they confirmed.</p> <p>The Stakeholders asked the representative of Orissa Metaliks Pvt Ltd that whether they are aware of the land related issues in which the representative responded that as stated in the letter regarding the DRI Plant Land, entry gate and land of 5.66 acre is known to them and well aware and if any other disputes related to land arises in future, then the stakeholders need to cooperate and to provide the paper and documents related to that land which the stakeholders agreed to it.</p> <p>Further, the Stakeholders requested the representative of Orissa Metaliks Pvt Ltd to submit the declaration of the same by way of affidavit which the representative assured that they will submit latest by 29th January, 2024.</p> <p>The Stakeholders requested the Representative to revise the financial offer and reduction in payment tenure as proposed, for which the representative stated that the payment as proposed is higher than the last reserve price and the payment will be made at the earliest once the approval from Hon'ble NCLT is received for Sale as Going Concern by way of private sale.</p> <p>After discussion, the stakeholders agreed to it and there was no other points to discuss.</p> <p>The Liquidator requested the representative to send an affidavit at the earliest so that the Liquidator may file an application before the Hon'ble NCLT for necessary approval.</p> <p>The Liquidator thanked the representative for attending the meeting and requested them to leave the meeting room which they left.</p> <p>After discussion above, the Stakeholders requested the Liquidator to approach the Hon'ble NCLT at the earliest for prior permission for sale of CD as Going Concern by private sale so that the process can be completed within</p>

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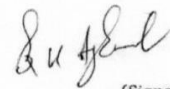
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Sr. No	List of matters discussed / noted
	a given time frame and the Stakeholders may get better value. The Liquidator assured that once the papers/ documents and affidavit is received from Orissa Metaliks Pvt Ltd, the Liquidator will file an application at the earliest for approval from the Hon'ble NCLT, Kolkata Bench. All the stakeholders in the meeting consented for sale of CD as Going Concern by way of Private Sale and also requested the Liquidator to file an application before the Hon'ble NCLT Bench for permission of Private Sale.
	There being no other matter to be discussed, the meeting concluded with vote of thanks to the Members of the SCC at 06:36 P.M.

Date: 27th January, 2024
Place: Kolkata



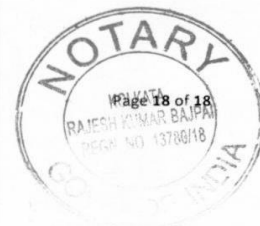
(Signature)

Chairman of the SCC Meeting

Rajesh Kumar Agrawal,

Liquidator

Divine Alloys and Power Co Limited- In Liquidation
Regd No. IBBI/IPA-001/IP-P01023/2017-2018/11722
AFA Valid till 22/11/2024



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- 21.** Further, we have noted that the **M/s Orissa Metaliks Pvt Ltd.** has deposited **Rs. 3.85 Crore** as **EMD** which is 10% of the **total consideration** of **Rs. 38.30 Crore** and **Rs. 10 Lakh** as **Refundable Deposit**, totalling to **Rs. 3.95 Crore** in the bank account of the Corporate Debtor maintained in the Punjab National Bank on 07.02.2024. the Proof of payment of deposit money is annexed at page 116 to the application. Further, we have noted that the last reserve price was Rs. 38.30 Crore.
- 22.** We would refer Regulation 32 and 33 of the IBBI (Liquidation Process) Regulation, 2016 as under:

Regulation 32:

Sale of Assets, etc.

The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

Regulation 33:

Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

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*(2) The liquidator may sell the assets of the corporate debtor by means of **private sale** in the manner specified in Schedule I when-*

- (a) the asset is perishable;*
- (b) the asset is likely to deteriorate in value significantly if not sold immediately;*
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or*
- (d) the prior permission of the Adjudicating Authority has been obtained for such sale:*

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- (a) a related party of the corporate debtor;*
- (b) his related party; or*
- (c) any professional appointed by him.*

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

23. Thus, in terms of forgoing discussion, we **approve** the “**Private Sale**” of corporate debtor as a “going concern” in favour of “**M/s Orissa Metaliks Private Limited**” in terms of Section 35(1)(n) and Section 60(5) of Insolvency and Bankruptcy Code, 2016, read with Regulation 32 and 33 of IBBI (liquidation process) Regulations, 2016.

24. “**M/s Orissa Metaliks Private Limited**” is directed to comply all the terms and conditions as decided and agreed in the SCC meetings for the implementation of successful private sale of

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the Corporate Debtor herein as a Going Concern under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 at the bid price of Rs. 38.50 Crore on “*as is where is whatever there is and without recourse basis*”.

- 25.** Liberty is hereby granted for preferring application for confirming sale of the Corporate Debtor as a going concern and for issuance of sale certificate by the Liquidator in favour of the **M/s Orissa Metaliks Private Limited** upon the completion of the sale and against the receipt of purchase consideration.
- 26.** In terms of view above, this application being **I.A. (IB) No. 382/KB/2024** in C.P. (IB) No. 1412/KB/2018 is **disposed of** accordingly.
- 27.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 16th Day of April, 2024.

Bose, R. K. [LRA]/ PH [PS]