



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 3049/2023

IN

Company Petition No. (IB) – 117/(PB)/2019

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

PUNJAB NATIONAL BANK

.... FINANCIAL CREDITOR

VERSUS

BETA INFRATECH PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF-

AKSA ENERJI ÜRETİM A.S

.... APPLICANT

VERSUS

MR. T.S.N. RAJA (SIVANAGARAJA TADUVAR)

...RESPONDENT NO 1/ LIQUIDATOR

SOLEN RENEWABLE ENERGY DMC

...RESPONDENT NO 2/PURCHASER



CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Dr. Pinky Anand, Sr. Adv. along with Mr. Sameer Jain, Mr. Suvigya Awasthy, Mr. Shantanu Rai, Mr. Asees Jasmine Kavi, Mr. Saudamini Sharma, Mr. Vivek Joshi and Mr. Rohan Gulati, Advs

For the Liquidator: Mr. Madhusudan Sharma, Adv. with Mr. TSN Raja, Liquidator

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 31.10.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by Aksa Enerji Oretim AS., Turkey, (Applicant) seeking issuance of appropriate directions to Mr. T.S.N. Raja (Sivanagaraja Taduvar), Liquidator of M/s Beta Infratech Pvt. Ltd. to consider the bidding offer submitted by the Applicant on 14.05.2023 and 19.05.2023 pursuant to the Expression of Interest ('EOI') dated 10.05.2023 submitted by the Applicant demonstrating



its strong willingness and interest towards purchasing the plant and machinery of CD.

2. The applicant in the present application has prayed for the following relief(s)

- a. *Allow the present application and direct the Liquidator to grant an opportunity of competitive bidding to the Applicant against the other entity whose bid has been accepted by the Liquidator towards the purchase of plant and machinery (77MWx2 GE Frame 6 make, 74 MW GE Steam Turbine, Thermax Boiler, ABB Elec) of Beta Infratech;*
- b. *Direct the Liquidator to disclose the financial bid of the entity that has been accepted by the Liquidator towards the purchase of plant and machinery (77MWx2 GE Frame 6 make, 74 MW GE Steam Turbine, Thermax Boiler, ABB Elec) of Beta Infratech;*
- c. *Direct the Liquidator to supply a copy of the Interlocutory Application filed by the Liquidator seeking approval of this Hon'ble Tribunal towards the sale of plant and machinery*



(77MWx2 GE Frame 6 make, 74 MW GE Steam Turbine, Thermax Boiler, ABB Elec) of Beta Infratech, if any;

d. Pass any other/ further order(s) as this Hon'ble Tribunal may deem fit and appropriate in the given facts and circumstances.

3. The brief facts of the case as mentioned in the instant application, which are relevant for adjudication, are as follows:

- i. That pursuant to liquidation order, the Liquidator published e-auction notices in various national newspapers to intimate the sale of assets of CD.
- ii. That the last auction notice dated 27.02.2023 was published by the Liquidator in Business Standard newspaper, however the same failed. After the expiry of auction period and its failure, the Applicant, located in Istanbul Turkey, discerned that the plant and machinery component of CD was available for purchase and the Liquidator is in the process of evaluating the proposals from probable buyers. Thereafter, the Applicant immediately acted with reasonable alacrity and demonstrated strong fidelity and interest towards purchasing the same.



- iii. It is imperative to mention that despite acting with all reasonableness, any delay on part of the Applicant in approaching the Liquidator was primarily occasioned due to the Applicant being a Turkish entity situated beyond the territorial limits of India and was not well versed with the scheme of the Indian law regarding the publication of the e-auction notices of the assets of the companies under liquidation. Thus, after gaining knowledge about the availability of the plant and machinery component of Beta Infratech, the Applicant immediately approached the Liquidator in April 2023 by way of demonstrating their intent and willingness to purchase the plant and machinery of Beta Infratech.
- iv. That with a strong intention towards purchasing the plant and machinery component of Beta Infratech, the representatives of the Applicant travelled from Istanbul, Turkey to Kashipur in Uttarakhand for a site visit to inspect the assets of Beta Infratech on 02.05.2023 and 03.05.2023 after taking due permission from the Liquidator. During the site visit, the Liquidator even demonstrated a presentation



regarding the borescope inspection to the representatives of the Applicant. Thus, the site visit by the representatives of the Applicant company along with their communications with the Liquidator evinced the bonafide intentions of the Applicant towards submitting a meticulous offer that intended to maximize the value of the assets of Beta Infratech and resultantly, align with the objectives of the Code as well.

- v. That vide e-mail dated 05.05.2023, the counsel for the Applicant sent an email to the Liquidator expressing the Applicant's interest to purchase the assets (primarily plant and machinery) of Beta Infratech that was aligned with the prior intentions of the Applicant that were also communicated to the Liquidator by the representatives of the Applicant company itself during their visit as well as via various contemporaneous e-mails.
- vi. That on 08.05.2023 and 09.05.2023, the representatives of the Applicant company had a virtual meeting with the Liquidator and demonstrated their strong interest and willingness to purchase the plant and machinery component



out of the assets of Beta Infratech that were under liquidation.

- vii. That after exercising all necessary due diligence, the counsel for the Applicant company vide e-mail dated 10.05.2023 submitted a formal EOI along with all necessary information for purchase of the plant and machinery of Beta Infratech.
- viii. That to the utter shock and surprise of the Applicant, the Liquidator vide e-mail dated 11.05.2023 stated that the sale was being finalized with another investor and further mentioned that in the absence of any binding proposal, the Applicant's EOI would hold no credence. It is submitted that the response of the Liquidator was lacked any clarity as to what a binding proposal would entail.
- ix. That, the Liquidator proposed a video conference that was held on 11.05.2023 on a pre-recorded conference, wherein the representatives of the Applicant company again demonstrated their strong willingness towards purchasing the plant and machinery of Beta Infratech and simultaneously ensure maximization of value of assets for an entity that is currently undergoing liquidation.



Pertinently, during the video conference held on 11.05.2023, despite repeated requests of the Applicant, the liquidator remained opaque about the financial offer he currently has, that caused the Applicant to not be able to decide a competitive bid amount. Thus, owing to the lack of information, the Applicant sought some more time to make a binding offer that was communicated vide e-mail dated 13.05.2023

- x. The liquidator rejected the EOI that was submitted by the Applicant on the premise that there was an absence of a binding offer by the Applicant.
- xi. That the Liquidator unfortunately failed to consider the bonafides of the Applicant company that were demonstrated time and again by remaining in constant contact with the Liquidator to ensure the best offer is considered for an entity that is undergoing liquidation
- xii. That vide e-mail dated 14.05.2023, the Applicant once again made a firm and binding offer to the Liquidator towards the purchase of plant and machinery of Beta Infratech in strict accordance with the requirements stated by the Liquidator.



As per the offer letter dated 14.05.2023, the Applicant proposed to deposit a sum of USD 2.5 million and further quoted an amount of INR 212 million towards purchasing the plant and machinery of Beta Infratech.

- xiii. That the Liquidator responded vide e-mail dated 15.05.2023 to the Applicant's offer dated 14.05.2023 and declined to consider the offer until the deposit of the EMO. Accordingly, the Applicant submitted the final and binding offer vide e-mail dated 19.05.2023, along with the details of the EMO that was deposited by the Applicant in favour of Beta Infratech. However, on the request of the Liquidator vide e-mail dated 22.05.2023, the offer was resent by the Applicant via e-mail of even date along with the proof of deposit of EMD. It is pertinent to mention that the offer letter submitted by the Applicant was in light of being oblivious to the prevailing state of affairs and offer available with the Liquidator by other bidders/ investors. However, despite the Applicant making an extremely fair and reasonable offer again vide e-mail dated 19.05.2023, the Applicant was shocked and dismayed to note that the Liquidator proceeded



to reject the offer vide letter dated 26.05.2025 by citing the reason that the bid for the plant and machinery was already accepted by the Liquidator on 17.05.2023 and thus the bid submitted by the Applicant has been rejected. Hence the present application.

xiv. The applicant has not questioned any illegality or procedural lapse on the part of Respondent No 2 i.e., Purchaser.

4. The Liquidator has filed its reply to the averments and stated as under: -

I. That the Liquidator made sincere efforts to place the assets of the Corporate Debtor on Global Market and continued the same despite several oddities. Response was received from almost all continents and Govts of several countries evinced interest, however due to global recession binding proposals were delayed. The details of the Countries in which the Liquidator tried to sell the assets of the Corporate Debtor are reproduced as under: -



- a. Ms Ranjita of Trinity Gas UK proposed to acquire the assets for US \$ 34 million and relocate to Mozambique. She proposed to deposit US \$ 50,000 and sought a mandate for three months way back in Sep 2021
- b. Dr Zuma of Zuma Energy Nigeria proposed to acquire the Plant and Machinery for US \$ 32.5 million way back in Oct 2021, but it was found that his company is one of the stricken off companies in Nigeria.
- c. Mr Aung Hlaing Oo of MCM proposed to acquire the plant and machinery for Rs 24 million way back in Dec 2021 but failed to make the required deposit.
- d. Mr Adrian Venzo of Power Consult proposed to acquire the plant and machinery for US\$27 million way back in June 2022 but failed to make the required deposit.
- e. Inter Rao of Russia came in touch with the liquidator in April 2022, conducted inspection way back in June 2022, promised to purchase the P&M and to make their offer binding they even proposed to transfer US\$ 50,000. By the time their test transfer of US \$ 10000 materialised the country is locked up in battle with Ukraine and there is no progress in the deal since Sep 2022.
- f. ATM of Argentina in consortium of IPC of UK conducted inspection around Nov 2022 and proposed to acquire the assets at Rs 202 crore and even transferred US \$ 50,000 in Mar 2023. He was granted one month time on the commitment that if he fails to deposit the balance consideration, his above initial deposit will be forfeited. Since he failed his deposit was forfeited.
- g. AKSA of Turkey approached the Liquidator in April 2023, conducted inspection on 2nd and 3 May 2023, reflected interest, promised to deposit the EMD but failed to do so in a timely manner.

II. Investors or EPC contractors of various countries were invited to interact with the SCC, who informed the committee that the present price at Rs 202 crore is fair and reasonable but the market post covid is yet to revive



and the entire world is hesitant to expand their business plans.

III. Based on this opinion, the SCC advised the Liquidator either to repeat the advertisement by keeping the Reserve Price as it was in the failed auction, or not to repeat the advertisement at all

IV. Thus, the actual number of advertisements repeated are about 12 and the latest advertisement was repeated on 27th February 2023

Solen Renewable Energy DMCC Proposal:

V. Mr. Praveen Pai of M/S Solen Renewable Energy DMCC UAE, approached the Liquidator in Feb 2023 with a proposal to acquire the Plant and Machinery for Rs 162 crores and relocate the same to Benin. He produced a mandate issued by Govt of Benin. Their offer was rejected as there were other better offers.

VI. Mr. Praveen Pai proposed to acquire the Plant and Machinery for Rs 202.01 crore, made an initial deposit of Rs 2 crore on 24th April 2023. The offer of M/S Solen Energy is more than the Reserve Price of failed auction. A



meeting of the SCC was called, and the committee decided to consider the offer under private sale option as it fulfils the norms of IBC 2016.

VII. The prospective purchaser deposited an amount of Rs 20.21 crore by 8th May 2023 and Bid acceptance letter is issued on 17th May 2023.

VIII. Attention also is invited to the Regulation 33 (2)(c) of CIRP Regulations 2016, as per which, in case of a failed auction, if an offer is received which is higher than the Reserve Price of a failed auction the assets may be sold by means of a private sale.

The AKSA Case:

IX. Mr. Michael Lohrmann approached the Liquidator way back in Sep 2022, enquiring about the Power Plant equipment and on some reason or other went on postponing a visit to the CD's site.

X. Finally, Mr. Michael requested the Liquidator on 21st March 2023, to give access to data room to enable them conduct due diligence. Mr. Michael was asked to share his KYC including net worth of his company. Finally on the advice



of the Liquidator the petitioner firm responded by furnishing their credentials and requested to give access to their employees.

XI. The applicants team proposed an inspection of the equipment initially in third week of April 2023 but could do it on 2nd and 3rd May 2023.

XII. That Mr. Basar Doganer, the lead member and their representative Mr. Michael were informed that the liquidator is in receipt of part EMD, and that the other prospective investor is likely to complete the process in a week's time. Hence, they were advised to take a quick call if at all they are interested.

XIII. Subsequently there were series of mails, virtual meetings were held to clarify procedural or legal issues and at every stage it is made clear that: -

- i. Their proposal will not be taken into consideration unless supported by stipulated EMD.
- ii. If the bid of the other competing investor is accepted no correspondence will be entertained.



XIV. Though they were advised to submit a binding offer by 8th May 2023, waiting up to 17th May 2023, a bid acceptance letter was issued to the other competing Bidder and the sale is concluded as per the procedure laid down under IBC 2016.

XV. The final proposal of the applicant came on 19th May 2023 and the intimation of initiating transfer of funds on 23rd May 2023 (The payment got transferred on 25th May 2023).

XVI. That the proposal of AKSA and their transfer of EMD amount, after having been informed of the bid acceptance letter, was placed before the 22nd SCC on 26th May 2023 and the SCC decided not to take cognizance of AKSA's offer since it was received after Bid acceptance letter was issued and also advised the Liquidator to place the information before this Tribunal, and in compliance with the same IA 2961 was filed.

XVII. The decision of the SCC was communicated to the applicant after the SCC Meeting.



XVIII. In support of his submissions, the liquidator also relied on the judgement of Hon'ble Supreme Court in the matter of R.K. Industries (UNIT-II) LLP vs. H.R. Commercials Private Limited and Ors. (26.08.2022 - SC) : MANU/SC/1069/2022.

XIX. Based on the facts and circumstances, the Liquidator prayed to dismiss the present application.

5. We have gone through the documents on record filed by the Applicant, Liquidator and also the reply filed by the Successful Purchaser and have heard the parties on merits.

6. It is observed that the applicant approached the Liquidator first time in April 2023 and demonstrated strong intent and willingness to purchase the plant and machinery component of Corporate Debtor. Further within 2 days of the site visit, the counsel for the Applicant vide e-mail dated 05.05.2023 expressed a formal interest to purchase the plant and machinery of Beta Infratech though no Bid was made or EOI was deposited. Then, applicant held a virtual meeting with the Liquidator between 08.05.2023 and 09.05.2023. On the very next day i.e., 10.05.2023, the Applicant submitted the formal



Offer cum Expression of Interest, which demonstrated their bonafides and seriousness towards acquiring the plant and machinery. In the said offer, the Applicant specifically wrote that *“Aksa is willing to purchase the Plant & Machinery at the reserve price of 202 crores fixed by you in your Public Notice 27.02.2023 **or any other negotiated higher price.**”*

7. The Liquidator, instead of engaging with the Applicant to negotiate the price at which the Plant & Machinery can be sold, informed the applicant that the sale was being finalized with another investor and in the absence of a binding offer, the Applicant’s bid will not be considered.

8. The Liquidator did not disclose the financial offer from the other investor and due to the lack of transparency, the Applicant sought some more time to make an offer under anticipation. Thereafter, on 14.05.2023, the Applicant submitted a binding offer to the Liquidator and quoted a sum of INR 212 Crores towards purchasing the plant and machinery of Beta Infratech. In response to the binding offer of the Applicant, the Liquidator vide e-mail dated 15.05.2023 declined to consider the same on the basis of non-receipt of



any Earnest Money Deposit. The applicant submitted that this was the first time the Liquidator revealed that the offer of the Applicant will not be considered without deposit of EMD. Therefore, on 19.05.2023, the Applicant submitted the binding offer along with the details of the EMD. However, the Liquidator issued the Bid Acceptance Letter to M/s Solen Renewable Energy on 17.05.2023 without considering the applicant's offer given earlier. As per the Liquidator, the final offer from the applicant was received on 19.05.2023. However, we noted from the records that the applicant's bid of Rs. 212 Crores was actually submitted on 14.05.2023. The Earnest Money Deposit (EMD) was submitted on 19.05.2023. We fail to understand why the Liquidator did not consider an offer that was INR 10 crores higher and accepted a lower bid. In the interest of maximizing of the value of the assets and as per the objectives of the Code, the Liquidator could have waited a few more days, especially given the significant difference between the two bids. Nevertheless, the Liquidator chose to consider the bid that was 10 Crores lower than the applicant's offer.



9. The Liquidator had relied upon the judgement of Hon'ble NCLAT in the matter of *R.K. Industries (UNIT-II) LLP vs. H.R. Commercials Private Limited and Ors.* (26.08.2022 - SC) : *MANU/SC/1069/2022*. In the aforesaid judgment, prior permission for a private sale was obtained from the Adjudicating Authority. However, in the present case, no permission was sought from the Tribunal for the private sale of the Corporate Debtor's assets. Further, each case is peculiar, with its own set of facts and circumstances, hence, we are of the view that facts of this aforesaid judgement does not apply to the present case.

10. It is observed that the applicant has acted diligently and made multiple attempts to contact the Liquidator and purchase the assets of the Corporate Debtor.

11. In view of the above facts and circumstances, this being a case of private sale, we direct the Liquidator and SCC to reconsider the matter between both the parties to meet the objective of the Code and maximization of value.

12. Accordingly, IA 3049/2023 stands disposed off in terms of the above order.



Let a copy of this order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)