(2020) 08 NCLT CK 0080

In the National Company Law Tribunal

Case No : Interlocutory Appeal (IB) No. ...../Kb/2020, Company Appeal (IB) Nos. 45/Kb/2018, 920, 1358, 1786/Kb/2019

Indian Overseas Bank — APPELLANT

Vs

Dc Industrial Plant Services Private Limited — RESPONDENT

Date of Decision : 03-08-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 32(A), 32(a), 32(b), 32(c), 32(d), 32(e), 32(f)

Citation : (2020) 08 NCLT CK 0080

Hon'ble Judges : Jinan K.R., J

Bench : Single Bench

Advocate : Dipankar Das

Final Decision : Allowed

Judgement

Jinan K.R., J

1. Mr. Ram Ratan Modi, the liquidator has filed this un-numbered application, for allowing the Corporate Debtor to continue to function as a 'going concern' to the extent of completion of the execution of two ongoing projects at NTPC Korba and NTPC Barh by October 2020 as a step towards beneficial liquidation of the Corporate Debtor and seeking leave to effect sale of the assets of the Corporate Debtor and to terminate certain employees/workmen of the Corporate Debtor who are no longer required for running the Corporate Debtor as a 'going concern' in respect to the completion of its NTPC Korba and NTPC Barh projects.

2. The applicant has prayed for urgent hearing of the case since the work of the Tribunal is disrupted due to Covid-19 pandemic and consequential lockdown. The urgency setup being found satisfactory this application was listed for hearing on today (03.08.2020) through video conferencing.

3. Herd the Ld. Counsel Mr. Dipankar Das for the Liquidator, and perused the

documents.

4. The applicant was appointed as Liquidator for the Corporate Debtor by an order of this Tribunal dated 19.06.2019. As per terms of this order, the Liquidator was to explore all possibilities as to whether the Corporate Debtor can be sold as a going concern. An application was thereafter filed by the Liquidator being CA(IB) No. 920/KB/2019 and this Tribunal modified clause (e) of the order dated 19.06.2019 by passing another order dated 31.07.2019 staying the discharge of duties of the officers, employees and workmen of the Corporate Debtor for a period of 3 months in order to enable the Liquidator to sell the Corporate Debtor as a going concern.

5. Another application was filed by the Liquidator, being CA(IB) No. 1358/KB/2019 seeking extension of time for a further period of three months from 19.09.2019 to enable the Liquidator to sell the Corporate Debtor as a going concern. The said application was allowed by this Tribunal and by its order dated 17.10.2019 the period was extended upto 19.12.2019.

6. The applicant filed another application seeking extension of time for a further period of three months from 19.12.2019. This was also allowed by an order of this Tribunal dated 03.01.2020 in CA(IB) No. 1786/KB/2019 by extending the period till 19.03.2020.

7. The Ld. Counsel for the applicant submits that publication inviting Expressions of Interest was caused on 25.08.2019, 14.11.2019 and 12.12.2019. The bidding document was also shared with two prospective bidders. According to him, in spite of granting several extensions, the financial bids were not submitted by the prospective bidders, thus belying the hope of the Corporate Debtor to be sold as a going concern.

8. The Ld. Counsel further submits that the corporate debtor is in the process of executing projects at thermal power stations of National Thermal Power Corporation (NTPC) at Korba and Barh and its subsidiary Nabinagar Power Generating Company Limited (NPGCL) at Nabinagar. The projects at Korba is reportedly at its final stage and expected to be completed by initiation of closure process which will be completed on 30.09.2020. Upon completion of this stage, an amount of Rs. 15.80 crores shall be due and receivable by the Corporate Debtor as per the last signed reconciliation statement subject to Liquidated Damages and other risks and rewards which shall be determined at the time of final reconciliation. So also the second stage of the project at Barh will be completed by 30.09.2020 and the Corporate Debtor is expected to be released by October, 2020. As per last reconciliation statement dated 19.02.2020 an amount of Rs. 9.24 crores is due and receivable by the Corporate Debtor subject to applicable Liquidated Damages, risks and rewards which shall be determined at the time of final reconciliation. The execution of the Nabinagar project involves substantial outstanding works as on date and likely to take a lot of time to complete and the Corporate Debtor may not be in a position to complete the

same anytime soon in the present financial year. The Liquidator therefore seeks to foreclose the execution of works with respect to the project at Nabinagar.

9. The Ld. Counsel further submits that upon completion of the projects at NTPC Korba and Barh, amounts of Rs. 15.80 crores and Rs. 9.24 crores respectively aggregating to Rs. 25.04 crores shall be receivable by the Corporate Debtor which is subject to liquidated damages, other risks and rewards decided at the time of closure reconciliation. This amount can be utilized to repay a major part of the dues to the stakeholders of the Corporate Debtor.

10. According to him in the interest of the stakeholders the Corporate Debtor should be allowed to be run as a going concern till the said projects are completed and the rightful entitlements of the Corporate Debtor are received and that the liquidator has prepared the liquidation estate of the Corporate Debtor which shall form a part of the Progress Report (to be submitted on or before 15.04.2020)

11. He further submits that the list of employees identified 1) to be retained for the successful execution of the ongoing projects and also 2) the employees/ workmen who shall serve no purpose in the execution of the ongoing projects. According to him in the light of the present state of affairs and in the best interest of the Corporate Debtor, the continued gainful employment of the employees/workmen in the second category will not serve any meaningful purpose and they need to be terminated.

12. Having heard the submissions of Mr. Dipankar Das, Ld. Counsel appearing on behalf of the Liquidator and on perusal of the records and the Regulations empowering the liquidator to sell the CD as a going concern and to terminate the unwanted employees due to abandoning the execution of the Nabingar Project as per the approval of the committee of the creditors, a prior permission from the Adjudicating Authority appears to me is unwarranted. Of course, if the liquidator is unable to sell the CD or its business under clause (e) or (f) of regulation 32 within 90 days from the liquidation commencement date, he shall proceed to sell the assets of the CD under clause (a) to (d) of regulation 32. Here in this case what is asked for is not for extensions of this 90 days period but to continue the CD as a going concern. In the meanwhile he also prays for extending the period to sell the CD as a going concern as the extended period already expired on 19.03.2020 that is before the period of lockdown. Such a relief seems to have not prayed for in the application. The lockdown being started on 23.3.2020 and continues till 31st August, 2020, and the notification insertion 47-A to the Regulations for exclusion of period ends during lockdown in the wake of Covid -19 outbreak cannot be claimed by the liquidator in the case in hand, in the better interest of the CD, the prayer for extensions is to be allowed.

In view of the matter the application is allowed as per the following orders:

ORDER

i) The Liquidator is permitted to continue the CD to function as a going concern till the completion of the ongoing projects at NTPC Korba and NTPC Barh which would not no way exceeds 2 years as per Regulation 44 (Unamended);

ii). The period of sale of the CD as a going concern as per regulation 32-A is further extended by three months from 19.03.2020;

iii) The liquidator is permitted to effect the sale of the assets of the Corporate Debtor as per the provisions of the Code and Regulations;

iv) the liquidator is also permitted to terminate the employees/workmen who are no longer required to be gainfully employed for running the company as a going concern, subject to their right to submits their claim;

v) IA(IB)/.../KB/2020 in CP (IB) No. No. 45/KB/2018 is disposed of accordingly.

vi) Registry is hereby directed to communicate the order to all the Applicants, Respondents through e-mail and free copy.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.