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(2023) 06 NCLT CK 0099

In the National Company Law Tribunal

Case No : IA 2571/2023 IN C.P.(IB)/559(MB)2018

Jayprakash B. Bihani Vs Divyesh Desai ?

Date of Decision : 26-06-2023

Acts Referred:

Citation : (2023) 06 NCLT CK 0099

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Chetan Kapadia, Swapnil Gupte, Vinay Butani, Rahul Gurjar, Jeta Shree, Rishabh Chandra

Final Decision : Disposed Of

Judgement

IA-2571/2023 – This Application is filed by Jayprakash Bihani Nandkishore Baheti the Applicant to allow the present Application and further approve the Acquisition Plan, being Exhibit No. E to the present Application as submitted by the Applicants.

The present application is allowed subject to the terms and conditions as recorded in the Consent Terms. On allowing the prayer (a) all prayers get infructuous as summarized below:-

1. The Liquidator, represented to the Successful Bidders that notwithstanding anything to the contrary contained in the e-auction process information document dated April 22, 2023 ("Auction Process Document"), the Liquidator has no objections whatsoever to any of the reliefs and/or concessions that are being sought by the Successful Bidders vide their IA-2571 of 2023 (including but not limited to the Corporate Debtor being acquired on an absolute "clean slate" basis) and if the same are approved by the NCLT, subject to the Successful Bidders agreeing to the following :-

(a) Responsibility to bear operational expenses : Obligation to bear the operational expenses of the Corporate Debtor as reflected and recorded in the books of accounts of the Corporate Debtor (including salaries and wages) after the date of LOI, i.e. from May 13, 2023, will be the responsibility of the Successful Bidders ;

(b) Payment of Final Consideration : Successful bidders shall make the entire payment within 90 (ninety) days from the date of LOI i.e. by August 10, 2023 and there shall not be any waiver of interest for payments made after June, 11, 2023, (i.e. 30 days from the date of LOI). As per the IBBI (Liquidation Process) Regulations, 2016 and has also agreed in the LOI, payments made after June 11, 2023, shall carry interest at the rate of 12% (twelve percent) p.a.

(c) Exclusion of certain assets : The following assets shall be excluded from the sale as going concern, in accordance with Auction Process Document :-

i. Cash and cash equivalents available with the Corporate Debtor on the Transfer Date (whereby Transfer Date has been defined in the E-Auction Process Document ;

ii. Avoidance Receivables – Recovery of proceeds pursuant to adjudication and order of the Hon'ble NCLT in respect of applications filed by the undersigned pertaining to avoidance transactions ; and

iii. Dish Receivables – Recovery of proceeds pursuant to adjudication and order of the Hon'ble NCLT in respect of the application filed by the undersigned against Dish Infra Services Private Limited.

(d) It was specifically agreed that the Successful Bidders shall be under the obligation to deposit the Final Consideration, in full within the timelines specified above and to acquire the Corporate Debtor on an as is where is basis.

With these above observations, IA-2571/2023 is allowed and disposed of.

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