(2023) 02 NCLT CK 0042

In the National Company Law Tribunal

Case No : I.A. No. 980/KB/2021 And I.A. No. 103/KB/2022 In CP(IB) No. 723/KB/2019

Mr. Sanjai Kumar Gupta Vs Kashvi Power & Steel Pvt. Ltd ?

Date of Decision : 22-02-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 33, 60(5)

Citation : (2023) 02 NCLT CK 0042

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Rishad Medora, Shaunak Mukhopadhyay, Sayantan Bose, Soumalya Ganguli, Sudarshana Dutta, Aditya Atheya, Joy Saha, Supriyo Gole, Jishnu Chowdhury, Vikash Singh, Zeenat Shabab, Dhirendra Nath Sharma, Naresh Balodia

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

2. This interlocutory application being I.A. No. 103/KB/2022 has also been filed by Sanjai Kumar Gupta (the Liquidator of the Corporate Debtor), under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking the following reliefs:

a) To recall and/or modify the order dated January 4, 2022;

b) To exclude the sale of non-core assets and insurance claim from the purview of the sale of Corporate Debtor as a going concern.

3. Further, the interlocutory application being I.A. No. 980/KB/2021 has been filed by the liquidator under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) praying for the following reliefs:

a) That the respondents shall release the said consumables to the applicant as and when required by the Applicant, and the respondent shall keep and protect the part of such non-core assets which are lying at the factory of the Corporate Debtor;

b) That the respondent has no right over the said insurance claim;

c) Any other, as the Adjudicating Authority may deem fit.

4. The case of the Applicant herein is that vide order dated July 3, 2020, this Adjudicating Authority, in an application filed by the Applicant (then resolution professional of the Corporate Debtor) of the Corporate Debtor, permitted the sale of "non-core assets" outside the ordinary course of business and allowed the utilization of the sale proceeds or part thereof towards payment of gratuity and retrenchment benefits which are due to the retrenched/released workmen, employed at the factory of the Corporate Debtor at Haldia, in terms of the agreement reached with the Deputy Labour Commissioner at Haldia.

5. Thereafter, on January 05, 2021, this Adjudicating Authority, admitted an application under section 33 of the Code, and appointed the Applicant herein as the Liquidator. Public announcement was made on May 26, 2021 for the sale of assets of the Corporate Debtor as a going concern along with all its assets excluding non-core assets. Sale of non-core assets, as mentioned in the order dated July 3, 2020, was excluded from the purview of the said public announcement. The Respondent herein participated in the said bid and was eventually declared as the Successful bidder for the sale of Corporate Debtor as the going concern along with all its assets but excluding non-core assets.

6. Accordingly, upon payment of the entire bid amount by the Respondent, the applicant handed over the assets excluding the said non-core assets of the Corporate Debtor on August 31, 2021. While taking possession of the assets of the Corporate Debtor, the Respondent were requested to provide undertaking to keep and ensure safety and security of the part of Non-Core Assets which were lying at the factory of the Corporate Debtor.

7. The applicant issued a sale certificate dated September 30, 2021 in favour of the respondent, however, the Respondent did not accept the same. The Respondent has raised disputes regarding the consumables part of the non-core assets and as such, the Applicant is unable to proceed with the e-auction process in respect of the same.

8. Hence, IA. 980/KB/2021 has been filed seeking direction upon the respondent to release the said consumables to the applicant as and when required by him.

9. Further, this Adjudicating Authority, in its order dated January 4, 2022 in IA 756 of 2021 has granted certain reliefs and concessions. In the said order, the right to pursue the insurance claim filed by Liquidator has been granted as a relief to the Applicant therein and exclusion of "non-core assets" is not mentioned from the sale as going concern. As such, the Applicant has filed I.A. 103/KB/2022 seeking the modification of order dated January 4, 2022.

Analysis and Findings:

10. Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel for the Respondents and perused the records.

11. On perusing the order dated 3.07.2020, it is clear that the Non- Core Assets that were allowed to be sold included the following:

i. Flats in Haldia

ii. Land at Bishnupur and Singur;

iii. Silico Manganese Slag (waste);

iv. Vehicles;

v. Raw material.

Since the insurance policies are not included in the non-core assets, and are instead a part of the assets sold as going concern to the Respondent, the relief granted to the Respondent vide order dated 4.01.2022 is a valid one and the said order need not be amended. As such the Applicant's claim that the insurance claims do not come under the purview of the sale of Corporate Debtor as a going concern and that the Respondent has no right in regard to said insurance claims is untenable and rejected.

12. Further, it is evident from Annexure G to the Reply to I.A.103/KB/2022, that the liquidator, vide email dated February 26, 2022, offered to sell the said consumables at a price of ☐ 9,69,000/- and the said offer was also accepted by the Kashvi Power and Steel Pvt. Ltd vide email dated February 26, 2022.

13. This Adjudicating Authority has further been informed during the course of hearing that while the instant interlocutory applications were pending for adjudication, the Liquidator of the Corporate Debtor and the Respondent had come to a conclusion wherein it was decided that the said "non-core assets" will be sold to the Respondent for a sum of ☐ 9,69,000/- which was higher than the reserve price of the said "non-core assets".

14. Therefore, in view of the aforementioned communication between the parties to this application, it is evident that both the parties knew and agreed that the said consumables did not form a part of the assets sold as a going concern and agreed that that there would be sold to the Respondent separately.

15. Therefore, having regard to the aforesaid communication between the parties and the subsequent events which transpired during the pendency of I.A. 980/KB/2021, the said interlocutory application has become infructuous and by consent and agreement of both the liquidator and the purchaser, the same is dismissed as infructuous.

16. Further, in light of the above-mentioned circumstances, I.A. No. 103/KB/2022 has also been rendered infructuous and is accordingly dismissed.

17. CP (IB) No. 723/KB/2019 to come up on 14.04.2023 for filing the progress report.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

