(2020) 07 NCLT CK 0139

In the National Company Law Tribunal

Case No : Interlocutory Appeal (IB) No. /Kb Of 2020 In Company Petition (IB) No. 723/Kb Of 2019

Rishav Coke Product Private Limited — APPELLANT

Vs

Modern India Con-Cast Limited And Ors — RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:
Insolvency And Bankruptcy Code, 2016 — Section 9
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 29, 29(2)

Citation : (2020) 07 NCLT CK 0139

Hon'ble Judges : Jinan K.R., J;Harish Chander Suri, Member (Technical)

Bench : Division Bench

Advocate : Vikash Singh

Final Decision : Disposed Of

Judgement

Jinan K.R., J

1. Mr. Samir Kumar Bhattacharyya the Resolution Professional filed this unnumbered application being IA(IB) No. /KB/2020 in CP(IB) No. 723/KB/2019, praying for permission for sale of Non-Core Assets outside the ordinary course of business and for utilizing the sale proceeds or part thereof towards (1) 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 on 04/09/2019, (2) reinstatement of security services at the Plant and (3) IRP costs.

2. Although this application was filed before the lockdown, because of the declaration of lockdown with effect from 25.03.2020, on account of pandemic COVID-19 the same could not be taken up for hearing. The applicant explained the reason for an early hearing before lifting the lockdown, and the explanation for an early hearing having been satisfactorily explained, it was listed for hearing today through Video Conferencing after issuing notice to the applicant.

3. Brief facts:

4. The Corporate Debtor was admitted under the Corporate Insolvency Resolution Process (In short, 'CIRP') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, 'I & B Code') vide order dated 22/10/2019. The Corporate Debtor has two units - one is situated at Bhuniaraichak, J. L. No. 122, Haldia-721635, Post Office and Police Station - Durgachak, District - East Medinipur, West Bengal (in short, "Haldia Plant") and the other is situated at Plot Nos. L-7 to L-15, WBIIDC Bishnupur Industrial Growth Centre, P.O. Dwarika, Dist. Bankura, Bishnupur - 722122 (in short, "Bishnupur Plant") and together collectively referred to as the "Plants".

5. The Corporate Debtor is not in operation at the time of admission under CIRP due to disconnection of electricity on 23/05/2019 by the West Bengal State Electricity Distribution Co. Ltd. for non payment of their dues. As a result the operations at the Plants were severely affected and over and above agitations were growing amongst the workmen at the Plants for non payment of their dues. On account of the closure of operations at the Plants, all the workmen working at the Plants were retrenched/released which resulted in payment of retrenchment compensation and gratuity benefits to the workmen. On the basis of available records, there were approximately 135 (one hundred and thirty-five) employees under the direct payroll of the Corporate Debtor and contract labour working at the Haldia Plant were consisting of 368 labourers/workmen and 42 (forty two) heads were in charge of security at the Plants.

6. Due to non-payment of retrenchment compensation and gratuity benefits to the retrenched/released workmen by the Corporate Debtor, there were agitations causing several unrest and turmoil at the Plant. On the basis of available records an agreement was arrived at the Office of the Deputy Labour Commissioner, Haldia on 04/09/2019 and the same was recorded in writing. In terms of the said agreement dated 04/09/2019, it was agreed that apart from the payment of wages for the months of July and August 2019 along with bonus and leave encashment, gratuity payment towards the retrenched workmen would also be paid by the Corporate Debtor within 45 (forty five) days there from and that under the said agreement dated 04/09/2019 it was also agreed that a lump sum amount of Rs. 15,000/- (Indian Rupees Fifteen Thousand) per workman was to be paid by the Corporate Debtor within November 15, 2019 as 'retrenchment compensation' and that the said agreement dated 04/09/2019 has also provided that one M/s. Karan Global Security Services Private Limited, who was the provider of security services at the Haldia Plant should be paid Rs. 10,00,000/- (Indian Rupees Ten Lakhs Only) to all workmen on equal sharing basis and the Corporate Debtor was directed to settle all provident fund related problems of 5 (five) workmen of one M/s. Sri Sai Srinivasa Engineering Works being a licensed contractor. A copy of the said agreement dated 04/09/2019 is annexed as Annexure "B".

7. There are certain non-core assets of the Corporate Debtor lying at the Plants

including idle raw materials and consumables along with 3 Flats at Haldia, Land at Bishnupur, Land at Singur, Silico-Manganese Waste (Slags) and vehicles. At the 3rd CoC meeting held on 18/02/2020 the CoC by voting share of 67% has recommended sale of non-core assets of the Corporate Debtor in terms of Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Annexure "C" annexure "D" respectively) so as to use the same to meet the dues towards the released/retrenched workmen as well as to meet the IRP costs. In the above scenario the Resolution Professional has filed this application before this Tribunal on 5th March 2020 seeking, inter alia, the relief referred to above.

8. Heard the Ld. Counsel Mr. Vikash Singh for RP and Mr. Samir Kumar Bhattacharyya, Resolution Professional, in person. Perused the records and notes of argument submitted on the side of the RP.

9. The Ld. Counsel for RP, submitted that the operation of the Corporate Debtor's factory was closed before admission of CIRP. Due to closure of factories of the Corporate Debtor workers were retrenched. Due to non payment of retrenchment compensation to the worker there was an agreement arrived at between the management and the workmen at the Office of the Deputy Labour Commissioner, Haldia dated 04/09/2019. Dues are not paid to the workmen in terms of the agreement by the erstwhile management of the Corporate Debtor. They are agitating now for the same at the factory. According to him, invitation for expression of interest was called for and if the agitation of workmen continues it will be difficult to have a good value from prospective Resolution Applicants. He said that the labour unrest can only be solved by paying the retrenched workmen dues as per the above agreement dated 04/09/2019. He further added that, even if the CD is ordered to be liquidated even then for enabling the RP to maximise the value of the core assets of the CD, it is good to sell the non-core assets as described in the below mentioned table.

Sl. No.	Particulars	Book Value (Rs.)	Fair Value (Rs.)	Liquidation Value (Rs.)
1.	Flats at Haldia	52,60,727	31,39,500	21,97,500

3.

Land at Bishnupur & Singur

23,21,39,301

5,96,73,000

5,06,08,500

5

Silico Manganese slag (waste)

0

44,10,000

33,08,000

6

Vehicles

8,84,836

4,87,500

4,05,500

7

Raw Material

5,49,12,781

76,03,500

64,63,000

Total

29,31,97,645

7,53,13,500

6,29,82,500

Referring to the above non-core assets he would say that the money fetched from the sale of non-core assets will be first utilized to pay retrenched workmen dues. After paying the workers' dues, the rest amount may be used to meet CIRP costs or for other purposes to be decided by the CoC. He also submitted that all the requirements to seek permission to sell as specified under Sub Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been complied and would submit that the book value of all assets to be sold in aggregate shall not exceed ten percent of the total claim admitted and given the details of total admitted claim as described in the below drawn table:

Sl. No.	Particulars	Claims Filed (Rs.)	Claims Admitted (Rs.)
1.	Financial Creditors	428,84,82,755	428,49,62,755
2.	Operational Creditors	229,78,66,855	213,74,67,039
3.	Workman Claims	95,88,000	93,53,000
5	Others	0	0
	Total	659,59,37,610	643,17,82,794

Referring to the details as shown above he would submit that 10% of total admitted claims is Rs. 64,31,78,279 and the total book value of non core assets as shown above is Rs. 29,31,97,645 and therefore, the sale of the said non-core assets of the Corporate Debtor is permissible under law. He also highlighted the copy of minutes wherein the CoC has passed a resolution by a vote of sixty seven per cent in compliance of Sub Regulation 2 of Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The copy of minutes shows that in the 3rd CoC meeting held on 18/02/2020 the CoC by vote share of 67% has recommended sale of non-core assets of the Corporate Debtor in terms of Regulation 29. He also would submit that the other financial creditors have not voted because they have not received the approval from higher authorities.

10. We have heard the Ld. Counsel for the RP as well as the RP in person at length. For clarification, we asked the Ld. counsel regarding the assets included for sale which are admittedly mortgaged with four financial creditors namely JM Financial Asset Reconstruction Company Ltd.; State Bank of India; Punjab & Sind Bank; and Hinduja Leyland Finance Ltd., the Ld. Counsel submitted that the unencumbered assets which are mortgaged with the above said four financial creditors are members of CoC, and they are willing to relinquish their mortgage rights subject to the order passed by this Learned Adjudicating Authority.

11. The CD Company was engaged in the manufacturer of Ferro Alloys at Haldia and not in operation since May 23, 2019. It has come out in evidence that there are labour unrest due to non fulfilment of an agreement arrived at in between the previous management of the CD and the retrenched workmen under the guidance of the Deputy Labour commissioner. For Claiming their dues agitations are going on. Upon perusal of the records, and upon the above referred data and submissions on the side of the RP we are satisfied that even if the CD will be revived, the assets to be sold are not critical to the production of the goods nor critical to generating revenue. Truly, the non-core assets to be sold have value and can be important to the CD to maximise the value during the period of CIRP. It cannot be ruled out that prospective resolution applicants or bidders in case of liquidation will not come forward if the labour unrest brought to our notice continued. From the foregoing discussions we do find some force in the argument advanced on the side of the RP that the sale of non-core assets are not central to the profitability of the CD company and its sale only helps the RP to maximise the value upon satisfying the workmen by clearing their dues.

12. Sale of non-core assets outside the ordinary course of business during CIRP is not uncommon. In Mr. Ashish Chhawchharia Housing Development Finance Corporation Ltd., State Bank Ltd. Vs. Jet Airways, the Hon'ble NCLT New Delhi (PB) (CA 998 of 2020 in CP(IB) 2205/MB/2019) has held that:

"In pursuance thereof, the applicant is hereby permitted to sell the Premises for utilizing the proceeds of the sale of the 3rd and 4th floor to settle the claims of HDFC at INR 360 crores, upon HDFC giving up security interest, charge, or any other rights in respect of the Premises and withdrawing the pending Application simultaneously against receipt of the above sum of INR 360,00,00,000 with no further responsibility or liability on HDFC for or towards any further or other costs, charges, claims in connection with the insolvency process or otherwise howsoever, including in the event of any liquidation of the Corporate Debtor, and HDFC charge, security interests, and rights in Debtor, and HDFC charge, security interests, and rights in the Premises shall remain unaffected until receipt of the full sum of INR 360,00,00,000 and the balance sums remaining from the sale proceeds of the 3rd and 4th floor of the Premises towards settlement with US Exim and CIRP costs".

Here in this case, the purpose of sale is for 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 on 04/09/2019; reinstatement of security services at the Plant and for payment of IRP costs. The CoC has approved the said proposal by a vote of 67%.

13. In view of the matter and legal position discussed above we are of the considered view that the prayer for sale of non - core assets listed above and utilizing the sale proceeds or part thereof to meet the dues towards the released/ retrenched workmen as well as to meet the IRP costs, is liable to be allowed. Accordingly, we allowed the application upon the following order:

(a) RP is permitted for sell Non-Core Assets outside the ordinary course of business and for utilizing 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 on 04/09/2019; reinstatement of security services at the Plant and for IRP costs as prayed for.

(b). Unnumbered IA(IB) No. KB/2020 in CP(IB) No 723/KB/2019 is disposed of accordingly.

(c). The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

