
(2022) 10 NCLT CK 0026

In the National Company Law Tribunal

Case No : IA No. 2663/MB/C-II/2022 In C.P (IB) No. 2849/MB/C-II/2018

?Sherisha Powertech Pvt Ltd

APPELLANT

Vs

Sundaresh Bhat Liquidator of EMCO Limited

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 53, 0(5)

National Company Law Tribunal Rules, 2016 — Rule 11, 154(1)

Citation : (2022) 10 NCLT CK 0026

Hon'ble Judges : P. N. Deshmukh (Retd.), Member (J); Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Vikram Nankani, Ayush Rajani

Final Decision : Disposed Of

Judgement

CA 555/2022

1. The present Application is filed for Seeking Rectification of Order dated 09.09.2022. The prayers sought vide this Application are as follows:

a) Direct that the Approval Order dated 09.09.2022 be rectified/corrected as follows:

i. In Para 27, the following statement be deleted: "We direct the Applicant to deposit the balance sale consideration with 30 (Thirty) days from date of this order. Failure, if any on part of the Applicant to deposit the balance sale consideration within 30 days shall result in forfeiture of the EMD and cancellation of sale of the Corporate Debtor. Further, the Applicant shall be liable to deposit the balance sale consideration along with 12% p.a. interest from 22.04.2022 (after 30 days of date of issuance of demand letter dated 22.03.2022) in accordance with Schedule 1 Regulation 12 of the Liquidation Regulations.";

ii. In Para 28, the following statement be deleted: "We direct the Applicant to deposit the balance sale consideration into the Liquidation Account in accordance

with Regulation 41 of the Liquidation Process Regulations. The said sale consideration shall be along with 12% p.a. interest 22.04.2022 since then distributed by the Liquidator in terms of Section 53 of the Code"

iii. In Para 28, the following statement be deleted: "For the aforesaid reasons prayer clause (E) (a) is rejected.";

iv. In the 'Remarks' column of sub-paragraph 'E' of Paragraph 31 of the Approval Order, word 'retention' be rectified and replaced with the word 'reduction'.

v. In the 'Remarks' column of sub-paragraph 'P' of Paragraph 31 of the Approval Order, the word 'renewable' be rectified and replaced with the word 'renewal';

vi. In the 'Remarks' column of sub-paragraph 'AA' of Paragraph 31 of the Approval Order, the word 'recovery' may be rectified and replaced with the word 'renewal';

vii. In the 'Remarks' column of sub-paragraph 'BB' of Paragraph 31 of the Approval Order, the statement "Subject to payment of recovery fees if any of such licensing authority" be deleted and replaced with "since the applicant should not be saddled with the liability prior to the issuance of sale certificate";

viii. In the 'Remarks' column of sub-paragraph 'CC' of Paragraph 31 of the Approval Order, the statement "Subject to payment of recovery fees if any of such licensing authority" be deleted and replaced with "since the applicant should not be saddled with the liability prior to the issuance of sale certificate".;

ix. In the 'Remarks' column of sub-paragraph 'EE' of Paragraph 31 of the Approval Order, the words "Subject to payment of recovery fees if any of such licensing authority" be deleted;

x. In the 'Remarks' column of sub-paragraph 'FF' of Paragraph 31 of the Approval Order, the words "recovery fees if any of such licensing authority" be replaced with "applicable fees if any payable to appropriate authority for change in registered office"

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b) grant liberty to the Applicant to amend, alter, modify, delete, rescind and/or substitute any prayer(s);

c) pass any further orders(s) or directions that this Hon'ble Adjudicating Authority may deem fit and proper.

2. The present application ("Application") is being filed on behalf of Sherisha Powertech Pvt. Ltd. ("Applicant"/ "SPPL") the successful bidder in the e auction process for sale of EMCO Limited ("Corporate Debtor") as a whole including its legal entity, brand name and its financial assets ("Auction Asset"). The Respondent in the present Application is the Liquidator of the Corporate Debtor.

3. The Application is being filed seeking rectification of the order dated 9

September 2022 ("Approval Order") passed by this Adjudicating Authority in I.A. No. 870 of 2022 ("LA. 870"), approving the sale of the Auction Asset to the Applicant. A copy of the Approval Order was uploaded on the NCLT website on 12 September 2022. Upon perusal of the Approval Order, it appears that certain inadvertent errors, apparent on the face of the record, have crept in the Approval Order which require immediate rectification by this Adjudicating Authority. Further, there is lack of clarity in respect of issue of payment of interest on the balance sale consideration, for which urgent clarification is prayed from this Hon'ble Adjudicating Authority.

4. Hence, the present Application is being filed seeking necessary clarification/rectifications/deletion in the Approval Order.

5. We have perused the records and noted that the order requires rectification. Therefore, Order dated 09.09.2022 stand rectified as follows:

i. In the 'Remarks' column of sub-paragraph 'E' of Paragraph 31 of the Approval Order, word 'retention' be rectified and replaced with the word 'reduction'.

ii. In the 'Remarks' column of sub-paragraph 'P' of Paragraph 31 of the Approval Order, the word 'renewable' be rectified and replaced with the word 'renewal';

iii. In the 'Remarks' column of sub-paragraph 'AA' of Paragraph 31 of the Approval Order, the word 'recovery' is rectified and replaced with the word 'renewal';

6. With the aforesaid corrections in Order dated 09.09.2022, rest of the order is unchanged present IA No. 2663 of 2022 In C.P (IB) No. 2849/MB/C-II/2018 stands disposed of.