

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 28

IA 1693/2024 in C.P. (IB)/3641(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **15.07.2024**

NAME OF THE PARTIES: **AMOD STAMPINGS PVT. LTD**

Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 11

ORDER

IA 1693/2024 in C.P. (IB)/3641(MB)2018

1) Mr. Manoj Kumar Mishra, Ld. Counsel for the Liquidator and Mr. Prakhar Tandon, Ld. Counsel for the Suspended Director are present.

2) The present Interlocutory Application has been filed by the Applicant, praying for the following reliefs:

a) *That this Honorable Tribunal may be pleased to approve the sale of the Corporate Debtor as a going concern to the successful bidder viz. S.M. Electric Works.*

b) *That this Honorable Tribunal may be pleased to issue following directions with respect to the sale of the Corporate Debtor as a going concern:*

i. Writing-off the entire existing shareholding of the Corporate Debtor and issuance of fresh equity shares to the successful bidder.

ii. Continuation of the authority, powers and obligations of the Liquidator to complete the liquidation proceedings and also control and operate the liquidation account.

- iii. Payments to the stakeholders in accordance with Section 53 of the Code;*
- iv. Protection of the successful bidder from all claims, liabilities, etc. pertaining to the period prior to liquidation commencement date of the Corporate Debtor.*
- v. The Registrar of Companies shall change the status of the Corporate Debtor from 'In Liquidation' to 'Active'.*

3) Brief facts leading to the case in hand are as follows:

- a) The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by the National Company Law Tribunal, Mumbai Bench (NCLT) by its order dated 13th August, 2019. After carrying out the CIRP, the Resolution Plan submitted by Shri R.B. Shinde, the Resolution Applicant, with the total financial outlay of Rs.15 crores to be paid over a period of 12 months was approved by the NCLT by its order dated 25th March, 2021.
- b) However, the Resolution Applicant failed to raise the required amount of Rs 15 crores within a period of 12 months and, therefore, Bank of India, the sole financial creditor, filed an application before the NCLT for liquidation of the Corporate Debtor and the NCLT, by its order dated 28th June, 2023 ordered the liquidation of the Corporate Debtor under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 {Code) and appointed Shri Anil Seetaram Vaidya as the Liquidator.

- c) At the second meeting of the sec held on 30th August, 2023, after consultation with the SCC, it was decided to carry on the E Auction process for sale of the Corporate Debtor by following two methods simultaneously viz. (a) To sell the Corporate Debtor as a going concern (b) To sell the assets of the Corporate Debtor
- d) At the said meeting, the draft E Auction Process Information Document was also deliberated and the suggestions of the SCC on the same were accepted by the Liquidator. The sale notice for the E Auction was published in two newspapers viz. Financial Express in English (All Editions) and Loksatta in Marathi on 1st September, 2023 and was also uploaded on the website of the IBBI and the Corporate Debtor.
- e) At the Third Meeting of the SCC, Mr. R.B. Shinde, the promoter/shareholder of the Corporate Debtor and the successful resolution applicant during the CIRP of the Corporate Debtor, informed that a potential investor viz. Modern Insulators Ltd. is willing to do the necessary investment for implementation of the Resolution Plan approved by the NCLT subject to some modifications and for the purpose of carrying out the due diligence of the Corporate Debtor by the potential investor, he requested for extending the timeline of the Liquidation Process for a period of one month. The members of the sec, at the said meeting, deliberated on the proposal

from Mr. Shinde and Modem Insulators Ltd, the potential investor, regarding the resolution of the Corporate Debtor.

- f) The Fourth meeting of the sec was held on 16th October 2023, mainly to review the position in respect of the proposal from Mr. R.B. Shinde, shareholder of the Corporate Debtor. At the said meeting, the Liquidator informed that, as advised by SCC, he has kept on hold the E Auction at the stage of submission of Expression of Interest and postponed further stages of E Auction by one month and informed the prospective bidders who had submitted the Expression of Interest before 15th September 2023, about the revised schedule of the E Auction.
- g) The Liquidator convened the Fifth Meeting of the sec on 30th October, 2023 at which the E Auction report received from M/ s Linkstar Infosys Private Limited was placed before the sec by the Liquidator. He informed the SCC that the highest bid submitted by S.M. Electric Works, Pune for Rs 6,05,91,998/- is 32.32% above the reserve price and as per the terms and conditions of the E Auction Process Information Document, S.M. Electric Works, Pune, being the highest bidder is eligible to be declared as the successful bidder. The members of the SCC advised the Liquidator to accept the highest bid of S.M. Electric Works, Pune in Method I viz. "To sell the Corporate Debtor as a going concern" and carry-on further process of sale of the

Corporate Debtor as a going concern in terms of the E Auction Process Information Document, the Liquidation Process Regulations and the Code.

h) The Liquidator then sent a Letter of Intent dated 30th October, 2023 to the successful bidder viz. S.M. Electric Works, Pune, informing that the bid submitted by it for buying the Corporate Debtor as a going concern has been accepted in consultation with the SCC and it has been declared as the successful bidder. It was asked to confirm its acceptance of the Letter of Intent within two days and make the payment of 25% of the bid amount on receipt of which an agreement will be executed between the Liquidator and S.M. Electric Works to give effect to the sale of the Corporate Debtor as a going concern on the broad terms mentioned in Clause 10.1.2 of the E Auction Process Information Document S.M. Electric Works conveyed its acceptance of the Letter of Intent on 1st November, 2023. However, in spite of the follow-up from the Liquidator, S.M. Electric Works could not deposit the full bid amount within 90 days i.e. before 28th January, 2024 and requested the Liquidator for extension of time for payment of the full bid amount which was not allowed by the Liquidator in view of the provisions of the Liquidation Process Regulations not giving him the authority to extend the time for the payment. In view

of this, the fresh E Auction was initiated by the Liquidator and the sale notice was published in the newspapers on 5th February, 2024.

- i) On the application of S.M. Electric Works, the NCLT allowed 60 days time from 28-1-2024 for payment of the remaining bid amount and directed the Liquidator to stay the fresh E Auction Process by its order dated 27-2-2024. S. M. Electric Works paid the 25% of bid amount in cash on 2-3-2024 and submitted post-dated cheques for balance bid amount to the liquidator as per the NCLT's order.
 - j) In view of the fact that the highest bid in the E Auction has been received in the Method I viz. "To sale of the Corporate Debtor as a going concern, and there are no specific regulations framed by the Insolvency and Bankruptcy Board of India for the sale of the Corporate Debtor as a going concern, the present application is being made to the Adjudicating Authority seeking its approval for the sale of the Corporate Debtor as a going concern.
- 4) Heard Ld. Counsel for the Parties extensively and perused the material available on record.
 - 5) The Ld. Counsel for the Applicant submits that the sale of the Corporate Debtor as a going concern is in accordance with E-auction process note and the consideration for such sale has been received in full. It is also submitted that the Regulation does not specifically provide for sale of the Corporate Debtor as a going concern in Liquidation, hence, it is considered necessary

to seek approval of this Tribunal, in this relation. We have noted these facts and confirm the said sale. Besides this, the Applicant has sought certain directions in consequent to the sale of the Corporate Debtor. We have considered the directions which are in nature of transfer of ownership of the Corporate Debtor to the successful buyer and certain consequential reliefs arising from such transfer. Accordingly, we direct the following:

- i. The Successful Buyer shall be entitled to Write-off the entire existing shareholding of the Corporate Debtor and to issue of fresh equity shares to the successful bidder, after following the due procedure including filing of prescribed forms in relation to these activities. It is clarified that no fresh approval of this Tribunal for enabling the write-off shall be required.
- ii. The Liquidator shall complete the Liquidation Proceedings before handing over of the Corporate Debtor as a going concern and close the Liquidation account. However, it is clarified that the date of sale certificate shall be the date after which the Liquidator shall not be liable for any claim in relation to the Corporate Debtor for the period post date of sale certificate.
- iii. It is clarified that Payments to the stakeholders shall be made in accordance with Section 53 of the Code in relation to the claim up to the date of sale certificate.
- iv. The Successful Bidder shall not be liable to any claims, liabilities, etc. pertaining to the period prior to liquidation commencement date of the Corporate Debtor.

v. The Registrar of Companies shall change the status of the Corporate Debtor from 'In Liquidation' to 'Active'.

6) With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 1693 of 2024, is disposed of. There will, however, be no order as to costs. Ordered Accordingly.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**