THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 391 OF 2023

Under Rule 11 of NCLT Rules 2016

Executive Engineer (Project) Bruhat Bengaluru Mahangara Palike (BBMP)

…**Applicant**

V/s

1. Indo Enviro Integrated Solutions Limited
2. M/s Grant Thornton India LLP, Erstwhile Claim Management Advisor of Infrastructure Leasing and Financial Services Limited

… **Respondents**

In the matter of

C.P. No. 3638/MB/2018

Union of India

…Petitioner

V/s.

Infrastructure Leasing & Financial Services Limited & others

... Respondents

Order delivered on: 07.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Mr. Animesh Bisht a/w Ms. Roma Bhojani, Advocates
For the CMA	:	Adv. Shwetaank Nigam
For R1	:	Ms. Anusha Nagarajan, Ms. Aakanksha Bhola, and Ms. Maansi Bhavnani, Olive Law

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Company Application CA 391/2023 is filed by Mr. Executive Engineer (Project) Bruhat Bengaluru Mahanagara ("Applicant") in the Company Petition (IB) No. 3638 of 2018 ("Petition") under Rule 11 of NCLT Rules seeking direction from this Bench to direct the Respondent No.1 to pay an amount of INR 17,22,88,480/- (Indian Rupees Seventeen Crores Twenty-Two Lakhs Eighty-Eight Thousand Four Hundred and Eighty Only) under the Concessionaire Agreement dated 4th May 2015 towards cost of re-construction of the shed and the repair/ replacement of 3-shredders, 3-bailers, 1- tractor trailer, 1-front end loader and other equipment.
2. The Applicant and IL&FS Environment Infrastructure and Service Limited (now known as Indo Enviro Integrated Solutions Limited "IEISL") (hereinafter collectively referred to as "Corporate Debtor") entered into a Concessionaire Agreement dated 4th May 2015 for operation and maintenance of Waste Processing Facility of 500TPD at Kannahalli, Bangalore (the "SWM Plant").
   2.1. Due to the negligence of the Corporate Debtor, a major fire broke in the SWM-Plant on 4th Otober 2016, which caused heavy damage to the SWM-shed, the machineries, other equipment installed, and the vehicles parked in the shed. Further, in capacity of an Operation &

Maintenance (O&M) operator of the said SWM Plant, the Corporate Debtor agreed to reconstruct shed of the SWM Plant.

2.2. In the meanwhile, the Applicant learnt about the order passed by this Hon'ble Tribunal in Company Petition No. 3638 of 2018, suspending the directors of the parent company/group company of IEISL i.e., IL&FS Ltd. and new directors were appointed to take over the affairs of IL&FS Ltd. and its 348 other subsidiaries, including the Corporate Debtor.

2.3. The Corporate Debtor vide email dated 16th June 2020 directed the Applicant to file its claim through Form-B before Respondent No. 2, as they were appointed as the Claims Management Advisor by the NCLT, Mumbai. On 13th July 2020, the Applicant upon discussions with the Respondent No.2 filed Form B claiming Rs. 17,22,88,480/- towards refund of the expenses incurred to rebuild the shed and to replace the machinery, other equipment and accessories to their original status.

2.4. Respondent No. 2 vide email dated 24th August 2020 informed the Applicant to get the claim adjudicated and at present are not able to admit the same. The Applicant invoked the dispute resolution clause 7.2 & 7.3 under the Concessionaire Agreement for adjudication of its claim and filed Reference No. 03 of 2021 before the Chief Commissioner of BBMP. By an order dated 25th February 2022, the Ld. Chief Commissioner directed the Corporate Debtor to pay INR 17,22,88,460/- to the Applicant within 15 days from the date of the Order. The Corporate Debtor has failed to pay the debt.

2.5. On 10th May 2022, the Applicant issued demand notice in Form 3 to the Corporate Debtor for payment of the outstanding dues of INR 17,22,88,460/-which was sufficiently served on the Corporate Debtor. The Corporate Debtor vide its letter dated 30th May 2022 while not disputing the claim of the Applicant, wrongfully refused to pay stating that the claim pertains to the period prior to the cut of

date and hence stands extinguished and also challenged the Reference Order dated 25th February 2022 before the Hon'ble High Court of Bengaluru on frivolous grounds.

2.6. It is further stated while several communications and correspondences were taking place between the Applicant and the Respondent No. 1, the Respondent No. 1 acting through its new Board and during the Corporate Resolution Process, agreed to reconstruct the shed and repair/replace the plant and equipment burnt in the fire accident. It is also pertinent to note that the new Board and the management representing Respondent No. 1 were aware of the money received towards insurance by the Respondent No. 1 towards the burnt plant and equipment but have intentionally never paid the Applicant in amounts.

2.7. The Respondent No. 1 was aware of its duty to reconstruct the shed and repair/replace the plant and equipment, which it assured during the tenure of the resolution process and was inclined to utilize the insurance monies towards the same. However, the Respondent No. 2 grossly ignored this fact and had compelled the Applicant to file the claim though the Respondent No. 1 already agreed to reconstruct the shed and repair/replace the plant and equipment, during the resolution process. The Respondent No. 2 was duty bound to check the Books of Accounts of the Respondent No. 1 to substantiate the claim, wherein it is evidence that the insurance monies were already received by the Respondent No. 1.

2.8. The Corporate Debtor has wrongfully refused to pay the Applicant its dues and hence the present Application is filed.

3. The Respondent No.1 has placed on record certified copies of the Orders dated 10.8.2022 and 1.9.2022 of the Hon’ble Karnataka High Court in WP No. 9370 of 2022 whereby the impugned order dated 25.2.2022 as well as demand notice dated 29.3.2022 issued by the Applicant was stayed.

4. The Respondent No.2 filed affidavit in reply stating that the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), vide its order dated October 15, 2018 placed the Infrastructure Leasing and Financial Services Limited Group ("IL&FS Group") into a comprehensive moratorium. In furtherance to the resolution framework approved by the Hon'ble NCLAT, the creditors of the IL&FS Group were required to file their claims up to October 15, 2018 ("Cut-Off Date") with the Claim Management Advisor, which was to be duly verified and collated.

   4.1. Subsequently, under the guidance of the new board of directors ("New Board") of Infrastructure Leasing and Financial Services Limited and as proposed by Union of India, a resolution framework was proposed under the third progress report dated December 17, 2018 read with the first addendum dated January 15, 2019, and the same was further alerted by the second addendum dated December 15, 2019 (the third progress report, modified by the first addendum and second addendum) (hereinafter referred to as the "Resolution Framework Report").

   4.2. Under this Resolution Framework Report, and as confirmed by order of the Hon'ble NCLAT dated February 11, 2019, the entities in the IL&FS Group were classified into 3 sections - green entities, amber entities, and red entities.

   4.3. The IL&FS Group invited proposals from various consultants for the role of the resolution consultant (subsequently referred to as Claim Management Advisor ("CMA") for companies of the IL&FS Group, the first set of companies for which the claims were to be collated and managed were identified by the New Board as entities in phase I.

   4.4. Pursuant to the screening of proposals from various entities, the New Board approved the appointment of Grant Thornton Bharat LLP, as the CMA for the IL&FS Group phase I entities. Subsequently Grant

Thornton Bharat LLP was also appointed as CMA for entities that were made of phase II, Phase III and phase IV.

4.5. The Application has been filed by Executive Engineer (Project), Bruhat Bengaluru Mahanagara Palike ("Applicant") against Indo Enviro Integrated Solution Limited (Formerly known as IL & FS Environmental Infrastructure & Services Limited) ("Respondent No.1"), seeking a direction of a payment of INR 17,22,88,480/- to the Applicant. The CMA has been arrayed as the Respondent No. 2 in the Application.

4.6. In terms of the claims management process under the resolution framework, the Applicant had submitted its claim on June 17, 2020 with the CMA under Form-B as prescribed under the Code and CIRP Regulation and thereafter submitted a revised Form-B on July 13, 2020 for a sum of INR 17,22,88,480/- in relation to IL & FS Environmental Infrastructure & Services Limited on account of (a)losses caused due to burning of the shed, (b) cost of three balers and three shedders and its accessories, (c) cost of one front end loader, (d) cost of trailer, (e) interest @18% and (f) cost of litigation.

4.7. Upon verifying the information available with the CMA in relation to Respondent No. 1, it was ascertained by the CMA that the claims of the Applicant were in the nature of damages which arose due to a fire which had arisen allegedly due to the actions of the Respondent No.1. Such claims being in the nature of damages would require to be adjudicated by way of trial and production of evidence to establish the claim of the Applicant and subsequently the quantum of damage would be ascertained. As stated above, the role of the CMA is only limited to collation and verification of claims of the various creditors and hence, the CMA cannot venture into the process of adjudication of claims.

4.8. In light of the above, the CMA sent an email to the Applicant on August 24, 2020 ("August 24 E-Mail") stating that the CMA was

unable to admit the amount on account the nature of claims which were submitted by the Applicant were under the purview of adjudication and the CMA does not have the power to adjudicate claims and only have the power to collate and verify the same.

4.9. Subsequently, the resolution plan for Respondent No.1 was approved by the NCLT Mumbai on February 2, 2021. It was after the resolution plan was approved that the Applicant issued a demand notice dated March 29, 2022 by which they informed the CMA of a Reference Order dated February 25, 2022 by which the Respondent No. 1 was directed to make payment of a sum of INR 17,22,88,460/- to the Applicant. Such demand notice was responded by the CMA on March 29, 2022 by which the Applicant was informed that as the resolution of the Respondent No. 1 was completed, the claim management process was also over. The CMA further informed that they had a very limited role in the Resolution Framework of the Respondent No. 1 and is not privy to the contents of the resolution plan and the process in which the resolution of the Respondent No. 1 will take place which includes the distribution of payments to the various creditors.

4.10. From a bare reading of the Application, it is seen that no allegation has been made against the CMA in the Application and none of the reliefs sought in the Application are against the CMA. For convenience of this Tribunal the prayers contained in the Application are set out herein below.

5. Heard the Learned Counsel and perused the material on record.

5.1. In the present case, the amount claimed in this application, was claimed in the Corporate Resolution Process by filing the claim, however the same came to be rejected by the Respondent No. 2, who was responsible for collating and verification of claims of creditors in resolution process of the Respondent No. 1, on the ground that the order passed by the Commissioner, determining the claim

amount, is after the cut-off date. In terms of approved resolution framework, the claims of the creditors were to be admitted with reference to a cut-off date and any claim arising thereafter was to be considered as resolution process cost, if the same meets the criterion to quality it as resolution process cost. It is not in dispute that the claimed amount does not qualify to be resolution process cost. Hence, the claimed amount being pertaining to pre-resolution period was to be admitted if such claim pertained to the period upto cut-off date. It is not in dispute that the said claim amount pertained to pre cut-off period, however came into existence after its determination by the Commissioner in terms of dispute resolution process contained in the Concessionaire Agreement. Admittedly, the claimed amount was not admitted as claim and not dealt with while settling the claim of the creditors out of realisation proceeds of resolution process.

5.2. It is the case of the Applicant that the Respondent No. 1 is a going concern, and is liable to the amount of claim not settled in the resolution process even in its new avatar. We note that the Hon'ble NCLAT in the case of ***Haryana state Industrial and Infrastructure Development Corporation Ltd. v. AAR AAR Technoplast Pvt Ltd. (2022) ibclaw.in 717 NCLAT*** dealt with similar proposition under the provisions of Insolvency & Bankruptcy Code, 2016 wherein the assets of the Corporate debtor were sold on *as is where is basis and on a non-recourse basis,* and the appellant therein sought the recovery of their claim from the auction purchaser contending that "*the assets of the Corproate Debtor have been sold with all the existing and future encumbrances, 'the Auction Purchaser' is liable to pay the dues outstanding with the Appellant*". The Hon'ble NCLAT held at Para 15 that "*The principle of clean slate laid down in the Judgement of the Hon'ble Apex Court in* Committee of Creditors Essar Steels Standard Chartered Bank *is applicable to the facts of this case, though it pertains to a successful Resolution Applicant.* ***The scope and purpose of this***

Code and the ratio of the Judgement is to be interpreted in its truest sense, i.e., not to saddle the purchaser with any hydra head popping up". *The Hon'ble NCLAT further held at Para 16-17 that "once the Liquidation sale has been completed and the Certificate of Sale has been executed followed by handing over possession to the Auction Purchaser, any claim relating to such property for dues prior to the Auction cannot be raised against the Auction Purchaser specifically when the Company is in Liquidation and the dues were already claimed by the said party as an Operational Creditor, during the CIRP process as the Company was in Liquidation and the Appellant had already approached the Liquidator by filing a Form-B and the Liquidator has intimated to the Appellant that there is no amount left for the payment to any Operational Creditor, we are of the earnest view that the Auction Purchaser cannot be made liable for any dues arising on the property before the purchase of the said property in this case. Hence, we do* ***not see any illegality or infirmity*** *in the Order of the Adjudicating Authority and hence this Appeal fails and is accordingly dismissed. No order as to costs.*"

5.3. In the case of ***Eastern Power Distribution Company of Andhra Pradesh Ltd. v. Maithan Alloys Ltd. and Ors. (2022) ibclaw.in 393 NCLAT,*** the Hon'ble NCLAT held that ***"Thus****, the Appellant is entitled to receive pre-CIRP dues as per provisions of section 53. Hence, the Appellant cannot be heard in contending that he should realize the said amount from the Successful Auction Purchaser. The claim of the Appellant to realize the pre-CIRP dues from Successful Auction Purchaser is clearly in conflict of the statutory scheme as laid down in the Code."*

5.4. In the present case, the sale of Respondent No. 1 company was completed on going concern basis in the resolution process carried out in terms of approved resolution framework in terms of provisions of section 241-242 of the Companies Act, 2013. The resolution process approved by the Hon'ble NCLAT is akin to the Corporate Insolvency Resolution Process, though strictly not adopting the provisions of IB Code, 2016, but it incorporates the salient features

thereof. It is trite law that a successful buyer can not be fastened with liabilities or obligations arising upto the period of sale, and the asset, in question even if legal entity itself, has to be sold on clean slate principle, unless the buyer specifically agrees to take on liabilities, whether in full or part. In the present case, it is not in dispute that the Respondent No. 1 legal entity was sold to its present management on going concern with all its liability upto the date of sale having been settled in terms of the Resolution Framework. Hence, Respondent No. 1 can not be fastened with any liability on account claim of the applicant.

5.5. It is not in dispute that the claim of the Applicant was in relation to the period upto cut-off date and the amount of such claim was quantified later on. The obligation of the Respondent No. 1 legal entity was in knowledge of the new board of the legal entity during its resolution process. Accordingly, we consider it appropriate to direct Respondent No. 2 to admit their claim and settle the same in accordance with the distribution framework approved for the purpose, if the proceeds are available for distribution. In case, the proceeds have already been distributed, this Tribunal is of view no relief could be granted at this stage in this case.

6. In view of the above, CA 391 of 2021 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)