

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB) No. 1102/ (KB) /2022

In CP(IB) No. 170/KB/2017

Application under Section 60(5) of IBC, Code 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016; and in the matter of Regulation 39(8) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

In the Matter of:

RBL Bank Limited

.....Financial Creditor

And In the Matter of:

MBL Infrastructure Limited

...Corporate Debtor

And

In the matter of:

1. MBL Infrastructure Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 308, 3rd Floor, Bani Corporate One, Commercial Centre, Jasola, New Delhi – 110 025.
2. Anjaneer Kumar Lakhotia, residing at B-37, 1st Floor, Soami Nagar (South), New Delhi – 110 017.

....Applicants

Versus

West Bengal Highway Development Corporation Limited, having its office at HRBC Bhawan, 4th & 5th Floor, Minshi Premchand Sarani, Kolkata – 700 021.

...Respondent

Date of Pronouncement of order: 01.05.2024

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Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Ratnanko Banerji, Sr. Adv.] For the Applicant

Mr. Shaunak Mitra, Adv.

Mr. Kanishk Kejriwal, Adv.

Ms. Neha Somani, Pr.CS

Mr. Anjan Chakraborty, Adv.] Respondent in A(I.B.C)/1178(KB)2022

Mr. Raja Satyajit Banerjee, Adv.

Ms. Krishnika Chatterjee, Adv

Mr. Dipankar Das, Adv.] For Respondent in IA(I.B.C)/1102(KB)2022

Ms. Sanjana Nandi, Adv.

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard.
3. This application has been preferred by MBL Infrastructure Limited and Anr. (applicants herein) to seek the following reliefs:
 - a. The Respondent be directed to forthwith unconditionally release in favour of MBL the materials, plant, machinery, equipment and other assets belonging to MBL lying at the Bezra Stackyard in Chandannagar, particulars whereof are stated in Annexure- 15 thereto;
 - b. Order be passed directing the local district administration and particularly, the police authorities and particularly, the police authorities in Chandannagar, West Bengal to provide necessary assistance including police help to MBL to remove its assets lying at Bezra Stackyard in Chandannagar;

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- c. Order be passed directing the Respondent to forthwith pay to MBL the accrued idling / rent charges as more fully stated in Schedule of Annexure -11 thereto;
 - d. Ad-interim orders in terms of prayers above;
4. The Corporate Insolvency Resolution Process (in short CIRP) was initiated against the Applicant by this Adjudicating Authority vide order dated 30.03.2017 under the provisions of IBC, 2016.
 5. The Resolution Plan dated 22.11.2017 submitted by the Applicant No. 2 namely **Anjaneer Kumar Lakhotia** was approved by the Committee of Creditors (CoC) with 78.50% voting shares and approved by this Tribunal on 18.04.2018.
 6. A challenge to the said order dated 18.04.2018 before the Hon'ble NCLAT met with a dismissal on 16.08.2019. Civil Appeal 8411 of 2019 preferred before the Hon'ble Apex Court challenging the order dated 16.08.2019 of the Hon'ble NCLAT was dismissed on 18.01.2022.
 7. Thus the Resolution Plan attained a finality being approved in the higher fora. This Tribunal passed its order dated 11.03.2022 for implementation of the approved Resolution Plan and formally excluded the period from 18.04.2018 to till 18.01.2022 when the matter was receiving consideration before the Hon'ble Apex Court.
 8. The Applicant No. 2 being the promoter of Corporate Debtor MBL Infrastructure Limited is presently the Chairman and Managing Director of the MBL Infrastructure Limited as also the Resolution Applicant whose Plan stands approved till the Hon'ble Apex Court.
 9. It is submitted that the approved Plan contemplates that all assets of MBL Infrastructure Limited shall be available to it for

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utilization and under Section 30(1) of IBC. The Plan is binding on all the Creditors, Government Authorities and Stakeholders.

10. That on 04.12.2013, the Respondent WBHDCL had entered into a contract with MBL Infrastructure Limited for strengthening and widening of 4 Lane of Dankuni – Chandannagar Section of NH-13 from Km 0+000 to Km 21+061 – NIT No. CIV/PCK-I/DN_CDN/13-14” for short “Project”).
11. The WBHDCL had illegally purported to terminate the contract on 03.08.2017. Pertaining thereto MBL had invoked arbitration clause before a three Member Arbitral Tribunal where WBHDCL in course of the matter had come up its counter claims before the Arbitral Tribunal. MBL had submitted a list of its assets being materials and machineries and equipment lying with WBHDCL at its Bezra Stackyard in Chandannagar.
12. Since one M/s. Jai Jagannath Service Station and M/s. Utsa Parking wrongfully purported to take custody of some of the machineries and equipment of MBL had lodged a complaint with the Police Station. Meanwhile, final award was passed on 16.03.2022 declaring the termination of contract by WBHDCL was wrongful and the Arbitral Tribunal also allowed several claims made by the MBL and awarded no payment in favour of the WBHDCL as it had not pressed its counter claim.
13. An application under Section 34 of the Arbitration and Conciliation Act 1996 was preferred before the Hon’ble High Court at Calcutta challenging the majority of award as it failed to allow three specific heads of claim made by MBL. However, a third Arbitrator allowed such claims.
14. WBHDCL also preferred an application under Section 34. While MBL started removing plant and machinery, equipment from the site of WBHDCL, WBHDCL along with officials of PWD,

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West Bengal wrongfully and forcefully stopped MBL and therefore, heated communications were made by WBHDCL to cooperate in the matter.

15. It is submitted by Ld. Counsel appearing for the MBL that such materials, plant and machinery, equipment as noted as appeared of business of MBL and in terms of the Resolution Plan contemplating continued by business of MBL and effective use of its assets and equipment, the MBL should be permitted to use the assets to the fullest. Therefore, directions for release of assets being plant and machinery as well as equipment belonging to MBL lying with WBHDCL at the Bezra Stackyard, in favour of the MBL has been sought.

16. Per contra, the Respondents have refuted the claim on the grounds that MBL cannot enjoy possession of the Bezra Stackyard without making payment of fair rent to PWD, West Bengal. Throughout the CIRP period MBL has been enjoying the possession of the said Bezra Stackyard and as such it is liable to pay the rentals as CIRP cost in full to PWD, West Bengal.

17. We would note the following extract from the Resolution Plan:

“(i) Admitted claims alone will be paid after reconciliation and subject to rights and remedies available.”

“(ii) the dues of existing operational creditors as on the date of resolution plan approval are proposed to be paid within 3 years from approval of resolution plan without any interest, penalties, delay damages, idle charges, loss of profit claims, additional claims over the principal amount due to them etc. Admitted claims alone will be paid after reconciliation and subject to rights and remedies available.”

18. We have heard the Ld. Counsel for the parties perused the records. We have failed to decipher any document filed by

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WBHDCL demonstrating and establishing the fact that they had ever sought for release of rentals during the CIRP period or had ever lodged a claim with the RP.

19. In view of extinguishment of all claims against the Corporate Debtor, we feel it appropriate to allow the application directing the Respondents to immediately release assets of MBL without any further procrastination.
20. With the above directions, **this IA(IB)No. 1102(KB)2022 is disposed of** accordingly.
21. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
22. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 01st day of May, 2024

M. Jana (P.S.)