

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

IA No. 1617 of 2023
C.P. (IB) No. 176/KB/2018

*An application under Section 60(5) of the Insolvency and Bankruptcy Code,
2016,*

read with

Rule 11 of the National Company Law Tribunal

Rule, 2016.

In the matter of:

Impex Metal & Ferro Alloys Ltd.

...APPLICANT

Versus

The Chief Engineer, The Transmission Corporation of Andhra Pradesh &
Anr.

...RESPONDENT

Date of Pronouncement: 16.04.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

Mr. Zeeshan Haque, Adv.	] For the Applicant in
Ms. Tanvi Luhariwala, Adv.	] IA(I.B.C)/2074(KB)2023
Mr. Supriyo Gole, Adv.]
Ms. Madhuja Barman, Adv.]
Mr. Shaunak Mukhopadhyay, Adv.	] For the Applicant in
Mr. Supriyo Gole, Adv.	] IA(I.B.C)/1617(KB)2023
Ms. Madhuja Barman, Adv.]
Mr. Joy Saha, Sr. Adv.	] In IA(I.B.C)/2074(KB)2023
Mr. Sidhartha Sharma, Adv.	] For the Respondent No.1 in
Mr. Rishav Dutt, Adv.] IA(I.B.C)/2074(KB)2023
Ms. Namrata Basu, Adv.]
Mr. Danish Taslim, Adv.]
Mr. S. Mitra, Adv.]

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Mr. Rohit Kumar Keshri, Adv. Mr. Ankit Chaurasia, Adv.] For the Respondent in] IA(I.B.C)/1617(KB)2023
Mr. Devajoyti Barman, Adv. Ms. S.B. Mallick, Adv.	] For the Respondent in IA(I.B.C)/1618(KB)2023
Mr. Kaustubh Rai, Adv.	] For the Respondent in] IA(I.B.C)/738(KB)2021
Mr. Rahul Auddy, Adv. Mr. Aditya Goptu, Adv. Mr. Samir Kumar Bhattacharya, Adv.	] For the Liquidator]] Liquidator
Ms. Deblina Lahiri, Adv. Ms. T. Chetri, Adv.	] For State Bank of India]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court conveyed through a hybrid mode.
2. Heard, Ld. Counsels present for the parties.
3. The applicant of Impex Metal and Ferroy Alloys seeks the following reliefs:
 - a. *“To pass an order directing extinguishment of claims and liabilities of Respondent No.1 against the Applicant company prior to 16th September 2021, i.e., the date of acquisition/purchase of the Applicant company by Auction Purchaser.*
 - b. *To pass an order directing the Respondent No. 1 to refund an amount of Rs. 7,37,389/- as the same is not payable by the Applicant.”*
4. This Tribunal in I.A. (IB) No. 709/KB/2021 in C.P. (IB) No. 176/KB/2018, vide its Order dated 25.11.2021 granted conditional concession on the basis of going concern of the unit and further

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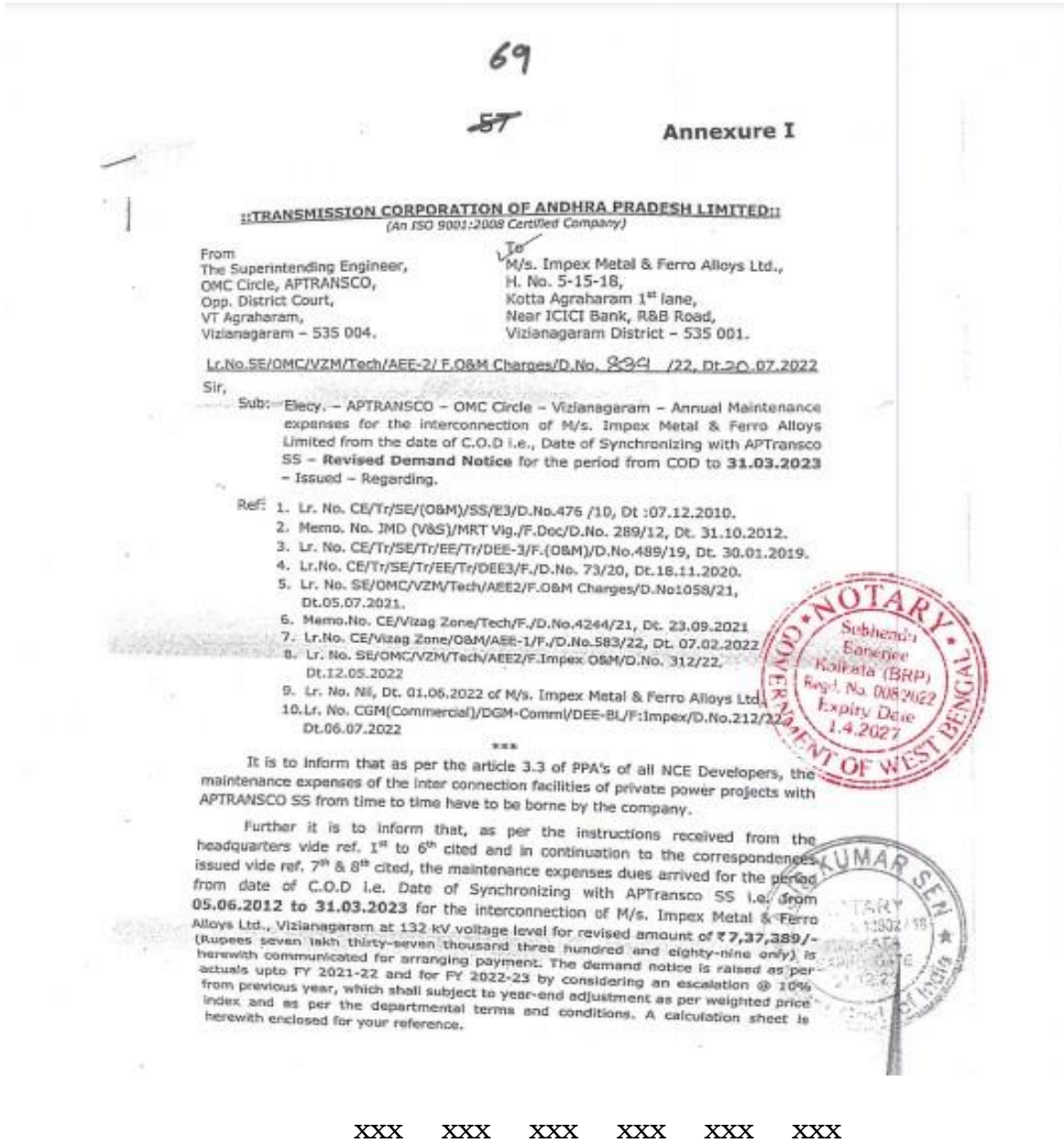
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observed that the said concession is subject to payment of renewal and license fees, the relevant extract being as under:

*“In this factual conspectus, Mr. Joy Saha, learned Sr. Counsel for the appearing for the Applicant, submitted that the purchase and takeover of the Corporate Debtor as a ‘going concern’ as per the Liquidation Process Regulation by the Applicant will not be sufficient to run the operations of the Corporate Debtor. **In order to ensure smooth running of the business of the Corporate Debtor, it is imperative that the Applicant is granted certain additional reliefs/concessions/relations and permissions which would be essential and necessary to run the business of the Corporate Debtor as a ‘going concern’.** Such reliefs are only intended for the purpose of a successful running of the operations of the Corporate Debtor in the future when a new management will strive to bring it back to its feet as these are crucial to kickstart the business of the Corporate Debtor and achieve value maximisation of the Corporate Debtor. Mr. Joy Saha, therefore, urged the court to consider granting the reliefs and concessions prayed for vide Annexure ‘A’ of the Applicant”*

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5. Viewed from this perspective, sale as a going concern implies that the corporate debtor will continue to exist, albeit under a new management. There is a seamless transition from the Liquidator to the purchaser. It envisages a wholesome transfer of immovable property, goods, employee, goodwill, etc. Further, there should not be a change of business after transfer.”

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Sl. No	Prayer/ Annexure Clauses No.	Particulars of the reliefs and concessions prayed	Remarks
7	3(a)	Sale of the assets of the Corporate Debtor shall be binding on all stakeholders including the utility providers and all the utility providers shall continue to supply the utilities as may be required for survival of the Corporate Debtor	Granted
11	3(e)	The Corporate Debtor shall be deemed to be eligible to receive all consents, licenses, exemptions, approvals, rights, entitlements, extensions, waiver, benefits and privileges whether under law, contract, lease or license, which includes without limitation permission for change of land use by the concerned Governmental and/or Regulatory Authorities as may be required by the Corporate Debtor.	Granted subject to payment of renewal fees, if any, to such licensing authorities.

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6. In view of the above it is noted that Respondents would be at liberty to charge renewal fees but not arrear of maintenance prior to sale when the applicant had not even stepped into the shoes of the Corporate Debtor. Accordingly, the amount payable is required to be recast and balance (if any) be refunded to the Applicant. Let the same be done in four weeks with intimation to the Applicant.
7. Hence, the IA 1617 of 2023 is accordingly **disposed of**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 16th April, 2024.

SG, Steno