

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

Item No. 5

IA 1999/2024

In

C.P. (IB)/1587(MB)2019

CORAM:

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

ORDER SHEET OF THE HEARING ON **29.04.2024**

NAME OF THE PARTIES: IDBI Bank Ltd VS Pawar Electro Systems Pvt
Ltd

Section 60(5) OF THE Insolvency And Bankruptcy Code, 2016

ORDER

IA 1999/2024

1. Ms. Bhanu Chopra, Ld. Counsel for the Applicant present. Mr. P.S. Thakre, Ld. Authorized Representative for the Liquidator present.
2. This I.A. 1999/2024 has been filed on 11.04.2024 by Marken Enterprises Private Limited (Successful Auction Purchaser) u/s 60 (5) of the Code seeking following reliefs:
 - a. Approve the sale of Corporate Debtor as a going concern to the Applicant, for the total sale consideration of Rs. 12,50,00,000/- (Twelve Crores Fifty Lakhs Only) (along with applicable interest, if any) out of which a sum of Rs. 1,00,00,000/- be treated as equity infusion and the balance Rs. 11,50,00,000/- be treated as unsecured loan by shareholders;

- b. Direct the cancellation/extinguishment of the entire issued share capital of the Corporate Debtor, including equity and preference shares and convertible instruments (whether pledged or not) held by the current shareholders of the Corporate Debtor, for a consideration equivalent to the amount to be received by such shareholders under Section 53 of the Code;
- c. Direct Registrar of Companies (RoC) to grant following with waive of penal charges for delay in filing and/or waiver of compliance of procedural requirements for the following:
 - i. Change in the registered office of the company from Shop No. 1, Ground Floor, Rajguru Apartments, Baburao Parulekar Road, Dadar West Mumbai Maharashtra 400025 to 93/1 & 93/2, Satpur MIDC Rd, Satpur Colony, Nashik, Maharashtra 422007 (Location of Existing Plant) falling within the Same ROC.
 - ii. Curing past non-compliances by way of permitting filling of various forms to ensure various past compliances including non-adoption of financial statements by erstwhile management.
 - iii. Voluntary revision of previous financial statements for the company under Section 131 of Company Act 2013, if required.
 - iv. Reduction of Capital under Section 66, under the Companies Act, ' 2013 and the Procedure for Reduction of Share Capital rules, 2016.
 - v. Issue of shares on Private placements under Section 42 under the Companies Act, 2013;

- vi. For issuance and allotment of 10,00,000 fresh equity shares of Rs. 10/- each, in favour of the Applicant and its nominees, as follows:

Sr. No.	Particulars	No of Shares	% held
1.	M/s Marken Enterprises Private Limited	9,90,000	99.00%
2.	Mr. Korra Praveen Naik	5000	0.50%
3.	Mr. Parmeshwara Chary Chittoju	5000	0.50%
	Total	10,00,000	100%

- d. Direct that the status of the Corporate Debtor, in the records and website of the Registrar of Companies, be changed from “under liquidation” to “Active”
- e. Direct the reconstitution of the existing Board of Directors of the Corporate Debtor by removal of the existing directors and appointment of the following persons as directors:

Sr. No.	Name of the Directors	DIN
1.	Mr. Korra Praveen Naik	10455194
2.	Mr. Parameshwara Chary Chittoju	10455195

- f. Direct that the change in shareholding of the Corporate Debtor, by virtue of its present sale as a going concern in liquidation, will not disentitle it from carrying forward and setting off losses and depreciation (including unabsorbed depreciation) under the provisions of the Income Tax Act, 1961 - and that S. 79(1) of the Income Tax Act,

1961 shall have no application in relation to such change in shareholding;

g. Direct that upon sale of the Corporate Debtor as a going concern, all outstanding & pending liabilities and/or contingent liabilities, claims and/or penalties shall stand extinguished, including (but not limited to) the following:

a. All claims filed before the Liquidator (whether admitted or rejected) save and except to the extent that these are not settled by way of distribution of Sale Amount in the manner set out in S. 53 of the IB Code;

b. Any claims that were not filed before the liquidator;

c. All statutory dues, taxes, penalties, fines, fees, levies, surcharges, compounding fees etc. that accrue and/or are levied upon the Corporate Debtor (including provident fund, gratuity etc.) upto the date of issuance of Sale Certificate in relation to the Corporate Debtor including (but not limited to) the following;

i. The penalty levied by the Director General of Foreign Trade vide its Orders dated 9 October 2020 and 14 February 2024 (Annexure "G" and "H" respectively);

ii. The penalty levied by the Income Tax Department vide its Order dated 10 March 2024 (Annexure "I")

d. All statutory dues, taxes, penalties, fees, levies, transfer charges, premiums, surcharges (including but not limited to those imposed by any statutory authorities, municipal bodies, lessors etc.) that accrue, arise from and/or relate to the sale of the Corporate Debtor to the Applicant and/or the change of shareholding of the Corporate Debtor by virtue of such sale;

- h. Direct that all assessment proceedings, prosecutions, demand notices, penalty proceedings, show-cause notices and appeals (whether completed or not) in relation to the Corporate Debtor and pertaining to any period prior to the issuance of the Sale Certificate - with respect to the Income Tax, Sales Tax, CST, VAT, CENV AT, MODVAT, Custom duty and/or any other applicable taxes- shall be deemed to have been completed and closed, without any liability, interest and/or penalty being imposed on the Debtor in relation to such proceedings;
- i. Direct that the Corporate Debtor (and its new management), shall not be held liable in any manner, for the non-compliance, breach and/or Violation by the Corporate Debtor (or its old management) prior to the issuance of sale certificate, of any provisions of any statutes, rules regulations , provisions, guidelines, policies, licenses, approval notifications, directions and/or contract, including but not limited to the Income Tax Act 1961, Companies Act 2013, the Foreign Trade (Development and Regulation) Act, 1992, Companies Act, 1956, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Securities Exchange Board of India Act, 1992, Foreign Exchange Management Act, 1999 and any labour laws etc. and/or the rules framed thereunder;
- j. Direct that the Corporate Debtor is exempted from any defaults/ penalties & obligations that may accrue on account of not holding of Annual General Body Meetings for any of the previous financial years prior to the issuance of the Sale Certificate;
- k. Direct the removal of any disability upon the Corporate Debtor (and its new management), as and by way of blacklisting or otherwise, on account of the non-compliance, breach and/or violation by the Corporate Debtor (or its old management) of any provisions of any statutes, rules, regulations, provisions, guidelines, policies, licenses,

approvals, notifications, directions and/or contract- including but not limited to the disability imposed by the Director General of Foreign Trade vide its Order dated 9 October 2020 (Annexure "G");

1. Direct that the pursuant to its sale as a going concern, the Corporate Debtor shall continue to remain entitled to all the assets including all benefits with respect to the CENV AT, MODVAT, MAT Credit, TDS Credit, Input Tax Credit of various taxes including but not limited to central excise, service tax, sales tax, Goods and Service Tax, Custom Duty or cess, or by whatever name known, available as balance keeping in financial statements which pertains to the transactions of the Corporate Debtor for the period prior to the date of the sale certificate;
- m. Direct that upon the issuance of the Sale Certificate, (i) all attachment, charges, lien (including the lien imposed by the Maharashtra Sales Tax Department), encumbrance, mortgage and any other security interest on the properties and/or bank accounts of the Corporate Debtor, whether - ., statutory or otherwise, shall stand extinguished, (ii) the creditors shall issue necessary letters & NOCs confirming such extinguishment and/or release of their charges, and make appropriate filings with the Registrar of Companies, and (iii) all documents pertaining to such properties shall be forthwith returned to the Corporate Debtor upon service of the Orders passed in the present Application.
- n. Direct that in the event of that the employment of any previous employees & workmen remain to be terminated by the Corporate Debtor, upon the issuance of the Sale Certificate, the Corporate Debtor shall be liable to terminate the employment of such previous employees & workmen, notwithstanding any procedures & provisions set out in the Industrial Disputes Act, 1947 - and without inviting any liability for any payment of gratuity in relation to such termination.

- o. Direct that all pending litigation as against the Corporate Debtor, before any court and/or tribunal and/or arbitrator and/or any quasi-judicial authority shall ipso facto stand terminated without passing of any order in any manner adverse to the interest of the Corporate Debtor & Applicant, and in the event that any judgment, decree or order has been passed in such litigation by any court, tribunal, arbitrator or authority - the same shall stand extinguished and rendered incapable of execution as against the Corporate Debtor or and/or Its new management;
- p. Direct that any and all claims/causes of action (whether statutory or otherwise) arising against the Corporate Debtor prior to the issue of the Sale Certificate, shall stand barred and no proceedings can be initiated in their regard upon issuance of the Sale Certificate;
- q. Direct that any claim made under any existing bank guarantee or letter of credit issued by banks to any third party based on the applications made by the Corporate Debtor or any guarantee, indemnity, counter indemnity, negotiable instrument issued by the Corporate Debtor to any third party including to any bank for issuance of bank guarantees or letter of credit and all liability of the Corporate Debtor under such guarantees/ indemnities shall stand extinguished on and from the date of the Sale Certificate and that the beneficiaries of such guarantees/ indemnity/ counter-indemnity & negotiable instruments, including the banks issuing bank guarantee shall not have any recourse against the Corporate Debtor and/or its new management;
- r. Direct that no right of subrogation shall be available to third parties/ existing promoters/ shareholders/guarantors of the Corporate Debtor under any guarantees/ indemnities/ contractual comforts/collateral provided by such parties to any creditor of the Corporate Debtor and all such subrogation rights shall stand extinguished;

- s. Direct that all notifications with regards to defaults filed with Credit Information Bureau (India) Limited, any information utility, RBI or any other regulatory authority for and on account of Corporate Debtor, shall be withdrawn by the respective financial creditors and all accounts of the Corporate Debtor shall stand regularized and their asset classification shall be “standard” for the purposes of all the Applicable loss;
- t. Direct that any invocation or enforcement action already undertaken under the Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 and/or Recovery of Debts And Bankruptcy Act, 1993, against the Corporate Debtor (and/or any of its assets) shall stand automatically revoked and cancelled and deemed null and void, and financial creditors shall take requisite action to ensure that any/all pending matters in relation thereto (filed before the DRT or otherwise) shall stand withdrawn.
- u. Direct that pursuant to the issuance of the Sale Certificate, the Corporate Debtor (and/or the persons in its new management) & the Applicant, and/or any persons related thereto, shall not be rendered disqualified under Section 29A of the IB Code, from submission of resolution plans in relation to any other company, only on account of the previous defaults of the Corporate Debtor or its existing associates or subsidiaries;
- v. Direct that any action, write-off, waiver and/or exemption sought for and granted herein, shall not give rise to any liability under the Income Tax Act, 1961, whether on account of Minimum Alternate Tax liability or otherwise - and any such liability that may arise would stand waived.
- w. Direct the Registrar of Companies to take note of all directions passed herein and forthwith carry out changes in its records pertaining to the

Corporate Debtor, upon submission of necessary forms along with a copy of any orders passed in the present Application.

- x. Direct the Registrar of Companies to accept all statutory filings as may be carried out by the Liquidator I Applicant, without insisting upon the Corporate Debtor remedying the non-submission of any statutory filings for any of the previous Financial Years i.e. (FY prior to the issuance of the sale certificate);
 - y. Direct that upon issuance of the Sale Certificate, all original documents pertaining to the Corporate Debtor be handed over the Applicant.
3. This application by the Applicant i.e. Marken Enterprises Private Limited seeks approval for the acquisition of Pawar Electro Systems Private Limited as a going concern, currently under liquidation. Marken Enterprises emerged as the successful bidder in an e-auction conducted by the liquidator. They aim to revive the Corporate Debtor that is Pawar Electro Systems and resume its business operations, primarily in manufacturing medical equipment. However, they express concerns about the substantial outstanding liabilities and penalties faced by Pawar Electro Systems, which exceed the sale amount.
- 3.1. The Applicant emphasizes the necessity of obtaining additional reliefs, concessions, and permissions to ensure the successful revival of Pawar Electro Systems. They seek directions from this Hon'ble Tribunal to extinguish outstanding liabilities, terminate pending litigations, regularize accounts, and facilitate a smooth transition of ownership. Marken Enterprises asserts that without these reliefs, the revival of the Corporate Debtor namely Pawar Electro Systems would be compromised, hindering its operational continuity, and emphasizes the Hon'ble Tribunal's authority to grant the requested reliefs essential for the corporate debtor's successful revival.

- 3.2. In or around December 2023, the Applicant came across an E-Auction Notice issued by the Liquidator for sale of the Corporate Debtor (as a going concern), which notice was published in the 'Financial Express' newspaper on 21 December 2023. As per the E-Auction Notice, the reserve price for the Corporate Debtor was set at Rs. 12,50,00,000/- (Twelve Crores Fifty Lakhs Only). The Earnest Money Deposit (EMD) amount was 10% of the reserve price, i.e. Rs. 1,25,00,000/- and the E-Auction was scheduled for 19 January 2024.
- 3.3. Being desirous of bidding for the Corporate Debtor, the Applicant participated in the Auction process by submitting the requisite documents and deposited the EMD Amount of Rs. 1,25,00,000/- (Twelve Crores Fifty Lakhs Only) and submitted its bid for a sum of Rs. 12,50,00,000/-, being Reserve price;
- 3.4. The Applicant has been informed by the Liquidator that the Director General of Foreign Trade, Pune ("DGFT") has issued an Order-in-Original dated 9 October 2020, imposing a penalty of Rs. 3,58,23,025.00/- on the Corporate Debtor ("2020 DGFT Order", copy annexed at Annexure "G"). The 2020 DGFT Order further purports to blacklist the Corporate Debtor from obtaining any license or authorization or scrip or any instrument bestowing financial or fiscal benefits, as per Rule 7 of Foreign Trade (Regulation) Rules, 1993. The 2020 DGFT Order was passed after the CIRP Order and was thus illegal and void having been issued during the subsistence of the Moratorium under Section 14 of the IB Code. However, Since no appeal was filed against the 2020 DGFT Order, the DGFT has issued a further Order dated 14 February 2024 directing the District Collector, Nashik to recover the aforesaid penalty amount from the Corporate Debtor, as an arrear of land revenue.

4. Heard learned counsel for the both sides and perused the materials available on record.
- 4.1. Prayers a, b, d, e, g to k and m to y are allowed. In relief clause C all relief except relief C(iii) and C(iv) are also allowed. In so far as c(iii) and c(iv) is concerned, the applicant shall follow the prescribed procedure and the concession shall be available in accordance with the relevant law only.
- 4.2. As regards to place clause f; The carry forward of losses under income tax law in terms of section 79 shall only be available to the extent and in the manner prescribed under the Income Tax act.
- 4.3. As regards relief clause l, the corporate debtor shall be entitled to all the assets, however, the balances relating to tax credits under direct and indirect tax law shall be available only to the extent as are admitted by the department as the date of sale and permissible for such carry forward under the relevant law.
5. In view of above directions, the I.A. 1999/2024 is **partly allowed and disposed of.**

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
/NP/

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)