

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2594 OF 2024

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Earls General Trading Private Limited
...Applicant

Vs.

Ms. Gomti Ramchandra Choudhary,
Liquidator of M/s. Vintage Comtrade
Private Limited

...Respondent

In the matter of

C.P. (IB) 1143/MB/2022

Earls General Trading Private Limited

... Financial Creditor

Vs.

M/s. Vintage Comtrade Private Limited

... Corporate Debtor

Order delivered on: 10.06.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Arjun Padhiyar
For the Respondent : None Present

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present application is filed by Earls General Trading Private Limited, the successful auction purchaser of the Corporate Debtor who has purchased the Corporate Debtor, namely M/s. Vintage Comtrade Private Limited as a going concern and therefore, for smooth functioning of the corporate debtor has preferred the present application seeking for certain reliefs, concessions, waivers and exemptions for the proper acquisition of the corporate debtor.
2. The Liquidation order came to be passed by this Tribunal on 06.12.2023 appointing the Respondent herein as a liquidator of the corporate debtor and further this Tribunal directed the liquidator to first go for sale of the corporate debtor as a going concern and thereafter if the same fails, than the liquidator can take other modes for sale of the assets of the corporate debtor.
 - 2.1. The Liquidator published notice on 06.03.2024 for selling the corporate debtor as a going concern. The Applicant herein

submitted its bid on 19.03.2024 for participating in the public auction in relation to the sale of corporate debtor as a going concern.

2.2. The Auction for sale of corporate debtor as a going concern came to be held on 29.03.2024 where the applicant came to be declared as the H1 bidder for bidding an amount of Rs. 1,49,500/- and accordingly sale confirmation letter dated 30.03.2024 came to be issued by the Respondent Liquidator.

2.3. The applicant made the entire payment as per sale confirmation letter dated 30.03.2024 and accordingly, the sale certificate dated 15.04.2024 came to be issued by the liquidator.

2.4. Hence, the applicant for smooth functioning of the corporate debtor has preferred the present application seeking for certain reliefs, 6 concessions, waivers and exemptions for the proper acquisition of the corporate debtor.

2.5. The Applicant has sought the following relief/concession

- a. The purchaser would be free to reorganize staff, employees and workers without any kind of burden/obligation resulting from the pre-acquisition operations and to design its own model of employment which includes contractual, fixed term, in the form of consultants, on probation, on a regular basis from anywhere without any reservation for a particular state or region.
- b. All the past claims against the Company by any related/unrelated party and all past liabilities of the

Company towards any related party /unrelated party whether the said claimant has filed any claim or has not filed any claim, shall stand automatically discharged and all such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever against _ the Company and/ or the new management of Company.

- c. The Purchaser is entitled to get all the rights, title and interest over whole and every part of the corporate debtor.
- d. The purchaser seeks that from the date of approval of these reliefs, the Board of Directors of the Corporate Debtor be re-constituted as per the Companies Act, 2016. The purchaser shall nominate the name of proposed board of directors of corporate debtor by filling requisite forms with Registrar of Companies; existing board shall be replaced with new board.
- e. The constitutional documents of the Corporate Debtor including the Memorandum of Association and Article of Association shall stand revised. The amendment to the Memorandum of Association, including the revisions to the capital clause therein, shall be pursuant to the approval of these reliefs and shall not require_ any additional approval from the shareholders or otherwise. The Purchaser may cause amendments to the Article of Association of the Company, upon the authorized persons who will be part of

managing and operating the affairs of the company are identified.

- f. The existing share capital of the Corporate Debtor shall stand cancelled. The Liquidator in consultation with the Registrar of Companies (RoC) concerned shall take action for cancelling the existing shares/share capital. The purchaser after approval of the reliefs will issue fresh equity share capital in the favour of the purchaser or any person eligible under Section 29A of the Code. Any other equity linked securities, securities convertible into or exchangeable with equity shares of the corporate debtor and all other securities of the corporate debtor, if any, shall also stand cancelled and extinguished.
- g. Any proceedings pending against the Corporate Debtor (other than against the Erstwhile Promoters or former members of_ the management of the Corporate Debtor) as on date with respect to its liabilities, enquiries, investigations, assessments, claims, disputes, litigations etc. will not have any bearing against the company or the new purchaser.
- h. The purchaser shall not be responsible for any other past claims /liabilities/ obligations etc. payable by the Corporate Debtor as on this date to the Creditors or any other stakeholders including Government dues.
- i. The Purchaser seeks that the cases pending/decreed/ arbitration / Guarantee to third party against the Corporate

Debtor by any court and/or Tribunal and/or any quasi-Judicial authority will not be forced against the Consortium or the Corporate Debtor. Further, all the pending litigations against the corporate debtor shall stand discharged.

- j. The Purchaser seeks that any non-compliance of provisions of any laws, non-filing of documents/ returns, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the issuance of sale certificate shall be deemed to be extinguished.
- k. The Purchaser shall have all the rights to review and terminate any contract that was entered into by the corporate debtor prior to the date of approval of this relief.
- l. The Purchaser shall not be held responsible/ liable for any of the past liabilities of the corporate debtor in inquiries, investigations, assessments, notices, cause of action, suits, claims, disputes, litigations, arbitrations, or other judicial, regulatory or administrative proceedings against or in relation to or in connection with the corporate debtor prior to this date. They shall not have any effect on the purchaser.
- m. Creditors of the Corporate Debtor which include Creditors in any form or category including statutory authorities i.e. GST or Income Tax or any other shall stand extinguished qua the approval of these reliefs as sought by the Purchaser. The statutory authorities will have liberty to receive their

outstanding dues in accordance with Section 53 of the Code from the Respondent-Liquidator.

- n. The Purchaser seeks support and assistance of the Liquidator for the smooth functioning of the corporate debtor to complete the entire process of transfer for purchasing the corporate debtor as a going concern.
- o. As on the Liquidation commencement date (i.e. 06.12.2023), all outstanding negotiable instruments, issued by Company or any other person on behalf of Company shall be deemed to have been cancelled/shall stand terminated and no liability shall arise on the same.
- p. The Purchaser seeks assistance of the Liquidator and further liberty to take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet of the corporate debtor.
- q. To obtain fiscal viability, the Company shall be allowed to carry forward and set off the accumulated business losses, unabsorbed appreciation, accumulated capital losses etc., as per Income Tax Act, 1961, against the income of the subsequent years under the income tax laws after take over (100% acquisition) of the Company by the Acquirer.
- r. Any claim for contingent liability of the Company over and above captured in the E-Auction Process Memorandum shall stand fully discharged/settled/waived as per the provision of the Code.

- s. The Purchaser seeks assistance from the Liquidator to ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government/ Statutory Authorities.
 - t. Any other reliefs as may be granted or allowed to the Purchaser in accordance with the 18B1 (Liquidation Process) Regulations, 2016.
3. Heard the Counsel and perused the material on the record.
- 3.1. The Applicant has submitted that mere purchase of the Corporate Debtor as a 'going concern' as per Liquidation Process Regulations will not suffice. In order to ensure smooth running of the business of the Corporate Debtor, it is imperative that certain additional reliefs / concessions / relaxations / and permissions are allowed which would be essential and necessary to run the business of the Corporate Debtor as a 'going concern'. Unless these reliefs / concessions / permissions are provided, the purpose of the revival of the Corporate Debtor as a 'going concern' under Liquidation Process Regulations will not be achieved. In fact, these permissions / relaxation / concessions / reliefs are crucial to kick start the business of the Corporate Debtor and achieve value maximization of the Corporate Debtor.
- 3.2. We note that the sale of the Corporate Debtor as going concern was concluded without any condition precedent for grant of relief and concession. However, we are conscious of the fact that the Applicant should not be burdened with any

liability or obligation which was not known or expressly taken over by the Applicant. In other words, the Corporate Debtor has to be transferred to the Applicant as going concern on clean slate principle. Accordingly, we consider the appropriate to grant the relief/concession prayed and specified in clause 9(a) to 9(d), clause 9(g) to 9(p), and Clause 9(r) to 9(t).

3.3.As regards clause 9(e), we hold that the constitutional documents of the Corporate Debtor including the Memorandum of Association and Article of Association shall stand revised subject to necessary filing and payment of applicable fees to the Registrar of the Company. However, the amendment to the Memorandum of Association, including the revisions to the capital clause therein shall not require any additional approval from the shareholders or otherwise.

3.4.As regards clause 9(f), it is clarified that the existing share capital of the Corporate Debtor shall stand cancelled. However, the Corporate Debtor shall file necessary form along with the copy of this order with the Registrar of the Company along with the applicable fees. The purchaser may issue fresh equity share capital in the favour of the purchaser or any person eligible under Section 29A of the Code. Any other equity linked securities, securities convertible into or exchangeable with equity shares of the corporate debtor and all other securities of the corporate debtor, if any, shall also stand cancelled and extinguished.

- 3.5. As regards clause 9(q), the Corporate Debtor shall be allowed to carry forward and set off the accumulated business losses, unabsorbed appreciation, accumulated capital losses etc., as per Income Tax Act, 1961, against the income of the subsequent years under the income tax laws after take over (100% acquisition) of the Company by the Acquirer subject to compliance with the necessary condition if any contemplated under the Income Tax Act, 1961 in relation to such carry forward and only if such carry forward and set off is permissible under the Income Tax Act, 1961 in such cases.
4. In view of the foregoing, the IA No. 2594 of 2024 is partly allowed and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)