

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P (IB)-292/(MB)/2017
MA 2689/2019, MA 2803/2019, MA
2742/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAJESH SHARMA
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 26.8.2019

NAME OF THE PARTIES: M/S Edelweiss Asset Reconstruction Company Ltd
V/s
M/S Bharati Defence & Infrastructure Ltd
Section 7 of the Bankruptcy and Insolvency Act, 2016

ORDER

41. **MA 2689/2019, MA 2803/2019, MA 2742/2019 In C.P. (IB)-
292/(MB)/2017**

MA 2803/2019 has been filed by the Liquidator seeking an extension of the period for submission of the compromise or arrangement of the scheme for the Corporate Debtor by a period of 90 days with effect from 12.8.2019 such that the compromise or scheme arrangement for the Corporate Debtor can continue till 10.11.2019.

The applicant contends that the Corporate Debtor, Bharti Defence and Infrastructure Ltd, is under Liquidation and as per the directions of Hon'ble NCLAT, applicant is seeking time for submission of Scheme of Compromise or arrangement with the creditors or members of the Corporate Debtor as provided for under Section 230 of the Companies Act, 2013 by further period of 90 days beyond the original 90 days allowed for such process in accordance with the directions of Hon'ble

NCLAT in the matter of Superna Dhawan &Anr. Vs Bharti Defence and Infrastructure Ltd & Ors. In Company Appeal (AT) No. 195 of 2019.

It is pertinent to mention that Hon'ble NCLAT in Company Appeal No.195/2019 has passed an order that "Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in "*S. C. Sekaran v. Amit Gupta & Ors.*" (Supra), this Appellate Tribunal allowed 90 days' time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme.

Given the order passed by Hon'ble NCLAT, it is clear that Hon'ble NCLAT has authorised this Tribunal to extend 90 days if there is a chance of approval of arrangement of scheme.

Ld. Counsel appearing on behalf of Edelweiss Asset Reconstruction, Financial Creditor is vehemently opposing this application for extending the further time. It is also important to point out that in this case, earlier resolution plan was submitted by Edelweiss Asset Reconstruction which was approved by CoC, but that resolution plan was rejected by this Bench, and this order of rejection of resolution plan was confirmed by NCLAT. Now the unsuccessful resolution applicant/Financial Creditor wants the Corporate Debtor to be liquidated.

Ld. Counsel for the Liquidator further submitted that he had received one scheme which is under consideration and he is hopeful for receiving more scheme for consideration. It is important to mention that Hon'ble NCLAT has also observed that the liquidation will be death of the Corporate Debtor, which should be avoided.

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In the circumstances, it is justified to extend the period of 90 days with effect from 12.8.2019.

It is also directed that Liquidator will ensure that the proposals are invited and the Schemes should be received in such way to ensure that some reasonable financial commitment commensurating with the value of the scheme is taken in the form of EMD, which can be forfeited, in case of non finalization of the scheme.

MA 2803/2019 is disposed of accordingly.

MA 2742/2019 has been filed by the liquidator, seeking a stay in Recovery proceedings bearing no 287/2018 and the e-auction notice dated 10.7.2019 wherein e-auction of Vessel No. V-419 has been ordered. The liquidator has also sought permission to initiate appropriate legal action on behalf of the Corporate Debtor against the order dated 24.4.2019 passed by the Ld. DRT Ahmedabad in OA 172/2016.

The Applicant contends that the GOL Offshore Ltd and the Corporate Debtor, vide a Ship Building Contract dated 21.11.2011 entered into an agreement whereunder the Corporate Debtor agreed to build, launch and deliver V-419, for a total price consideration of US\$30 million. As per contract, it was agreed between GOL and BDIL that the title and risk shall pass to GOL only upon delivery thereof being effected, it being expressly understood that, until such delivery is effected, the vessel and the equipment are at the entire risk of the BDIL that the total ownership V-419 was agreed to be completely that of BDIL, until and unless the delivery thereof was effected. It is important to note that till date, V-419 has not yet been entirely constructed, and consequently its delivery has not however been made to GOL.

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It is also pertinent to mention that Ld. DRT-I, Ahmedabad, vide its order dated 24.4.2018 held that V-419 does not belong to the Corporate Debtor, based on that the Recovery Officer has directed the Vessel V-419 to be auctioned off, by virtue of which an asset of the

Corporate Debtor, may be taken away from the liquidation estate of the Corporate Debtor, which may cause immense prejudice to the liquidation process of the Corporate Debtor. As per provision of section 238 of the IBC, 2016, it has overriding effect over all other laws to the extent of inconsistencies between the two. It is contended that the orders dated 1.11.2018, 14.3.2019 and 10.7.2019 passed by the Ld. Recovery Officer ordered the attachment and auctioning of Vessel No. V-419 are also ex-facie illegal as they emanate from the order dated 24.4.2018 passed by the Ld.DRT-1 Ahmedabad during the pendency of Moratorium against the Corporate Debtor.

It is pertinent to mention that during the moratorium period under section 14 of the IB Code,2016 the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited. Further during the moratorium period DRT-I, Ahmedabad has passed the alleged order of auction.

In the circumstances, we hereby pass an order to restrain the respondent from auctioning the Vessel V-419 during the liquidation proceeding without prior approval of this tribunal.

MA 2742/2019 is disposed of accordingly.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)