

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 413 of 2021

IN THE MATTER OF:

Damodar Valley Corporation

...Appellant(s)

Versus

Shriramrathi Steels Pvt. Ltd. & Anr.

...Respondent(s)

Present:

For Appellant : Ms. Maninder Acharya, Sr. Advocate with Ms. Madhumita Bhattacharjee, Ms. Shreya Garg, Advocate.

For Respondents : Mr. Shatadru Chakraborty, Ms. Kanchan Yadav, Advocates.

ORDER
(Hybrid Mode)

26.07.2024: This appeal is filed against an impugned order dated 07.05.2021 on an application I.A. No. 316/KB/2021 in CP(IB) No. 391/KB/2018. This application was filed by the Respondent *viz* the purchaser of the properties of Corporate Debtor, sold by liquidator through public auction held on 24.01.2020. The applicant has sought directions against the Appellant herein to grant electricity connection to the factory premises purchased by the applicant under the said auction. While the said application was pending, the impugned order was passed as under:-

“24. The question is whether the DVC is entitled to charge the third-party purchaser for the defaults committed by the previous consumer, in terms of the WBERC Regulations. DVC has also raised the question of maintainability of the application. Further, the question whether liability of the previous consumer will fasten on every third-party purchaser when the properties have been purchased in a public auction under the aegis of the IBC, is a legal issue that will have to be gone into. This is a matter that

will have to be considered after inviting reply affidavits from the respondents. The matter is likely to take some more time before a decision can be arrived at, due to the prevailing pandemic situation, and considering that only urgent matters are begin taken up for hearing.

25. In the meantime, the successful auction purchaser cannot be made to sit idle while awaiting a decision in the matter, since successful energisation of the factory will enable it to start functioning, leading in turn to some gainful employment to the workers.

26. In keeping with this noble intent, we issue the following directions: -

(a) The demand of ₹6,78,33,434/- made by DVC upon the successful auction purchaser, SBEG Consultants Private Limited, the applicant herein, shall be stayed and no coercive action shall be taken by DVC in this regard without leave of this court;

(b) Respondent No.2/DVC shall process the application filed by SBEG Consultants Private Limited, the successful auction purchaser, as if the same was a request for a brand-new connection on temporary basis;

(c) DVC shall communicate the requirements for a new temporary connection to the SBEG Consultants Private Limited within a period of ten days from today;

(d) Upon receipt of such a communication, the applicant/SBEG Consultants Private Limited, shall make the applicable security deposit with DVC to enable the latter to process the application, within two weeks from the date on which the communication is received from DVC;

(e) Once the requisite formalities are completed, DVC shall install the meters and energise the connection within a further period of two weeks thereafter.

27. We make it clear that at this stage, not making any observations as regards maintainability of the present application and the other legal issues raised, which will all be decided after reply affidavits are filed. We are making these orders only so that the factory can be restarted at the earliest, which will provide some employment to the workers in this pandemic which has already caused sufficient hardship, particularly to the workers. These orders may not be construed in any other manner by either side.”

2. During the pendency of this appeal, pursuant to an order dated 29.06.2021, an interim arrangement was entered into between the parties. The said order is as under:

“4. Parties may discuss between themselves and state before next date whether for the amount of Rs. 678,33,434/- (referred in Para 26 of Impugned Order) they would accept between themselves arrangement of giving of security by the Auction-Purchaser partly by a deposit in Fixed Deposit or Bank Guarantee or any other mode convenient to both the sides.

5. If parties agree between themselves, we would act on that or on next date we will pass suitable orders regarding disputes being raised.”

3. In pursuance of the arrangement between the parties a new connection was installed in the aforesaid premises, purchased by the auction purchaser, on deposit of an amount of Rs. 2,28,66,131/-. Said arrangement is being continued till date.

4. The application I.A. No. 316 (*supra*) is still pending before the Ld. NCLT and in view of para 27 of impugned order, the question *qua* maintainability and other issues need to be decided by the Ld. NCLT.

5. Hence in view of the above it will appropriate if the interim arrangement be continued till the disposal of I.A. No. 316/KB/2021 by Ld. NCLT.

6. In view of the above understanding / interim arrangement between the parties we set aside the impugned order dated 07.05.2024 and post the matter before the Ld. NCLT for disposal of the said application no. 316 (*supra*). All contentions as raised by the Appellant and the Respondents shall remain open. The interim arrangement shall continue, without prejudice to the rights of the parties and subject to the outcome of application i.e. I.A. No. 316/KB/2021. In view of above, this appeal is disposed of. Pending application also stand dispose of.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

R.N./Manu.