

ITEM NO.2

Court 3 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3299/2020

**KRIDHAN INFRASTRUCTURE PVT. LTD. (NOW
KNOWN AS KRISH STEEL AND TRADING PVT. LTD)**

Appellant(s)

VERSUS

VENKATESAN SANKARANARAYAN & ORS.

Respondent(s)

**(With appln.(s) for IA No. 110408/2020 - APPROPRIATE ORDERS/
DIRECTIONS)**

Date : 25-11-2020 These matters were called on for hearing today.

CORAM :

**HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MS. JUSTICE INDIRA BANERJEE**

**For Appellant(s) Mr. K.V. Vishwanathan, Sr. Adv.
 Mr. Gaurav Varma, AOR**

**For Respondent(s) Ms. Meenakshi Arora, Sr. Adv.
 Ms. Misha, Adv.
 Ms. Charu Bansal, Adv.
 Ms. Prabh Simran Kaur, Adv.
 Mr. S. S. Shroff, AOR**

**Mr. Ashish Makhija, Adv.
Ms. Shagun Matta, AOR
Mr. Anurag Bhatt, Adv.
Mr. Deepak Bashta, Adv.**

**UPON hearing the counsel the Court made the following
O R D E R**

IA No 110408/2020 in Civil Appeal No 3299/2020

1 By the order of this Court dated 9 October 2020, the following interim directions were issued:

(i) The operation of the impugned order of the NCLAT dated 8 September 2020, is stayed;

(ii) The appellant shall, in order to demonstrate its ability to implement the Resolution Plan and in compliance with the understanding arrived at on 25 February 2020 deposit an amount of Rs 50 crores, on or before 10 January 2021; and

(iii) The auction of the properties of the Corporate Debtor shall remain stayed in the meantime.

These directions were issued in the context of the observations contained in paragraph 9 of the order which reads as follows:

“Liquidation of the Corporate Debtor should be a matter of last resort. The IBC recognizes a wider public interest in resolving corporate insolvencies and its object is not the mere recovery of monies due and outstanding. The appellant has indicated its bona fides, at least prima facie at the present stage, by unconditionally agreeing to subject itself to the forfeiture of an amount of Rs 20 crores, which has been deposited by it, in the event that it fails to comply with the requirement of depositing an additional amount of Rs 50 crores within a period of three months in terms of the understanding that was arrived at on 25 February 2020. In order to enable the appellant to have one final opportunity to do so, we direct that the appellant shall, in order to demonstrate its bona fides deposit an amount of Rs 50 crores upfront in terms of the understanding which was arrived at on 25 February 2020. The appellant is specifically placed on notice of the fact that should it fail to do so in whole or in part, the entire amount of Rs 20 crores which has been deposited thus far, shall stand forfeited without any further recourse to CA 3299/2020 5 the appellant.”

- 2 By the order of this Court dated 9 October 2020, the order of the NCLAT dated 8 September 2020 was stayed. The NCLAT had upheld the order of NCLT by which the Corporate Debtor was directed to be liquidated. The decision of the NCLT having merged with the order of the NCLAT, the plain consequence is that the direction for the liquidation of the Corporate Debtor would stand stayed. This Court has issued the above directions, acceding to the contention of the appellant that it should be furnished time until 10 January 2021 to deposit an amount of Rs 50 crores to demonstrate its *bona fides* and in compliance with the understanding which has been arrived at on 25 February 2020. The understanding which has been arrived at on 25 February 2020 at the meeting of the erstwhile Committee of Creditors, clearly indicates that the creditors are in support of furnishing the appellant an opportunity of reviving the company and acting in accordance with resolution plan. It may also be noted that the appellant has been put on terms by the direction of this Court to the effect that should it fail to bring the amount of Rs 50 crores within the schedule as fixed, it would necessarily undergo a forfeiture of the amount of Rs 20 crores which has been deposited upfront.
- 3 Besides hearing Mr K V Vishwanathan, learned senior counsel in support of the interim application, we have heard Ms Meenakshi Arora, learned senior counsel appearing on behalf of EARC and Mr Ashish Makhija, learned counsel appearing on behalf of the liquidator.
- 4 The reliefs which have been sought in the interlocutory application are basically for a direction to the liquidator not to impede the process of implementing the approved resolution plan in view of the Minutes dated 25 February 2020. A clarificatory order sought to the effect that the order of this Court dated 9 October 2020 has the effect of staying the liquidation proceedings. Other consequential directions have been sought.
- 5 Ms Meenakshi Arora, learned Senior Counsel appearing for EARC highlighted several grievances against the conduct of the liquidator. It has been urged that there were valuable on-going projects of the Corporate Debtor which have been jeopardized by key personnel being replaced. Moreover, the legal

teams which were pursuing arbitral proceedings qua third parties have been summarily replaced. Ms Arora urged that the Fair Market Value of the assets was reduced without justification by 25% for re-auction. Another grievance is that moneys lying in an escrow account have been transferred. Mr Ashish Makhija, learned counsel appearing on behalf of the liquidator refutes these submissions and submits that after the order of this Court dated 9 October 2020, no steps were taken by the liquidator; the transfer of the moneys which were held in the escrow account to the account of the Corporate Debtor was at the behest of HDFC Bank Limited. It has also been stated that the moneys have been held in a fixed deposit. Moreover, it has been submitted that the erstwhile Committee of Creditors has ceased to exist following the order of liquidation and the creditors of the Corporate Debtor, thereafter would have only a consultative role as members of the SCC. The liquidator has hence challenged the locus of the creditors at the meeting of 25 February 2020.

- 6 At this stage, it is not necessary to enter upon the recriminations between the Liquidator and the Committee of Creditors. We are of the view that having regard to the previous order dated 9 October 2020, an opportunity should be given to the appellant to fulfill its obligation under the Resolution Plan, since the liquidation proceedings have been stayed. We accordingly clarify the order dated 9 October 2020 by directing that (i) the liquidation proceedings shall remain stayed as a consequence of the order and the liquidator as well as the Resolution Professional shall take cognizance of the aforesaid position by taking all necessary steps in accordance with law; (ii) as a consequence of the stay which has been granted on the liquidation proceedings, and the opportunity which has been granted to the Resolution applicant to fulfill the obligations assumed under the plan, all parties shall act on the basis of the above directions passed by this Court on 9 October 2020 and by the terms of the present order.
- 7 Mr K V Vishwanathan, learned Senior Counsel has sought an extension of the period of three months that was granted by the order of this Court dated 9 October 2020 to deposit Rs 50 crores. Learned senior counsel submitted that the interlocutory application was filed before this Court on 27 October 2020

and it was only today that it has been listed. Hence, it has been submitted that a period of one month has been lost in seeking the clarification in the above terms, since the appellant was aggrieved by the failure of the liquidator to take necessary steps to implement the order of this Court. Having considered the matter from all its perspectives, we grant an extension of time for deposit of the amount of Rs 50 crores until 25 February 2021.

- 8 The interlocutory application is disposed of.
- 9 The proceedings shall now be listed in the week commencing 1 March 2021.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master