

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
18-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**IA(IBC)727/2021, IA(IBC)114/2022;  
IA(IBC)321/2022,  
CP(IB) 11/10/HDB/2017**  
U/s 10 of IBC, 2016

**IN THE MATTER OF:**

Kamineni Steels & Power India Pvt Ltd

**...Corporate Applicant**

**CORAM:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA 727/2021 & IA 114/2022** – Common Orders pronounced, recorded vide separate sheets.

In view of the Regulation 44, we have no hesitation to state that, the Successful Bidder has failed in honouring his commitments, as such, we are not inclined to grant any further extension. Accordingly, the following order is passed:

- i. The Liquidator is directed to forfeit and invoke the EMD of Rs.5 crores.
- ii. The Liquidator is directed to start the bidding process afresh and to complete the whole process **within six months**.

With the above direction, **IA 727/2021 and IA 114/2022 are disposed of.**

**IA 321/2022** – Mr. Krishna Grandhi, Learned Counsel appeared via video conference. In view of the orders passed in IA 727/2021, the relief prayed in IA 321/2022 filed by the Financial Creditor became infructuous. Liquidator has reported that sale dated 26.08.2020 has already been cancelled. We record the same. With this direction, this IA is disposed of.

In view of the orders passed in IA 727/2021 and IA 114/2022, the relief prayed in IA 321/2022 became infructuous hence stands disposed of accordingly.

  
**MEMBER (T)**

Syamala

  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**IA NO. 727 OF 2021**

**&**

**114/2022**

**IN**

**CPIB) NO. 11/10/HDB/2017**

**IN THE MATTER OF KAMINENI STEEL AND POWER PRIVATE  
LIMITED**

**Between:**

**Nimmagadda Surya Pradeep Bio-Tech  
Private Limited**

**.... Successful bidder/ Applicant**

**And**

**Kamineni Steel and power Private Limited  
Represented by Mr. Racharla Ramakrishna Gupta  
Liquidator**

**.... Corporate Debtor**

**Date of order: 18.04.2022**

**Coram**

**Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)**

**Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)**

**Appearance:**

**For Applicant : Shri Y. Suryanarayana, Advocate**

**For Liquidator : Shri Raja Shekar Rao Selvaji, Advocate**



**PER: BENCH**  
**COMMON ORDER**

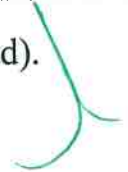
1. The Successful bidder in the e-auction dated 26/08/2020 conducted by the Liquidator of the Corporate Debtor for sale of the assets of the Corporate Debtor has filed this Application i.e. IA No. 727/2021, praying the Tribunal to grant an extension of further 2 months w.e.f. 30/11/2021 till 30/1/2022 for completion of the sale of the Corporate Debtor as a going concern and further sought directions to the liquidator not to forfeit the Earnest Money Deposit (EMD) of Rs. 5 Crores paid by the Applicant herein till the disposal of the instant Application.
2. While the above IA is pending adjudication, another IA bearing No. 114 of 2022 has been filed for further extension w.e.f 31.01.2022 to 28.02.2022 finally, to facilitate the Applicant to pay the balance of Rs. 346 crores after receiving clearance by FIU. Since, the pleadings in both these IAs are same, we are passing a common order.
3. The gist of the facts in the Application are that the Adjudicating Authority vide order dated 26/10/2018 initiated the liquidation proceedings of the Corporate Debtor and appointed Mr. R. Ramakrishna Gupta as the Liquidator of the Corporate Debtor. The Liquidator, in order to maximize the value of the Corporate Debtor, decided to sell the Corporate Debtor as a going concern and therefore as per the provisions of Regulation 32 and 32A of the Liquidation



Regulations, the liquidator issued invitation of expression of interest dated 26-07-2020 in Business Standard (English) and Namaste Telangana (Telugu) newspapers on 27-07-2020 as per Regulation 12(3) of the Code, inviting the bid from the prospective bidders to purchase the Corporate Debtor under liquidation as a going concern and the last date for submission of the EOI was 23-08-2020 with the last date fixed as 26-08-2020.

4. It is stated that the Applicant herein participated in the e-auction conducted by the. Liquidator on 26-08-2020 and was declared as successful bidder. The Applicant herein paid Rs. Five Crores as EMD on 21-08-2020 to take part in the e-auction conducted by the Liquidator on 26-08-2020. The Applicant was unable to arrange the funds immediately and meet the timelines owing to Covid induced lockdown and therefore had sought an extension of 90 days vide IA 1062/ 2020. The said IA is pending for adjudication.
5. In the meanwhile, the Applicant has identified an overseas investor who showed interest to invest in the Corporate Debtor and pay the balance amount of Rs. 346 Crores, towards the sale of the Company under Liquidation as a going concern. However, it is stated that the amount from the said foreign investor is received by the Applicant herein but the said amount is stuck with Financial Investment Unit (FIU) (Unit which monitors the funds received from abroad).





6. It is averred that the same was informed to the Liquidator through various letters and emails and was also submitted before the Bench during the hearing held on 17/09/2021 by the counsel for the Applicant herein and therefore had sought an extension of time of two months. This Tribunal vide order dated 7/10/2021 granted extension with directions to the Applicant herein to make the payment of 25% of the bid amount including the EMD amount of Rs. 5 Crores on or before 30<sup>th</sup> November, 2021.
7. It is further stated that despite vigorous efforts by the Applicant herein to release the said amounts from the FIU, the said amount is still stuck in FIU. In view of the said circumstances, the Applicant herein has filed the instant Application seeking an extension of 2 months w.e.f. 30/11/2021 till 30/1/2022 for completion of the sale of the Corporate Debtor as going concern and further sought directions to the Liquidator not to cancel the bid and call for fresh bids for sale of the Corporate Debtor and not to deposit and forfeit the EMD of Rs. 5 Crores paid by the Applicant till the disposal of the instant Application.
8. In the above backdrop, the point that emerges for consideration of the Tribunal is,  
  
Whether there are valid reasons for extension of time sought for by the Applicant/Successful Bidder?





9. We have heard the Ld. Counsel Shri Y. Suryanarayana, for the Applicant and Shri Ramakrishna Gupta, Ld. Liquidator, perused the record and case laws.

POINT

Whether there are valid reasons for extension of time sought for by the Applicant/Successful Bidder?

10. The record in this case reveals that the Applicant is a successful bidder for purchase of Corporate Debtor as a going concern for Rs. 351 crores. The successful bidder also deposited Rs. 5 crores as EMD to participate in the e-auction conducted on 26.08.2020 and was required to pay balance of Rs. 346 crores on or before 24.11.2020 (i.e. 90 days from the date of e-auction). The ground stated by the Applicant for non-payment of bid amount is their inability to arrange funds owing to covid pandemic from overseas investor and sought for 90 days extension, which is pending for adjudication.
11. While things stood thus, the Ld. Counsel appearing for the Applicant informed the Bench on 16.06.2021 that an IA bearing 260/2021 has been filed, inter-alia, seeking directions to Liquidator not to proceed with cancelling the bid dated 26.08.2020 and not to forfeit the EMD of Rs. 5 crores paid by the Applicant. Considering the lockdown imposed due to covid-19 pandemic and also considering the fact that if the bid is cancelled it would be difficult to find a new bidder, we





directed the Successful bidder to pay 10% amount within 30 days without fail to show his bonafides and adjourned the matter to 14.07.2021

12. On 14.07.2021, the Bench observed that the order passed on 16.06.2021 has not been complied. However, on the submissions made by the Successful Bidder, the Bench passed the following order and adjourned the matter to 01.09.2021.

*Ld. Counsel for Successful Bidder submits that his clients will pay 10% of amount with a month and remaining amount within 3 months from today. We recorded his statement made at bar. We further make it clear that if this has not been honoured then we will be constrained to cancel the entire bid. We direct the Ld. Counsel for Successful Bidder to pay 10% of amount within 30 days without fail.*

13. Thereafter, IA 260/2020 has been heard and disposed of on 07.10.2021, as follows:-

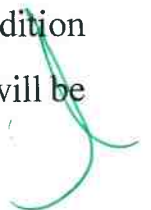
*“Notwithstanding the above and considering the facts mentioned by the Successful Bidder and also keeping in mind that sale as a going concern is always better resolution of the Corporate Debtor than permitting part sale, we give a final chance to the Applicant to make the payment of 25% of the bid amount including EMD amount of Rs. 5 cores on or before 30.11.2021.”*

14. Thereafter, when this IA 772/2021 was listed on 21.12.2021, Learned Counsel for Applicant was directed to file proof of receiving funds in India and the proof of remittance from abroad by the next date of hearing and adjourned the matter to 21.01.2022.



15. When the matter came up on 21.01.2022, Ld. Counsel for Applicant once again prayed for extension of time for compliance of the earlier direction of the Tribunal, stating that, information sought for by the Tribunal could not be obtained from the public office on account of prevailing covid pandemic condition. It is stated by the Applicant that the amount is struck in FIU for want of some clearances and despite continuous efforts the Applicant failed to release the said amount from FIU, however the applicant is hopeful of releasing the money soon by FIU.
16. This Adjudicating Authority, after hearing observed that sufficient time has already been given, considering the prevailing Covid-19 conditions, as a last opportunity, granted two weeks' time to the Applicant and adjourned the matter to 10.02.2022.
17. While the said IA was pending, yet another IA No. 114/2022 was filed on 10.02.2022 seeking further extension from 31.01.2022 to 28.02.2022 on the ground made in IA 727/2021.
18. On 01.03.2022. Ld. PCS Ms. Devangi representing Shri Y. Suryanarayana, Ld. Counsel for the Petitioner sought two weeks' time for depositing the entire amount since deposit of the amount would resolve the dispute once for all. Based on the representation of the Ld. Counsel, two weeks' was granted however on the condition that if the amount is not deposited by 14.03.2022, final orders will be passed on 15.03.2022.








19. On 15.03.2022, Shri Y. Suryanarayana, Ld. Counsel for Applicant filed a memo along with documents stating that an amount of Rs. 451,25,86,000/-has been released by FIU and the investor NSR Jermyn Capital LLC has received the RBI clearance, hence sought further 10 days' time enabling the Applicant to deposit the entire amount. In view of the representation, the matter was adjourned to 04.04.2022 and subsequently to 08.04.2022. Even on 08.04.2022, ~~but~~ the Applicant has not deposited even a pie.
20. Thus, from the facts and circumstances, it is overwhelmingly clear that despite providing sufficient opportunity to SRA, the SRA failed to comply the directions of this Tribunal issued from time to time and has been praying time on some pretext or the other.
22. We find no bonafides, in the plea of the petitioner/ SRA for further extension of time. The petitioner is devoid of any merit or substance. Hence the same is liable to be dismissed.
23. We therefore, hereby dismiss the petition for extension of time and order as follows:-
- (a) The Liquidator is directed to forfeit and invoke the EMD of Rs. 5 crores.





(b) The liquidator is directed to start the bidding process afresh and to complete the whole process **within 6 (six) months.**

24. With these directions, the IA stands disposed of.

  
(Veera Brahma Rao Arekapudi)  
Member (Technical)

  
(Dr. N.V. Ramakrishna Badarinath)  
Member (Judicial)

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