ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO. ACO/3/2023
With
ACO/2/2023
BIFR/153/1987
In
APO/63/2023

IN THE MATTER OF
M/S TATA C0NSTRUCTION & PROJECTS LTD. (IN LIQN.)
-And-
MANJU RAO & ORS.
-Versus-
THE OFFICIAL LIQUIDATOR, HIGH COURT AT CALCUTTA.

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 9th January, 2024

Mr. Debrup Bhattacharjee with
Mr. Ritesh Kr. Ganguly, Advs.
...for the appellants.

Mr. Sanjoy Mukherjee with
Mr. Dhananjay Nayak &
Mr. Arghadip Das, Advs.
...for applicant in ACO/3/2023.

Ms. Smita Das De, Adv.
...for O/L.

The purchaser of the Kharagpur unit of the company, M/s. R.S. Syndicate Pvt. Ltd., seeks leave of this court to participate in this proceedings by filing the application, ACO/3/2023.

Such leave is allowed.

ACO/3/2023 is thus disposed of.

This is an appeal from a short judgement and order dated 30th January, 2023. It was made by a learned single judge transferring the winding-up proceedings relating to the company in liquidation, Tata Construction & Projects Ltd. (In Liqn.) to the National Company Law Tribunal, Kolkata. The appellants were the suppliers of construction materials to the company when it was in existence. The appellants have a claim of Rs.43,62,598/- against the official liquidator in respect of such supply.

We have heard all the parties present before us.

The company was wound up by an order of this court dated 21st April, 2003. It had amongst other assets, immovable properties in Odissa, Bangalore and Kharagpur. These immovable properties were sold in 2013. The company also has movable assets at Kaniha in Odisha, Raigarh in Chattisgarh, Bakreshwar in West Bengal and Bistupur in Jamshedpur. These movable assets have still not been sold.

The most important point in these applications is that the company was wound up about 20 years ago. All its immovable properties have been sold, as stated above. Out of the sale proceeds the preferential creditors and the secured creditors have been paid in full. No share-holder or contributor or any other stake-holder of the company has come forward to revive it. There is practically no possibility of revival of this company.

The Official Liquidator had bound the appellants to a contract. Since the funds available in the said assets of the company are in his custody, it has become his solemn duty to pay the appellants/creditors.

Ms. Smita Das De, learned Advocate appearing for the Official Liquidator, has affirmed before this court that there is no denial or dispute by the Official Liquidator regarding the claim of the appellants.

In those circumstances, the company is almost on the verge of death with no chance of revival in the words of the Supreme Court in Action Ispat & Power Pvt. Ltd. vs. Shyam Metalics & Energy Ltd. reported in (2021) 2 SCC 641 and A. Navinchandra Steels Pvt. Ltd. vs. SREI Equipment Finance Ltd. & Ors. reported in AIR 2021 SC 1180.

Hence, in the interest of all stake-holders and in the interest of justice, the winding-up proceedings should be continued and concluded before the learned single judge.

We request the learned single judge to conclude the same within six months of communication of this order.

We direct the Official Liquidator to pay to the appellants the sum of Rs.43,63,598/- subject to making the statutory deductions like tax at source, service tax etc., if applicable, within four weeks of communication of this order.

All points raised by the Kharagpur unit purchasers before us are kept open before the learned single judge.

The appeal is allowed.

The impugned judgement and order dated 30th January, 2023 is set aside.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

K. Banerjee
A.R. (C.R.)