

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA (IB) No. 264/KB/2021
in
CP (IB) No. 03/KB/2017**

In the matter of

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 and rule 11 of National Company Law Tribunal Rules, 2016.

And

In the matter of:

Nicco Corporation Limited (in Liquidation), having its registered office at 2, Hare Street, Kolkata 700001, in the State of West Bengal.

...Corporate Debtor

And

IA No. 264/KB/2021

In the matter of:

Nicco Eastern Private Limited (previously known as Sourenee Experiences Private Limited), a company within the meaning of the Companies Act, 2013, having its registered Office at Tripura Enclave, Unit-III, 7th Floor, 59, Ballygunge Circular Road, P.S. Ballygunge, Kolkata - 700019 and having its factory unit "Shyamnagar Cable Unit" at Ghoshpara Road (East) P.O. Athpur, P.S. Jagatdal, District-North 24 Parganas, PIN - 743128.

... Applicant

Versus

1. **Nicco Corporation Limited**, represented by Vinod Kumar Kothari, Liquidator of the Corporate Debtor, having his office at 1006-1009, Krishna Building, 224 A.J.C. Bose Road, P.S. Karaya, Kolkata 700017;
2. **Bhatpara Municipality** through the chairperson, having its office at 1/1, West Ghoshpara Road, Post office- Kankinara, District-North 24 Parganas, PIN - 743126;

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3. **The Executive officer, Bhatpara Municipality**, having its office at 1/1, West Ghoshpara Road, Post office- Kankinara, District- North 24 Parganas, PIN - 743726;

...Respondents

Order reserved on: 28.06.2021

Order pronounced on: 13.07.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

Mr. Ratnanko Banerji, Senior Advocate
Ms. Urmila Chakraborty, Advocate
Mr. Ashis Kumar Mukherjee, Advocate } For the Applicant

Mr. Dipak Kumar Mukherjee, Advocate
Mr. Rajib Mukherjee, Advocate
Ms. Shreyasi Bhaduri, Advocate
Mr. Subhrajit Saha, Advocate } For Respondent Nos. 2 and 3

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. **IA (IB) No. 264/KB/2021** is an application filed by **Nicco Eastern Private Limited**, previously known as Sourenee Experiences Private Limited, seeking following directions:-

- a. *“An order declaring and/or adjudging the purported demand notice dated February 1, 2021, issued by the respondent No.2 as null and void;*
- b. *An order, thereby, quashing the purported demand notice dated February 1, 2021 issued by the respondent No.2;*
- c. *Appropriate directions on the respondent No.2 and 3 to immediately*

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grant a Trade License/Enlistment certificate in respect of Shyamnagar Cable Manufacturing Unit in favour of the applicant;

- d. An order, thereby, declaring that the applicant is not liable to make any payment to the respondent Municipality for past alleged dues accrued prior to the date of sale, i.e. October 8, 2020;*
- e. Appropriate directions on the respondent No.2 and 3 to issue necessary Mutation Form to enable the applicant to submit applications for its holding numbers and to grant mutation for the said holdings;*
- f. An order, thereby, staying the purported demand notice;*
- g. Ad-interim orders in terms of aforesaid orders;*
- h. Costs”*

2. The Applicant's case in brief is that: -

- 2.1. An order of liquidation was passed by this Adjudicating Authority on 17.10.2017 against Nicco Corporation Limited (NCL or Corporate Debtor) and Mr. Vinod Kumar Kothari, PCS was appointed as the liquidator.
- 2.2. The liquidator made public announcement on 23.10.2017 calling upon the stakeholders of the Corporate Debtor to submit their claims with the Liquidator.
- 2.3. On 23.09.2020, the liquidator invited Expression of Interest (EOI) for sale of Shyamnagar Cable Manufacturing Unit owned by the Corporate Debtor situated at 71, East Ghoshpara Road, District-North 24 Parganas at the reserve price of Rs.20.63 crore. In terms of the EOI, the successful bidder was entitled to conclude the sale in favour of its nominee subject to the nominee not being ineligible under Section 29A of the Code.
- 2.4. E-Auction with respect to the said unit was convened on 05.10.2020 and Mrs Vinita Bajoria emerged as the highest bidder, with a bid of Rs.23,33,00,000/-. Accordingly, the Liquidator has issued an e-mail dated

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- 05.10.2020 along with a Confirmation and Demand letter in terms of the invitation dated 23.09.2020, thereby, accepting the bid and confirming the sale.
- 2.5. In terms of the EoI, Mrs. Vinita Bajoria, the successful bidder informed the liquidator by a letter dated 07.10.2020 that she has nominated the Applicant herein for concluding the sale of the said unit in its favour. The Applicant is not an ineligible in terms of Section 29A of the said Code and therefore, the Applicant being the nominee has executed a Deed of Adherence as required under the Invitation of EoI dated 23.09.2020. Copies of the letter of nomination and the Deed of Adherence are annexed with the application and collectively marked with letter “F”.
- 2.6. On 08.10.2020, the Sale Certificate was executed by the liquidator in favour of the Applicant herein. The Applicant has made full payment of the total consideration for acquiring the said Unit. The Liquidator handed over the possession of the said unit to the Applicant on 09.10.2020. Copies of the Sale Certificate dated 08.10.2020 and the Memorandum regarding delivery of possession dated 09.10.2020 are annexed with the application and marked with letters “G” and “H”, respectively.
- 2.7. On 07.01.2021, the Applicant submitted an application and requested Respondent No.2 to grant Trade License or Enlistment Certificate to facilitate resumption of activities of the said Unit in order to enable the applicant to generate employment opportunity and contribute to the all-round development of the Bhatpara Municipal area. A copy of the said application vide letter dated 07.01.2021 is annexed with the application and marked with letter “K”.
- 2.8. On 01.02.2021, the Respondent No.3, instead of considering Applicant’s request for grant of license as aforesaid, sent a notice demanding from the Applicant to immediately liquidate purported outstanding Municipal property tax against Holding Nos. 70, 71, 73, 74, E.G.P. Road, 27B, N.C.

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Road, 1 and 2 Uttarpara Road, amounting to Rs. 68,09,123.61. The claim of the Respondent Nos. 2 and 3 with respect to alleged outstanding Municipal property tax for the period from first quarter of 2015-16 to fourth quarter of 2020-21 under various purported Office Memo vide No.C-12/DR-1/4599 dated 11.12.2017 and C-12/DR-1/5060 dated 01.03.2018. A copy of the purported demand notice dated 01.02.2021 is annexed with application and marked with letter “L”.

2.9. The claim of Respondent Nos. 2 and 3 is towards Municipal property tax for a period prior to the sale of the said Unit to the Applicant. The Applicant has no liability to pay such dues to the Municipality. The Municipality can only claim the purported amount from the Liquidator by submitting its proof of claim.

2.10. Further, the Municipality is not a secured creditor. The Municipal Tax does not create any charge as it is considered to be a personal liability. Therefore, Municipal tax dues against the Corporate Debtor (in liquidation) do not create any encumbrance on the property. Hence, the Applicant is not liable to make any payment of such purported demand as raised by the respondent nos. 2 and 3.

3. In reply filed on behalf of Respondent Nos. 2 and 3 it is submitted that: -

3.1. Prior to the receipt of the present application bearing I.A. No.264/2021, the Municipal Authority of Bhatpara had no knowledge of the order of liquidation dated 17.10.2017 and proceedings thereunder, therefore, it could not take any steps earlier.

3.2. The entire procedure of sale of the said unit was adopted, carried on and completed behind the back of the authority of Bhatpara Municipality and without complying the provision of sections 55 (i)(g) and 55(2) of Transfer of Property Act.

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- 3.3. It was within the special knowledge of the liquidator, Respondent No.1 as well as the application-purchaser of said Unit that the Unit situates within the Bhatpara Municipality and the same is liable to pay regular municipal tax to the Bhatpara Municipality and the Trade License is a must for running any business within any municipal territory governed by the West Bengal Municipal Act, 1993. Such municipal tax as well as the trade license is to be obtained by the owner of the factory as per the said Act. Neither the Liquidator took any information regarding the unpaid tax of the corporate debtor nor did the applicant take any information regarding the municipal liability of the Corporate Debtor regarding arrear tax payable in respect of the said corporate debtor.
- 3.4. The liquidator over looked the provision of Municipal Tax despite having knowledge that municipality gave device to the company, Municipality supplied whole borne water to the company, etc.
- 3.5. The Corporate Debtor was defaulter in payment of taxes and a huge municipal tax is payable to the Bhatpara Municipality amounting to the tune of Rs.68,09,123.61 (Rupees sixty-eight lakh nine thousand one hundred twenty-three and sixty one paise), the liquidator ought to have taken note of the said dues and disclosed the same to the prospective purchaser under section 55 of the Transfer of Property Act.
- 3.6. On the other hand, the purchaser has a duty before purchase regarding dues of demand of the corporate debtor in respect of the said holding. Any application for mutation of a holding within the Municipality requires the entire payment of the arrear tax in respect of the said holding.
- 3.7. Before purchasing any property in a municipal area, there is a duty cast upon the person buying them to search the municipal record regarding arrear tax to be paid.
- 3.8. The Applicant purchased the said property knowing fully well that huge tax to

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the tune of Rs.68,09,123.61 (Rupees sixty-eight lakhs nine thousand one hundred twenty-three and sixty one paise), is payable to Bhatpara Municipality in respect of the holdings purchased. The liquidator, Respondent No.1, ought to have ascertained the debts of the Corporate Debtor before selling the said property. In any event as per mandate of section 55 of the Transfer of Property Act, the Applicant cannot deny the payment of the arrear municipal tax in respect of the holdings purchased by them.

3.9. The Applicant is liable for payment of outstanding tax receivable by the Municipality in respect of the holdings situated within the Bhatpara Municipality. The Municipality all along gave service to the holdings by giving wholesome water, cleaning of sewerage and removal of garbage of the persons residing within the said holdings including the essential services and security personnel who are residing in the said holdings.

3.10. Without mutation and payment of the tax amount due, the municipality is unable to issue enlistment certificate as per section 118 of the West Bengal Municipal Act and Audit and Accounts Rules, 1999.

3.11. The holding is liable to pay all arrear tax and the claim of the Bhatpara Municipality is genuine. The Applicant is liable to pay the entire dues. It cannot make any erection or re-erection of any structure, building within the said holding without obtaining written permission/sanction from the municipal authority of Bhatpara.

4. In rejoinder to the said reply, the Applicant submitted as follows:-

4.1. When the present application was moved, this Adjudicating Authority, upon hearing the Applicant and Bhatpara Municipality, was pleased to pass an Order dated 23.03.2021 directing an Order of Stay of the demand made by Respondent No.2, Bhatpara Municipality.

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- 4.2. Pursuant thereto, the Applicant submitted a letter dated 30.03.2021 enclosing further updated documents for issuance of trade license. The Applicant has also issued another letter dated 31.03.2021 intimating the Bhatpara Municipality about the said Order dated 23.03.2021 and once again appealed to the Municipality for issuance of trade license. Despite receipt of the said two letters, the Municipality has neither considered such representation nor has issued any response thereto.
- 4.3. On 20.04.2021, the Applicant applied for mutation of holdings in its name that has been duly received by the Respondents.
- 4.4. On 22.04.2021, the Applicant received a copy of application taken out by the Bhatpara Municipality, inter alia, for an order including the name of Bhatpara Municipality as creditor of the Corporate Debtor. The Municipality is claiming its dues from the Corporate Debtor, therefore, it should be stopped from demanding its past dues from the Applicant herein.
5. We have heard Mr. Ratnanko Banerji, learned senior counsel appearing on behalf of Applicant and Mr. Dipak Kumar Mukherjee learned Counsel appearing for the Respondent Nos. 2 and 3, and have perused the records.
6. Applicant herein is the nominee of the successful bidder and buyer of the Shyamnagar Cable Manufacturing Unit owned by the Corporate Debtor situated at 71, East Ghoshpara Road, Athpur, District-North 24 Pargana at the price of Rs.23,33,00,000/- out of the liquidation estate of the Corporate Debtor. The liquidator has also handed over the possession of the said unit to the Applicant on 09.10.2020.
7. In order to make the unit functional, the Applicant applied to Respondent No. 2 for Trade Licence. However, instead of considering the application, Respondent No. 3 sent a notice demanding the outstanding Municipal property tax against Holding Nos. 70, 71, 73, 74, situated at E.G.P. Road, 27B, N.C. Road, 1 and 2 Uttarpara Road, amounting to Rs. 68,09,123.61.

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8. The ground taken by the Respondents 2 and 3 is that the Applicant and the liquidator should have exercised their duties under section 55 of the Transfer of Property Act, 1882. And that the Respondents 2 and 3 are bound by the municipality by section 118 of the West Bengal Municipal Act and Audit and Accounts Rules, 1999 under which they cannot issue enlistment certificate unless all the tax dues are paid.
9. The Insolvency and Bankruptcy Code, 2016 is a self contained legislation. In cases of liquidation, through chapter III read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Code provides for a procedure of public announcement calling upon the stakeholders to submit their claims with the liquidator, who then consolidates, verifies and adjudicates upon it.
10. In the present case, the liquidator had made the public announcement on 23.10.2017, however, the Respondent Nos. 2 and 3 did not file their claim with the liquidator. The Respondents cannot by-pass the provisions of the Code and hold the grant of licence or enlistment certificate ransom subject to the payment of their dues.
11. Further, under section 238, the Code also envisages that the provisions of the Code will override other laws. Therefore, the Respondent's reliance on the provisions of the Transfer of Property Act, 1882, West Bengal Municipal Act, 1993 and Audit and Accounts Rules, 1999 is misplaced.
12. In these facts and circumstances we hereby hold that the Applicants are not liable to pay the tax dues prior to the date of sale of the said unit i.e. 08.10.2020. The demand notice dated 01.02.2021 is not sustainable in law. The Respondent Nos. 2 and 3 are hereby directed to consider the application for grant of License or Enlistment Certificate and application for mutation of the said unit on its merit without being affected by the dues pending.
13. With the abovesaid directions, **IA No. 264/KB/2021** is disposed of.
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

13.07.2021

SR (LRA)