

CA 3299/2020

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ITEM NO.30

Court 3 (Video Conferencing)

SECTION XVII

SUPREME COURT OF INDIA
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 ex-parte ad-interim relief and exemption from
filing c/c of the impugned judgment)

Date : 09-10-2020 This appeal was 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) Dr. Abhishek Manu Singhvi, Adv.
Mr. N.P.S. Chawla, Adv.
Mr. Gaurav Varma, AOR
Mr. Sujoy Datta, Adv.
Mr. Allan Massey, Adv.
Mr. Azeem Samuel, Adv.

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

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

**UPON hearing the counsel the Court made the following
ORDER**

- 1 Admit.
- 2 We have heard Dr Abhishek Manu Singhvi, Senior counsel in support of the appeal. Ms Meenakshi Arora, Senior counsel appears on behalf of Edelweiss Asset Reconstruction Company Limited (**EARC**), a financial creditor, who had appeared before the National Company Law Appellant Tribunal. EARC has supported the appellant. Mr Ashish Makhija, learned counsel appears on behalf of the liquidator to oppose the appeal and support the order of the National Company Law Appellate Tribunal.
- 3 The corporate insolvency resolution process (CIR process) was initiated against the Corporate Debtor on 7 August 2017. The Resolution Plan submitted by the appellant was approved on 30 April 2018 by the Committee of Creditors (CoC). The Resolution Plan was approved by the NCLT on 15 May 2019. The NCLT was thereafter moved on the ground that the Resolution Plan had not been implemented by the appellant. Hence an application was filed under Section 33 of the Insolvency and Bankruptcy Code 2016 seeking liquidation of the Corporate Debtor. This was allowed by the NCLT by its order dated 16 January 2020.
- 4 After the appellant filed an appeal before the NCLAT on 3 February 2020, an opportunity was granted to them to file an affidavit indicating the time frame for compliance of the Resolution Plan. On 25 February 2020, a meeting took place between the member of the erstwhile CoC, the appellant and the liquidator. A revised time line was agreed upon, under which the appellant was to make a payment upfront of Rs 15 crores within seven days of the

order of the NCLAT, which was liable to be forfeited if the appellant failed to make the balance upfront payment of Rs 50 crores within three months thereafter.

- 5 The appellant filed an affidavit before the NCLAT on 2 March 2020 apprising it of the understanding which had been arrived at on the above terms. On 29 July 2020, the NCLAT permitted the appellant to deposit Rs 15 crores in an escrow account to be specified by the lenders of the erstwhile CoC, within ten days. It is not in dispute that the appellant has in compliance with the order of the NCLAT, deposited Rs 15 crores. The appellant filed an undertaking on affidavit on 18 August 2020, accepting its obligation to make an upfront payment of Rs 50 crores within three months from the date of the reversal of the liquidation order. The appellant agreed to the stipulation that the amount of Rs 15 crores deposited by it in escrow would stand forfeited if it failed to deposit the payment of Rs 50 crores. NCLAT by its order dated 8 September 2020, dismissed the appeal and upheld the order of liquidation.

- 6 Dr Abhishek Manu Singhvi, Senior counsel appearing on behalf of the appellant submits that liquidation of the undertaking should be a matter of last resort and, consistent with the understanding which was arrived at on 25 February 2020, the appellant is willing to abide by the terms as agreed. He has submitted that within a period of three months, the appellant would bring in the upfront payment of Rs 50 crores, failing which the amount of Rs 15 crores which has already been deposited in escrow would stand forfeited together with the amount of Rs 5 crores that was deposited following the approval of the Resolution Plan.

- 7 Ms Meenakshi Arora, Senior counsel appearing on behalf of EARC supports the proposal which has been submitted by the appellant on the ground that the erstwhile members of the CoC have in their commercial decision found it in their best interest to allow the Resolution Plan to be implemented.
- 8 Mr Ashish Makhija, learned counsel appearing on behalf of the liquidator has while opposing the appeal submitted that while the liquidator does not in principle oppose the request, as an officer of the Court, he would wish to apprise the Court of the fact that the appellant did not take steps following the approval of the Resolution Plan in May 2019 for complying with its obligations.
- 9 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

the appellant. Accordingly, the following interim directions are 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.

10 The appeal shall be listed on 12 January 2021.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

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