

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1584 of 2023

[Arising out of the Order dated November 21, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 2117 of 2021 in I.A. No. 1577 of 2021 in C.P.(IB)
No. 69/MB/2017]

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.
Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai -400 021.

...Appellant

Versus

Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India
Having his Registration No. IBB/IPA-001/IP-
P00190/2016-17/1 0369
Having his address at B-10, Jaybandhu
Apartments, Opp. Guthu Restaurant,
90 Feet Road, Ghatkooar (E), Mumbai -400 077.

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vishesh
Kalra and Ms. Anoushka Deo, Advocates.

For Respondent : Mr. Krishnendu Datta Sr. Advocate with Ms.
Apoorva Pandey, Ms. Adyasha Nanda, Advocates for
R1.

Mr. Anand Varma, Advocate for R2 to R4.

With

Company Appeal (AT) (Insolvency) No. 1585 of 2023

[Arising out of the Order dated November 21, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 1617 of 2022 in C.P.(IB) No. 69/MB/2017]

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.

Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai -400 021.

...Appellant

Versus

Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India
Having his Registration No. IBB/IPA-001/IP-
P00190/2016-17/1 0369

Having his address at B-10, Jaybandhu
Apartments, Opp. Guthu Restaurant,
90 Feet Road, Ghatkooar (E), Mumbai -400 077.

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vishesh
Kalra and Ms. Anoushka Deo, Advocates.

For Respondent : Ms. Nikita Abhyankar, Advocate for R-1/ Liquidator

With

Company Appeal (AT) (Insolvency) No. 23 of 2024

**[Arising out of the Order dated December 05, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 1577 of 2021 in C.P.(IB) No. 69/MB/2017]**

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.

Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai -400 021.

...Appellant

Versus

1. Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India

Having his Registration No. IBB/IPA-001/IP-P00190/2016-17/1 0369

Having his address at B-10, Jaybandhu

Apartments, Opp. Guthu Restaurant,

90 Feet Road, Ghatkooar (E), Mumbai -400 077. **...Respondent No.1**

2. Leisure Enterprises LLP

82, 8th Floor, Plot - 223, Maker Chambers III,
Jamnalal Bajaj Marg, Nariman Point, Mumbai
City, Mumbai, Maharashtra, India, 400021

Email - pk.bansal@jaicorpindia.com

...Respondent No.2

Present:

For Appellant : Mr. Krishnendu Dutta and Mr. Abhijeet Sinha, Mr. Kunal Tandon, Sr. Advocates with Mr. Vishesh Kalra, Ms. Smriti Churiwal and Ms. Anoushka Deo, Advocates.

Mr. Vaibhav Gaggar Sr. Advocate with Mr. Aviral Kapoor, Advocates I.A. No. 6973 of 2024.

For Respondent : Ms. Nikita Abhyankar, Advocate for R-1/
Liquidator.
Mr. Shakul R. Ghatole, Mr. Shyam Dewani, Mr. Sumit Khanna, Ms. Diksha Gupta and Ms. Samiksha Parekh, Advocates for R-2.

Mr. Raghav Chadha and Mr. Mukund Rawat, Advocates for EKA Life Ltd.

Mr. Ashim Sood, Mr. Varun Kalra and Mr. Prateek Singh Kundu, Advocates for R4.

With

Company Appeal (AT) (Insolvency) No. 526 of 2024

&

I.A. No. 1845 of 2024

**[Arising out of the Order dated December 06, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 4212 of 2021 in C.P.(IB) No. 69/MB/2017]**

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.

Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai -400 021.

...Appellant

Versus

Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India
Having his Registration No. IBB/IPA-001/IP-
P00190/2016-17/1 0369
Having his address at B-10, Jaybandhu
Apartments, Opp. Guthu Restaurant,
90 Feet Road, Ghatkooar (E), Mumbai -400 077.

...Respondent

Present:

For Appellant : Mr. Vishesh Kalra and Ms. Anoushka Deo,
Advocates.

For Respondent : Ms. Nikita Abhyankar, Advocate for R-1/
Liquidator.

With
Company Appeal (AT) (Insolvency) No. 528 of 2024
&
I.A. No. 1857 of 2024

[Arising out of the Order dated December 06, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 1393 of 2021 in C.P.(IB) No. 69/MB/2017]

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.
Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai -400 021.

...Appellant

Versus

Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India
Having his Registration No. IBB/IPA-001/IP-
P00190/2016-17/1 0369
Having his address at B-10, Jaybandhu
Apartments, Opp. Guthu Restaurant,
90 Feet Road, Ghatkooar (E), Mumbai -400 077.

...Respondent

Present:

For Appellant : Mr. Vishesh Kalra and Ms. Anoushka Deo,
Advocates.

For Respondent : Ms. Nikita Abhyankar, Advocate for R-1/
Liquidator.

With

Company Appeal (AT) (Insolvency) No. 492 of 2024

**[Arising out of the Order dated January 18, 2024 passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench-I) in I.A. No. 213 of 2024 in C.P.(IB) No. 69/MB/2017]**

IN THE MATTER OF:

Bhavik Bhimjyani

Financial Creditor / Shareholder / Ex-Director of
Neelkanth Township & Construction Pvt. Ltd.

Having office at: 508, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai - 400 021.

...Appellant

Versus

Uday Vinodchandra Shah

A Resolution Professional,
Registered with the Insolvency and
Bankruptcy Board of India
Having his Registration No. IBB/IPA-001/IP-
P00190/2016-17/1 0369

Having his address at B-10, Jaybandhu
Apartments, Opp. Guthu Restaurant,
90 Feet Road, Ghatkooar (E), Mumbai -400 077.

...Respondent

Present:

For Appellant : Mr. Vishesh Kalra and Ms. Anoushka Deo,
Advocates.

For Respondent : Ms. Nikita Abhyankar, Advocate for R-1/
Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal challenges the Impugned Judgment and Order
dated 05.12.2023 passed by the Adjudicating Authority in I.A. No. 1577 of

2021 in Company Petition IB No. 69 (MB) of 2017 by which sale of assets of the Corporate Debtor by way of a private sale to a related party was allowed without considering the objections raised by the Appellant objecting to the sale by way of its I.A. No. 2117 of 2021 and despite better offers being under consideration by the Adjudicating Authority.

2. The Corporate Insolvency Resolution Process ("CIRP") of Neelkanth Township & Construction Pvt Ltd. ("NTCPL") commenced on 21.04.2017. Subsequently, NTCPL was directed to be liquidated vide an Order dated 03.09.2018. The immovable property at Alibaug, forming subject-property of the present dispute is an undivided parcel of land of about 80.6 acres. Out of the entire parcel of land, the title of about 30 acres (appx. 24%) of land is with CD-NTCPL while 50.6 acres (appx. 76%) of land stands in the name of Urban Rupi Infrastructure Pvt Ltd ("URIPL") and the same is not demarcated.

3. It appears that 76% of land is in the name of URIPL and is purchased from the funds of the Corporate Debtor which was loaned to URIPL as per the Balance Sheet of F.Y. 2013-14. URIPL is a wholly owned subsidiary of NTCPL. Urban Infrastructure Venture Capital Fund, the main Financial Creditor of the Corporate Debtor was settled by the said Urban Infrastructure Venture Capital Ltd. One Anand Jain was the Chairman of Urban Infrastructure Venture Capital Ltd and also the Partner in Leisure Enterprises LLP, being R2 in the present matter. Urban Infrastructure Trustees Ltd. (UITL) is 40% shareholder of NTCPL.

4. UITL had 2 directors on the board of NTCPL and was at all times involved in the affairs of NTCPL. UITL is a 100% subsidiary of one Jai Corp Ltd. and which is a company promoted by Mr. Anand Jain, where he and his family represent majority shareholding.

5. Before proceeding further, it will be instructive to note the chronology of events which is noted as below:

| Date | Particulars |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01.03.2017 | UITL filed Company Petition No. 21 of 2017 under Section 7 of the IBC seeking admission of NTCPL under CIRP claiming financial debt to the tune of Rs. 226.16 Crores. NCLT dismissed the petition filed by the Petitioner claiming Rs. 226.16 crores and restricted the claim of the Petitioner to an amount of Rs. 51 crores. |
| 29.03.2017 | UITL after accepting the order dated 01.03.2017, filed Company Petition No. 69 of 2017 seeking admission of NTCPL under CIRP for an amount of Rs. 51 Crores, which is the only amount which could be claimed. |
| 21.04.2017 | Adjudicating Authority admitted the Company Petition against NTCPL for a sum of Rs. 51 Crores. The order of admission was upheld by the Hon'ble Supreme Court. |
| May 4, 2017 | NCLAT stayed the Orders dated April 21, 2017, admitting the above Company Petition and May 1, 2017 appointing the IRP in Company Appeal (AT)(INS) No. 44 of 2017 |
| August 11, 2017 | Company Appeal (AT) (INS) No. 44 of 2017 was dismissed |
| August 18, 2017 | Bhavik Bhimjyani filed SLP challenging Order of NCLAT dated August 11, 2017 |
| August 23, 2017 | SLP was dismissed |
| February 6, 2018 | IRP was confirmed as the RP during meeting of the CoC |
| April 26, 2018 | RP filed Application under Section 19 being MA No. 344 of 2018. MA No. 344 of 2018 under Section 19 was allowed making prima facie observations against Bhavik Bhimjyani (para 9 of Order) (Annex. R-1 Pg 29-33) |
| May 2, 2018 | Bhavik Bhimjyani challenged the Order dated April 26, 2018 in Company Appeal (AT) (INS) No. 182 of 2018 |
| September 9, 2018 | Corporate Debtor was set into liquidation |
| 23.11.2018 | The Respondent No. 1 filed a list of stakeholders. Respondent No. 1 admitted the claim of UITL for a sum of Rs. 296.31 Crores, despite the Adjudicating Authority having called upon UITL to limit its claim to Rs. 51 Crores on the same documents. |
| | The Appellant challenged the claims of UITL admitted by the Respondent No. 1 vide MA No. 2184 of 2019, which is pending. |

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| | The Appellant contends that the claim of UITL is only Rs. 51 Crores. |
| December 6, 2018 | Final Order was passed Company Appeal (AT) (INS) No. 182 of 2018 (against Order passed in Section 19) wherein Bhavik Bhimjyani's statement is recorded stating that he does not have signed copy of any MoU executed by CD and one Lighthouse, which pertains to the property forming subject matter of present proceedings (Annex. R-2 Pg 34-39) |
| February 1, 2019 | Uday Shah (now Liquidator) challenged Order dated December 6, 2018, in Civil Appeal No. 1716 of 2019 before SC |
| July 18, 2019 | 1st Auction Notice was published for Reserve Price of Rs 23.70 crores (land) (Annex. R-8 Colly Pg 59-62) |
| December 10, 2019 | 2nd Auction Notice was published for Reserve Price of Rs 20.16 crores (land) (Annex. R-8 Colly Pg 63-66) |
| February 24, 2020 | SC set aside Order dated December 6, 2018 passed by NCLAT and restored NCLT Order (Annex. R-3 Pg 40) |
| July 20, 2020 | SC expunged remarks made by NCLT that Bhavik Bhimjyani is "hiding information" on the condition that Bhavik Bhimjyani submits an undertaking stating that the Order is fully complied. The rest of Order of NCLT was retained as it is. *Till date none of the parties are served with any such undertaking of compliance, neither is such an undertaking produced before any of the courts during the course of present proceedings (Annex. 2 to Written Submissions) |
| February, 2021 | Fresh valuation was carried out by the Liquidator wherein the Average Price of the property was Rs 67.41 crores . Highest valuation was Rs 68.01 crores. *As per Government Valuation Report, property was valued at Rs 70.31 crores (Re: September 21, 2021 Report) |
| March 1, 2021 | 3rd Auction Notice was published for Reserve Price of Rs 68.47 crores (land & shares) |
| March 25, 2021 | 4th Auction Notice was published for Reserve Price of Rs 58.20 crores (land & shares) |
| April 13, 2021 | One Vivek Talwar confirmed to buy subject property for Rs 72 crores upon completion of due diligence upon receipt of papers from one Mr Vikram (broker). However, no EMD was paid. |
| April 20, 2021 | Vivek Talwar sought some papers relating to the property. Since Liquidator was not seized with documents on account of non-cooperation from the suspended Directors, the Liquidator informed Vivek Talwar likewise. |
| May 13, 2021 | Survival Tech expressed their interest in the subject property for Rs 58.50 crores |
| May 14, 2021 | Liquidator requested Survival Tech to submit requisite documents along with EMD |
| May 19, 2021 | Survival Tech addressed an email to Liquidator seeking further two weeks' time *No communication was received at any time thereafter. EMD was never paid |
| June 10, 2021 | Leisure Enterprises LLP addressed a Letter of Interest to the Liquidator proposing to purchase the land & shares (subject property) at Rs 58.51 crores |
| July 9, 2021 | IA No. 1577/2021 was filed by Liquidator under Regulation 33(5) of Liquidation Process Regulations to pass appropriate directions to allow the sale of subject property to Leisure, a purported related party. |

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| July 15, 2021 | Liquidator informed Vivek Talwar that since 3 months, no further steps were taken by Vivek Talwar and since EMD is also not paid, the offer stands cancelled |
| July 27, 2021 | IA No. 1577/2021 was taken up for the first time for hearing. NCLT, after hearing the Liquidator directed that a valuation be conducted by the Ld. Collector, Raigad District Maharashtra. Advocate for Bhavik Bhimjyani also appeared and sought time to file intervention/ impleadment. |
| | Adjudicating Authority passed an order in IA No. 1577 of 2021 recording that an application is made under Regulation 33 of the Liquidation Regulations seeking permission for private sale of the said Lands to a related party of NTCPL. |
| September 19, 2021 | Appellant filed IA No. 2117/2021 seeking impleadment in IA 1577/2021 on the ground that the subject property is being sold for a lesser value |
| September 21, 2021 | IA No. 1577/2021 was listed. However, the Valuation Report of the Collector, Raigad, was not on record and therefore the matter was adjourned |
| September 29, 2021 | IA No. 2117/2021 was listed when the Appellant submitted that he has offers from buyers for more than Rs 100 crores. NCLT granted opportunity to the Appellant to bring forth such buyer |
| October 4, 2021 | Liquidator called for a meeting of the stakeholders of the Corporate Debtor. Upon being enquired, the Appellant failed to provide any detail/name of any such purported interested buyer |
| October 20, 2021 | Collector Raigad provided its Valuation Report to NCLT providing a valuation of Rs 70,31,40,400/- comprehensively for the land and shares (Annex. R-11 Pg 99-102) |
| October 21, 2021 | IA No. 1577/2021 and IA No. 2117/2021 were listed before NCLT. Appellant failed to provide details of any such interested buyer. The Tribunal gave one final opportunity to bring an offer and therefore adjourned the matter to the very next day for hearing |
| October 22, 2021 | IA No. 1577/2021 was listed when Appellant failed to get any offers. IA No. 1577/2021 was heard at length and reserved for orders |
| December 24, 2021 | Order was pronounced in IA No. 1577/2021 thereby allowing the sale to Leisure Enterprises LLP |
| 28.12.2021 | The Appellant filed Writ Petition (L) No. 31179 of 2021 before the Hon'ble Bombay High Court challenging the order dated 24.12.2021 on merits as well as principles of natural justice. |
| 30.12.2021 | The Hon'ble Bombay High Court was pleased to allow the Writ Petition and set aside the order dated 24.12.2021 passed by the Adjudicating Authority allowing IA No. 1577 of 2021. Hon'ble Bombay High Court had set aside the order on a technical discrepancy that the constitution of the Bench that reserved the matter for orders on 22/10/2021 was different from the Bench that pronounced the order on 30/12/2021. Merits of the matter were not considered at any point (Annex. R-17 Pg 69) |
| 18.01.2022 | The Respondent No. 1 filed IA No. 63 of 2022. No notice to Appellant and not a party |
| 10.02.2022 | The Appellant received a copy of the valuation given by the office of District Collector in terms of the order dated 27.07.2021 passed by the Adjudicating Authority under RTI, which valued the property at Rs.70.31 crores. |
| February 21, 2022 | Myron Realtors Pvt Ltd addressed email to Liquidator expressing interest in property (Annex. R-21 Pg 122) |

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| | M/s Myron Realtors Pvt. Ltd. (a part of Hiranandani Group) made an offer of Rs. 72,54,63,000/-, which is much higher than the offer which forms basis of IA No. 1577 of 2021, proposing sale to the related party at Rs. 58.51 crores. |
| 15.03.2022 | Adjudicating Authority allowed IA No. 63 of 2022 despite the oral objection of the Appellant against passing a formal order allowing IA No. 1577 of 2021 as the objections of the Appellant as raised in IA No. 2117 of 2021 continued to subsist. |
| March 19, 2022 | Appellant filed Additional Affidavit in IA No. 2117/2021 along with offers from Myron Realtors |
| March 21, 2022 | Appellant filed IA No. 1322/2022 repeating contents of the Additional Affidavit in IA No. 2117/2021 and placing on record the offer of Myron Relators |
| March 28, 2022 | IA No. 2117/2021 was listed when the Hon'ble NCLT was informed of the developments before the Hon'ble Bombay High Court and informed the Tribunal that process for listing IA No. 1577/2021 is underway |
| May 12, 2022 | Vivek Talwar withdrew his offer |
| June 8, 2022 | IA No. 1577/2021 was revived and placed before the appropriate Special Bench in NCLT. Special Bench directed Liquidator to give notice of hearing to the Appellant in view of I.A. No. 2117/2021 |
| June 14, 2022 | Appellant filed IA No. 1617/2022 seeking removal of liquidator citing undervaluation of the property despite having the valuation by Collector, Raigad, as directed by NCLT |
| June 15, 2022 | IA No. 1577/2021 was placed before the appropriate Special Bench in NCLT when the same was heard and length and adjourned to June 24, 2022. |
| June 15, 2022 | Myron Realtors withdrew their offer |
| June 23, 2022 | Liquidator filed Additional Affidavit placing on record the Letter of withdrawal of Myron Realtors |
| June 24, 2022 | IA No. 1577/2021 was to be listed before the appropriate Special Bench, however, the Special Bench did not preside on the given day and subsequently the Members retired and the I.A. No. 1577/2021 was listed before the Main Bench for De-Novo hearing |
| 01.07.2022 | Adjudicating Authority issued notice in IA No. 1617 of 2022 in CP IB No. 69 (MB) of 2017. |
| 31.10.2022 | Order passed by SEBI whereby Mr. Anand Jain, partner of Leisure Enterprises LLP (the related entity which made the bid of Rs. 58.51 crores) was debarred by SEBI from participating in securities markets for over a year. |
| Nov 2022 | The Appellant learnt about an order dated 31.10.2022 passed by Ld. SEBI. |
| July 2022- June, 2023 | No effective hearing occurred during this period. Liquidator preferred two Applications for urgent listing of IA No. 1577/2021 since the Liquidator was incurring liquidation cost |
| June 16, 2023 | IA No. 1577/2021 was listed. Appellant once again submitted to NCLT of getting a buyer at a higher price. NCLT asked him to get a buyer at 20% premium at exiting offer along with EMD of 50%, on or before next date of hearing, i.e July 4, 2023 |
| July 3, 2023 | Appellant filed Additional Affidavit in IA No. 2117/2021 stating that Mr Anand Jain of Leisure Enterprises LLP is barred by SEBI *Additional Affidavit was served upon the Liquidator on September 11, 2023 |
| July 3, 2023 | Gewortal expressed its interest in purchase of the said property |

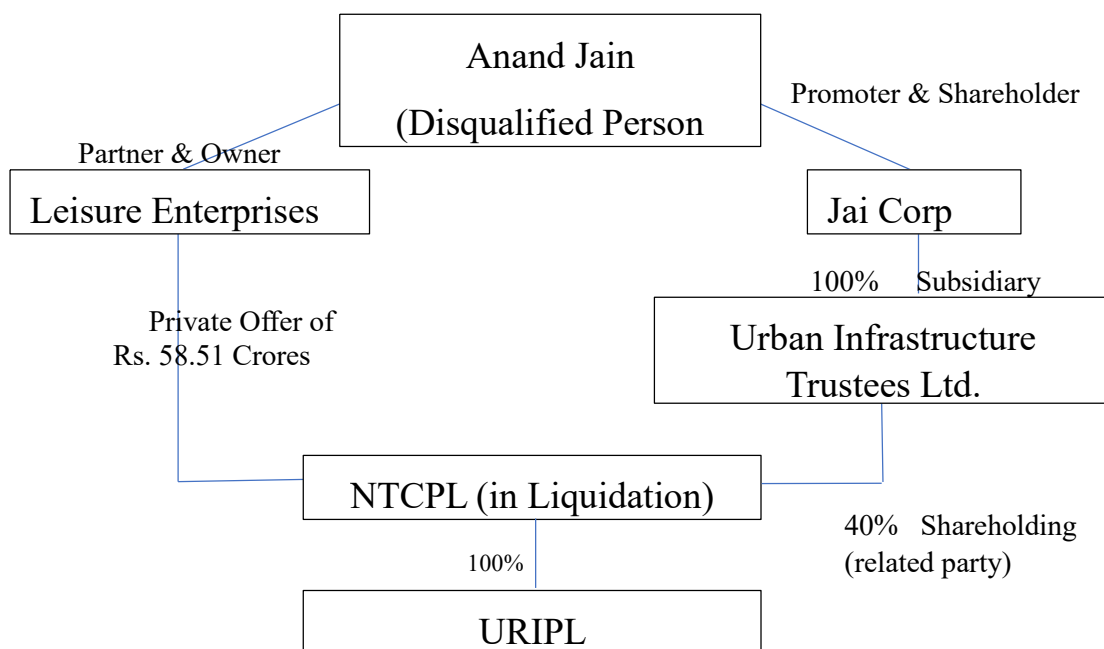
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| | <p>Appellant filed affidavit placing on record another offer from one M/s Gewortel Developers Pvt. Ltd. (a company of Abhinandan Lodha Group).</p> <p>*This letter was never received by the Liquidator till September 8, 2023. This letter was brought to the knowledge of Liquidator for the first time only through service of IA No. 4212 of 2023</p> |
| 08.09.2023 | The Appellant filed IA No. 4212 of 2023, wherein the Appellant has <i>inter-alia</i> prayed that the subsisting offer of M/s Gewortel Developers be accepted, else the said Lands be put to a fresh auction through an independent person. |
| September 11, 2023 | IA No. 1577/2021 was heard at length when submissions were also made in terms of IA No. 2117/2021 and IA No. 1617/2022. All Applications were reserved for Orders |
| September 14, 2023 | IA No. 4212/2023 was numbered and automatically listed. Although the Application was infructuous, NCLT issued notice to give another opportunity to the Appellant to get a better buyer. Matter was adjourned to October 4, 2023. |
| October 3, 2023 | Gewortal, by an email of October 3, 2023 withdrew its offer. Email was also marked to the Appellant (Annex. R-25 Pg 128) |
| 04.10.2023 | Appellant also made an offer to buy the said Lands at Rs. 72.45 Crores. The Appellant is at par with Mr. Anand Jain/ Leisure Enterprises LLP in its relationship with NTCPLAppellant filed Additional Affidavit in IA No. 4212/2023 putting forth his own offer. |
| October 5, 2023 | IA No. 4212/2023 was listed when Bench enquired if Leisure Enterprises LLP would be willing to better their offer |
| October 16, 2023 | One Ankit Wadhwa of Wendt Corporate Services Pvt Ltd put forth an offer by email. |
| 18.10.2023 | <p>IA No. 4212 of 2023 was listed before the Adjudicating Authority wherein the Respondent No. 1 informed the Adjudicating Authority that a fresh bid for an amount of Rs. 95 crores for the land was received by the liquidator from one Mr. Wadhwa on 16.10.2023. Offer by Ankit Wadhwa was informed to the NCLT. Bench granted opportunity for Ankit Wadhwa to deposit EMD and conduct its due diligence to complete the sale within its specified timelines</p> <p>NCLT was also informed that Leisure Enterprises LLP was not willing to better their offer and that they will continue with their existing offer.</p> |
| October 25, 2023 | Leisure Enterprises LLP filed Application being aggrieved by the Order dated October 18, 2023, granting opportunity to Ankit Wadhwa, who failed to adhere to the timelines of the Hon'ble NCLT |
| November 21, 2023 | <p>Hon'ble NCLT passed Common Order dismissing IA No. 2117/2021, IA No. 1322/2022 and IA No. 1617/2022.</p> <p>The same is challenged vide Appeal No. 1584/2023 and Appeal No. 1585/2023</p> |
| December 1, 2023 | Ankit Wadhwa of Wendt Corporate Services Pvt Ltd withdrew his offer |
| December 3, 2023 | Appeal No. 1584/2023 and Appeal No. 1585/2023 was e-filed |
| 04.12.2023 | Company Appeal (AT) (Ins) No. 1584 of 2023 and Company Appeal (AT) (Ins) No. 1585 of 2023 filed before this Hon'ble Tribunal against the order dated 21.11.2023 passed in IA Nos. 2117 of 2021, 1322 of 2022 and 1617 of 2022 in CP IB No. 69 (MB) of 2017. |

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| December 4, 2023 | Appellant mentioned Appeal citing urgency of IA No. 4212 of 2023 being listed before the Hon'ble NCLT on December 6, 2023. Urgency was not considered and circulation was not granted. Liquidator was not given notice of mentioning |
| December 5, 2023 | Adjudicating Authority passed the Impugned Order whereby IA No. 1577 of 2021 was allowed. Adjudicating Authority's order dated 18.10.2023 passed in IA No. 4212 of 2023 was uploaded. The Order contained directions to the party who made the offer for Rs. 95 crores to deposit 10%. |
| December 6, 2023 | Appellant filed Additional Affidavit executed on the same date in Appeal No. 1584/2023 listed before the NCLAT |
| December 6, 2023 | Company Appeal (AT) (Ins) No. 1584 of 2023 and Company Appeal (AT) (Ins) No. 1585 of 2023 were listed before this Hon'ble Tribunal whereby this Hon'ble Tribunal issued notice to the Respondent No. 1 and directed the Respondent No. 1 to not take any further steps. IA No. 5021 and IA No. 4212 of 2023 were listed before the Ld. Adjudicating Authority for hearing. Both IA No. 5021 of 2023 and IA No. 4212 of 2023 were dismissed as infructuous by the Ld. Adjudicating Authority. |
| January 8, 2024 | Advocate for the Appellant submitted that the Application under Section 66 being IA No. 179/2019 cannot be heard citing Order of the Hon'ble NCLAT of December 6, 2023. Hon'ble NCLT directed Advocates for Liquidator to seek clarification from the Hon'ble NCLAT as to whether the Order dated December 6, 2023 would apply to the proceedings under Section 66 being IA No. 179/2019 |
| September 2, 2024 | IA No. 179/2019 (Section 66) was finally argued over a span of two days and reserved for Orders |
| October 11, 2024 | Order pronounced in IA No. 179/2019 (Section 66) and inter alia Respondent No. 1 was declared to have engaged in fraudulent activities. |

Submissions of the Appellant-

6. The Appellant is challenging the approval given by the NCLT to the undervalued sale of lands of Neelkanth Township & Construction Pvt Ltd (in liquidation) ("NTCPL") by way of private treaty to a related party vide the Impugned Order dated 05.12.2025 contrary to requirements of Regulation 33 of IBBI (Liquidation Regulations), 2016 ("Regulations"). NTCPL owns a total of 80.6 acres of prime non-agricultural land in Village Boris, Alibaug, which is a part of the Mumbai Metropolitan Region. Of these 80.6 acres, 30 acres is directly held by NTCPL and 50.6 acres is held through its 100% subsidiary being Urban Rupi Infrastructure Pvt Ltd (URIPL).

7. It is contended that Leisure enterprises LLP (Buyer/ Respondent No. 2) and the Financial Creditor – UITL, are owned by same promoter group. UITL is the sole Financial Creditor other than Appellant and has a claim of Rs 51 crores (reduced as per order dated 19.03.2025). UITL is a subsidiary of Jai Corp, which is promoted by Mr Anand Jain. Leisure Enterprises LLP is an LLP where Mr Anand Jain and his daughter are partners. The fact that UITL and Respondent No. 2 is a related party is evident from the flowchart submitted to the Ld. Adjudicating Authority which is as under:



8. It is vehemently argued that impugned private sale is contrary to the requirements of Regulation 33 of Liquidation Regulations. The liquidation sale is required to be carried out in terms of Regulation 33 read with Schedule I of the Regulations. The Regulations are mandatory in nature. Regulation 33(1) mandates that the Liquidator “shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule -I”. A private sale is meant to be an exception, allowed only in specific circumstances enumerated in Regulation 33(2). In the present case, the Liquidator deviated

from the normal auction route without any legitimate justification. Regulation 33(2)(d) mandates prior permission from the NCLT in case the Liquidator intends to approach buyers for a private sale. The permission is required to be taken prior to approaching and negotiating with buyers. Further a second prior permission is required in case sale of assets is intended to be made to a related party. Regulation 33(3) bars sale where there may be collusion between the creditor and a buyer. In the present case, far from reporting collusion, the Liquidator appears to have actively participated in it.

9. In the present facts, no prior permission from the Tribunal was taken by the Liquidator as required under Regulation 33 of the Code. The Liquidator filed IA No. 1577 of 2021 after agreeing to an undervalued price and after accepting a deposit from the related party. The Liquidator also did not inform the Stakeholders Consultation Committee (SCC) of the proposed private sale. Admittedly, in the present case, the buyer and creditor is the same person and is directly affected by the bar under Regulation 33(3).

10. Appellant places reliance on ***State Bank of India vs Bhuvée Stenovate (2023 SCC Online NCLAT 71)***¹, which lays down requirements for private sale, which has been ignored by the Adjudicating Authority.

11. The Impugned Order does not consider compliance with Regulation 33 at all. It is submitted that a sale tainted by collusion cannot be sustained in law. Permitting an application seeking prior permission for private sale is not a mere formality and the NCLT ought to consider the mandatory parameters

¹ State Bank of India vs Bhuvée Stenovate (2023 SCC Online NCLAT 71)

of Regulation 33 before permitting such sale. In the present case, Application appears to be an empty formality.

12. The Liquidator has filed IA No. 1577 of 2021 secretly and unilaterally, without prior notice or information to the stakeholders, on a misleading premise that there were four failed auctions and, hence, he attempted a private sale, without highlighting that 2019 auction was only for 30 out of 80.6 acres. Auctions dated 18.07.2019 and 10.12.2019 were only for 30 acres out of 80.6 acres and the shares of subsidiary holding 50.6 acres of land were never put to auction in 2019. The auctions held on 01.03.2021 and 25.03.2021 were deliberately carried out during the 2nd wave of Covid 19 despite a relaxation in timelines granted under Regulation 47A. The Liquidator has pleaded that no auction was conducted in 2020 due to COVID. However, despite the circumstances getting worse on account of the 2nd wave, the Respondent attempted 2021 auctions and then approved a private sale in June 2021. The Alibaug lands are neither perishable nor likely to deteriorate if not sold immediately-conditions which might warrant a swift private sale did not exist.

13. The auction notices of 2021 were carried in only in two newspapers with limited circulation as opposed to four newspapers in 2019. Despite reduced readership due to covid, number of publications reduced. Publication made was itself in breach of the mandatory provisions of Regulation 12, which requires publication in an English and vernacular daily at the place of registered office. No vernacular publication at Mumbai was made. Raigarh Times is not circulated in Mumbai where NTCPL has registered office. It is

evident that the Liquidator did not even conduct a single genuine public auction before resorting to a private sale.

14. On the issue of undue haste in conducting back-to-back auctions within a 3-week period in March 2021, the Liquidator has sought protection of Schedule-1 (1B). However, the provision was only introduced on 16.09.2022. Section 35(1)(f) of the Code obligates the Liquidator to sell the assets of the Corporate Debtor “in a manner specified by the Board (IBBI) and to maximise recovery. In the present case, the Liquidator utterly failed to uphold this principle.

15. The Appellant has placed on record documents showing that the proposed private sale to the related party at a Rs 58.59 crores is grossly undervalued when compared to (i) Resolution Plan proposed by UIVCL (sister concern of UITL and entity controlled by Mr Anand Jain) (pg. 450); (ii) Valuation by experts such as Colliers; (iii) Circle rates; valuation given by the Collector; (iv) adjacent land sales; (v) Liquidation value arrived in 2018.

16. In the plan of UIVCL 19.04.2018 be noted, the same entity has valued property at Rs 103 crores in 2018 and is attempted to be brought at 50% value in 2021. Reliance is placed by the Appellant on Indian Bank vs Charu Desai (Company Appeal AT (Ins) No. 644 of 2021), wherein this Appellate Tribunal permitted consideration of a better valuation.

17. The claim of UITL is Rs 51 crores. The sale amount is deliberately kept Rs 58.59 crores. Essentially the transaction is putting the money from one pocket to the other by defrauding the Corporate Debtor of the actual value of

the assets of Corporate Debtor. It is exactly for this reason that Regulation 33(3) of the Regulations bars such a sale. This attempt to make a circular transaction may also be considered in light of the fact that in the offer dated 10.06.21, the offer is made in the interest of investors in UITL and to give them an exit. It may be noted that the same purchaser Mr Anand Jain is being investigated by CBI for fraud in UITL with regard to the investors under the orders of the Bombay High Court. [Judgment in Shoaib Richie Sequeira vs State of Maharashtra and Ors dated 31.01.2025 reported in 2025: BHC-AS:5208-DB – para (x)]. This judgment was upheld by the SC on 17.03.2025. Thus, it is claimed that the transaction was not an arm's length commercial deal but a collusive arrangement.

18. Under the Regulations, the Liquidator is duty bound to conduct the process to maximize the asset value. However, in the present case, the Liquidator having abdicated its statutory duties, has made no efforts to identify buyers or appoint even a property consultant to conduct an auction for the sale. Liquidator has not encouraged better offers brought by the Appellant and instead has only been making allegations that the Appellant has failed to conclude transactions from the offers received. In any event the Appellant got offers over Rs 73 crores from two reputed developers, which only proves the fact that the Liquidator is in fact encouraging the undervalued sale to the related party. No attempt made to find better value from 2021 till date.

19. Record evidently shows that despite better offers being there, the same have been resisted by the Liquidator. In fact, the Appellant itself had placed a better offer before the NCLT which offer was also made before this Tribunal.

All better offers have been resisted by the Liquidator and the Liquidator continued to support the offer received from the related party. In fact, by Orders dated 05.10.2023 and 18.10.2023, the NCLT was considering better offers, even before the order of 18.10.2023 was uploaded, the Impugned Order was passed.

20. As on date, two offers i.e. from Survival Technologies Pvt Ltd (Rs 73.45 crores) and the Appellant (Rs 72.54 crores) are subsisting which are 35% higher than the private sale offer. Despite the serious objections and availability of higher bids, the NCLT approved the private sale. The NCLT's Impugned Order does not discuss at all why the Rs 58.51 crores offer of the related was accepted in preference to the Appellant's Rs 72.5 crores offer. On 06.12.2023, the NCLT dismissed the Appellant's IA No.4212 of 2023 for consideration of better offers/auction as infructuous. It is evident that the Corporate Debtor stood to realise substantially more value if an open, competitive sale process had been pursued.

21. The Appellant's case has not been considered by the NCLT at any stage. By the Order dated 21.11.2023, the IA for intervention made by the Applicant is rejected but the Order records that the objections will be considered in the Order pertaining to Application for private sale. The Order dated 05.12.2023 for private sale does not consider the legal position or the objections of the Appellant at any stage. Further even the provisions of law are not considered. The only reason to permit sale is at para 3.9 i.e. EMD is deposited by the Respondent No. 2. The Appellant submits that the NCLT committed a serious error in procedure and law by not addressing the merits of the objections and

alternate higher offers placed before it. The Appellant's grievance that the sale process was collusive and not in the interest of creditors was left unanswered, which is an error apparent on the face of the record.

22. By the Order dated 05.10.2023 in IA No. 4212 of 2023, the NCLT put up a query whether the Leisure LLP intends to increase its offer. The response is recorded at para 3.6 of the Impugned Order where it has threatened to walk out of the process and seek refund of EMD. Clearly, there was no finality in the offer made.

23. The Appellant is the 60% shareholder of the Corporate Debtor and is a recognized stakeholder. The Appellant stands to gain 60% of the sale proceeds above Rs 51 crores. Evidently, the Appellant has locus to challenge the private sale. Further, it has been held that suspended management and shareholders have the locus.

24. The Appellant has not delayed the process in any manner. The Appellant is entitled to seek remedies available in law. The allegation of delay by the Respondent No. 1 against the Appellant is without any basis. The Liquidator, acting as the RP carried out the resolution process in a time-bound manner but at the time of sale of assets in liquidation, allegation of process being delayed by the Appellant is being raised as a bogey. In any event, this is no defense or reply to breaches by the Liquidator. The delay if any is due to the illegal acts of the Liquidator. The Appellant has only urged that an open auction or consideration of higher offers would better serve the interests of the creditors and stakeholders.

25. The Respondents have relied upon the cases of ***Mohan Gems and Jewels Pvt Ltd through Liquidator vs Vijay Verma and Anr.; Resolve Support Services Pvt Ltd vs Anuj Bajpai Liquidator Radiance Properties India Pvt Ltd and Anr.; Vedica Procon Pvt Ltd vs Maleshwar Green Pvt Ltd and Ors.; RK Industries (Unit w) LLP vs HR Commercial Pvt Ltd and Ors and Eva Agro Greens Pvt Ltd vs PNB and Anr.*** All these pertain to cases of auction and not private sale. In fact, the Appellant has relied upon ***SBI vs Bhuvée Stenovate (2023 SCC Online NCLAT 71)***, which considers ***RK industries*** and lays down requirements for private sale.

26. The Liquidator has failed to conduct SCC meetings beyond two recorded instances and no information was provided or consultation was held with the stakeholders about the liquidation process or the fact that the property was being sold by private treaty basis. The 2nd meeting was pursuant to notice being issued in IA No. 2117 of 2021 wherein a specific prayer was made for conducting SCC. In the 2nd meeting, the Liquidator refused to answer queries on steps taken to maximise value and instead levelled baseless allegations. All of which are recorded. No subsequent SCC meetings have been convened, and no responses provided on issues raised till date. Despite this, the Impugned Orders record that information would be provided to the Appellant under SCC meetings, which have till date not been held. The record has been completely ignored by the NCLT.

27. The Liquidator deliberately avoided filing replies in IA Nos. 2117/2021 and 1613/2021. It was only after the issuance of Notice in the present Appeals that a response was filed, disclosing for the first time the manner in which

the process had been conducted. A copy of IA No. 1577 of 2021 was only shared by Affidavit dated 17.04.2025 i.e. after commencement of final hearing before this Tribunal. This shows the opaque nature in which the entire liquidation process was being carried out.

28. The claim that the Appellant benefits from delayed proceedings due to an alleged rise in property prices is unfounded. The Appellant's case has consistently relied on valuations and offers from 2018 and 2021, demonstrating the property's higher value at that time. The consistent suppression of value through collusion between the Liquidator and the related party purchaser is evident.

29. The Impugned Order of the NCLT approving the sale is ex-facie unsustainable, having been passed in the teeth of the Liquidation Regulations and without judicious consideration of the facts. The Appellant has demonstrated that the sale was conducted at an unconscionably low price, in a non-transparent and collusive manner, causing loss to the stakeholders. It is humbly submitted that this Tribunal ought to set aside the illegal sale and direct a proper third-party auction to ensure that the true value of the assets of the Corporate Debtor can be realized for the benefit of all stakeholders, in accordance with law.

Submissions of Liquidator-Respondent No1

30. It is contended that the property description was deliberately concealed on account of ulterior motives. Liquidator submits that all auction notices are duly placed on record before the NCLT and this Appellate Tribunal. All auction notices duly provide a detailed description of the immoveable property and

the shares that were being put to auction, which are once again described as below:

Immoveable property: Parcel of land in Village Boris, having Survey no. and Hissa no. 47/1B, 47/2C, 54/3, 68/2A, 69/1, 69/8, 103, 59/1A, 60/2, 67, 69/9; in Village Kihim, having Survey No. 767; and in Village Gunjis having Survey no. and Hissa no. 7/1 and 9/1/4 all located in Taluka Alibaug, District Raigad within the state of Maharashtra.

Shares: 100% Equity shares of wholly owned subsidiary company of the Corporate Debtor being Urban Rupri Infrastructure Pvt. Ltd. ("URIPL").

31. The cumulative parcel of land mentioned above comprises of about 80.6 acres of land. Out of the said 80.6 acres, about 30 acres (appx. 24%) is the ownership of the Corporate Debtor as per revenue records and whereas 50.6 acres (appx. 76%) is in the name of one Urban Rupri Infrastructure Pvt. Ltd. ("URIPL"). It appears that 76% of land in the name of URIPL is purchased from the funds of the Corporate Debtor which was loaned to URIPL as per the Balance Sheet of F.Y. 2013-14. Liquidator had sought documents thereof but the same were not provided.

32. Valuation derived by the valuers under IBC is within 3% range of valuation as submitted by the Collector, Raigad. The reduction in the Reserve Price of the subsequent auction was only 15% as against the permitted reduction of 25% as per Regulations. The Appellant has remained present at each hearing of I.A. No. 1577 of 2021 since September, 2021. Appellant, himself being a Real Estate Developer has better contacts and has brought forth several buyers during the pendency of IA No. 1577 of 2021. The Liquidator has never opposed the offers by such buyers. Even so the proposed buyers have eventually withdrawn their interests without having paid any

EMD. The Appellant was given multiple opportunity by the NCLT to get a better offer.

33. Further Wendt Corporation Pvt. Ltd. (Re: Table under the head of SALE OF PROPERTY DOES NOT COMPLY WITH REGULATION 33) in its withdrawal letter dated December 1, 2023 has laid down the following reasons insofar as the present matter is concerned:

- a. Land parcels are fragmented and non-contiguous.
- b. No designated/proper entry point to any land parcel
- c. Electric poles existing on the land parcel
- d. Gas pipeline is passing through the land parcel
- e. Concerns relating to Coastal Regulation Zone.

34. Consequent to the non-cooperation of the Appellant and not having provided the requisite documents, the Liquidator preferred an Application under Section 19 of the Code and the same was allowed vide an Order dated April 26, 2018. Appellant preferred an Appeal against the Order dated April 26, 2018 vide Company Appeal (AT) No. 182 of 2018, wherein this Appellate Tribunal directed that the Liquidator may inspect the documents of URIPL, however the Liquidator shall not have any jurisdiction to take over any asset of URIPL including the 76% of parcel of land above-named by its Order dated December 6, 2018. Liquidator challenged the said Order before the Hon'ble Supreme Court vide Civil Appeal No. 1716 of 2019 and by an Order dated February 24, 2020, the Hon'ble Supreme Court was pleased to set aside the Order dated December 6, 2018 thereby restoring the Order dated April 26, 2018 passed by the NCLT under the Section 19-Application. As such, the issue pertaining to Liquidator's right to sell properties of a third party was

sub-judice at the time of conducting the auctions in 2019. The Appellant preferred another ***Miscellaneous Application being M.A. No. 880 of 2020 in C.A. No. 1716 of 2019 before the Hon'ble Supreme Court*** wherein the Appellant sought to expunge the remarks stating that the Appellant is 'hiding information from the Resolution Professional'. By an Order dated July 20, 2020, the Hon'ble Supreme Court was pleased to expunge the remark on a specific condition that the Appellant would provide an undertaking to the Hon'ble Supreme Court of the full compliance of the Order. A copy of the said Order dated July 20, 2020 is annexed herewith as Annexure 2. However, till date, no such Affidavit of compliance is received by the Liquidator and neither has the Appellant produced the same although several and substantial questions have been raised on the existence of the same before multiple fora during the course of the present proceedings.

35. Appellant has engaged in fraudulent activities in relation to the funds of corporate debtor per order of the NCLT under section 66 of Code. The Liquidator has preferred an Application under Section 66 of the Code inter alia against the Appellant, being I.A. No. 179 of 2019. The said Application was allowed vide an Order dated October 11, 2024, a copy of which is annexed as Annexure 3. At para 14.19 of the said Order dated October 11, 2024, the NCLT has observed that the Respondent No. 1 therein, i.e the Appellant herein has unjustly enriched himself and has defrauded the Corporate Debtor and its Creditors. As such, any offer by the Appellant and/or through the Appellant ought to be seen and confirmed with a higher degree of scrutiny.

36. Public notices for auction were duly published and are shown as below in a Chart:

| Sr. No. | Date | Publication | Property | Reserve Price (in Rs.) |
|---------|-------------------|------------------------------------------------------------------------------------------------------------|-----------------|------------------------|
| 1. | July 18, 2019 | Free Press Journal (English) Indian Express (English) Krushival (Marathi) Navashakti (Marathi) | Only land | 23,70,77,327/- |
| 2. | December 10, 2019 | Business Standard (English) Free Press Journal (English) Krushival (Marathi) Navashakti (Marathi) | Only land | 20,16,50,400/- |
| 3. | March 1, 2021 | Free Press Journal (English) Raigad Times (Marathi) | Land and shares | 68,47,65,620/- |
| 4. | March 25, 2021 | Free Press Journal (English) Raigad Times (Marathi) | Land and shares | 58,20,51,000/- |

37. The Appellant has objected to the sale on various grounds and they are considered hereinafter.

38. The first ground is that Auctions were conducted during Covid pandemic. The Covid pandemic started in or around the month of March, 2020 and a nationwide lockdown was declared. The Hon'ble Supreme Court took *suo moto* cognizance of the pandemic and passed necessary orders from time to time since its first Order passed on March 23, 2020 in *Suo Moto Writ Petition (Civil) No. 3 of 2020*. It is submitted that while earlier auctions were conducted in the year 2019. No auctions were conducted in the year 2020 due to the Covid pandemic. However, when the lockdown was being lifted and the situation was going back to normalcy, the Liquidator sought to act on the duty cast upon him under the Code and its Regulations and therefore initiated the process to conduct the next round of auction. Vide an Order passed on March 8, 2021 in *Suo Moto Writ Petition (Civil) No. 3 of 2020*, the Hon'ble Supreme Court relaxed its earlier decisions while observing that *"Though we have not seen the end of pandemic, there is considerable improvement. The*

lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode.”.

This itself suggests that the Liquidator was prompt in conducting his duty as a Liquidator since the Liquidation Process ought to be conducted in a time bound manner as stipulated under the Code and its Regulations.

39. It was also contended that Auction notices were not widely circulated. Schedule I (Mode of Sale) under the Liquidation Process Regulations mandates a public auction to be conducted in the manner specified at Regulation 12(3). Evidently, the Liquidator has fully and completely complied with the rigours of Regulation 12(3) in terms of issuance of the public auction. The Appellant has relied on a certain chart (Ann A-6 of Rejoinder to R1’ pg 30) purportedly to expand on the data of circulation of newspapers. The source and the authenticity and veracity of the document is in question since it does not bear any details of the source thereof. The basis of numbers contained therein is neither known nor explained and as such the Appellant has failed to reasonably establish the correctness of the said document. Moreover, the footnote of the said document refers to ‘Microsoft Power BI’ which is a Microsoft Login-based Software and as such the said document at Annexure A-6 of the Appellant’s Rejoinder is not a public document. The said document is referred to and relied upon by the Appellant for the first time before this Appellate Tribunal and therefore the same cannot be considered. In any event, such allegations as levelled by the Appellant are unsustainable since the publications, whereby the Liquidator has published the Auction Notices are also utilized by several established private entities as also judicial fora such

as the High Court of Judicature at Bombay, Debt Recovery Tribunal etc. as given below:

| | Name of Institution | Type of Paper Advertisement |
|---|------------------------|------------------------------------------------------------|
| 1 | Tata Capital | Auction Notice for Sale of Immovable Property |
| 2 | High Court | Official Liquidator - Offer for Sale of Immovable Property |
| 3 | L&T Finance | Public auction notice of Mortgaged Property |
| 4 | Bank of Baroda | Sale Notice of Immovable Property |
| 5 | GOI | Notice of Sale of Property for recovery |
| 6 | GS Mahanagar | Symbolic Possession Notice |
| 7 | Bank of Baroda | Immovable Property Possession Notice |
| 8 | Debt Recovery Tribunal | Recovery Notice |

Moreover, Free Press Journal is one of the most sought after publications for the purpose of advertisement of tenders and auction notices in the State of Maharashtra. A copy of the enlarged newspaper pages were tendered to this Tribunal at the time of hearing. The auction notices are already forming a part of the Reply by the Liquidator to Appeal No. 23/2024 as also as a part of the Annexures to I.A. No. 1577 of 2021, which was primarily placed before the Tribunal. The Appellant also contends that Raigad Times (regional newspaper used for publication of the Auction Notice) does not have circulation in Mumbai. This statement is factually incorrect. Moreover, the statement was made orally as at the time of hearing and whereas pleadings do not contain any such reference. That being said, the subject-property is situated in District Raigad that has a vast circulation of the publication 'Raigad Times'. Additionally, the Appellant has failed to point out that Raigad District also falls within the list of Districts under the MMR Region.

40. It was also contended that Property was sold at a lesser value than market rate. At the cost of repetition, in the interest of maximizing the value

of the property and since almost 75% of the land parcel was in the name of URIPL, being the wholly owned subsidiary of the Corporate Debtor, the Liquidator sought to sell the immoveable property of 30 acres in the name of the Corporate Debtor along with 100% shares held by the Corporate Debtor in URIPL which claimed ownership of 50 acres of contiguous land parcel. In view thereof, the Liquidator conducted a fresh valuation of the property in or around the month of February, 2021 wherein the Average Market Price of the property (land and shares) was Rs. 67.41 crores and the highest valuation was Rs. 68.01 crores. Accordingly, the third auction (first auction in the year 2021) was conducted for a Reserve Price of Rs. 68.47 crores, i.e higher than the highest valuation received by the Liquidator. Since the property could not be sold, the Liquidator sought to reduce the auction price by about 10% and the fourth auction (second in the year 2021) was conducted for about Rs. 58.20 crores. It is pertinent to note that the Regulations permit the Liquidator to reduce the auction price by 25% after every failed auction. However, in the present case, the Liquidator only reduced the price by about 15%. Even then, no bidders came forth for the said price under the public auction. Subsequently, R2 made an offer for an amount of Rs. 58.51 crores, i.e higher than the Reserve Price under the last conducted auction. Therefore, there is no infirmity in the offer placed by the said R2. Moreover, the valuation report of the Corporate Debtor is not challenged and/or are questioned and the Appellant cannot raise a contention as such at this stage. The Government Valuation conducted pursuant to the Order dated July 27, 2021 of the NCLT, calculated the Ready Reckoner rate of the property (land and shares) at Rs. 70.31 crores, i.e just about 2 crores more than the value gauged by the

Appellant. Therefore, without prejudice, the sale conducted by the Liquidator is valid and does not suffer from any lapse procedurally or otherwise.

41. It is also argued by the Appellant that the Sale of property does not comply with Regulation 33. The Appellant wrongly contends that the Liquidator is required to take dual permission of the Adjudicating Authority for the purpose of a private sale. The first leg of permission is purported to be sought before even ensueing on the process of a private sale (with or without a known buyer who would not withdraw their offer) and subsequently upon having a prospective buyer in hand. A situation as such is not only absurd but logically unimaginable and does not stand ground at all. To advance an argument on that route, the Appellant relies on the judgment of **State Bank of India vs Bhuvée Stenovate Pvt. Ltd. & Ors. (supra)**. However, the facts in the matter of **Bhuvée Stenovate (supra.)** are completely different to that of the present matter. It is pertinent to note the Terms & Conditions as provided by the Liquidator to R2. As regards the approval for a sale to a Related Party, the Liquidator has been waiting for the confirmation by NCLT and sale has not been completed. Moreover, the Confirmation Letter issued by the Liquidator while being in consonance and accordance with the Terms and Conditions, explicitly states that all necessary process will be based on Order of the Adjudicating Authority.

42. The Appellant vehemently argues that there is purported collusion between the Liquidator and the Successful Buyer without any logical and/or cogent basis and evidence to such allegations. Having canvassed such allegations even before the NCLT, the NCLT has categorically observed that

there is no adverse material suggesting collusion. On the contrary, buyers who initially conveyed their interests in the property, did not make any effort even to deposit EMD, much less put forth an actual offer. Offers by such buyers were also placed before the NCLT and the same was considered prior to approving the private sale under I.A. No. 1577 of 2021.

43. Details of such buyers, the corresponding Applications and the details of their expression of interest and subsequent withdrawal are provided below:

| Sr. No. | Buyer / Relevant Application | Date of expression of interest | Date of withdrawal |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------------------------------|
| 1. | Survival Tech Pvt. Ltd. * Offer was considered and Liquidator addressed and email directing to pay the EMD. However, no EMD was paid for atleast two months after that due to which the Liquidator cancelled the offer. | May 13, 2021 | Offer was cancelled on account of non-payment of EMD |
| 2. | Vivek Talwar – IA No. 2117 of 2021 | April 13, 2021 | May 12, 2022 |
| 3. | Myron Realtors Pvt. Ltd. – IA No. 1322 of 2022 | February 21, 2022 | June 15, 2022 |
| 4. | Gewortal Development Pvt. Ltd. – IA No. 4212 of 2023 | July 3, 2023 | October 3, 2023 |
| 5. | Wendt Corporate Services Pvt. Ltd. * No Application filed. Details of the interest were placed before the Ld. NCLT by the Liquidator (<i>Re: para 3.7 of Impugned Order in Appeal No. 23/2024</i>) | October 18, 2023 | December 1, 2023 |

44. In the light of the above, the NCLT (@ para 3.8 of Impugned Order in Appeal No. 23/2024) also observes as under:

“The value maximization proposition has to (be) put to and end at some point of time and it cannot be made an unending process. We are of the considered view that the realizable value is a value, which other willing buyer is ready to pay. Though, the buyers have offered to pay the price, but when confronted, they backed out with their offer without deposit of Earnest Money. Accordingly, we cannot consider such offer to be bonafide.”

45. It is also claimed that as required under Regulation 31A, there was non-consultation of the SCC. The Liquidation proceedings herein commenced on September 3, 2018 and whereas Regulation 31A mandating formation of an

SCC was inserted by way of Notification dated July 25, 2019. IBBI issued a Circular dated August 26, 2019 stating that the provisions of the aforesaid amendment would not be applicable to the liquidation processes which had commenced before coming into force of the said amendment. The prospective applicability of the said provisions was specifically inserted into the Liquidation Regulations vide an Amendment carried out on or about April 28, 2022. That being said, even after having preferred I.A. No. 1577 of 20021 in the month of June, 2021, when the Appellant claimed to have a buyer who was willing to pay about Rs. 100 crores for the subject property, the Liquidator called for a meeting of the stakeholders. Even at that time, the Appellant did not divulge any details of such buyers and in fact simply stalled proceedings before the NCLT on one pretext or another. It is pertinent to note that the Appellant contends that the Liquidator has resisted other prospective buyers and therefore is purportedly in collusion with the Successful Buyer herein (R2). However, during the pendency of the proceedings before the NCLT, the Liquidator has never opposed any of the Applications filed by the Appellant on behalf of other buyers. On the contrary, such buyers introduced by the Appellant have themselves failed to hold ground and have withdrawn their offer.

46. It is also argued that shares of the CD were not put to auction in the year 2019 and the Liquidator has failed to engage in value maximisation. At the cost of repetition, the Liquidator had preferred an Application under Section 19 before the NCLT inter alia seeking further details and documents pertaining to the loan advanced by Corporate Debtor to URIPL in the interest

of value maximisation of the very property in question. However, the Liquidator is not permitted to take on the property of a sister concern, being a third party which was subsequently established upon conclusion of the proceedings before the Hon'ble Supreme Court. Thus, only the land was put to auction in the year 2019 and whereas no auctions could be conducted due to the unprecedented Covid-19 pandemic in the year 2020. Thus, having left with little choice, the Liquidator subsequently put to auction the Land in the name of Corporate Debtor and its shares held in the Wholly Owned Subsidiary. i.e URIPL such that any buyer would benefit the right, title and interest in the entire parcel of land, directly and/or indirectly thereby aiding in value maximisation of the property at Alibaug. It is contended that the Liquidator has opposed higher offers by other prospective buyers. While such contention is far from truth (elaborated herein below) the Hon'ble Supreme Court has established that there is no such principle laid down by a Court that whenever a higher offer is received in respect of the sale of a property of a company in liquidation, the Court would be justified in reopening the concluded proceedings (***Vedica Procon Pvt. Ltd. vs Balleshwar Greens Pvt. Ltd. - para 47 (2015) 10 SCC***).

47. Further, the Respondent relies on the judgement of ***Hon'ble Supreme Court***, recently in the matter of ***Eva Agro Feeds Pvt. Ltd. vs Punjab National Bank & Anr. – (2023) 10 SCC***.

48. The Appellant contends that the Judgments aforementioned relied upon by the Liquidator are not sustainable for the mere ground that the judgments are based upon auction conducted by the Liquidator thereunder.

That being said, in the present case, the Liquidator sought to auction the property and subsequently, when the auctions failed, the Liquidator proceeded to conduct a private sale thereof in compliance with Regulation 33 of the Liquidation Regulations. As such, the principles of sale laid down in the judgments relied herein above are as valid and applicable to the present matter. In addition to what is stated hereinabove, the NCLT has already examined the adequacy of the value of the property as at the time of conducting the auction and subsequent thereto. The Tribunal has also given multiple opportunities to consider better offers and none have stood ground. Therefore, it cannot be said by any stretch of imagination that efforts were not made for value maximisation of the property.

49. In view of the above, it is submitted that the present set of Appeals are yet another way of stalling of the imminent conclusion of the present proceedings which are pending since 2018, i.e about seven years over a single property forming asset of the Company and subject matter of the present proceedings.

Submissions of Respondent No. 2 - Leisure Enterprises LLP

50. Liquidator had conducted two auctions for immovable property being the parcel of land in the name of NTCPL. Both auctions had failed and no prospective bidders came forth. At the relevant time, the Liquidator's right on property of URIPL was impinged vide challenge to the Order dated April 26, 2018 under C.A. No. 182 of 2018. The said C.A. No. 182 of 2018 was finally decided vide an Order dated December 6, 2018. Subsequent thereto the Liquidator challenged the said Order dated December 6, 2018 vide Civil

Appeal No. 1716 of 2019 and the same was finally decided on or about February 24, 2020 thereby restoring the Order of NCLT, which established that the Appellant is hiding information. The remarks of the NCLT that the Appellant is 'hiding information' is purportedly expunged vide an Order dated July 20, 2020 subject to filing of a certain Affidavit of undertaking of compliance. No such Affidavit has been placed on record before any Fora as per the submissions of the Liquidator.

51. Two more auctions were conducted in the year 2021 pursuant to carrying out fresh valuation. Both auctions failed since no bidders came forth. The last public auction was conducted for a Reserve Price of Rs 58.20 crores. R2 - Leisure Enterprises has offered an amount of Rs 58.51 crores and has paid 10% EMD (Non-Refundable) against their offer. As per the Terms and Conditions of sale, Clause 23 explicitly states that it is an 'Invitation to Offers'. Subsequent thereto, R2 has placed its offer before the Liquidator vide letter dated July 1, 2021. The Offer placed by R2 was conditionally accepted by the Liquidator vide a letter dated July 2, 2021. Last paragraph of the said letter explicitly states that all necessary process will be based on Adjudicating Authority Order and as per the satisfaction of Order, the possession of abovementioned property will be handed over to R2 only upon receipt of full sale consideration by NTCPL. Therefore, the subject-sale under Regulation 33 of the Liquidation Process Regulation is subjected to approval of the Adjudicating Authority, being Application under I.A. No. 1577 of 2021.

52. Without prejudice to rights of R2, as per the List of Dates and Events submitted by R1, Survival Tech Pvt. Ltd. had earlier placed an offer before the

Liquidator prior to the offer placed by R2 and whereas Survival Tech Pvt. Ltd. failed to deposit further documents or EMD. The said Survival Tech Pvt. Ltd never approached the Hon'ble NCLT with any offer.

53. Appellant herein is declared to have engaged in fraudulent activity under Section 66 of the Code. Mr. Anand Jain and/or any other personnel of R2 is not convicted of any of the allegations as levelled against them, which in any event is unrelated to the transaction at hand and does not create any bar under Section 29A of the Code.

54. To the best knowledge of R2, the valuation reports by Liquidator are not challenged till date and as such the Liquidator's valuation reports have attained finality. The Reserve Price under the auction is based upon the valuation conducted by the Liquidator in the month of February 2021 and the same is in line with the Government's Valuation which was conducted upon directions of the NCLT.

55. The Appellant contends that a related entity of R2, i.e Urban Infrastructure Venture Capital, in its proposed Resolution Plan offered in the year 2018 has projected an amount of Rs 103 crores as against a plot of 80 acres of land. However, the Appellant has failed to point out that under the proposed Resolution Plan, the amount of Rs. 103 crores were to be recovered over a period of five years by development of property, which will have lower Net Present Value (NPV). In any event, it a matter of public knowledge and financial understanding that development always fetches more value. The Appellant's usage of the value assigned to the subject property under the

proposed Resolution Plan in the absence of the immediate context thereof is therefore misleading and flawed. The Appellant has failed to realise that property prices are always fluctuating and are subject to market forces and ancillary issues arising thereof, such as change in government rules, coastal regulations and clarity in terms of the title to the property.

56. R2 made its offer on or about July 1, 2021 and alongside paid a non-refundable EMD as at the time of placing its offer for the subject property. The sale was first approved by the NCLT vide an Order dated December 24, 2021. The said Order was challenged by the Appellant before the Hon'ble High Court vide a Writ Petition and the Order dated December 24, 2021 was set-aside vide an Order dated December 30, 2021. It is pertinent to note that the Order dated December 24, 2021 was set-aside on account of a technical and administrative flaw which does not relate to the sale and/or its validity and merits in any manner. Thereafter, upon revival of I.A. No. 1577 of 2021 before the NCLT, the Appellant time and again brought forth offers from buyers claiming that such buyers were purportedly willing to offer a better price. However, all the buyers as purportedly claimed by the Appellant was withdrawn their offers more so without paying a single dime.

57. As against the conduct of such buyers as claimed by the Appellant, R2 has already paid a Non-Refundable EMD to the Liquidator in the year 2021 and till date R2 has abided by its offer for purchase of the subject property. Even as R2 has kept available the balance amount towards its offer of Rs. 58.51 crores, R2 is already facing a loss of opportunity cost merely on account of the delay caused in the present matter which is purely attributed only to

the conduct of the Appellant which is evident from the List of Dates and Events submitted by the Liquidator.

58. The approval of private sale for the subject property, for reason as stated above, was pending before the Ld. NCLT since June, 2021 until December, 2023 and subsequently before this Tribunal from December 2023 until date. During the course of hearing of the present matter, while the Appellant has raised several contentions, all of which are unsustainable, the Appellant has failed to point out to any flaw and or grounds and reasons for which the Order dated December 6, 2023 is bad in law and any reason thereof for the said order to be set-aside.

59. The Hon'ble Supreme Court, in the matter of ***R K Industries vs HR Commercials (2024) SCC 166***, has held that:

"79...Once the liquidator applies to the adjudicating authority (NCLT) for appropriate orders/directions, including the decision to sell the movable and immovable assets of the corporate debtor in liquidation by adopting a particular mode of sale and the adjudicating authority (NCLT) grants approval to such a decision, there is no provision in IBC that empowers the appellate authority (NCLAT) to suo moto conduct a judicial review of the said decision. The jurisdiction bestowed upon the adjudicating authority (NCLT) and the appellate authority (NCLAT) are circumscribed by the provisions of IBC. and borrowing a leaf from Essar Steel India Ltd. (CoC) v. Salish Kumar Gupta, they cannot act as a court of equity or exercise plenary powers to unilaterally reverse the decision of the liquidator based on commercial wisdom and supported by the stakeholders. ..".

80. .. The appellate authority cannot don the mantle of a supervisory authority for overseeing the validity of the approach of Respondent 2 liquidator in opting for a particular mode of sale of the assets of the corporate debtor".

60. The Hon'ble Supreme Court, in its landmark judgment of ***Navalkha & Sons vs Ramanya Das (1969) 3 SCC 537*** has established that even the Hon'ble Supreme Court has only recognised the existence of the discretion in

the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made. The hon'ble Supreme Court has also emphasized on the well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation (para 40 of (1969) 3 SCC 537)). It is notable to consider that even in the case of **Navalkha (supra.)**, an auction was conducted albeit between only two persons (re: (para 35 of (1969) 3 SCC 537)) and as such the facts of the matter are well-fitting in the present case and thus the ratio as laid down in the matter of Navalkha (supra.) can be applied as is. The principles laid down in the matter of Navalkha are reiterated by the Hon'ble Supreme Court in the matter of **Vedica Procon Pvt. Ltd. vs Balleshwar Greens Pvt. Ltd. (2015) 10 SCC 94.**

61. The issue pertaining to the adequacy of the consideration for the subject property was examined in detail by the NCLT vide a Common Order dated November 21, 2023 passed in IA No. 2117 of 2021, IA No. 1617 of 2021 and IA No. 1322 of 2021. The said Order is impugned vide Appeal No. 1584 of 2023 and Appeal No. 1585 of 2023 forming a part of the present batch of tagged matter. R2 is not arrayed as a party to the said proceedings.

62. It is an undisputed and admitted fact that the Appellant did not participate in the sale of the subject property, either at the time of having placed the public auction and/or during the pendency of IA No 1577 of 2021 before the NCLT. In fact, a perusal of the List of Dates and Events submitted by the Liquidator also shows that a meeting of the stakeholders was conducted on or about October 4, 2021, which was attended by the Appellant

herein and whereas the Liquidator enquired with the Appellant in regards to the Appellants claims of having a higher offer. Without prejudice to the objection in terms of any higher offer being considered at this stage, it is pertinent to note that even at the time the Appellant did not inform the Liquidator of any such buyer having a higher offer.

63. This Hon'ble Tribunal has, time and again thwarted efforts by third parties challenging sale proceedings without as much as participating therein.

In the matter of ***Manjit Commercial LLP v SPM Auto Pvt. Ltd. (2019 SCC Online NCLAT 1173)*** this Hon'ble Tribunal had observed as under:

“....

11. However; the Appellant did not participate in the e-auction and now making vague allegations without any substantial grounds cannot be accepted. As per Regulation 44(1) of the Liquidation Process Regulations, 2016 the Liquidator shall liquidate the 'Corporate Debtor' within a period of two years. We are of the view that there should not be any unnecessary delay and protract the liquidation process for undue advantage of some of individuals of group, which would adversely affect the liquidation process.”

64. We now note the submissions Qua related Appeals hereinafter.

Appeal CA AT Ins No. 1584 of 2023

65. The prayers in this appeal are as below:

- a) That this Hon'ble Tribunal be pleased to call for the records and proceedings culminating in the Impugned Order dated 21.11.2023 passed in IA No. 2117 of 2021 in Company Petition IB No. 69 of 2017 and after going through the validity, propriety and correctness thereof, be pleased to quash and set aside the same.
- b) Pending the hearing and final disposal of the present Appeal, this Hon'ble Tribunal be pleased to stay further proceedings in Company Petition No. 69 of 2017 and more particularly IA No. 1577 of 2021 in Company Petition No. 69 of 2017 which is

pending adjudication before the Ld. Adjudicating Authority,
Mumbai.

66. It is contended that Liquidator is guilty of misleading NCLT by way of pleadings in IA No. 1577 of 2021 in seeking permission for a private sale of the property in favour of a related party, as more particularly stated in the submission to Company Appeal No. 23 of 2024, the Liquidator is guilty of misleading the NCLT in its pleadings in IA no. 1577 of 2021. The IA seeks permission for a private sale to a related party on the basis that there were 4 failed auctions but there was no genuine auction conducted at any stage for the entire lands. Further, the IA No. 1577 of 2021 further fails to disclose that various alternate offers were received by the Liquidator for much higher value. The true value of the property was thus wilfully suppressed from the NCLT while making an Application to permit the undervalued private sale in favour of Leisure Enterprises LLP, a related party. It is evident that NTCPL's assets could fetch a significantly higher price in an open, transparent process. The Liquidator's insistence on the sale of assets at ₹ 58.51 crores suggests a design to benefit the related party buyer at the cost of the stakeholders of the NTCPL. It is contended that the control of corporate Debtor and its 100% subsidiary was handed over to UITL by appointing their employees as directors. The Liquidator is ex facie hand-in-glove with the UITL and its associates. This is inter alia evident from the fact that the Liquidator has already appointed Mr Nirav Dholakia and Mr Raju Tanna, both associates/employees of the promoters of UITL, as the directors of 100% subsidiaries of NTCPL, which owns 50.6 acres of land belonging to the NTCPL.

67. Further, the registered address of TCPL and the registered email ID of NTCPL has been changed to the address and email ID of UITL which is under the control of Mr Anand Jain, the related party, that has placed the distressed offer to purchase the lands of NTCPL through M/S Leisure Enterprises LLP. These acts were done behind the back of stakeholders and without permission of NCLT. The Liquidator appointed the said persons as directors to give them control, even though the proposed private sale transaction was being challenged by the Appellant. It is pertinent to note that the private sale is challenged before this Tribunal in Company Appeal No 23 of 2024 and the same is not confirmed.

68. It is contended that the liquidation process being carried out is with complete opacity and no proper meetings of Stakeholders Consultation Committee (SCC) are being held. The Liquidator is duty bound to provide all information in the SCC with respect to the liquidation process. In the present case, no proper SCC meetings were carried out by the Liquidator. The Appellant (being an ex-director and Financial Creditor) was never called to any meeting discussing the sale. In fact, no stakeholders' consultation meeting was convened at all regarding the proposed private sale. The first SCC was held on 28.11.2019. Thereafter, no SCC was held. The Appellants request to hold SCC dated 30.08.2021 was flatly refused. The Appellant's request for details of private sale and copy of IA 1577 of 2021 was also denied as evident from emails dated 30.08.2021, 04.09.2021 and 06.09.2021. After receipt of IA 1577 of 2021, it is learnt that the private sale was concluded in terms of the offer made in June 2021 and in July 2021. Thus, the entire transaction

was entered during the 2nd wave of the pandemic for reasons which are not far to seek.

69. In fact, it is only after the Appellant filed IA no. 2117 of 2021 inter alia praying for intervention to oppose the private sale with a prayer for directions to carry out the SCC and notice was issued on 29.09.2021, did the Liquidator hold a SCC meeting. In the SCC dated 04.10.2021, no information was provided with respect to the private sale. The Appellant has raised queries with respect to the sale process and compliance of Regulation 33, which have remained unanswered till date. All of which are recorded and are uncontroverted. Instead of dissipating information on the prospective buyer, the Liquidator instead recorded false allegations against the Appellant in the minutes of meeting. The Appellant has protested the same in its communication dated 19.10.2021. The meeting had been carried out on a hybrid platform and was recorded but despite assurances by the Liquidator in emails dated 09.10.2021, 14.10.2021, 27.10.2021 and 05.01.2022, no recording has been shared by the Liquidator till date. The Liquidator's conduct is a blatant breach of Regulation 31A and the Liquidator's duty of transparency. Essentially, the liquidation process has been treated as a private affair between the Liquidator and UITL, which is against both the letter and spirit of the IBC.

70. It is also contended that there is a collusion between the liquidator and UITL-Financial Creditor in undervaluation. The Liquidator is duty bound to conduct the liquidation proceedings in the best interest of the creditors, contributories and stakeholders and maximise the value of the assets of the

Corporate Debtor. Instead of acting as a trustee of the NTCPL, he has acted in a biased and collusive manner to favour a related-party buyer, to the serious detriment of the stakeholders of the Corporate Debtor. It is ex-facie evident that the Liquidator has wilfully suppressed the value of the assets to engineer the private sale impugned in Company Appeal No. 23 of 2024. The Liquidator, whilst accepting the offer of private sale and EMD from Leisure Enterprises LLP, has failed to even consider that in 2018, the same promoter group had offered ₹ 103 crores for the assets of the Corporate Debtor under Resolution. Instead of encouraging better offers available, the Liquidator has actively discouraged better offers and continues to support the private sale, which otherwise was carried out in blatant violation of the Code. The Liquidator did not appoint any third-party property consultants to market the property to seek better offers. No steps have been taken by the Liquidator as per Schedule I of the Liquidation Regulations for value maximisation. In fact, the Liquidator has discouraged genuine buyers who showed an interest in the property, in his email dated 20.04.2021 to a prospective purchaser, the Liquidator has refused to provide necessary land details available with him and has thus actively discouraged third party buyers in their attempt to acquire the lands at a higher value.

71. No replies were filed by the liquidator before the NCLT despite notice. The Liquidator acts as a trustee of the Corporate Debtor and is an officer appointed by the Tribunal under the statute and is duty bound to place true and correct facts/records before the Tribunal. In the present case notice was issued in IA Nos. 2117/2021 and 1617/2021. However, no Reply was filed by

the Liquidator at any stage despite notice being issued. In fact, none of the allegations made/issues raised by the Appellant were answered by the Liquidator at any stage before the NCLT as such the case of the Appellant was uncontroverted. It was only after the issuance of notice in the present Appeals that a response was filed. Despite filing replies, copy of IA No. 1577 of 2021 (seeking private sale to Leisure Enterprises LLP) was not filed and was only filed before this Tribunal by of an Additional Affidavit only shared by Affidavit dated 16.04.2025 during final hearing, after submissions of suppression by the Liquidator were made before this Tribunal.

72. It is also claimed that there has been Breach of confidentiality. The record shows that the Liquidator has been divulging confidential information of the Corporate Debtor to UITL. In fact, the Liquidator was found sending confidential papers of the Corporate Debtor to UITL as the same were accidentally delivered to the office of the Appellant. This clearly shows that UITL has complete control over the Liquidator and he was not acting in non-partisan and neutral manner.

73. It is also contended that liquidator has acted contrary to the code. Actions of the Liquidator are ex-facie contrary to Code. The Liquidator has completely ignored the requirements of Regulation 33 of the Liquidation Regulations to support an undervalued and illegal private sale. The Liquidator has admitted time-barred and inflated claims of the Corporate Debtor in contravention of the Orders of the NCLT, without any scrutiny and despite objections raised by the Appellant and the Committee of Creditors. The claims of UITL admitted by the Liquidator, have been held to be time barred by the

Order dated 19.03.2025 in MA No. 2185 of 2019 filed by the Appellant before the NCLT. The Liquidator has thus failed to act independently and professionally.

74. It is also contended that the conduct of liquidator is contrary to the provisions of IBBI Insolvency Professional Regulations. The Liquidator has breached the Code of Conduct for Insolvency Professionals as provided by IBBI (Insolvency Professional) Regulations, 2016, and is in breach of the requirements of 'integrity and objectivity', 'independence and impartiality', 'professional competence', 'representation of correct facts and correcting misapprehensions', 'information management' evident from following acts.

75. Furthermore, impugned order does not consider the allegations raised against the Liquidator. The Appellant submits that despite the allegations being uncontroverted, the Impugned Order dated 21.11.2023 does not consider or deal with the issues raised at all.

76. On the issue of impleadment challenging private sale, submissions filed in Company Appeal (AT) (Ins.) No. 23 of 2024 are adopted.

Company Appeal (AT) (Ins.) No. 1585 of 2023

77. This Appeal was filed by Appellant Bhavik Bhimjyani impugning the order dated 21.11.2023 rejecting of I.A. No. 1617 of 2022 which had prayers as follows:

- “(a) Investigate Liquidator under Section 218 of IBC.
- (b) Replace Liquidator
- (c) Initiate proceedings of professional misconduct and such other offences.

- (d) Stay I.A. No. 1577 of 2021
- (e) Interim and ad-interim reliefs in terms of prayer clause (a) to (d).”

Company Appeal (AT) (Ins.) No. 526 of 2024

78. This Appeal was filed by Appellant Bhavik Bhimjyani impugning the order dated 06.12.2023 which had made I.A. No. 4212 of 2023 to be infructuous in view of the order passed in I.A. No. 1577 of 2021. It is to be noted that prayers in I.A. No. 4212 of 2023 were as follows:

- “(a) Conduct fresh auction
- (b) In an alternative to prayer clause (a), allow the sale to Gewortal Development
- (c) Sale proceeds be subject to outcome of IA 2184/2019 (for change of Liquidator)
- (d) Stay IA 1577/2021
- (e) Interim and ad-interim in terms of prayer clause (d)”

The prayers in this Appeal are same as in CA (AT) (Ins.) No. 1584 of 2023.

79. The Appellant prays to quash and set aside the Order dated 06.12.2023 passed in IA 4212 of 2023 in CP (IB) No. 69 of 2017 qua considering better offers/ fresh auction rejected as infructuous. It is claimed that the Appellant's IA No. 4212 of 2023 was being considered by the NCLT as evident from the Orders dated 05.10.2021 and 18.10.2021 of the NCLT. In the said Orders the NCLT had called upon the proposed buyer Leisure Enterprises LLP to increase its offer and was also contemplating better offers which were placed by the Liquidator. The Order dated 18.10.2023 calling upon one Wendt Corporation to make an EMD was only uploaded on 05.12.2023 after the Order in IA 1577 of 2021 allowing the private sale was pronounced. The NCLT erroneously lost

sight of the proceedings pending in the said IA 4212 of 2021 and incorrectly allowed the private sale dismissing the Appeal as infructuous.

Company Appeal (AT) (Ins.) No. 528 of 2024

80. In Company Appeal (AT) (Ins.) No. 528 of 2024, the Appellant is assailing impugned order in IA No. 1393 of 2024. I.A. No. 1393 of 2024 which was filed by the Liquidator had the prayer that Respondents to pay property tax of Rs. 8.65 lakhs. In the Order dated 06.12.2023, directions were issued in IA No. 1393 of 2023, directing the purchaser under the private sale to pay property taxes despite there being directions by this Tribunal to the Liquidator not to take further steps in pursuance of the Impugned Order allowing the private sale. The Appellants objects to further rights being created in furtherance of the illegal private sale in breach of the Orders of this Tribunal.

Company Appeal (AT) (Ins.) No. 492 of 2024

81. This Appeal was filed by the Appellant Bhavik Bhimjyani impugning the order dated 18.01.2024 rejecting of I.A. No. 213 of 2024. The I.A. No. 213 of 2024 filed by Liquidator which had the prayer as follows:

“Modification of Order dated 05.12.2023 erroneously recording that Prospective Buyer (Leisure) has sought for refund of EMD in the event NCLT is now allowing the sale.

The present appeal has the following prayers:

- a) This Hon'ble Tribunal be pleased to call for the records and proceedings culminating in the Impugned Order dated 18.01.2024 passed in IA No. 213 of 2024 in Company Petition IB No. 69 (MB) of 2017 and after going through the validity, propriety and correctness, thereof, be pleased to quash and set aside the same.

- b) Pending the hearing and final disposal of the present Appeal, this Hon'ble Tribunal be pleased to stay the effect operation and implementation of the Impugned Order dated 18.01.2024 passed in IA No. 213 of 2024 in Company Petition IB No. 69 (MB) of 2017.

82. Qua modification of order dated 05.12.2023 was permitted during the pendency of Appeal No. 23 of 2024 without notice to the Appellant. The Liquidator moved an IA for modification of order dated 05.12.2023 and moved the same on 18.01.2024 after this Tribunal was seized of the matter and had granted interim protection on 09.01.2024. The Application was moved without notice and the Appellants protest was rejected by the NCLT, while allowing the modification of the order.

Appraisal

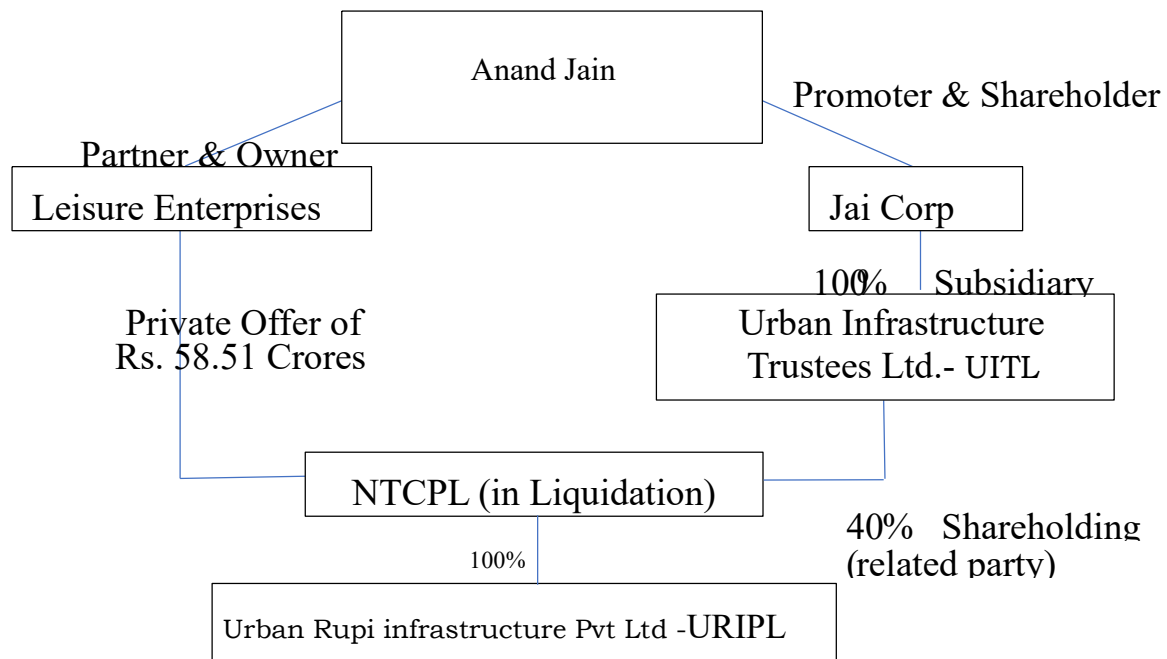
83. The Appellant is challenging the approval given by the NCLT to the sale of lands of Corporate Debtor (in liquidation) - Neelkanth Township & Construction Pvt Ltd - NTCPL on undervalued rates and also by way of private sale to a related party vide the Impugned Order dated 05.12.2025, which is assailed to be contrary to the requirements of Regulation 33 of IBBI (Liquidation Regulations), 2016 ("Regulations").

84. Heard Learned Counsels for both sides and perused material placed on record. As agreed by all parties CA(AT)(Ins.) No. 23/2024 is taken as a lead case along with other related matters as noted hereinafter.

85. The brief sequence of events - from admission into CIRP under Section 7 of the Code and thereafter into liquidation is captured as below:

| | |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01.03.2017 | Urban Infrastructure Trustees Limited (UITL) filed Company Petition No. 21 of 2017 under Section 7 of the IBC seeking admission of NTCPL under CIRP claiming financial debt to the tune of Rs 226.16 crores. NCLT dismissed the petition filed by the Petitioner claiming Rs 226.16 crores and restricted the claim of the Petitioner to an amount of Rs 51 crores. |
| 29.03.2017 | UITL after accepting the order dated 01.03.2017, filed Company Petition No. 69 of 2017 seeking admission of NTCPL under CIRP for an amount of Rs 51 crores, which is the only amount which could be claimed. |
| 21.04.2017 | Adjudicating Authority admitted the Company Petition against NTCPL for a sum of Rs 51 crores. The order of admission was upheld by the Hon'ble Supreme Court. |
| May 4, 2017 | NCLAT stayed the Orders dated April 21, 2017, admitting the above Company Petition and May 1, 2017 appointing the IRP in Company Appeal (AT)(INS) No. 44 of 2017 |
| August 11, 2017 | Company Appeal (AT) (INS) No. 44 of 2017 was dismissed |
| August 18, 2017 | Bhavik Bhimjyani filed SLP challenging Order of NCLAT dated August 11, 2017 |
| August 23, 2017 | SLP was dismissed |
| February 6, 2018 | IRP was confirmed as the RP during meeting of the CoC |
| April 26, 2018 | RP filed Application under Section 19 being MA No. 344 of 2018. MA No. 344 of 2018 under Section 19 was allowed making prima facie observations against Bhavik Bhimjyani (para 9 of Order) |
| May 2, 2018 | Bhavik Bhimjyani challenged the Order dated April 26, 2018 in Company Appeal (AT) (INS) No. 182 of 2018 |
| September 9, 2018 | NTCPL-Corporate Debtor was set into liquidation |

86. A chart of shareholding of Corporate Debtor (in liquidation) has been provided by the Appellant, which has not been controverted by the Respondents, and which is reproduced as below:



87. The shareholding and the board of Neelkanth Township & Construction Pvt Ltd - NTCPL comprised of two sets of shareholders. It is claimed by the Appellant that it represents Neelkanth group and owns 60% of shareholding, and the remaining 40% shareholding is held by Urban Infrastructure Trustees Limited (UITL), which is 100% subsidiary of Jai Corp limited, which in turn is closely held by Mr Anand Jain. In UITL, Mr Anand Jain and his family represent majority shareholding. UITL had two directors on the board of NTCPL and was at all times involved in the affairs of NTCPL. Mr Anand Jain is the Chairman of Urban Infrastructure Venture Capital Ltd and also the Partner in Leisure Enterprises LLP, being R2 in the present matter. One Anand Jain was the Chairman of Urban Infrastructure Venture Capital Ltd is also the partner in Leisure Enterprises LLP, being R2 in the present matter.

88. NTCPL is in course of its business, purchased non-agricultural land ad-measuring about 80.6 acres in Alibaug, Maharashtra. These lands are contiguous and are held in the name of NTCPL and its 100% subsidiary

period. The said lands are located in the prime area in Alibaug, which is a part of the Mumbai Metropolitan Region (MMR) and is the only asset of NTCPL.

89. Admittedly, out of the entire parcel of land, the title of about 30 acres (appx. 24%) is with CD-NTCPL (now in liquidation) while 50.6 acres (appx. 76%) stands in the name of Urban Rupi Infrastructure Pvt Ltd ("URIPL") and the same is not demarcated. 76% of land, in the name of URIPL, is purchased from the funds of the Corporate Debtor, which was loaned to URIPL as per the Balance Sheet of FY 2013-14.

90. Before proceeding any further, it will be instructive to note all the Appeals before this Tribunal which are tabulated as follows:

| Sr. No. | Company Appeal (AT) (Ins) Nos. | Corresponding Application before NCLT with Prayers | Impugned Order |
|----------------|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| 1. | 1584 of 2023 | I.A. No. 2117/2021 (Filed by Bhavik Bhimjyani) (a) Allow impleadment in IA. 1577/2021 (private sale) (b) Provide copy of IA 1577/2021. (c) Call meeting of SCC (d) Provide copies of all IAs in CP 69/2017 (e) (Interim) No orders to be passed in IA 1577/2021 (f) Interim and ad-interim reliefs in terms of prayer clause (a) to (e) | November 21, 2023 rejecting IA 1577/2021 |
| 2. | 1585 of 2023 | I.A. No. 1617/2022 (Filed by Bhavik Bhimjyani) (a) Investigate Liquidator under Section 218 of IBC (b) Replace Liquidator. (c) Initiate proceedings of professional misconduct and such other offences (d) Stay IA 1577/2021 | November 21, 2023 rejecting IA 1617/2022 |

| | | | |
|----|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | (e) Interim and ad-interim reliefs in terms of prayer clause (a) to (d) | |
| 3. | 23 of 2024 | I.A. No. 1577/2021 (Filed by Liquidator) (a) Allow the present Application (b) Permit the Applicant, being Liquidator of the Corporate Debtor, to sell the immovable property at Alibaug, along with the equity shares held by the Corporate Debtor in its subsidiary, Urban Rupi Infrastructure Pvt Ltd to Leisure Enterprisers LLP | December 5, 2023, Allowing private sale |
| 4. | 492 of 2024 | (a) Modification of the Order dated 05.12.2023 erroneously recording that Prospective Buyer (Leisure) has sought for refund of EMD in the event that NCLT is now allowing sale | January 18, 2024, clarifying that record of NCLT does not show any such statement to be made. *No modification made in view of pending Appeal and the same is recorded in the orders (Ann. A-1 of Appeal No. 492/2024; rel pg 49 @ para 5) |
| 5. | 526 of 2024 | (a) Conduct fresh auction (b) In an alternative to prayer clause (a), allow the sale to Gewortal Development (c) Sale proceeds be subject to outcome of IA 2184/2019 (for change of Liquidator) (d) Stay IA 1577/2021 (e) Interim and ad-interim in terms of prayer clause (d) | December 6, 2023, observing IA 4212 of 2023 to be infructuous in view of Order passed in IA 1577/2021. *Stay Order of 06.12.2023 by the NCLAT was not informed as at the time of hearing before NCLT on the same day. |
| 6. | 528 of 2024 | (a) Direct Respondents to pay property tax of Rs 8.65 lakhs | December 6, 2023, observing IA No. 1393/2024 to be infructuous in view of the Order passed in IA No. 1577/2021. |

91. Since all Appeals are inter-related, they are being taken up together. For our analysis it will be useful to extract the pleadings before NCLT in IA No. 1577 of 2021, which was filed before us by the Respondent Liquidator on 22nd April 2025 in an Additional Affidavit and the relevant extracts are as below:

“13. Subsequent to the last auction notice dated March 25, 2021, one Leisure Enterprisers LLP (“proposed Buyer”) issued a letter dated June 10, 2021 to the Applicant expressing their interest in purchase of the said property for an amount of Rs. 58.51 crores. Hereto annexed and marked as Exhibit “F” is a copy of the said letter dated June 10, 2021.

14. In view of the interest expressed by the proposed Buyer in purchase of the said property, the Applicant issued a letter dated June 24, 2021 to the proposed Buyer intimating the proposed Buyer of the terms and conditions of the said sale. Alongside, the Applicant also issued a formal Invitation to Offer to proposed Buyer on the same day. Hereto annexed and marked as Exhibit “G” is a copy of the said letter dated June 24, 2021.

15. As per the said Invitation to Offer document, the sale of the said property was made subject to the payment of a non-refundable Earnest Money Deposit (“EMD”) along with a declaration that the said Leisure Enterprisers LLP, being the proposed Buyer, is not barred under Section 29A of the Code.

16. Accordingly, the proposed Buyer provided all requisites, including the declaration under Section 29A of the Code on July 1, 2021. Hereto annexed and marked as Exhibit “H” is a copy of the said Invitation to Offer document along with the declaration under Section 29A of the Code.

17. Upon being satisfied of the bonafides of the proposed Buyer and having complied with the necessary provisions of the Code, the Applicant issued a letter dated July 2, 2021 to the proposed Buyer

thereby confirming the sale of the property to the proposed Buyer.
Hereto annexed and marked as Exhibit "I" is a copy of the said confirmation letter dated July 2, 2021.

18. It is pertinent to note that one Mr. Anand Jain, Partner in Leisure Enterprisers LLP is also a Chairman of Urban Infrastructure Venture Capital Ltd. Whereas, Urban Infrastructure Opportunities Fund, the main Financial Creditor of the Corporate Debtor is settled by the said Urban Infrastructure Venture Capital Ltd. In view of the same, the proposed Buyer is a related party of the Corporate Debtor as per Section 5(76) of the Companies Act, 2013.

19. In view of the same, the Applicant has preferred the present Application since the proposed Buyer falls under the proviso to Regulation 33(2) of the Liquidation Regulations.

20. The Applicant most humbly states and submits that the Applicant has made several efforts to sell the said property by auction method, and whereas all such efforts of the Applicant have been futile.

21. The Applicant further submits that there are no more funds available in the Bank Account of the Corporate Debtor (under Liquidation). In view of the above, the sale proposal of the proposed Buyer, being the only bonafide proposal received by the Applicant ought to be allowed in the interest of the liquidation process of the Corporate Debtor

22. The Applicant submits that it is just and equitable that the present Application be allowed as prayed.

23. The Applicant submits that no harm, loss or prejudice would be caused if the present Application is allowed as prayed."

92. It is to be noted that the Liquidator had issued confirmation letter dated 2nd July 2021, which confirms the receipt of Rs 58.51 crores from Respondent

No. 2 and it further states that the offer to purchase the property of NTCPL has been accepted. The confirmation letter is extracted as below:

UDAY V SHAH
(Chartered Accountant)
(Insolvency Professional Registration No. IBBI/IPA-001/IP-P00190/2017-18/10369)
B-10, Jaybandhu, 353-B, 90 feet Road, Garodia Nagar, Ghatkopar East, Mumbai 400077
M/+91-9869010243 E/shahuday.ipa@mail.com
2nd July 2021 Through -Email

To
Leisure Enterprise LLP
82 Maker Chamber III,
Nariman Point,
Mumbai - 400021

FAO: Mr Anand Jain / Mr P K Bansal

Reference - Sale of Agricultural Land and Non-Agricultural Land as per the Lot No 1 and Lot No 2 as per attach list held By Neelkanth Township & construction Private limited (Under Liquidation) and Sale of shares of 100% subsidiary company namely Urban Rupi Infrastructure Private Limited.

Subject: Confirmation Letter

Dear Sir/Madam,

This has reference to our letter dated 24th June 2021 ("Letter") accompanying the terms & conditions relating to the sale of Agricultural Land and Non-Agricultural Land as per the Lot No 1 and Lot No 2 as per attach list held By Neelkanth Township & construction Private limited (Under Liquidation) and Sale of shares of 100% subsidiary company namely Urban Rupi Infrastructure Private Limited. of Neelkanth Township & Construction Private Limited - in liquidation ("NTCPL") to you under the provisions of the Insolvency & Bankruptcy Code, 2016.

We confirm receipt of INR 5,85,10,000 (Indian Rupees Five Crores Eighty Five Lakhs and Ten thousand Only) along with terms and conditions of sale of above description property duly accepted by you. Therefore, your offer to purchase Property of NTCPL by you as per terms and condition contained in the Letter for the consideration of INR 58,51,00,000 (Indian Rupees Fifty Eight Crores, Fifty One Lakhs only) has been accepted.

Kindly note that further all necessary process will dependent on outcome of the deal will be based on Adjudication Authority Order and as per the satisfaction of Order, the possession of abovementioned property will be handed over to you only after receipt of full sale consideration by NTCPL.

Thanking you,

For Neelkanth Township & Construction Private Limited
- In Liquidation

IP Uday V Shah
Liquidator



93. It is to be noted that on 10th June 2021 Leisure enterprises LLP addressed a letter of interest to the Liquidator proposing to purchase the land and shares at Rs 58.51 crores. It was replied by the Liquidator on 24th June. Thereafter, on 1st July 2021 Leisure Enterprises LLP confirmed the purchase of the land. In turn, Liquidator was confirmed it on 2nd July 2021. It is to be noted that things moved very swiftly after a long hiatus in auction proceedings from Sept. 9, 2018 till June 2021. They were not moving forward as per the procedure which has been prescribed for private sale, which is assailed and which is being analysed hereinafter.

94. The Appellant has relied on the regulations governing private sale and particularly for a related party of the Corporate Debtor. It is vehemently argued that this is a private sale and is contrary to the statutory requirements of Regulation 33 of Liquidation Regulations. We note that the liquidation sale is required to be carried out in terms of Regulation 33 read with Schedule I of the Regulations. The relevant Regulation No. 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 is as extracted below:

“33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

- (a) the asset is perishable;
- (b) the asset is likely to deteriorate in value significantly if not sold immediately;
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- (a) a related party of the corporate debtor;
- (b) his related party; or
- (c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties."

95. From the above statutory provisions, it can be noticed that private sale can be resorted to only in the condition when either the asset is perishable or asset is likely to deteriorate or asset is sold at a higher price than the reserve price of a failed auction or the prior permission of the Adjudicating Authority has been obtained for such sale. We find that no such condition exists in this case.

96. We need to note the Regulations are mandatory in nature. Regulation 33 (1) mandates that the Liquidator "*shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I*". A private sale is meant to be an exception, allowed only in specific circumstances enumerated in Regulation 33 (2). In the present case, the Liquidator deviated from the normal auction route without any legitimate justification. Regulation 33 (2) (d) mandates prior permission from the NCLT in case the Liquidator intends to approach buyers for a private sale. Prior permission for private sale from the Adjudicating Authority implies prior to approaching and negotiating with buyers. Further prior permission is all the

more required in case sale of assets is intended to be made to a related party. In the present facts, no prior permission from the Tribunal was taken by the Liquidator as is required under Regulation 33 of the Code. The Liquidator filed IA No. 1577 of 2021 after agreeing to an undervalued price and after accepting a deposit from the related party. Admittedly, in the present case, the buyer and creditor is the same person and is directly affected by the bar under Regulation 33 (3). Permitting an application seeking prior permission for private sale is not a mere formality and the NCLT ought to have considered the mandatory parameters of Regulation 33 before permitting such sale, which is missing in the Impugned Order. In the present case, Application appears to be an empty formality.

97. Liquidation Regulations as noted above provide that Liquidator shall not auction the asset without prior permission of the Adjudicating Authority by way of private sale to a related party. As per materials on record Leisure Enterprises LLP- R2 has confirmed that they are related party as per Section 5 (24) of IBC. It was, therefore, necessary that prior permission of the Adjudicating Authority is obtained by the Liquidator for private sale. It was not done. Furthermore, the way transactions happened so swiftly defy any logic in the background that the auction was pending for a long time, price was nowhere close to the valuation and the assets were not going to deteriorate and the statutory Liquidation Regulations were not being followed.

98. Liquidator has set out a case before the Adjudicating Authority that, subsequent to the last Auction Notice dated March 25, 2021, one Leisure Enterprises LLP sent a letter dated June 10, 2021, expressing their interest

in purchase of the said property for an amount of Rs 58.51 crores. In view of the interest expressed by the proposed buyer in purchase of the said property, the Liquidator issued a letter dated June 24, 2021, to the proposed buyer intimating the proposed buyer of the terms and conditions of the said sale. Alongside, the Liquidator also issued a formal invitation to offer to proposed buyer on the same day. As per the said Invitation to offer document, the sale of the said property was made subject to the payment of a non-refundable earnest money deposit (“EMD”) along with a declaration that the said Leisure Enterprisers LLP, being the proposed buyer, is not barred under Section 29A of the Code. Accordingly, the proposed buyer provided all requisites, including the declaration under Section 29A of the Code on July 1, 2021. Upon being satisfied of the bonafides of the proposed buyer and having complied with the necessary provisions of the Code, the Liquidator issued a letter dated July 2, 2021, to the proposed buyer thereby confirming the sale of the property to the proposed buyer. Mr Anand Jain, partner in Leisure Enterprisers LLP is also a Chairman of Urban Infrastructure Venture Capital Ltd which is the main Financial Creditor of the Corporate Debtor and also the proposed buyer is a related party of the Corporate Debtor as per Section 5 (76) of the Companies Act, 2013.

99. On the issue of undue haste in conducting back-to-back auctions within a three-week period in March, 2021, the Liquidator has sought protection of Schedule 1 (1B). However, the provision was only introduced on 16.09.2022. Section 35 (1) (f) of the Code obligates the Liquidator to sell the assets of the Corporate Debtor in a manner specified by the Board (IBBI) and

to maximise recovery. In the present case, the Liquidator has failed on this count also.

100. We also find that when a private sale is undertaken, the Schedule I (Private Sale Requirements) imposes certain procedural norms to ensure value maximisation and fairness. Schedule I, para 2 requires the Liquidator to prepare a strategy to approach interested buyers and allows private sale by directly liaising or by any means likely to maximise realisation. In the case at hand, the Liquidator has failed to explore or approach other potential buyers in an effort to get the best price, which indicates a bias of the Liquidator towards R2.

101. The Appellant claims that the Liquidator also did not inform the Stakeholders Consultation Committee (SCC) of the proposed private sale. This is being defended by the Liquidator on the ground that the Regulations relating to the SCC came into existence later on and they were not applicable on these proceedings. It is contended by the Liquidator that the liquidation proceedings herein commenced on September 3, 2018 and whereas Regulation 31A mandating formation of an SCC was inserted by way of notification dated July 25, 2019. IBBI issued a circular dated August 26, 2019, stating that the provisions of the aforesaid amendment would not be applicable to the liquidation processes which had commenced before coming into force of the said amendment. The prospective applicability of the said provisions was specifically inserted into the Liquidation Regulations vide an amendment carried out on or about April 28, 2022.

102. In the present case we note that Respondent No. 1- Liquidator had filed IA No. 1577 of 2021 for seeking permission under private sale to a related party. The relevant portion of the IA is extracted below:

“4. The Applicant has preferred the present Application inter alia seeking the permission of this Hon'ble Tribunal under Regulation 33(2) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") for sale of the immoveable property in Village Boris, having Survey no. and Hissa no. 47/1 * B 47/2 * C 54/3 68/2 A prime 69/1, 69/8 103, 59/1 * A 60/2 67, 69/9 in Village Kihim, having Survey No. 767 and in Village Gunjis having Survey no. and Hissa no. 7/1 and 9/1/4 in Alibaug, Maharashtra along with the equity shares of a subsidiary company of a Corporate Debtor being Urban Rupi Infrastructure Pvt. Ltd. ("URIPL") having face value Rs. 10/-bearing Distinctive Nos. 0001 to 10000 comprising of the immoveable property in Village Boris, having Survey No. and Hissa no. 33/2, 34/1 * (pt) 41/3 * (pt) 42/3 * (pt) 43, 44/2 45/1, 46, 47/1 * A 47/1E, 47/2 * A 47/2D, 49/2, 50/1 and in Village Kihim having Survey No. and Hissa No. 754/1, 761 and 764, aforementioned property ("said property"), since the Applicant is in the process of selling the said property under private sale to a related party of the Corporate Debtor, not barred under Section 29A of the Insolvency & Bankruptcy Code, 2016.”

103. We note that the issue relates to a private sale under Liquidation Regulations and that too to a related party and will be governed by the statutory provisions under Regulation 33 of Liquidation Regulations, which has been noted earlier by us. In the facts and circumstances of the case we need to test the tenability of the argument of the Liquidator that *“since the Applicant is in the process of selling the said property under private sale to a related party of the Corporate Debtor, not barred under Section 29A of the Insolvency & Bankruptcy Code, 2016.”*

104. From the material placed on record, we also find that the Liquidator has not presented the facts in proper perspective before the Adjudicating

Authority, particularly without highlighting that auction dated 18.07.2019 and 10.12.2019 were only for 30 acres out of 80.6 acres and the shares of subsidiary holding 50.6 acres of land were not put to auction in 2019. The auctions held on 01.03.2021 and 25.03.2021 were carried out during the 2nd wave of Covid 19 despite a relaxation in timelines granted under Regulation 47A. The Liquidator has pleaded that no auction was conducted in 2020 due to COVID. However, despite the circumstances getting worse on account of the 2nd wave, the Respondent attempted 2021 auctions and then approved a private sale in June 2021. It is to be noted that the Alibaug lands are neither perishable nor likely to deteriorate if not sold immediately-conditions which might warrant a swift private sale did not exist. Sudden hurry in the month of March 21 is inexplicable. On the issue of undue haste in conducting back-to-back auctions within a three-week period in March, 2021, the Liquidator has sought protection of Schedule 1 (1B). However, the provision was only introduced on 16.09.2022. Section 35 (1) (f) of the Code obligates the Liquidator to sell the assets of the Corporate Debtor “in a manner specified by the Board (IBBI) and to maximise recovery. In the present case, the Liquidator has failed on this count. We, therefore, find that the Liquidator in IA No. 1577 of 2021 has pleaded on misleading premises that there were four failed auctions and, hence, he attempted a private sale.

105. Appellant has vehemently argued that wide publicity to auction was not given. Even though we may not rely upon all the arguments of the Appellant that the auction notices were issued in newspapers with limited circulation, but it is worth noting that the auction publicity could have been much more

especially when it was Covid period. We note that the auction notices of 2021 were carried in only in two newspapers with limited circulation as opposed to four newspapers in 2019, despite reduced readership due to Covid, number of publications reduced. Publication made was itself in breach of the mandatory provisions of Regulation 12, which requires publication in an English and vernacular daily at the place of registered office. No vernacular publication at Mumbai was made. Raigarh Times is not circulated in Mumbai where NTCPL has registered office. The claim of the Appellant that the auction notices were not widely circulated has been repelled by the Liquidator. It claims to have conducted the auction in the manner specified at Regulation 12 (3). The Respondent Liquidator has questioned the data of circulation of newspapers as presented by the Appellant and contends that it is not a public document. The Liquidator claims that it has published the auction notices, which were used by several established private entities as well as judicial fora such as High Court of Judicature at Bombay Debt Recovery Tribunal etc. It also claims that Free Press Journal is one of the most sought-after publications for the purpose of advertisement of tenders and auction notices in the State of Maharashtra. The Appellant also contends that Raigad Times (regional newspaper used for publication of the auction notice) does not have circulation in Mumbai. This statement is factually incorrect. Moreover, the statement was made orally as at the time of hearing and whereas pleadings do not contain any such reference. That being said, the subject-property is situated in District Raigad that has a vast circulation of the publication 'Raigad Times'. Additionally, the Appellant has failed to point out that Raigad District also falls within the list of districts under the MMR Region. Even

though we may not rely on the argument of the Appellant with respect to wide publicity of auction, but the way and timing of auction notices raises eyebrows. In the facts and circumstances of this case, we find that even small deviations are very glaring omissions, which will may indicate a bias liquidation proceeding and which may not be towards the maximisation of recovery. We are inclined to agree with the argument the Liquidator did not conduct genuine public auction before resorting to a private sale.

106. Now we delve into the issue of valuation of the assets. We note that the proposed private sale to the related party at a Rs 58.59 crores is grossly undervalued on all valuations placed on record. The Liquidator has attempted to provide a defense on the valuation and claims that the Liquidator conducted a fresh valuation of the property in or around the month of February, 2021, wherein the average market price of the property (land and shares) was Rs 67.41 crores and the highest valuation was Rs 68.01 crores. Accordingly, the 3rd auction (1st auction in the year 2021) was conducted for a reserve price of Rs 68.47 crores, i.e higher than the highest valuation received by the Liquidator. Since the property could not be sold, the Liquidator sought to reduce the auction price by about 10% and the fourth auction (2nd in the year 2021) was conducted for about Rs 58.20 crores. The Liquidator claims that the Regulations permit him to reduce the auction price by 25% after every failed auction. However, in the present case, the Liquidator only reduced the price by about 15%. Even then, no bidders came forth for the said price under the public auction. Subsequently, R2 made an offer for an amount of Rs 58.51 crores, i.e higher than the reserve price under the last

conducted auction. Therefore, it claims that there is no infirmity in the offer placed by the said R2. It also claims that the valuation report of the Corporate Debtor is not challenged and/or are questioned and the Appellant cannot raise a contention as such at this stage. Furthermore, it claims that the government valuation conducted pursuant to the Order dated July 27, 2021, of the NCLT, calculated the ready reckoner rate of the property (land and shares) at Rs 70.31 crores, i.e just about 2 crores more than the value gauged by the Appellant. It is claimed by the Liquidator that the NCLT has already examined the adequacy of the value of the property as at the time of conducting the auction and subsequent thereto. The Tribunal has also given multiple opportunities to consider better offers and none have stood ground. Therefore, it cannot be said by any stretch of imagination that efforts were not made for value maximisation of the property. The arguments presented by the Liquidator are not tenable for various reasons. Firstly, the liquidation is being decided by private sale instead of public auction. The Liquidator was to prepare a strategy as contained in Schedule I for private sale to interested buyers by directly liasing or by any other means which will maximise the realisation. In this case, we have not even realised the rates which were assessed and which were on record with the Liquidator. Most importantly, the private sale value is very low compared to any other valuation. It could have been acceptable in case of public auction limit in case of private sale. Therefore, we find that this is a clear case of undervalued private sale and cannot be accepted.

107. The Appellant has vehemently argued that there is a purported collusion between the Liquidator and the successful buyer, which is being countered by the Liquidator. We are not going into the allegations but we are looking into the issue of compliance of liquidation process Regulations and we find that they have not been followed. The whole liquidation process gets tainted by non-compliance of the Regulation, as has been noted by us earlier.

108. Appellant has claimed that auctions were conducted during Covid pandemic. Liquidator claims that while earlier auctions were conducted in the year 2019, yet no auctions were conducted in the year 2020 due to the Covid pandemic. However, when the lockdown was being lifted and the situation was coming back to normalcy, the Liquidator sought to act on the duty cast upon him under the Code and its Regulations and, therefore, initiated the process to conduct the next round of auction. Liquidator claims that this itself suggests that the Liquidator was prompt in conducting his duty as a Liquidator since the liquidation process ought to be conducted in a time-bound manner as stipulated under the Code and its Regulations. From the records in the case, we do not find the justification to be satisfactory. We find that very limited circulation was done for two back-to-back public auctions for March 2021, when 3rd and 4th auction notices were issued. And, in the month of June 2021, private sale was finalised without prior approval of the Adjudicating Authority, which was in contravention of Regulation 33.

109. Leisure Enterprises LLP claims that, as per the terms and conditions of sale, Clause 23 explicitly states that it is an 'invitation to offers'. Subsequent thereto, R2 has placed its offer before the Liquidator vide letter dated July 1,

2021. The Offer placed by R2 was conditionally accepted by the Liquidator vide a letter dated July 2, 2021. Last paragraph of the said letter explicitly states that all necessary process will be based on Adjudicating Authority Order and as per the satisfaction of Order, the possession of abovementioned property will be handed over to R2 only upon receipt of full sale consideration by NTCPL. Therefore, the subject-sale under Regulation 33 of the Liquidation Process Regulation is subjected to approval of the Adjudicating Authority, being Application under IA No. 1577 of 2021. We do not find this argument to be tenable as the Regulations clearly prescribes for prior approval and in this case no prior approval for private sale has been taken from the Adjudicating Authority.

110. The Appellant claims that Mr Anand Jain, a partner of Leisure Enterprises LLP, was barred by SEBI from accessing the security market for a period of one year vide Order dated 31.10.2022. This Order was set aside by Securities Appellate Tribunal. However, the findings to the effect that Mr Jain did not comply with the SEBI Regulations remain. It is claimed that the SEBI proceedings were with respect to breaches by the managers of Urban Infrastructure Ventures Capital Fund UIVCF to act in compliance with the relevant SEBI Venture Capital Regulations, 1996, applicable to the Fund. It is important to note that UIVCF was held by a Trust, in which UITL, a shareholder of the Corporate Debtor, was the Trustee. As such, the UIVCF was controlled by Mr Anand Jain through his entities. It is also claimed that UIVCF has been bought over by Mr Anand Jain and his family members. Therefore, the entire beneficial interest of UITL in the Corporate Debtor is held

by Mr Anand Jain. Therefore, the proposed sale is a well thought out scheme designed to effectively become a book transaction so that proceeds from the sale of land amounting to Rs 58.51 crores can be transferred by Mr Anand Jain to NTCPL and taken away by him against repayment of the debentures outstanding in NTCPL, making him the beneficiary on both sides of the transaction. In the event sale goes through, Mr Jain, will receive the sale proceeds in UITL as Financial Creditor and, also, the entire land of 80.6 acres, thereby leaving barely any money for any other stakeholder of the Corporate Debtor. Even though we may not rely on these pleadings by the Appellant, since they have remained uncontroverted it provides an indication to the relationship between Mr Anil Jain both as Financial Creditor and as a shareholder of Corporate Debtor (in liquidation).

111. Appellant claims that Mr Anand Jain is being investigated by CBI for fraud in UITL with regard to the investors under the orders of the Bombay High Court. **[Judgment in Shoaib Richie Sequeira vs State of Maharashtra and Ors dated 31.01.2025 reported in 2025: BHC-AS:5208-DB – para (x) at pg. 28]**. This judgment was upheld by the Hon'ble Supreme Court on 17.03.2025. Per contra, it is denied by Leisure Enterprises LLP-R2 and claims that R2 is not barred under Section 29A of the Code. On the contrary, Liquidator claims that Appellant herein is declared to have engaged in fraudulent activity under Section 66 of the Code. We are not going into the merits of the claims and counter claims with respect to the criminal background of both the Appellant and the Respondent. It is sufficient for us to note that there has been deviation in the statutory process, which should

have been followed by the Liquidator and that vitiates the liquidation process and casts a shadow on the conduct of the Liquidator.

112. The Appellant contends that a related entity of R2, i.e Urban Infrastructure Venture Capital, in its proposed Resolution Plan offered in the year 2018, had projected an amount of Rs 103 crores as against a plot of 80 acres of land. Countering this argument, Leisure Enterprises LLP claims that in the proposed Resolution Plan, the amount of Rs 103 crores were to be recovered over a period of five years by development of property, which will have lower net present value (NPV). It also claims that property prices are always fluctuating and are subject to market forces and ancillary issues arising thereof, such as change in government rules, coastal regulations and clarity in terms of the title to the property. We do not find much force in the argument of the Leisure Enterprises LLP for the reasons that compliance of Liquidation Process Regulation cannot be waived on this ground.

113. Liquidator also claims that Appellant has not participated in the sale of the subject property either in public auction or later on with a higher offer. Respondent No. 2 made its offer on or about July 1, 2021, and alongside paid a non-refundable EMD as at the time of placing its offer for the subject property. The sale was first approved by the NCLT vide an Order dated December 24, 2021. The said Order was challenged by the Appellant before the Hon'ble High Court vide a Writ Petition and the Order dated December 24, 2021, was set-aside vide an Order dated December 30, 2021. Thereafter, upon revival of IA No. 1577 of 2021 before the NCLT, the Appellant time and again brought forth offers from buyers claiming that such buyers were

purportedly willing to offer a better price. However, all the buyers as purportedly claimed by the Appellant, withdrew their offers. As against the conduct of such buyers as claimed by the Appellant, R2 has already paid a non-refundable EMD to the Liquidator in the year 2021 and, till date, R2 has abided by its offer for purchase of the subject property. Even as R2 has kept available the balance amount towards its offer of Rs 58.51 crores, R2 is already facing a loss of opportunity cost merely on account of the delay caused in the present matter which is purely attributed only to the conduct of the Appellant which is evident from the list of dates and events submitted by the Liquidator. The approval of private sale for the subject property, for reason as stated above, was pending before the NCLT since June, 2021, until December, 2023, and, subsequently, before this Tribunal from December, 2023, until date. Anyway, without prior approval of the Adjudicating Authority, the private sale could not have proceeded any further and in such a situation the deposit of EMD doesn't give any preferential right to the R2.

114. Both the Liquidator and the Leasure Enterprises LLP have relied upon various judgments, the relevant ones are being taken up hereinafter.

115. Appellant places reliance on ***State Bank of India vs Bhuvée Stenovate (supra)***, which lays down requirements for private sale and has been ignored. The relevant extract of this judgement is as follows:

“....

12. In the Application, the Respondent No. 2 was praying for a direction to liquidator to accept the offer of the Respondent No. 2 and transfer the Corporate Debtor through a private sale on a going concern basis in accordance with the provisions of the Code. The manner and procedure of conducting the private sale is governed by Regulations and the liquidator is empowered to conduct sale of the assets by means of private sale in the manner specified in

Schedule-I. We have noticed the provisions of Clause (2) of Schedule-I which is a procedure for private sale. One of the requirements of the Regulation is that Liquidator is to prepare a strategy to approach interested buyers for assets to be sold by a private sale. As per the Regulations, the private sale has to be conducted in a manner so as to maximise the realisations from the sale of assets. **The liquidator, thus, for conducting private sale is not to identify one buyer and sell the assets rather strategy has to be made to approach the interested buyer for assets which is with the object to attract more and more interested buyers to maximise the realisations from the sale of assets.** 4th meeting of the Stakeholders' Consultation Committee held on 04.03.2022 has been brought on record where several suggestions were given to the Liquidator for the sale of the assets by different means. With regard to fresh valuation as suggested by the State Bank of India, the Bank of Baroda has also agreed to the suggestion and it was noted that the said can be done with the permission from the Adjudicating Authority. From the record, it is also clear that the liquidator did not file any application for obtaining any permission from the Adjudicating Authority for private sale and the Adjudicating Authority, on an application submitted by the Respondent No. 2 making an offer and another intervenor-'M/s. Jindal Stainless Limited', directed both to submit their bids in a sealed cover. The Adjudicating Authority on being satisfied that two bidders have come up before the Court showing their interest to acquire the Corporate Debtor, the Adjudicating Authority could have directed the liquidator to conduct the private sale so that apart from Respondent No. 2 and 'M/s. Jindal Stainless Limited' if any other interested person wanted to participate, opportunity ought to have been given. The liquidator under the statutory Scheme of the IBBI (Liquidation Process) Regulations, 2016 have been empowered to take a decision regarding sale of the assets of the Corporate Debtor. It is relevant to notice that the offer of the Respondent No. 2 was rejected by the Liquidator.”

[emphasis supplied]

116. When a private sale is undertaken, the Schedule I (Private Sale Requirements) imposes certain procedural norms to ensure value maximisation and fairness. Schedule I, paragraph 2 requires the Liquidator to prepare a strategy to approach interested buyers and allows private sale by directly liaising or any means likely to maximise realisation. In the case at hand, the Liquidator has failed to explore or approach other potential buyers in an effort to get the best price. However, the Liquidator claims that the facts of this judgment [***State Bank of India vs Bhuvée Stenovate (supra)***] are not

applicable in the present case. In the said case, the Liquidator had rejected offers under private sale and, whereas, the Adjudicating Authority surpassed the commercial decision of the Liquidator and permitted a private sale thereunder. It was in light of facts as such that the observations thereunder were made and the sale was set-aside. The Appellant has vehemently argued that the sale has been completed by the Liquidator in the absence of the permission of the Adjudicating Authority in contravention to Regulation 33 of the Liquidation Process Regulations.

117. Appellant has also relied upon the judgement of ***R K Industries vs HR Commercials (2024) SCC 166*** and the relevant extracts are as follows:

“56. When it comes to the mode of sale of the assets of the corporate debtor, whether immovable or movable and other actionable claims, Regulation 33 of the Liquidation Regulations comes into play and states that ordinarily, the liquidator will sell the said assets through auction, as specified in Schedule I (1). Sub-section (2) of Section 33 IBC gives an option to the liquidator to sell the assets of the corporate debtor through a private sale, in the manner set out in Schedule I(2). Regulation 33 of the Liquidation Regulations is couched in a language which shows that ample latitude has been given to the liquidator, who may "ordinarily" sell the assets through auction thereby meaning that in peculiar facts and circumstances, the liquidator may directly go in for a private sale. To avoid the pitfalls of disposing of the assets by conducting a private sale for the pittance, Regulation 33 has prescribed some stringent conditions that the liquidator is under an obligation to comply. The said preconditions are that:

(i) the asset is perishable; (ii) the asset is likely to deteriorate in value significantly if not sold immediately; (iii) the asset is sold at a higher price than the reserved price of the failed auction; and (iv) the adjudicating authority (NCLT) must grant prior permission for such a sale. The proviso appended to Regulation 33(2) of the Liquidation Regulations places yet another embargo to the effect that when the liquidator intends to sell the assets of the corporate debtor by way of a private sale to a related party of the corporate debtor, his related party or any professional appointed by him, it is mandatory to obtain prior permission of the adjudicating authority (NCLT). Even the mode of sale has been regulated under the Liquidation Regulations for both, a public auction and a private sale. All the above dos and don'ts have been inserted to

protect the assets of the corporate debtor and safeguard the interest of the stakeholders.”

[emphasis supplied]

118. On the other hand, the Leisure Enterprises LLP questions the authority of NCLAT by citing few paragraphs from the same judgement as extracted below:

"79. The powers vested in and the duties cast upon the liquidator have been made subject to the directions of the adjudicating authority (NCLT) under Section 35 IBC. Once the liquidator applies to the adjudicating authority (NCLT) for appropriate orders/directions, including the decision to sell the movable and immovable assets of the corporate debtor in liquidation by adopting a particular mode of sale and the adjudicating authority (NCLT) grants approval to such a decision, there is no provision in IBC that empowers the appellate authority (NCLAT) to suo moto conduct a judicial review of the said decision. The jurisdiction bestowed upon the adjudicating authority (NCLT) and the appellate authority (NCLAT) are circumscribed by the provisions of IBC. and borrowing a leaf from Essar Steel India Ltd. (CoC) v. Salish Kumar Gupta, they cannot act as a court of equity or exercise plenary powers to unilaterally reverse the decision of the liquidator based on commercial wisdom and supported by the stakeholders. The Court has also observed in the captioned case that "from the legislative history, there is contra-indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority".

80. The aforesaid view will apply with equal force to any commercial or business decision taken by the liquidator for conducting the sale of the movable/immovable assets of the corporate debtor in liquidation. The appellate authority cannot don the mantle of a supervisory authority for overseeing the validity of the approach of Respondent 2 liquidator in opting for a particular mode of sale of the assets of the corporate debtor".

[emphasis supplied]

119. It is to be noted that the facts of the above cited case are slightly different than the case in hand as in the cited case as noted in paragraph 57 of the judgement, the Liquidator had approached the Adjudicating Authority for seeking permission to sell the assets of the Corporate Debtor through private sale. Hon'ble Supreme Court has clearly the Regulations relating to

private sale, which are applicable. The case in hand is distinguishable as the Liquidator has approached the Adjudicating Authority after receiving the full amount from the proposed buyer and also after issuing confirmation letter of sale. Even though the letter states that it is subject to the approval of the Adjudicating Authority, from the facts and material placed on record it can be seen the Liquidator has taken the approval of the Adjudicating Authority to be granted and has presented a fait accompli before the Adjudicating Authority. The conduct of the Liquidator is depreciable and is not unbiased.

120. Leisure Enterprises LLP has relied upon the judgment of Hon'ble Supreme Court in R.K. Industries (supra) and also on Navlakha Industries & Sons (supra). It has also relied on judgment of Hon'ble Supreme Court in the matter of Vedica Procon (supra).

121. Leisure Enterprises LLP-R2 claims that Hon'ble Supreme Court, in its landmark judgment of ***Navalkha & Sons vs Ramanya Das (1969) 3 SCC 537*** had set out the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made. The Hon'ble Supreme Court has also emphasised on the well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

122. Leisure Enterprises LLP-R2 also relies on the Hon'ble Supreme Court in the matter of ***Vedica Procon Pvt. Ltd. vs Balleshwar Greens Pvt. Ltd. (2015) 10 SCC 94***, wherein the Court reiterated the principles laid down in

the matter of Navalkha and made the following observations, which are reproduced as under:

“....

39. No doubt, the penultimate statement of the paragraph recognises the discretion of the Company Court either for accepting or refusing the highest bid at the auction, it also emphasizes the obligation of the Court to see that the price fixed at the auction is adequate price even though there is no irregularity or fraud in the conduct of the sale. However the penultimate sentence restricts the scope of such discretion in the following words: (Navalkha case, SCC p. 541, para 6)

"6. ...it is well to bear in mind the other principle which is equally well settled, namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received (See: the decision of the Madras High court in Roshan & Co. case (S Soundararajan v Roshan & Co. (1939 SCC Online Mad 205).

40. In other words, in Navalkha case, this Court only recognized the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made. This Court also emphasized that it is equally a well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

xxx

47. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale of offer already made. Unfortunately in Divya Mfg. Co. this Court departed from the principle laid down in Navalkha & Sons. We have already explained what exactly is the departure and how such a departure was not justified.

51. No doubt, the property in question became more valuable in view of the subsequent development. In our opinion, it is not a relevant consideration in determining the legality of the order dated 17-12-2013. Imagine, if instead of increasing the floor space index for construction from 1.0 to 1.8 the State of Gujarat had decided to reduce it below 1.0 subsequent to 17-12-2013, could the appellant be heard to argue that it would be legally justified in resiling from its earlier offer which was accepted by the court and not bound by the contractual obligation flowing from such an offer and acceptance?"

[emphasis supplied]

123. Respondent Liquidator also relies upon the above judgment and contends that Hon'ble Supreme Court has established that there was no such principle laid down by a Court that whenever a higher offer was received in respect of the sale of a property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. Further, the Respondent Liquidator has relied upon **Hon'ble Supreme Court**, in the matter of **Eva Agro Feeds Pvt. Ltd. vs Punjab National Bank & Anr. – (2023) 10 SCC**, wherein it was held as under:

“79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel and auction, unless it is found that fraud or collusion had vitiated the auction....”

[emphasis supplied]

124. The above judgments cited by the Respondents are not applicable in the facts of the present case as it is not the question of adequacy of the price found in the auction, but it is the procedure which needs to be followed Liquidation Process Regulations for private sale and which has not been followed and which raises questions of lack of transparency and also non-discovery of maximum recovery.

125. On the contrary the Liquidator claims that the judgments are based upon auction conducted by the Liquidator. The Liquidator had sought to auction the property and, subsequently, when the auctions failed, the Liquidator proceeded to conduct a private sale thereof in compliance with

Regulation 33 of the Liquidation Regulations. As such, the principles of sale laid down in the judgments relied herein above are as valid and applicable to the present matter. We have gone through all the judgments placed before us. We do not find any judgments which support the case of liquidation proceedings of similar nature of private sale. We find that all these judgments relate to public auction. The auction which has been resorted to by the Liquidator is by way of private sale, on which no judgment has been cited. Therefore, the facts of the present case are distinguishable. The present case is being governed by statutory provision under Regulation 33 of Liquidation Regulations. As noted earlier by us, these Regulations are mandatory and it is necessary that they are followed scrupulously. It is also necessary for transparency and also ensuring maximisation of recovery. We note that this is missing in the present case. We also note that the Impugned Order has not delved into the issue of Regulation 33.

126. We also note the contentions in Appeal CA (AT) (Ins) No. 1584 of 2023, wherein apart from the similar claims that IA seeks permission for a private sale to a related party on the basis that there were four failed auctions but there was no genuine auction conducted at any stage for the entire lands. Further, the IA No. 1577 of 2021 fails to disclose that various alternate offers were received by the Liquidator for much higher value. The true value of the property was thus wilfully suppressed from the NCLT while making an Application to permit the undervalued private sale in favour of Leisure Enterprises LLP, a related party. It is evident that NTCPL's assets could fetch a significantly higher price in an open, transparent process. The Liquidator's

insistence on the sale of assets at Rs 58.51 crores suggests a design to benefit the related party buyer at the cost of the stakeholders of the NTCPL. Furthermore, it is contended that the control of Corporate Debtor and its 100% subsidiary was handed over to UITL by appointing their employees as directors. The Liquidator is ex-facie hand-in-glove with the UITL and its associates. This is inter alia evident from the fact that the Liquidator has already appointed Mr Nirav Dholakia and Mr Raju Tanna, both associates/employees of the promoters of UITL, as the directors of 100% subsidiaries of NTCPL, which owns 50.6 acres of land belonging to the NTCPL. We are not giving specific finding on the claim that Liquidator has already appointed Mr Nirav Dholakia and Mr Raju Tanna, both associates/employees of the promoters of UITL, as the directors of 100% subsidiaries of NTCPL in the light of orders hereinafter. Further, the registered address of TCPL and the registered email ID of NTCPL has been changed to the address and email ID of UITL, which is under the control of Mr Anand Jain, the related party, that has placed the distressed offer to purchase the lands of NTCPL through M/s Leisure Enterprises LLP. These acts were done behind the back of stakeholders and without permission of NCLT. The Liquidator appointed the said persons as directors to give them control, even though the proposed private sale transaction was being challenged by the Appellant. It is pertinent to note that the private sale is challenged before this Tribunal in Company Appeal No 23 of 2024 and the same is not confirmed. We are not going into the merits of these claims as the orders relating to validity of the private sale are being noted herein after.

127. In Company Appeal (AT) (Ins.) No. 1585 of 2023, the prayers which were rejected related to investigation of Liquidator under Section 218 of the IBC and also to replace him and initiate proceedings of professional misconduct and such other offences. By common order this Appeal is also disposed of as noted hereinafter.

128. In Company Appeal (AT) (Ins.) No. 526 of 2024, the prayers in original Appeal, which was rejected in IA No. 4212 of 2023, related to conduct of fresh auction and for change of Liquidator. By common order this Appeal is also disposed of as noted hereinafter.

129. The Company Appeal (AT) (Ins.) No. 492 of 2024, relating to rejection of IA 213 of 2024. By common order this Appeal is also disposed of as noted hereinafter.

130. In Company Appeal (AT) (Ins.) No. 528 of 2024, the Appellant is assailing impugned order in IA No. 1393 of 2024. This IA No. 1393 of 2024 was filed by the Liquidator and had the prayers that Respondents/CD to pay property tax of Rs 8.65 lakhs. In this IA on 06.12.2023 orders were issued by Adjudicating Authority by which purchaser was directed to pay property taxes despite there being order by this Tribunal not to take further steps in pursuance of the Impugned Order, allowing the private sale. This was being assailed by the Appellant along with private sale. It is to be noted that as per the Interim Order in Company Appeal (AT) (Ins.) No. 1584/2023 issued on 06.12.2023 we had noted that *“in the meantime, no further steps shall be taken by the Liquidator”*. Furthermore, this Tribunal had taken up all the related matters together and on 09.01.2024 had ordered that *“we make it clear that*

Interim Order passed in Company Appeal (AT) (Insolvency) No. 1584 of 2023 shall not preclude Adjudicating Authority in proceeding to hear other applications pending before the Adjudicating Authority". In this backdrop of orders, we do not see any infirmity in the order of Adjudicating Authority. In any case, by common order this Appeal is also disposed of as noted hereinafter.

Orders:

131. In the light of above facts and circumstances and the legal precedents, we find that the proposed sale in the form of a private sale in favour of Leisure Enterprises LLP-R2, as approved by the Adjudicating Authority in IA 1577, is not in conformity with the statutory provisions, particularly Regulation 33. The Order of the Adjudicating Authority is therefore set aside. Moreover, for a transparent and unbiased liquidation process, a new Liquidator should be appointed immediately. Accordingly, Adjudicating Authority should take steps to appoint a new Liquidator within a period of 15 days of presentation of this Order. New Liquidator should ensure that the whole process of liquidation is taken up afresh starting with public auction or private as per law. All related Appeals as noted above and all pending IAs, if any, are disposed of. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
May 30, 2025.**

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