

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: MS. REETA KOHLI,  
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR  
HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 597/JPR/2024**  
**In CP No. (IB)- 601/ND/2018**

**IN THE MATTER OF:**

**M/S PACKWELL (INDIA) PVT. LTD.**

**...Petitioners**

**VERSUS**

**M/S EMGEE CABLES AND COMMUNICATIONS LTD.**

**... Respondents**

**AND IN THE MATTER OF:**

**IA (IBC) No. 597/JPR/2024**

**MEMO OF PARTIES**

**Babulal Edible Oils Pvt. Ltd.,  
Through AR- Lokesh Paraswani,  
R/o- Plot No. 20, 21 & 22, Old  
Industrial Area, Alwar-301001,  
(Rajasthan)**

**...Applicant**

**Versus**

**M/s Packwell (India) Pvt. Ltd.,  
C/49-52, Jaipur Industrial Estate,  
Kartarpura, Bais Godam, Jaipur-  
302006 (Rajasthan)**

**...Non-Applcant No. 1/Petitioner**

**M/s Emgee Cables and Communications Ltd.  
T-16, Third Floor, Alankar Plaza,  
Vidhyadhar Nagar, Central Spine,**

**Sd/-**



Vidhyadhar Nagar, Jaipur-302023  
(Rajasthan)

...Non-Applicant No. 2/Respondent

For the Applicant  
For the RP

: Rahul Khandelwal, Adv.  
: Anubha Singh, Adv.  
Shubham Choudhary, Adv.

**Order Pronounced On: - 08.05.2026**

**ORDER**

**Per: Ms. Reeta Kohli, Judicial Member**

1. The present Application has been preferred by *M/s Babulal Edible Oil*

*Private Limited* seeking the following reliefs: -

*a) This Hon'ble tribunal may be pleased to allow present application in the interest of justice. The applicant may be allowed to withdraw from the auctioned proceedings i.e. (auction ID: 307515).*

*b) This Hon'ble tribunal may be pleased to direct the liquidator to release the amount already deposited by the applicant i.e. Rs. 1,03,62,500/- as EMD (25%) for the aforesaid auctioned property in the account of applicant.*

2. The case of the Applicant is that the Liquidator published E-Auction sales notice on 12.07.2024 and invited general public for participation in the auction of the assets of the Corporate Debtor. On 03.08.2024, the Applicant herein participated and submitted the requisite documents and tendered the Expression of Interest for the property of the Corporate Debtor situated at *Plot No. 86-A, Gaurav Nahar, Civil Lines Road, Choukadi Haveli, Jaipur.* Further, the Applicant deposited an amount of rupees Rs. 65,31,300/- as EMD on 13.08.2024, which was duly acknowledged by the Liquidator of

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the Corporate Debtor. Subsequently, the Applicant was declared the highest bidder for an amount of Rs. 4,14,50,000/-.

3. The Applicant submits that on 14.08.2024, the Liquidator sent an email to the Applicant stating that the Applicant being the highest bidder is required to deposit 25% of the bid amount up to 16.08.2024, after adjusting the amount already paid by way of EMD. Further, it was only on 14.08.2024 that the Liquidator intimated the Applicant regarding the Writ Petition bearing *CWP No. 13429/2024*, filed qua the auctioned property by *Jaipur Nagar Nigam (Heritage)* claiming its ownership. In view of the fact that the Applicant had only one day to deposit the due amount, he was left with no other option but to deposit the requisite amount of Rs. 38,31,200/- on 16.08.2024 under protest in view of the fact that the auctioned asset was under litigation.
4. The Applicant contends that the vital information about the title of the auctioned property was nowhere disclosed at the time of the auction. The Applicant, relying upon the terms of the auction as stated by the Liquidator, participated in the E-auction believing the property to be free from any encumbrances.
5. The Applicant further states that it was only after he deposited the EMD amount, the Order passed by the Hon'ble High Court dated 14.08.2024 came to his knowledge, wherein the Hon'ble High Court held that the auction proceedings are subject to the decision in the Writ Petition.

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6. Since the title of the property in question is pending adjudication before the Hon'ble High Court, the Applicant herein has filed the instant Application seeking withdraw from the auction proceedings along with the release of the EMD amount of Rs. 1,03,62,500/-.
7. The Counsel for the Applicant has also drawn our attention to the judgment of the Hon'ble Supreme Court in the case of "*Viney Kumar Sharma Versus The Improvement Trust & Another*" dated 16.01.2026, wherein the Hon'ble Supreme Court has held as under: -

5. *We are very much disturbed to note that when the plot in question was put to auction by The Improvement Trust, Ludhiana (for short "the Trust"), the fact about pendency litigation was not disclosed before the parties who offered their bids in the public auction.....*
6. *It was the legal duty on the part of the Trust to have made it clear in the auction notice itself that the subject plot is a subject matter of litigation. Authorities (such as banks, recovery officers, or state bodies) conducting public auctions are legally required to disclose all known encumbrances and litigation relating to the property, as failure to do so invalidates the sale. Suppressing such material facts renders the auction fraudulent or vitiated by material irregularity.....*
9. *Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities and their officers who should act fairly and objectively. Their actions should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the stakeholders....*
12. *We direct the Trust to refund the amount of Rs. 1,57,04, 580/- (Rs. One crore fifty-seven lakh four thousand five hundred eighty only) with interest at the rate of 9% per annum from the date of the deposit i.e. 19.07.2021.*

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8. In addition, the Counsel for the Applicant also relied upon the judgment of the Hon'ble NCLAT titled *D.D. International Pvt. Ltd. and Anr. v. Rajesh Kumar Agarwal (Liquidator) and Ors. (2024) ibclaw.in 813 NCLAT*, wherein the Hon'ble NCLAT has been pleased to hold as under ..

*17. .... "Respondent was duty bound, being the custodian of the record of the CD, to give the exact details of the property which was put to sale by e-auction but in the e-auction process document the fact that the property under DRI plant was not belonging to the CD was not disclosed. The Tribunal has though blamed the Appellant as well that it had the access to VDR and could have also found out by due diligence that whether the said land belongs to the CD or not but in our considered opinion the first duty is cast upon the liquidator to provide exact information to the bidder about the property which is put to sale and it cannot take the shelter of alleged fault of the Appellant...."*

9. Hence, the contention of the Applicant is that in view of the settled proposition of law, the Liquidator be directed to refund the EMD amount deposited by the Applicant.
10. On the other hand, the Counsel for the Liquidator states that the issue raised in the present Application do not fall within the jurisdiction of the Adjudicating Authority as the parties are governed by terms and conditions of the auction notice dated 12.07.2024. It was submitted that the stakeholder Committee has exclusive authority to decide issues concerning the auction, including withdrawal of the successful bidder from the auction. It is the case of the Liquidator that the SCC in its meeting dated 26.11.2024 has already decided that the successful bidder is to deposit the remaining amount due in

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the auction proceedings and cannot be permitted to withdraw from the auction. Hence, the Applicant being the successful bidder, is bound by the terms and conditions of the auction notice, which clearly stipulates that in case the successful bidder withdraws from auction, the Liquidator has the right to forfeit the EMD, including the part consideration paid.

11. Further, the Counsel for the Liquidator submits that all the relevant information available with the Liquidator was clearly mentioned in the auction notice stating that the auction will be subject to the outcome of *CWP No. 14476/2020* pending before the Hon'ble Rajasthan High Court. The Applicant, despite being the highest bidder has failed to deposit the complete payment and thus, in terms of the notice, the Liquidator is bound to forfeit the amount paid by the Applicant.
12. It is further stated that it was only on 12.08.2024 that *CWP No. 13429 of 2024* filed by *Nagar Nigam (Heritage)* came to the notice of the Liquidator as the name of the advocate of Respondent No. 2 (i.e., *M/s Emgee Cables and Communications Limited*) appeared in the cause list being the caveator in the matter. Therefore, the Liquidator informed the Applicant about the filing of *CWP No. 13429 of 2024* through an email dated 14.08.2024. The contention of the Liquidator is that the auction of the said property was conducted between 12:00 noon to 3:00 PM on 14.08.2024 and till the time of the auction, the Writ Petition bearing *CWP No. 13429 of 2024* was not

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heard and thus the Liquidator was not aware of the contents and/or relief prayed in the said Writ Petition.

13. It is further stated that the mail dated 14.08.2024 was evidently sent to the Applicant at 3:29 PM and the Liquidator with the bona fide intention intimated the Applicant about the filing of the Writ Petition without knowing the contents of the same. Furthermore, it is contended that in the Writ Petition, the *Nagar Nigam* has nowhere made any prayer regarding ownership over the property under auction. Even on the date of E-auction, i.e. 12.07.2024, there in fact was no encumbrances on the subject property, and the said writ petition *13429 of 2024* was filed on 12.08.2024, and the same came to the knowledge of the Liquidator only on 14.08.2024. Thus, there was no occasion for the Liquidator to inform the Applicant about the listing of the Writ Petition.
14. It is the contention of the Liquidator that the Applicant, auction purchaser, is duty-bound to complete the auction proceedings and in terms of the auction dated 12.07.2024 shall deposit the remaining 75% of the bid amount. Therefore, in view of the facts and circumstances of the present case, where the property has been auctioned on "*as is where is basis*", the Applicant is duty-bound to pay the due amount or otherwise it is well within the right of the Liquidator to forfeit the amount deposited by the Applicant.
15. This Adjudicating Authority has appreciated the contentions of both the learned counsels and have perused the documents placed on record.

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16. The Writ Petition was listed on 14.08.2024, the date on which the Applicant was sent an email to deposit the due amount. The counsel for the Liquidator has also drawn our attention to the public notice dated 12.07.2024, wherein with respect to forfeiture of earnest money, it is clearly stated that if the successful bidder, after being intimated by the liquidator as a successful bidder, fails to make the complete payment as per the terms of the E-auction documents, the amount deposited can be forfeited.
17. Thus, the contention of the Liquidator is that in the present case, the Applicant has failed to deposit the due amount and hence in terms of the auction notice, the Liquidator is duly authorized to forfeit the amount deposited. The Counsel appearing for the Liquidator has relied upon the judgment of Hon'ble NCLAT in the case of "*BRS Refineries Vs. Mr. Supriyo Kumar Chaudhari (Liquidator)*" and also "*Westcoast Infraprojects Pvt. Ltd. Vs. Mr. Ram Chandra Dallaram Choudhary*" wherein NCLAT has been pleased to hold that the Appellant having breached the clauses of E-auction process, Information Document, and having failed to deposit the balance amount within the time allowed, the Liquidator did not commit any error in forfeiting the EMD.
18. This Adjudicating Authority is of the considered opinion that in the normal circumstances, whenever an auction is conducted both the parties are bound by terms of the auction notice, and when the property is sold on "*as is where is basis*", it is the bidder who has to exercise the due diligence and only then

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submit his bid. But in the facts and circumstances of the present case, it is pertinent to take note that the Liquidator has preferred a caveat before the Hon'ble High Court anticipating the indulgence by the Hon'ble Court. The email dated 14.08.2024 sent by the Liquidator to the Applicant is reproduced as under:-

*“Therefore as per the terms of auction, you are kindly requested to deposit the 25% amount of your highest bid upto 16<sup>th</sup> August 2024 in the same account in which you have deposited EMD and you can adjust the already deposited EMD amount for calculation of 25% amount. Kindly deposit amounting of Rs.62,27,500/- upto 16<sup>th</sup> August, 2024. (Since 15<sup>th</sup> August is National Holiday.)*

*“Further, as per the provisions of the Insolvency and Bankruptcy code and regulations thereto, the successful bidder has to deposit the remaining amount within 30 days i.e. by 13.09.2024. In case, you fail to deposit the remaining amount within 30 days then further time period of 60 days will be available to deposit the remaining amount along with applicable interest on the balance amount. It is further informed that the undersigned has come to know about the filling of a writ C.W. 13429/2024 as per the information received to the undersigned, the matter could not be heard and no order has seen passed in the petition till issuance of this letter.”*

19. It is pertinent to take note that on the same date (i.e., 14.08.2024) on which the Liquidator has sent communication to the Applicant to deposit remaining amount making it 25% of the bid amount, the Hon'ble Court pleased to pass the following order which is as under:-


*“Learned counsel for the petitioner is directed to supply copy of this writ petition to learned counsel for respondent Nos. 3 & 4. Issue notice to respondent Nos. 1 & 2 through both the processes. Rule is made returnable on the next date of hearing. Requisites be filed within a period of one week failing which, this petition shall stand dismissed automatically without further reference to the Bench*

Sd/-

*If this order is complied within time frame, list on 06.09.2024.  
It is made clear that auction proceedings initiated, if any, shall be subjected to final outcome of the writ petition”*

20. For the sake of arguments, even if the contentions of Liquidator are taken as factually correct that at the time of sending the email no order passed by the Hon’ble Court, then also the material fact remains unchanged that the Liquidator could have waited and sent the factually correct information to the Applicant with respect to the proceedings before the Court since the matter was already posted for hearing before the High Court.
21. The conduct of the Liquidator in the present case is evidently not above board as firstly, the Liquidator was caveator in the pending Writ Petition, meaning thereby he was apprehensive about the filing of the Petition by *Nagar Nigam*. Secondly, despite the Petition having been listed, the Liquidator consciously choose to send the email before the matter was taken up before the Hon’ble High Court, granting only one day's time to the Applicant to deposit the due amount, without informing the Applicant about the true and correct facts about the status of the auctioned property.
22. In view of the stated factual matrix, the observations of the Hon’ble Apex Court in the case of “*Viney Kumar Sharma Versus The Improvement Trust & Another*” becomes relevant, wherein the Supreme Court has been pleased to castigate the conduct of the *Improvement Trust* in not placing all the relevant facts before the auction purchaser and suppressing the material

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facts. The Hon'ble Supreme Court held that such conduct renders the auction fraudulent and vitiated by the material irregularity.

23. In the present case also, the Liquidator failed to bring the factum of the pendency of the Writ Petition bearing 14476/2020 before the Hon'ble High Court of Rajasthan to the notice of the auction purchaser so as to enable him to take an informed decision about depositing the amount with respect to property auctioned.
24. Therefore, keeping in view the facts and circumstances of the present case, the Interlocutory Application bearing *IA (IBC)- 597/JPR/2024* is allowed and the Liquidator is directed to refund the amount with 9% interest per annum from the date of deposit, as has been directed by the Hon'ble Supreme Court in the case of *Viney Kumar Sharma (Supra)*.
25. With these observations, IA bearing *IA (IBC)- 597/JPR/2024* is ***allowed*** and thus ***disposed of***.



**REETA KOHLI,  
JUDICIAL MEMBER**

Dated: 08.05.2026



## Note of Concurrence


*(To be added to the order of Member Judicial)*

**IA No. 597JPR/2024 in CP No. (IB)-601/ND/2018**

*(M/s Packwell (India) Pvt. Ltd. Vs. M/s Emgee Cables & Communications Ltd.)*

**Per: - Kavita Bhatnagar, Technical Member**

1. I have gone through the order prepared by the Ld. Member (J). I concur with the ultimate conclusion that, in the peculiar facts and circumstances of the present case, the Applicant-Auction Purchaser deserves to be permitted to withdraw from the auction proceedings and the amount deposited by it is liable to be refunded. However, considering the nature of issues involved, I deem it appropriate to record a brief note of concurrence.
2. The record reflects that the auction purchaser had initially participated in the e-auction process pursuant to the auction notice dated 12.07.2024 and had deposited the EMD amount. It is also borne out from the material placed on record that during the interregnum, a writ petition came to be instituted before the Hon'ble Rajasthan High Court concerning the auctioned property and the auction proceedings were made subject to the outcome of the said writ proceedings.
3. At the same time, it is also evident from the record that the Liquidator has taken a consistent stand that the writ petition came to his knowledge only



on 14.08.2024 and that the communication sent to the Applicant on the said date was based upon the information available with him at that point of time. Therefore, in my considered view, the present case may not strictly fall within the category of a deliberate or intentional suppression of facts so as to warrant any adverse observations against the Liquidator personally. Equally, the filing of a caveat by itself may not conclusively establish complete knowledge of the pleadings or reliefs claimed in the writ proceedings.

4. However, notwithstanding the above, what assumes significance is that the auction purchaser was ultimately confronted, at a crucial stage immediately following the auction, with a pending litigation concerning the auctioned asset, coupled with the fact that the auction proceedings themselves had been made subject to the final outcome of the writ petition. In such circumstances, the apprehension entertained by the auction purchaser regarding the certainty and finality of the title to the property cannot be said to be wholly unfounded.
5. Though the Applicant did proceed to deposit the further amount after receipt of the communication dated 14.08.2024, the surrounding circumstances indicate that such deposit was made within a limited timeline prescribed under the auction process and amidst uncertainty regarding the status of the property. In the peculiar facts of the present case,



therefore, I am of the considered opinion that permitting the Applicant to withdraw from the auction proceedings and directing refund of the amount deposited would subserve the ends of justice and avoid further complications in the liquidation process.

6. Before parting, it is clarified that the direction regarding payment of interest shall operate against the liquidation estate and the account maintained during the liquidation process, and shall be paid by the Liquidator as when such funds are available in the said account and shall not be construed as creating any personal liability upon the Liquidator, who has acted in discharge of his statutory duties under the Insolvency and Bankruptcy Code, 2016.
7. Subject to the above observations, I concur with the operative conclusion directing refund of the amount deposited by the Applicant-Auction Purchaser.

A handwritten signature in black ink on a yellow rectangular background.

**Kavita Bhatnagar**  
**Member Technical**  
**NCLT Jaipur Bench**