

2

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/796/2021 in CP/661/CB/(IB)/2017

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules)

In the matter of RLS Alloys Private Limited

Indian Bank,
Cantonment Branch,
Sree Naga Arcade,
No.5, Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

... Applicant

-Vs-

Mr. CA. R. Shanmuggam,
Liquidator of RLS Alloys Private Limited

... Respondent

Along with

IA/206/2021 in CP/661/CB/(IB)/2017

(filed under Section 60(5) and 32 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules and Regulation 33 and Schedule 1 of the IBBI (Liquidation Process) Regulations, 2016)

Mr. G Subramanian,
S/o Mr. Gopalan,
Successful Bidder/E-Auction Purchaser,
No 27/A, Alexandria Road,
Cantonment. Tiruchirappalli-620 001.

... Applicant

-Vs-

1. Mr. CA.R. Shanmuggam,
Liquidator of RLS Alloys Private Limited,
No 207, 1st Floor, Thirukumaran Building,
Near Kalyan Silks, 11-F,
Mettur Road,
Erode-638 011.

2. Assistant Commissioner of Commercial Taxes,
Srirangam Circle,
Ground Floor, Multi Storied Building,

Kajamalai Colony,
Mannarpuram,
Tiruchirappali-620 021.

3. The Sub-Registrar of Keezhsathanur,
Sub-Registration Office at Keezhsathanur,
Palani Nagar, LIC Colony,
K.K. Nagar,
Tiruchirappalli-620 021.

4. Indian Bank,
Cantonment Branch,
No.5. Williams Road,
Melapudur,
Sangilyandapuram,
Tiruchirappalli-620 001.

... Respondents

Along with

IA/22/CHE/2021 in CP/661/CB/(IB)/2017

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 & 14 of the NCLT Rules, 2016)*

CA.Ramaswamy Shanmuggam,
(Liquidator of RLS Alloys Pvt Ltd)
No.207, 1st Floor, Thirukumaran Building,
11-F, Mettur Road,
Erode – 638 011

... Applicant

-Vs-

Indian Bank,
Cantonment Branch,
Trichy

... Respondent

Along with

IA/932/IB/2021 in CP/661/CB/(IB)/2017

*(Filed under Section 238 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 & 14 of the NCLT Rules, 2016)*

CA.Ramaswamy Shanmuggam,
(Liquidator of RLS Alloys Pvt Ltd)
No.207, 1st Floor, Thirukumaran Building,
11-F, Mettur Road,
Erode – 638 011

... Applicant

-Vs-

1. The Goods and Service Tax Department,
(Commercial Tax Department)
Srirangam Assessment,
Circle Srirangam,
Moolathoppu,
Trichy - 06

2. The Sub –Registrar,
Registration Department,
Keezhsathanur,
Trichy

... Respondents

Order pronounced on 2nd June 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr.HarshaRaj, Advocate in IA/796(CHE)2021
:Mr.Rathina Asokan, Advocate in IA/206(CHE)2021
:A.G.Sathyanarayana, Advocate in IA/22(CHE)2021
:A.G.Sathyanarayana, Advocate in IA/932(IB)2020

For Respondent: R.Shanmuggam, Liquidator in IA/796(CHE)2021
Abinav Parthasarathy for R1, B.Vanithamani, Asst
Commissioner in person for R2, No representation
For R3 & R4 in IA/206(CHE)2021S
Mr.HarshaRaj, Advocate in IA/22(CHE)2021
B.Vijay for R1, No representation for R2 IA/932(IB)2020

O R D E R

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA/796/2021 was filed on 31.12.2020 by Indian Bank against Mr. CA.R.Shanmuggam, the Liquidator of RLS Alloys Private Limited with the following prayers:-

- i. *To call for records of the sale conducted on 25.09.2020 and set aside the sale;*
- ii. *To pass such other or further orders as this Hon'ble Tribunal may deem fit and thereby render justice.*

1. The CIRP against the Corporate Debtor viz., RLS Alloys Private Limited commenced under Section 9 of IBC, 2016 on 03.12.2018. Pursuant to which the Respondent herein was appointed as the IRP. Liquidation of the Corporate Debtor was ordered on 14.06.2019 in MA/559/2019 and the Respondent was appointed as the Liquidator of the Corporate Debtor.

2. It is submitted that on 16.03.2020 the movable assets of the Corporate Debtor were sold by the Respondent in e-auction for an amount of Rs.107.01 lakhs. The Applicant is the sole Financial Creditor of the Corporate Debtor, it is alleged that the Respondent is yet to submit the Applicant distribution proceeds regarding the sale of the above movable properties.

3. It is further stated that the Respondent have since appropriated a sum of Rs.99 lakhs from the Liquidation account of the Corporate Debtor as maintained with the Applicant.

4. The Respondent has published e-auction sale notice in The New Indian Express on 10.09.2020 for an auction to be conducted on 23.09.2020 for the sale of the land and buildings of the Corporate Debtor at reserved price of Rs.1,06,55,550/- (Rupees One Crore Six Lakhs Fifty Five Thousands Five Hundred Fifty Five only) and the Bid Increment was decided at Rs.1 lakh or in multiple thereof.

5. The impugned sale notice is placed at page Nos.18 and 19. The terms and conditions were placed at page Nos.20 to 24 of the application.

6. The e-auction commenced on 23.09.2020 on the website of the designated service provider which was <https://ncltauction.auctiontiger.net>.

7. The Applicant has attached the highest bid report and item wise breakup of the bid from page Nos.25 to 32 of the Application. As per the said report e-auction commenced on 23.09.2020 at 10.00 AM and concluded on 23.09.2020 at 11:45:57 AM.

8. It is stated that the bids went up to Rs.1,55,55,550/- (Rupees One Crore Fifty Five Lakhs Fifty Five Thousands Five Hundred Fifty only), the bid was received from one Mr. G. Subramanian and lastly one Mr. S. Ramalingam made a bid amount of Rs.15,65,55,550/- (Rupees Fifteen Crores Sixty Five Lakhs Fifty Five Thousands Five Hundred Fifty only). The auction ended at that point of time.

9. It is further stated that during the auction held on 23.09.2020 there were as many as 43 competitive bids.

10. The highest bidder Mr. S. Ramalingam post conclusion of the auction intimated to the Respondent that he has mistakenly quoted Rs.15,65,55,550/- in place of Rs.1,56,55,550/-. The said bidder thereafter requested for cancellation of the bid.

11. Later on, the said Mr. Ramalingam on 24.09.2020 wrote letter to the Respondent. The said writing by Mr. Ramalingam was on a stamp paper of Rs. 100 and is extracted below. (Page Nos.40 & 41 of the Application):-

"As I participated in the above said E-Auction held on 23/09/2020. At the time of E auction was going on, I was supposed to type bid amount to be Rs.1,56,55,550/- , but due to typing error as well as time pressure and I

am new to this type of online E-auction, I entered it as Rs. 15,65,55,550/-. It has happened due to tension and time pressure only and it was not made intentionally. I kindly request you to consider my above said error in E-Auction bid amount, it was to be only Rs.1,56,55,550/ instead of Rs.15,65,55,550/- which was punched in the portal and I kindly request you to cancel the above said E Auction.

All the consequences of cancellation of E Auction held on 23/09/2020, I will be solely and personally responsible to you in this above said matter. I will bear the cost of Re E-Auction portal expenses and other incidental charges. Any NCLT Proceedings in this matter against you, I well bear all the Expenses and incidental charges.

I am very much sorry for the unavoidable inconvenience caused in this regard.

Place: Erode.

Date:24/09/2020

Yours Truly,

-sd-

(S. Ramalingam)

Encl: -

1. Highest Bid Report
2. Item wise break up of Bid
3. Bid History"

12. The applicant inquired with the respondent regarding the outcome of the e-auction. On 24.09.2020 the Respondent has written to the Applicant an e-mail contents of which are reproduced below. The said e-mail is placed at page No.56 of the application

:-

"Dear Sir,

The E auction held on 23/09/2020 was cancelled and the same will be done in due course of time. This is for your kind information."

13. The Applicant further states that the Respondent re-fixed the auction on 25.09.2020 and that the Applicant was never informed about the same.

14. It is the allegation of the Applicant Bank that on 25.09.2020 the auction commenced at the upset price of Rs.1,06,55,550/- (Rupees One Crore Six Lakhs Fifty Five Thousands Five Hundred Fifty only), i.e. which was the upset price on 23.09.2020 and the same set of bidders who participated in the e-auction conducted on 23.09.2020 participated in this e-auction too. No fresh auction notice was published. The auction commenced on 25.09.2020 and concluded on 25.09.2020. The final bid amount was Rs.1,10,55,550/-.

15. It was further stated that the said Mr. S. Ramalingam who is said to have erroneously quoted Rs.15,65,55,550/- in place of Rs.1,56,55,550/- also participated in the e-auction held on 25.09.2020.



16. One Mr. G. Subramanian who was the second highest bidder in the auction dated 23.09.2020 and who has placed the bid amount of Rs.1,55,55,550/- on 23.09.2020 also participated in the auction held on 25.09.2020. In the auction held on 25.09.2020 the said Mr. G. Subramanian was declared as the highest bidder with the last bid amount of **Rs.1,10,55,550/- (Rupees One Crore Ten Lakhs Fifty Five Thousands Five Hundred Fifty only).**

17. The allegations of the Applicant in this IA are

1. The auction held on 25.09.2020 lacks transparency and there is an apparent fraud.
2. The value of the property got decreased by Rs.45 lakhs within two days time.
3. The auction held on 25.09.2020 should have commenced from Rs.1,55,55,550/- in place of upset price of Rs.10,65,55,550/-.
4. No further e-auction sale notice was put by the Liquidator and the sole secured creditor was never informed.
- 5.

18. The Applicant submits that under the circumstances, they were not in a position to maximize the value of the assets and in a transparent manner and the same stands defeated.

19. Reply in the matter was filed on 25.01.2022, the Liquidator states that :-

- i. The Application is not maintainable due to non-joinder of essential party.
- ii. The auction sale was conducted in a transparent manner.
- iii. There was no malafide intention or illegality on the part of the Liquidator.
- iv. Limitation issue was also raised by the Liquidator since the application was filed after 190 days from the auction sale and after issuance of Sale Certificate.

20. It was further stated that prior to auction on 23.9.2020, nearly 10 e-auctions for the sale of assets the Corporate Debtor had failed to realize desired results.

21. Ld. Liquidator has specifically pointed out to point No.12 of e-auction notice dated 23.09.2020 the same is reproduced below:-

"The Liquidator has absolute right to accept or reject the bid or adjourn, postpone, extend the auction without assigning any reason"

22. The Ld. Liquidator submits that the Applicant is not entitled the relief as prayed.

23. Both sides admitted that the impugned property has so far not been registered in the name of the auction purchaser till the date of hearing.

24. Heard both sides and perused the documents placed on record. Ld. Counsel for the Liquidator in reply to question posed by this Tribunal during the hearing stated that the EMD provided by Mr. S. Ramalingam, (person who placed a wrong bid on 23.09.2020) was forfeited by the Liquidator.

25. From the documents it is apparent that the auction held on 23.09.2020 was keenly contested auction. In all five bidders were in the designated room. The bidders have placed 52 bids of which 43 valid bids were found to be valid, these were received from 10:00 AM till 11:40 AM.

26. At the commencement of auction at 10:00 AM and Mr. S. Ramalingam has given the first bid for Rs.1,07,55,550/- at 10:05 AM. The last bid i.e., bid No.52 was by Mr. S. Ramalingam for Rs.15,65,55,550/- and was at 11:40 AM. The 51st bid was by Mr. G. Subramanian for Rs.1,55,55,550/- at 11:56 AM.

27. As stated supra, subsequently Mr. S. Ramalingam withdrew his bid for Rs.15,65,55,550/- on 24.09.2020.

28. On 25.09.2020 when the auction commenced the auction was attended by four persons by Mr. G. Subramanian and Mr. S. Ramalingam also participated. The upset price was reset with the level of Rs.1,06,55,550/-. It is noteworthy that this upset price of Rs.1,06,55,550/- is the same upset price on which the auction commenced on 23.09.2020.

29. At page No.23 of the Application the terms and conditions of e-auction are set out, para 11 of the terms and conditions is reproduced as under:-

"In case of default in payment, the property shall at the discretion of the Liquidator/secured creditor be sold to the 2nd highest bidder or resold and the defaulting purchaser shall not have any claim. Decision of the Liquidator/Secured Creditor will be final."

30. On perusal of the facts placed, it appears that the auction was not conducted in a transparent manner due to the following reasons: -

- i. The Ld. Liquidator could have very well sold the property to the second highest bidder Mr. G. Subramanian for Rs.1,55,55,550/- at his bid placed at 11:56 AM as per the auction record.

- ii. No fresh e-auction notice was published by the Liquidator for holding e-auction on 25.09.2020. As late as 24.09.2020 the Liquidator was not clear what he is going to do which is apparent from the email written by the Liquidator to the Financial creditor as mentioned supra.
- iii. The upset price was set at the level of Rs.1,06,55,550/-. This was the level at which the auction commenced on 23.09.2020 and was lower than the last valid bid amount which was Rs.1,55,55,550/- which was the bid of Mr. G. Subramanian.
- iv. Taking advantage of the entire scenario Mr. G. Subramanian was declared successful bidder on 25.09.2020 for a sum of Rs. **1,10,55,550/- in place of his own bid of Rs. 1,55,55,550/- on 23.09.2020 for the same property. The amount of the final bid was lower by nearly 45 lakh.**
- v. From the record of auction placed before us it is clear that the Liquidator allowed Mr. S. Ramalingam, the person who placed a wrong bid on 23.09.2020 and whose EMD the Liquidator had forfeited to participate in the auction held on 25.09.2020.
- vi. In place of maximization of value, the auction held on 25.09.2020 decreased the value for the financial creditor. To top it all, the Liquidator never kept the financial creditor in loop for the proceedings held on 25.09.2020.
- vii. The entire episode smacks of wrongdoings and malafide on the conduct of the Liquidator in conducting the two auctions on 23.09.2020 and 25.09.2020.

31. In view of the findings above, IA/796/2021 is **allowed**. The auction held on 25.09.2020 is hereby set aside.

32. The Registry is directed to mark a copy of this Order to IBBI who in turn to conduct detailed inspection of the Liquidator and the

records pertaining to the Corporate Debtor to find out irregularities, if any.

IA/206/CHE/2021

33. IA/206/CHE/2021 was filed by the successful Applicant who has purchased the immovable property of the Corporate Debtor in e-auction conducted on 25.09.2020 with the following prayers.

- a. Direct the 1st Respondent / Liquidator to issue and register the Sale Certificate in the name of the Applicant herein, free from all encumbrances and consequently, handover the possession of the Auction property i.e, Factory Land and Building situated at Survey No.118/1, 2, 3, Sethurapatti Road, Fathima Nagar, Srirangam Taluk, Trichy – 620 012 admeasuring Land – 5.04 Acres, Building – 62170 Sq.ft and Drying yard-11227 Sq.ft to the Applicant herein.
- b. Direct the Respondent No.2 and 3 to raise and release the Attachment in respect to the Auction Property i.e., Factory Land and Building situated at Survey No.118/1, 2, 3, Sethurapatti Road, Fathima Nagar, Srirangam Taluk, Trichy – 620 012 admeasuring Land – 5.04 Acres, Building – 62170 Sq.ft and Drying yard – 11227 Sq.ft.
- c. Direct the Respondent No.4 to execute the cancellation of the Memorandum of Deposit of Title Deeds (MODT) registered as Document No.3767 of 2010, 6200 of 2010, 6811 of 2011, 5145 of 2012, 2144 of 2014 in respect to the Auction Property i.e., Factory Land and Building situated at Survey No.118/1, 2, 3, Sethurapatti Road, Fathima Nagar, Srirangam Taluk, Trichy – 620 012 admeasuring Land – 5.04 Acres, Building – 62170 Sq.ft and Drying yard – 11227 Sq.ft.
- d. Direct the 1st Respondent / Liquidator to pay the interest @ 12% p.a., for the sale consideration of Rs.1,10,55,550/- paid by the Applicant to the 1st Respondent / Liquidator

from 01.12.2020 till the date of registration and handing over of the auction property.

- e. Pass such further or other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice.

IA/22/2021

36. IA/206/Che/2021 was filed by the Liquidator seeking the following reliefs:

- a) To direct the Respondent to handover the original title deeds of the Corporate Debtor to the Applicant herein to register the Property in favour of the CD.
- b) To pass such other orders or further orders which may deem to be fit and proper in the interest of justice.

37. In view of the findings given above in IA/796/2021, this IA/206/CHE/2021 and IA/22(CHE)/2021 stand **dismissed**.

IA/932/2020

38. IA/932/2020 is filed by the Liquidator under Section 238 of the IBC, 2016 read with Rule 11 & 14 of the NCLT Rules, 2016 seeking relief as follows;

- a) To direct the 1st Respondent to remove the attachment in the Scheduled Property of the Corporate Debtor; or
- b) To declare that the 1st Respondent attachment in the scheduled property of the Corporate Debtor is null and void ; or
- c) To direct the 2nd Respondent to remove the GST Department attachment in the Encumbrance Certificate of the scheduled property of the Corporate Debtor and declare the same is null and void ; or
- d) To direct the 2nd Respondent to register the scheduled property of the Corporate Debtor in favour of the Successful Bidder as informed by the Applicant; and
- e) To pass such other orders or further orders which may be deemed to be fit and proper in the interest of justice.

39. From the averments made in the Application it is seen that the 1st Respondent has attached the property of the Corporate Debtor vide letter dated 03.02.2016 for the sales tax dues of Rs. 2,11,57,636/-pertaining to the Financial Years 2007-08 to 2014-15. The CIRP in respect of the Corporate Debtor was initiated on 03.12.2018. Thus, it could be seen that the attachment of the property of the Corporate Debtor by the 1st Respondent was made prior to CIRP period. Hence, the prayer of the Liquidator seeking

removal of attachment on the property is not maintainable in view of the Judgment rendered by Hon'ble NCLAT in the matter of **Regional Provident Fund Commissioner v T.V. Balasubramanian** in Company Appeal (AT) (Insolvency) No. 1521 of 2019 dated 08.06.2020. Accordingly, IA/932/IB/2020 stands **dismissed.**

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

R. SUCHARITHA
MEMBER (JUDICIAL)