

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-09-2023 AT 10:30 AM**

IA (IBC) 770/2023 in CP (IB) No. 251/9/HDB/2020
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Mr P Raghava Rao

...Operational Creditor

VS

Anjali WaterFord Hospitality and Infra Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC)/770/2023

Ld. Counsel Smt. A. Sandhya Rani for the Applicant, Ld. Counsel Ms. Manoranjini and Mr. G V Subba Rao for Liquidator present.

Orders pronounced in IA (IBC)/770/2023 in CP (IB) No.251/9/HDB/2020 recorded vide separate sheets. In the view of the facts and circumstances of this case it is held that this application is not maintainable and the prayer sought for in the application cannot be granted. Hence, the same is dismissed, however without costs. The Liquidator is directed to proceed by the liquidation process expeditiously.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1**

IA NO. 770/2023

IN

CP IB NO. 251/9/HDB/2020

(Under section 60 (5) (c) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
National Company Law Tribunal Rules, 2016)

In the matter of:

M/s Deattis Projects Private Limited
Flat No.33, SBH Colony, Srinagar Colony,
Yellareddyguda, Hyderabad – 500073
Rep. by its Authorized Signatory
Mr. Bokka Suresh Babu
Deattis 2022 @gmail.com

... Applicant/Successful Bidder

Versus

1. Mr. Govada Venkata Subba Rao
Liquidator of Anjali Waterford Hospitality and Infra Limited,
2. The Chief Executive Officer
The Kakinada Co-Operative Town Bank Limited

...Respondent / Financial Creditor

Date of Order: 07.09.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance of Parties/Counsels:

For the Applicant : Smt. A. Sandhya Rani, Counsel
For the Respondent No.1 : Smt. Mano Ranjini, Counsel
For the Respondent No.2 : Shri. Shaik Gouse, Counsel

PER: BENCH

ORDER

1. This is an Application filed by M/s Deattis Projects Private Limited/Successful Bidder of the Corporate debtor M/s Anjali Waterford Hospitality & Infra Pvt Ltd at the e-auction conducted by the Liquidator on 01.02.2023, seeking the following reliefs:-
 - (a) Directions to Respondent No.1/Liquidator to cancel the e-auction dated 17.01.2023 as the assets put for sale are not having clear marketable title.
 - (b) Directions to Respondent No.1/Liquidator to refund the earnest money deposited by the Successful Bidder/Applicant herein.
2. **The averments in the Application in brief are:-**
 - (i) This Tribunal vide order dated 13.05.2022 passed in IA No. 248/2022 put the Corporate Debtor i.e. M/s Anjali Waterford Hospitality & Infra Pvt Ltd into liquidation and appointed Mr. Pradeep Kumar Sarvanan as Liquidator. Subsequently, the Liquidator was replaced by Respondent No.1 herein owing to demise of Mr. Pradeep Kumar Sarvanan.
 - (ii) The sale notice was issued by the Liquidator on 17.01.2023 for sale of the assets of the Corporate Debtor.
 - (iii) The Applicant herein participated in the e-auction conducted by the erstwhile Liquidator and was declared as the successful bidder. The Liquidator then issued Letter of Intent to the Applicant.

- (iv) Later the Successful Bidder(Applicant herein) got the information from the reliable sources that the assets were acquired by the Corporate Debtor under the SARFAESI Auction sale conducted by UCO Bank in the year 2014 and the registered sale deeds bearing No. 213 & 214 of 2014 have been mortgaged with IDBI Bank and also with Indian Overseas Bank by the Predecessor's in the year 2011.
- (v) Based on the information, the Indian Overseas Bank had lodged a criminal complaint no. 191/2029 with Bhimavaram Police Station. Against the said criminal complaint, the borrowers have alleged to have approached Hon'ble High Court of Amaravati and the same is still pending.
- (vi) The Applicant further gained knowledge that the subject property is mortgaged to different banks by different people claiming it as their own property viz, to IDBI and UBI in the year 2011 by a different person and in the year 2019 to the Kakinada Co-operative Town Bank by the Corporate Debtor. Therefore, at the time of issuing sale notice, the Liquidator is not having valid marketable title for the assets that are put for sale.
- (vii) The Applicant brought to the knowledge of the Liquidator but there is no reply and the Liquidator was hospitalized before his demise and the applicant could not bring to the notice of the then Liquidator.

- (viii) The Applicant brought to the notice of the dispute to the present Liquidator/Respondent No.1 but the liquidator has not evinced any interest in resolving the issue.
- (ix) The Respondents are not cooperating and showing very adamant attitude by saying that the assets are sold in as is there is and whatever there is basis but the same shall apply to the physical dimensions of the assets like size, shape and approach roads etc., but not apply to the title of the property.
- (x) The Liquidator/Respondent No.1 issued letter dated 23.04.2023 demanding to pay the balance sale consideration as per the letter of intent issued, but if the entire sale consideration is paid to the assets which are not having clear marketable title the Successful bidder will suffer huge irreparable loss therefore having left with no other alternative the applicant is knocking the doors of this Tribunal for Justice.

3. Counter filed by the Liquidator/Respondent No.1:-

- (i) The Respondent No.1/Liquidator categorically disputes and denies all the contentions and allegations made in the present application.
- (ii) The current status on the Liquidation process is:
 - a) The Public announcement has been issued in Form B, inviting for claims from the stake holders on 17.05.2022.
 - b) The SCC has been constituted with sole the financial creditor, The Kakinada Coop Town Bank.
 - c) The last sale notice was issued on 17.01.2023 to sell the assets of the Corporate Debtor at RS No. 415/1 bearing H No 18-10-

11, RS No 415/1A, Behind Sri Sathya Sai Kalyana Mandapam, Bhimavaram Town & Mandal, West Godavari, AP at a reserve price of Rs.280.00 Lakhs in “AS IS WHERE IS”, “AS IS WHAT IS” and “WHATEVER THERE IS BASIS”.

- d) The auction of the above sale was conducted on 01.02.2023 after receiving the EMD amount of Rs. 28,00,000/- from single bidder, who is the applicant of the instant application, M/s De Attis Projects P Ltd.
- e) On 03.02.2023 a mail was sent to M/s De Attis Projects Private Limited announcing it as successful bidder in the e-Auction and on 06.02.2023 the LOI was issued to it by the erstwhile Liquidator.
- f) As per the terms of the auction document and the LOI, last date for payment of the balance bid amount of Rs. 2,52,50,000/- with interest @12% as per Schedule I clause I (12) of IBBI Liquidation Process) Regulation (Apart from the EMD of Rs.28,00,000/- already paid by the successful bidder) is 02.05.2023.
- (iii) It is averred that the property quoted to be in dispute by the Applicant is different from the e-auctioned property of the Corporate Debtor for which the applicant is the Successful Bidder.
- (iv) The “other property” which is mentioned in the application (@Para VI (f) of application) and the E-auctioned property of the Corporate Debtor, the House numbers and also the ward numbers of both the properties are different and this application is filed only

to buy time due to applicant's incapability to pay the balance amount by the due date 02.05.2023.

vi) The averment in Para VI(k) is partially true and the Liquidator has sent letter dated 23.04.2023 requesting the applicant to make the payment as per the terms of the e-auction and LOI and the applicant made no payment is being inconsistent and blowing hot and cold.

a) On one hand alleging that the auction property is under dispute and not having clear marketable title and on the other hand wrote an emails to the Liquidator stating that they are willing to remit the balance amount in two instalments i.e., Rs. 72,00,000/- immediately and Rs. 1,80,50,000/- within 90 days with 12% interest for delayed period and that they will fight the site litigation/ legal cases if any with their costs.

(Mails received from the Successful Bidder requesting the Liquidator to accept the revised payment terms and to recommend the financial creditor to file an IA to resolve the issue is annexed herewith and marked as Annexure A02)

b) The current application has been filed in order to seek the extension of time for making the balance payment and also to restrain the Liquidator to proceed for forfeiture of the EMD and commence the fresh e auction for the sale of the said property and there was no dispute at all in respect of the property.

4. Reply/Counter filed by Respondent No.2/Financial Creditor:

(i) The Respondent No.1 and Respondent No.2 has filed the same facts in their counters. However, Respondent No.2 mentioned that Clause J of the e-Auction Process document, the Liquidator will

forfeit the Earnest Money deposit from the e-Auction Purchaser/Bidder, for any non-compliance of the terms mentioned therein by the e-Auction Purchaser/Bidder and the said clauses are also mentioned in the counter.

- (ii) The Respondent relied upon the Judgment of Hon'ble NCLAT in the matter of Westcost Infraprojects Private Limited vs. Ram Chandra Dallaram Choudhary, Liquidator of Anil Limited (28.04.2023- NCLAT) : MANU/NL/0400/2023 it was held that in para 20.

5. Written Submissions filed by Liquidator/Respondent No.1 :

- (i) Liquidator has reiterated the same facts which was mentioned in the Counter and written submissions are being filed by the Liquidator to address the concerns and confirm that there are no issues with the title of the subject property as outlined in the summarised table given in written submissions at Page No.3.
- (ii) The erstwhile Liquidator got the valuation done for the subject property, by appointing the IBBI registered valuers who issued their valuation reports subsequent to their contentment with the fact that the property belonging to the Corporate Debtor has a clear title and further Liquidator also personally visited the Subject Property and after appointment, physically inspected the Subject Property and the PNB Property.

6. Written Submissions filed by the Applicant :

- (i) The applicant reiterated the same facts mentioned in the application and also submitted the facts mentioned by the

Respondents in his written submissions and prayed the Tribunal to direct the Respondent No.1 to return the amount paid by the Successful Bidder.

7. Our findings and observations:

This is an application filed by the M/s Deattis Projects Private Limited/ Successful Bidder of the Corporate Debtor M/s Anjali Waterford Hospitality & Infra Pvt Ltd, seeking direction to Respondent No.1/Liquidator to cancel the e-auction dated 17.01.2023 and refund the EMD of Rs.28,00,000/- deposited by the applicant herein as a Successful Bidder of the Corporate Debtor. The facts of the case are that:

- (i) The Corporate Debtor i.e., M/s Anjali Waterford Hospitality & Infra Pvt Ltd was put into liquidation by this Tribunal on 13.05.2022 vide an order passed in IA No 248/2022, the erstwhile liquidator conducted the e-Auction of the assets of Corporate Debtor at a reserve price of Rs. 280.00 Lakhs in “AS IS WHERE IS”, “AS IS WHAT IS” and “WHATEVER THERE IS BASIS”. On 01.02.2023, the property of Residential/Commercial land admeasuring a total extent of 978.66 Square Yards belonging to the Corporate Debtor’s name RS No: 415/1 bearing H No 18-10-11, RS No 415/1A, was put up for auction by liquidator. The Applicant herein bid for the property along with EMD of Rs. 28,00,000/- and LOI was issued to the applicant on 06.02.2023. Last date for payment of the remaining bid amount of Rs. 2,52,50,000/- plus interest @ 12% as per schedule I clause I (12) of IBBI Liquidation

Process) Regulations (apart from the EMD of Rs. 28.00 Lakhs already paid by the successful bidder) was 02.05.2023.

- (ii) The Applicant herein did not pay remaining amount and filed this IA No. 770/2022 asking to cancel the e-auction and return the EMD amount of Rs. 28,00,000/- stating that the asset for sale does not have clear marketable title.
- (iii) The liquidator pleaded that the property under auction is not under dispute and has a clear title and the applicant itself is sending e-mails to the liquidator showing its willingness to remit the balance amount but in two instalments i.e., Rs. 72,00,000/- immediately and Rs.1,80,50,000/- within 90 days with 12% interest for delayed period .However, no payment has been done till date.
- (iv) The Applicant has pleaded that the subject property under sale is mortgaged to IOB . However, the liquidator has submitted a letter from IOB which says the said property in your letter dated 14.08.2023 i.e. Residential/Commercial Land and measuring a total extent of 978.66 Sq. Yards which is situated at Nearby Door No: 18-10-11 covered under S.No:415/1A is not related to our bank and the properties mortgaged to us is different from the one stated in your letter.
- (v) The other point raised by the applicant is about the dispute regarding some common passage to the property mortgaged to Punjab National Bank . To clarify on this issue also, the liquidator has submitted an e-mail from Panjab National Bank which clarifies

that the bank had published auction notice in the daily newspapers after leaving the 8 Feet common passage.

8. We have heard advocates from both sides and also liquidator in person and perused all the documents submitted to us by both sides. On the basis of the facts of the case particularly, the condition of auction being “AS IS WHERE IS”, “AS IS WHAT IS”, and “WHATEVER THERE IS BASIS” firstly, the applicant has no right after participating in the bid to bring forth all these issues, secondly, the liquidator has given sufficient clarifications through submitting letter from IOB, e-mail from Panjab National Bank and legal scrutiny certificate of title deeds to prove that the property is not in dispute and the title is clear.
9. In view of the above facts and circumstances, we decide that this application is not maintainable and the prayer sought for in the application cannot be granted. Therefore, this application is dismissed and disposed of without costs. The liquidator is directed to proceed by the liquidation process expeditiously.

Sd/-
Charan Singh
Member Technical

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial