NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal(AT)(Insolvency) No. 356 of 2021

IN THE MATTER OF:

D.R Corporation (Proprietorship Firm)
Through its Proprietor
Shri Manoj Kumar Agarwal
S/o. Ram Charan Agarwal,
Age: 45 Years,
Having address at 316,
Bopal Hart,Suncity,
Bopal, Ahmedabad, Gujarat-38005 **...Appellant**

Vs

1.Shri Ravi Kapoor,
Liquidator of City Tiles Ltd.
Having address at
402, Shaival Plaza,
Nr. Gujarat College,
Ellisbridge,
Ahmedabad-380006, Gujarat **...Respondent No.1**

2.Seazone Granito Pvt. Ltd,
Having address at
505, The Capital,0pp.
Hetarth Party Plots,
S.G. Highway, Sola,
Ahmedabad-380060, Gujarat **... Respondent No.2**

Present: For Appellant: Mr. Abhijeet Sinha, Mr. Ravi Pahwa, Ms. Aastha Mehta and Ms. Prerana Mohapatra, Advocates.

For Respondents: Mr. Tirth Nayak, Advocate for Respondent No. 1.

Mr. Jay Savla, Sr. Advocate with Ms. Shilpi Chowdhary and Mr. Harmish Shah, Advocates for Respondent No. 2.

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal is filed under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the order dated 27.04.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal), Ahmedabad Bench, in I.A.No. 297(AHM) of 2021 in CP (IB)No. 56 of 2019.

2. The Appellant has prayed the followings :

   i. To set aside the order dated 27.04.2021 passed by the Adjudicating Authority in I.A.No. 297(AHM) of 2021 in CP (IB) No. 56 of 2019:

   ii. Set aside the public announcement dated 30.04.2021 made by the Respondent No.1 for sale of lot No.4 etc.

3. The Adjudicating Authority has passed the impugned order dated 27.04.2021 is presented hereunder:

> *"Mr. Harmish K Shah, Advocate appeared on behalf of Applicant. Mr. Tirth Nayak, Advocate appeared on behalf of Liquidator and fairly submitted that Liquidator is ready to go for fresh public announcement instead of contesting the matter.*

Accordingly, the matter is adjourned. List the matter on 16.06.2021"

4. The Adjudicating Authority has not passed any order per se, only the issue of fresh public announcement was presented to the Adjudicating Authority by the parties and the Adjudicating Authority has listed the matter on 16.06.2021.

5. The Financial Creditor has filed an application before the Adjudicating Authority under Section 7 of the Code seeking initiation of 'Corporate Insolvency Resolution Process' (CIRP) against the Corporate Debtor and the said application was admitted by the Adjudicating Authority vide its order dated 22.04.2019. Mr. Parag Sheth originally appointed 'Interim Resolution Professional' (IRP) in this case was replaced in the first of the 'Committee of Creditor' (CoC) meeting held on 21.05.2019 by Mr. Ravi Kapoor 'Resolution Professional' (RP), now liquidator. It is also not in dispute that the 4th CoC meeting was held on 07.01.2020, wherein CoC has decided to liquidate the Corporate Debtor as no 'EOI' (Expression of Interest) was received in respect of Corporate Debtor and directed the RP to file an application for liquidation of the Corporate Debtor. It is also not in dispute that the Resolution Professional Mr. Ravi Kapoor continuation as 'Liquidator' was also passed unanimously in the same meeting of the CoC. Accordingly, the Adjudicating Authority has passed an order on 02.07.2020 for initiation of 'Liquidation' of the 'Corporate Debtor' and also directed to Mr. Ravi Kapoor – Resolution Professional shall act as the 'Liquidator' for the purpose of Liquidation of the Corporate Debtor.

6. The learned counsel for the Appellant has submitted that the Adjudicating Authority based on the submission of the Liquidator allowed for re-auction and issue of a fresh public announcement thereby virtually allowing the Respondent No.2 to take over the auction whereas the same is non-maintainable application.

7. The Appellant has submitted that as per the auction conducted on 12.04.2021 pursuant to the public announcement on 26.03.2021, where both the Appellant and the Respondent No.2 participated for Lot No.4 i.e. Plant and Machinery of Ceramic Manufacturing Unit situated at 445 and 451 of Dalpur, District-Sabarkantha, Gujarat, thereby binding themselves to the terms and conditions of the Tender document. It is submitted that the Appellant's bid of Rs. 6,15,00,000/- (Rupees Six Crores Fifteen Lakhs) was accepted by the Liquidator and the appellant was declared as the highest bidder. The Appellant has thereafter deposited the 25% of the bid amount in the Bank. It is submitted that despite the auction having concluded and sale having taken place by virtue of depositing of money, the Respondent No.2 filed a baseless application stating that they could not participate in e-auction due to certain technical snags as well as the agency conducting the e-auction did not allow them to enter the e-auction link. It is submitted that the Respondent no.2 deliberately did not implead the Appellant, who is the successful bidder, in the Interlocutory Application filed before the Adjudicating Authority with a view to play fraud. Such an application at the hands of Respondent no.2, an unsuccessful bidder, was not maintainable. The Respondent no. 1 also

suppressed the fact that the appellant has already deposited 25% of the amount in pursuance to sale in favour of the Appellant and instead conceded to the Application. It is submitted that the Adjudicating Authority ought to have ensured that the Appellant was heard, since its rights have now crystalized and any direction of conducting a fresh process would prejudice the rights of the appellant, along with causing a huge delay in the closure of the liquidation process as contemplated under the Code. It is submitted that there are plethora of judgments on the well-settled proposition that Courts should be slow in interfering with concluded auction sales and that simply because an unsuccessful bidder is offering a higher price at a later date, the Court cannot set aside the sale without their being any allegation of fraud, irregularity or discrimination. It is submitted that there are no allegations against the Appellant, in spite of the same, the sale in favour of appellant through e-auction held on 12.4.2021 is virtually set aside and that too without hearing the appellant thereby causing serious prejudice to the Appellant. Pursuant to the impugned order dated 27.4.2021, the Respondent no.l Liquidator made another public announcement on 30.4.2021 informing the public at large that the next auction is scheduled on 13.5.2021 and the last date for submission of EMD is 10.5.2021, even though the Appellant was the successful bidder for Lot No.4 (i.e. Plant and Machinery of Ceramic Manufacturing Unit situated at 445 and 451 of Dalpur, District-Sabarkantha, Gujarat) in the e-auction held on12.4.2021.

8. The Respondent No.2 has given lot of insistence for technical glitches in the auction process as at the last moment of auction and has attempted to prove that he could not upload the revised offer in the bidding process as there was technical glitches from around 3:00PM onwards. He has also presented his version immediately conveyed to the concerned IT agency involved in the auction process as well as Liquidator. He has also cited that the auction document Clauses 9 to 11 provides for transparent and visible highest bidder and cast a duty on Liquidator to ensure maximum realization from the sale of assets. He has also changed the existing bidding process that clause 2.11 of the 'Tender Document' states that till sale certificate is issued, no successful bidder has right / title over the assets. The Respondent No.2 has also stated that the stakeholder committee has already agreed for e-auction as the offer of Respondent No.2 is Rs. 6.40 Crore which is Rs. 25 lakhs more than the last offer made by the Appellant. He has also presented the log report apart from the Appellant and is challenging if the Appellant bid was highest at 3.02 PM and that bid is to remain open as per auction term for only 5 minutes then how would log report be generated till 3.17 PM. This reflects itself that there was a technical snag in the system. The Respondent No.2 has also asserted that the 'page 132 of the Appeal Paper book' continuous called made by the Respondent No.2 to the service provider is already appearing and so also email at page no. 70-71 sent to the Liquidator at 3.53 PM on the same date of auction i.e. 12.04.2021. The Respondent No.2 further stated that it is not correct that e-auction and the algorithm is automated. As pre the

tender document, the auction can remain open only for 5 minutes after the last offer made at 3.02 minutes. If that being so, how could log report show login till 3.17 minutes. The contention made by the Respondent No.2 in the application is reiterated. In the application before the Adjudicating Authority, Respondent No.2 has stated as under:

> *"7.It is submitted that during the continuation of E-Auction process on portal no one except applicant appeared as highest bidder. The applicant has waited for the time slot given by the service provider and suddenly thereafter the sign of closed appeared on the site. The applicant had thereafter talked with E-auction service provider (M/s Linkstar Infosys Private Limited) and it was informed to the applicant that the auction is still going on. The applicant was informed for Log in again for participation in the auction. The applicant immediately tried for Relog in but it was not permitted.*
>
> *8. The applicant was therefore shocked and immediately talked on contact No.9870099713 of service provider. However the service provider not answered properly. The copy of screenshot showing talk time on mobile is annexed hereto and marked as Annexure-D to this application.*
>
> *9. The applicant was not satisfied with the answer given by the service provider and therefore talked in the office of liquidator and it was informed to the applicant to wait for some time and thereafter it was informed that as the time is over and therefore*

nothing can be happened. The copy of email communication with respondent is annexed hereto and marked as Annexure-E to this application.

!0. The applicant submits that he was under the genuine belief that he was declared as successful auction purchaser when on portal the appellant was shown as No.1 bidder for Lot No.4. However when the sign/ mark of closed appeared, the applicant immediately talked with service provider for confirmation. The service provider Linkstar Infosys Private Limited has not allowed the access to the applicant and with some ulterior motive or due to technical snag conducted the auction particular/y when the applicant was not allowed after immediate telephonic call. It is the duty of the service provider to give access to the applicant for £-auction participation. The applicant was at present not knowing the exact status of the Lot NO.4.

11. The applicant is interested in the Lot No.4 and also willing to pay an amount of Rs.6,40,00,000/-(Six Crore Forty Lacs only) immediately. It is submitted that when more price has been received than it will be in the benefit of all the stake holders."

9. The 'Object of the Code' is 'Resolution'. If this concept fails, then the objective shifts to "maximization of the value of assets of the Corporate Debtor". It is well settled principle that an auction should be transparent and visible to other bidder. As per IBBI (Liquidation Process) Regulations, 2016 vide Chapter

–VI, the process of realisation of assets has elaborately been explained. Regulation 31 of IBBI (Liquidation Process) Regulation 2016 provides how the list of stakeholders be made by the Liquidator and Regulation 31 A - the stakeholders consultations committee to advice the Liquidators on the matters relating to sale under Regulation 32. This Regulation 31A provides elaborately the method to be followed by the stakeholders consultations committee and the Liquidator. The said Regulation further provides vide Regulation 31A (10) that the advice of the consultation committee shall not be binding on the Liquidator and only when the Liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing. The Appellant has no vested right and has no sale certificate issued to him in terms of the e-auction. There appears has to be some technical glitches but the same is not support by the certificate of the administrator of the *E-auction service provider* of the agency involved.

10. This is a case where the 'Liquidator' has gone for e-auction based on the advice of the stakeholders consultation committee and this action is yet to be approved or disapproved by the Adjudicating Authority. This case is not right for review by the Appellate Tribunal as no order has been passed by the Adjudicating Authority. The Appellant has appealed under Section 61 of the Code where the appeal can be filed only against the order of the Adjudicating Authority vide 61(1) of the Code. The Appellant has come in this appeal against the decision taken by the stakeholders consultation committee and Liquidator going ahead with the e-auction. The Adjudicating Authority is to appropriately

consider the above observations while disposing of the petition**.** The parties have cited various judgments of various authority which are not relevant in the appeal and appeal itself is not maintainable. The Appeal is devoid of merit both on fact and law. The Appellant is to approach first to the Adjudicating Authority for redressal of their grievance for any irregularity and only thereafter can approach before this Appellate Tribunal under Section 61(1) of the Code. We, therefore, do not find any merit in this appeal and accordingly the appeal is dismissed. Pending IAs, if any, stands disposed off and interim order passed by this Appellate Tribunal dated 13.05.2021 stands vacated. No orders as to costs.

12. The registry is directed to send a copy of this judgement to the concerned Adjudicating Authority.

[**Justice Jarat Kumar Jain]**
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

5th July, 2021

New Delhi

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