

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 522/JPR/2023
In CP No. (IB)- 205/7/JPR/2019

UNDER SECTION 7 OF IBC, 2016

IN THE MATTER OF:

PUNJAB NATIONAL BANK

... Financial Creditor/Applicant

VERSUS

ATLAS ALLOYS (INDIA) PVT. LTD.

... Corporate Debtor/Respondent

AND IN THE MATTER OF:

IA No. 522/JPR/2023

MEMO OF PARTIES

Shri Jai Agarwal
S/o Shri Manoj Agarwal
Purana Bazar, Fateh Nagar,
Udaipur, Rajasthan – 313205

... Applicant

VERSUS

Shri Satyendra Prasad Khorania,
The liquidator of M/s Atlas Alloys (India) Private Limited
402, OK Plus, DP Metro, Opposite Metro
Pillar No. 94, New Sanganer Road,
Jaipur, Rajasthan – 302019

... Respondent

IA No. 522/JPR/2023
In CP No. (IB)- 205/7/JPR/2019

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For the Applicant : Avin Chhangani, Adv.
For the Respondent : Amol Vyas, Adv.
 Satyendra Prasad Khorania, Liquidator In-Person


Order Pronounced On: 06.10.2023

ORDER

Per: Shri Rajeev Mehrotra, Technical Member


1. This Interim Application ('IA') bearing IA (IBC) No. 522/JPR/2023 is filed by Mr. Jai Agarwal ('Applicant/ Unsuccessful Bidder'), under Section 60(5) of the Insolvency and Bankruptcy Act, 2016 (the 'Code/ IBC') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking to quash and setting aside e-auction dated 06.09.2023.
2. The present IA has been filed on the following set of facts:
 - a. The order for liquidation was passed *vide* Order dated 02.03.2021 ('Liquidation Order') and appointed Mr. Satyendra Prasad Khorania as the Liquidator ('Liquidator') to manage, protect, and liquidate the property, assets, business, and other affairs of the M/s Atlas Alloy (India) Private Limited ('Corporate Debtor').
 - b. Consequently, the public announcement was made on 11.08.2023 wherein it was stated that e-auction for assets *viz.* land and building situated at Plot No. G – 78-79 and part of G – 80, Industrial Area, Beawar measuring 2990 *sq. mtrs.* ('Auction Property') on *as is where is and whatsoever available* basis of the Corporate Debtor.

The opening of the auction portal and the terms and conditions as



per the E-auction Process Information Document ('Bidding Document') was made available on the websites on 14.08.2023 while site visits and discussion meeting along with submission of eligibility documents was scheduled on 29.08.2023.

- c. Subsequently, the e-auction was undertaken on 06.09.2023. As per the e-auction documents, the successful bidder has to make a payment of 25% of the total consideration by 07.09.2023 and the balance by 06.10.2023. This balance payment if made beyond the period of thirty days, shall attract interest at 12% per annum with the sale deemed to be cancelled upon non-receiving of the entire sale consideration in ninety days. A copy of the Bidding Document is annexed as Annexure – A1 of the IA.
- d. Meanwhile, the Liquidator on 05.09.2023 contacted the Applicant and his father stating that the office of Respondent has only received the bid from the Applicant and asked to remain present on the date of auction in his office to complete all the formalities quickly. Thus, the Applicant for participating in the e-auction submitted his bid document. A copy of the bid documents is annexed as Annexure – A2 of the IA.
- e. Therefore, when the Applicant sent his father as his representative to the office of the Respondent on the date of the auction. It was insisted by the members of the Respondent's office to the



Applicant's representative to allow them to log into the bid account of the Applicant for proper participation. The said auction was conducted from 12:00 PM to 03:00 PM through *ncltauction.auctiontiger.net*. The Applicant initially bid Rs. 1,56,05,000/- (Rupees One Crore Fifty-Six Lakhs and Five Thousand Only) which came to be revised in increments of Rs. 25,000/- at the insistence of the Respondent and his staff.

- f. The representative of the Applicant saw on the Respondent's computer the progress of the e-auction system which showed the Applicant as the sole highest bidder and remained the sole bidder until three minutes before the deadline of 03:00 PM. However, during the continuance of the e-auction, the Respondent stated to the Applicant's representative that the e-auction and consequent sale would be finalised in favour of the Applicant if he agreed to certain financial demands of the liquidator.
- g. Thus, despite the Applicant being the sole Bidder, some other bids also appeared in the last few minutes of the bidding process by placing a higher bid. As a result, he was not declared a successful bidder upon the completion of e-auction. These actions were undertaken by the Respondent as the illegal demand was refused by the representative of the Applicant.



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- h. The second bid was reflected on the e-auction portal and photographs of the bid as shown on the aforementioned e-auction portal in annexed as Annexure – A3 (Colly) of the IA. Being aggrieved by the illegal actions of the Respondent, the Applicant wrote an email dated 08.09.2023 requesting the Liquidator not to proceed further with the e-auction process. A copy of the communications is annexed as Annexure – A4 of the IA.
- i. The entering of the second bidder moments before the deadline suggests illegal collusion and lack of transparency. The *modus operandi* adopted by the Respondent in calling the Applicant's representative to his office during the e-auction renders the whole process infructuous. Further, such actions of the Liquidator in colluding with the second bidder have fetched a lower price than the fair value of the assets of the Corporate Debtor and violate the principle of asset value maximisation.
- j. Hence, the liquidator has not only breached his fiduciary duties towards the creditors and deceived the court of law but also conducted the auction process without any core tenets of openness, fairness, and transparency. Thus, the applicant *inter-alia* has prayed for the e-auction dated 06.09.2023 to be quashed and set aside along with the following:

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- i. *This Adjudicating Authority kindly call for the complete record of the e-auction dated 06.09.2023 and consequential proceedings, if any;*
- ii. *During the pendency of the instant IA, the Respondent may be precluded from taking any consequential steps in pursuance of the e-auction dated 06.09.2023;*
- iii. *The bid of the Applicant may be confirmed, or in the alternative, re-auction of the asset in the question be ordered;*
- iv. *Any other order, in the interest of justice and to ensure the sanctity of the liquidation proceedings under IBC.*

3. The Learned Counsel for the Respondent *vide* Order dated 20.09.2023, waived the requirement of the formal notice and argued the matter finally on 22.09.2023. Subsequently, the Liquidator filed his Written Submissions *vide* Diary No. 2407/2023 dated 05.10.2023 and has stated the following:

- a. The Liquidator never invited the Applicant or his representative to his office, albeit the Applicant himself came to the office of the Liquidator as he did not have adequate knowledge of the computer and auction proceedings. Therefore, the Applicant requires the assistance of the Respondent and in good faith provided him with one of the computers installed at his office around noon. However, the Applicant later left the office of the Respondent.
- b. Further, the Applicant has himself admitted that he logged in from his computer to the e-auction site at 12:54 PM, which was soon after he left the Respondent's office and remained logged in till 03:06 PM. Furthermore, the Applicant knew his bid and the opportunity to revise the bid which is apparent from the various attached

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screenshots wherein he still had twenty-seven seconds and later screen shows ten seconds remaining to improvise the bid. Nevertheless, he was busy taking screenshots of his computer screen with a view to use it for the filling of the instant IA.

- c. Moreover, in the remaining time of the bidding process, the Applicant intentionally stuck to his bid of Rs. 1,56,30,000/- (Rupees One Crore Fifty-Six Lakhs Thirty Thousand Only) whereas the e-auction tab clearly shows the next possible bid could have been only Rs. 1,56,80,000/- (Rupees One Crore Fifty-Six Lakhs Eighty Thousand Only). Thus, the Applicant participated in the bidding process not to purchase the property of the Corporate Debtor for value maximisation but to drag the process of liquidation.
4. On careful perusal of the above-mentioned facts, documents placed on record before us, submissions made, and arguments advanced, we find that the bidding process is managed by M/s e-procurement Technologies Limited at the web portal *ncлтаuction.auctiontiger.net*. The bidding details and screenshots provided by the Applicant do not suggest that the process of bidding was vitiated. The Applicant had an unhindered log-in presence at the bidding terminal from his computer during bidding time as evidenced by the screenshots provided by him.
5. The Applicant had used his log-in credentials from his computer on 04.09.2023 and the day of bidding 06.09.2023; firstly, at 12:00 PM;



secondly, at 12:19 PM; and lastly, at 02:57 PM. The screenshots relied on by the Applicant have a label of his email box opened and a photo to prove that the Applicant was present in the bidding terminal and during this process, no contact or intervention by Liquidator has been complained by the Applicant.

6. As per the terms of the e-auction the next level of bidding is in the multiples of Rs. 25,000/- (Rupee Twenty-Five Thousand Only) and was shown on the e-auction portal as Rs. 1,56,80,000/- (Rupees One Crore Fifty-Six Lakhs Eighty Thousand Only). Howbeit, he did not submit any revised bid after his initial bid of Rs. 1,56,30,000/- (Rupees One Crore Fifty-Six Lakhs Thirty Thousand Only) despite the screen purporting the highest bid of Rs. 1,56,55,000/- (Rupees One Crore Fifty-Six Lakhs Fifty-Five Thousand Only) has been submitted by one of the bidders.
7. Moreover, Condition No. 7 of the Other Terms and Conditions of the Bidding Document states that *in case a bid is placed in the last five minutes of the closing time of the e-auction, the closing time will automatically get extended for five minutes*. It means that the bid other than that of the Applicant was entered at least five minutes before the closing time of 03:00 PM. Any intervention to revise the bid by the Applicant would have further extended the e-auction time by five minutes. Thereby, giving time and opportunity to the Applicant. Therefore, the allegation of him being the only Bidder till 03:00 PM is incorrect and unfounded.

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8. In addition, the Applicant must have been aware of the action of the last few minutes in e-auctions when the bidders try to put in their best offers. It is widely understood that the number of bidders in e-auctions remains hidden to maintain competition and fair play with only the highest bid in real-time displayed at any given point. Hence, any serious bidder cannot be expected to remain out of the bidding process till the last few minutes of bidding. Additionally, the bidding conditions as well as a message appearing on screen while bidding reads as follows:

‘You are advised not to wait till the last minute or last few seconds to submit your Bid to avoid complications related to internet connectivity, network problems, system crash down, power failure, etc. neither department nor e-procurement Technologies Ltd. (service provider) are responsible for any unforeseen circumstances.’

9. Further, the Applicant did not provide any satisfactory information and answers regarding the non-observance of the terms and conditions of the Bidding Document. Condition No. 9 of Annexure III of Declaration by Bidders in Bidding Document states that *‘I / We confirm that the seller and his employees shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances etc. before or during the auction event.’*
10. The Applicant by way of his submissions has admitted and acknowledged violating the terms of bidding by sending his representative to the office of

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Liquidator during bidding time of 12:00 PM – 03:00 PM on 06.09.2023. Further, his representative reportedly made the first bid through his log-in at 12:19 PM allegedly while in the office of the liquidator. Thus, the prayer of the Applicant cannot be accepted as not only Liquidator is not in control of the bid process on the terminal or its data but also the Applicant himself has not approached this Adjudicating Authority with clean hands.

11. The Applicant should have carefully seen the Bidding Document's Terms and Conditions and avoided a visit to meet the Liquidator during the bidding time, which is reproduced below for ease of reference:

'L. Fraudulent and Corrupt Practices— The E-Auction Process Applicant / Bidder shall observe the highest standards of ethics during the E-Auction Process and subsequently during the closure of the E-Auction process and declaration of the successful bidder.'

Nevertheless, the Applicant is an unsuccessful bidder, no action can be taken against him now for violating the E-auction terms and conditions.

12. The allegations made against the Liquidator were not supported by any evidence for not conducting the process of e-auction transparently except that the Applicant's representative visited the office of the Liquidator on 06.09.2023 around 12:00 PM on the date and time of bidding. We have noted the explanation by the Liquidator for meeting with the representative of the Applicant on the date of the bidding. We find that such a meeting of the Applicant/ his representative with the Liquidator is mundane and was



to genuinely help the prospective buyer in the dynamic technological environment as it is expected from the Liquidator to help in maximising the value of the Corporate Debtor.

13. Consideration of the foregoing narrative leads to the inference that the Applicant failed to update his bid on the online terminal despite his participation in the bidding process while knowing that the next higher bid is already in place, and is not allowed to point fingers at others. The e-auction undertaken by the Liquidator is not in violation of the letter and spirit of the Code. The Liquidator can further go ahead with the terms of the auction. Hence, we proceed to dispose of the IA under consideration.

14. Accordingly, IA No. 522/JPR/2023, stands dismissed with the aforesaid observations and a copy of this Order may be placed in the file of the said IA. A copy of this Order is to be furnished to the parties.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**