



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 4801/ND/2021

IN

Company Petition No. (IB)-2257/(ND)/2019

IN THE MATTER OF:

M/s Adonis Electronics Private Limited

... Applicant/

Operational Creditor

Versus

M/s Monica Electronics Limited

... Respondent/

Corporate Debtor

AND IN THE MATTER OF IA. NO. 4801/ND/2021:

Salawat Infacon

A registered Partnership Firm,
Having its registered office at:
702, Sahajanand Complex, Shahibaug Road,
Ahmedabad – 380004

... Applicant

VERSUS

Mr. Sanjay Kumar Singh

Liquidator of Monica Electronics Limited
Having his office at
003, Windsor, Grand Forte,
Plot No. 76, Sigma-IV
Greater Noida – 201310
Uttar Pradesh

... Respondent

SECTION: Section 60(5) of IBC 2016

Order Delivered on: 04.07.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Atul Sharma



ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

As has been espoused in the captioned application, in terms of the order dated 15.03.2021 passed in IA No. 4873/ND/2020 in CP. (IB). No. 2257/ND/2019, this Adjudicating Authority ordered the Liquidation of the CD viz. M/s Monica Electronics Ltd. and Mr. Sanjay Kumar Singh, was appointed as Liquidator for the Corporate Debtor. During the course of the Liquidation proceedings, the Respondent published E-Auction Sale Notice dated 25.08.2021 and also issued the notice inviting Expression of Interest (EOI) from interested parties to acquire the assets of the CD. The EOI included the tender document, terms and conditions (process memorandum) for participation in the e-auction sale, which were made available to the prospective bidders on 25.08.2021. As per E-Auction Sale Notice dated 25.08.2021 (ibid), the auction was to take place on 08.09.2021. The asset of the CD sought to be auctioned in the process (ibid), as mentioned in the E-Auction Sale Notice was an Industrial Plot No. 8, bearing New Survey No. 1827, Old Survey No. 908/P7, Near Gayatri Dairy, Near Vasudev Industrial Park, situated in Village Indrad, Tehsil-Kadi, District Mehsana, Gujarat.

2. As per the averments made in the application, the reserve price for the aforementioned plot of land was Rs. 20,50,000/- (Rupees Twenty Lakhs Fifty Thousand Only) and the amount of EMD fixed was Rs. 2,00,000/- (Rupees Two Lakhs Only). The Applicant having an interest in the plot, sent an e-mail dated 03.09.2021 requesting the Respondent to provide him with the title



documents. He also deposited the earnest money (EMD) amounting to Rs. 2,00,000/- to fulfil the condition for participating in E-Auction dated 08.09.2021. The Applicant had also expressed an interest to participate in the bid/auction, vide e-mail dated 04.09.2021. On 07.09.2021, he received an e-mail from the Respondent about the postponement of the E-Auction to 25.09.2021. He again received an e-mail dated 24.09.2021 from Respondent regarding the postponement of the e-auction to 01.10.2021.

3. As no login id or password was provided to Applicant to participate in the e-auction dated 01.10.2021 which was going to be held between 3.00 to 5:00 PM at 12:50 PM, the Applicant sent Text/WhatsApp messages requesting the Respondent to provide him the login id and password to enable him to participate in the e-auction (ibid). Nevertheless, till the time of auction i.e., 03:00 p.m. on 01.10.2021, the Applicant herein was not provided any login id or password as requested by him (ibid). Only after the auction/bid was over, in terms of the e-mail dated 02.10.2021, the Respondent informed the Applicant that the documents submitted by it were found not in conformity with the terms and conditions of the e-auction process and declared the Applicant ineligible for participating in the auction in question.

4. Apparently, the e-mail was received by the Applicant after the e-auction/bid had taken place. The Applicant had questioned the auction dated 01.10.2021 on the grounds inter alia: -

a) As it was for the Respondent to provide all necessary assistance to Applicant for conducting the due diligence, in not providing all such assistance to the Applicant i.e., an interested buyer, the Respondent



violated Clause 6 of Schedule-I under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

b) As the Respondent did not allow the Applicant to participate in the electronic auction, the Clause 7 of Schedule-I under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 was violated by him.

c) As the auction was not conducted in a transparent manner, the Clause 9 of the Schedule-I under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 stood violated.

d) Even if there was any deficiency in the documents submitted by the Applicant, the Respondent ought to have informed about the same, before the auction could take place on 01.10.2021.

5. To oppose the application filed by the Applicant questioning the auction of the asset/plot owned by CD, the Respondent herein/Liquidator filed its reply dated 11.11.2021. The pleas brought to for by the Respondent in the reply are: -

a) The submission of the bid by the Applicant has not created any vested right in its favour and non-consideration of the same has not resulted in any prejudice to it.

b) The e-auction schedule for 08.09.2021 had to be deferred to 25.09.2021, on account of unfortunate demands by father-in-law and sister-in-law (wife of cousin of the Respondent). The bidders namely,



Ashpura Traders, Salawat Infracon, Hiren Palan and W9 Realty LLP were found part of a cartel. The formation of a cartel by the said bidders was in contravention of the e-auction process. The EMD amount of all the unsuccessful bidders was returned before the commencement of the e-auction process i.e., 01.10.2021, and they were informed that their bid applications were found not in conformity with the e-auction process documents and they were not eligible to participate in the bidding process.

6. To espouse the cartel alleged by him in para 12 of the reply, the Respondent has stated that in the bid application of the Applicant herein viz. Salawat Infracon, the RTGS details and the account number mentioned were in the same handwriting in which the details were filled in the bid application of Hiren Palan. To further buttress the plea of the cartel, the Respondent pleaded that the bid application of Applicant and Hiren Palan were attested by the same notary i.e., Mr. S.M Shah, and the envelopes received by the Respondent through speed post which contained the bid applications of Applicant and Hiren Palan were not only similar but also contained the same addresses of sender and receiver and the addresses written on envelopes were in the same handwriting.

7. It is also the plea espoused by the Respondent in its reply that there is no resolution passed by the Applicant in favour of Mr. Kunal Salawat, the Signatory of the present application.

8. During the course of the hearing, the Ld. Counsel for the Applicant could emphasize that the Respondent was unfair in informing the Applicant



about his ineligibility only on 02.10.2021, when the auction had already taken place on 01.10.2021.

9. We heard the Counsels and perused the record. As has been provided in Regulation 33 of IBBI (Liquidation Process) Regulations 2016, the Liquidator needs to sell the assets to the Corporate Debtor through an auction in the manner specified in Schedule-I to the Regulations, except the assets referred to in sub-Regulation (2) of the Regulation 33. The Regulation 33(3) of the aforementioned Regulations categorically provided that the Liquidator shall not proceed with to sell an asset if he has reason to believe that there is any collusion between the buyers, inter alia.

10. As far as the plea of the Applicant regarding violation of Clause 6 of Schedule-I (ibid) is concerned, the same is misconceived as the assistance referred to in the Clause is regarding due diligence qua the property under auction and not regarding the completion of bid documents by the bidder. Clause 7 of the Schedule was incorporated only on 16.09.2022, while the bid in question had taken place on 01.10.2021. In view of the settled position of law in this regard, the Clause would not apply retrospectively i.e., to the bid which had already taken place on 01.10.2021. Even otherwise also, in the present case as per the stand taken by the Applicant himself, the auction had taken place electronically only. In the wake, the plea taken by the Applicant with reference to Clause 7 is irrelevant and can be no ground to quash the auction of the plot in question. Since in the present case, the Respondent did not find the Applicant as a qualified/eligible bidder, there could be no question for the highest bid being visible to it.



11. As has been explained by the Respondent in its reply, he had reason to believe that the Applicant herein was in collusion with three other bidders, thus he found all the members of the cartel as ineligible/disqualified for participating in the auction process. The thrust of Regulation 33(3) of the Regulations (ibid) is that in the event of there being collusion between the buyers, the Liquidator shall not proceed with the sale of an asset and would submit a report to this Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties. It was not open to Liquidator to declare some of the parties as ineligible/disqualified being in collusion and to proceed with the sale by considering the bids of some of the bidders who are found not in collusion. Since, in the reply filed by him, the Respondent could categorically allege that the EMD deposited by the bidders in collusion could be refunded before 01.10.2021 itself and the Applicant did not file any rejoinder to refute the plea, the grievance raised in the application regarding not providing login password and id to Applicant to participate in the bid is found misconceived and afterthought. Nevertheless, the Liquidator ought to have informed the Applicant and other bidders whom he found in collusion, about the fate of their bid, before 01.10.2021, when the auction had taken place.

12. In terms of Clause 1(c) of Schedule-I to the IBBI (Liquidation Process) Regulations 2016, which is a non-obstante clause the Liquidator ought to have completed the auction process within 35 days from the issue of public notice for auction. In the present case, when the public notice of auction was



issued on 25.08.2021, the auction could take place on 01.10.2021. Thus, the Liquidator adhered to timeline almost.

13. The irregularity committed by the Liquidator is, “when he found 04 of the bidders in collusion and part of a cartel, he should not have proceeded with the sale of the asset and should have submitted a report to the Adjudicating Authority, seeking appropriate orders against the colluding parties”. The violation of Regulation 33(3) of IBBI (Liquidation Process) Regulations 2016, could be sufficient ground to quash the auction process commenced in terms of the notice dated 25.08.2021, qua which the auction could take place on 01.10.2021. Nevertheless, in the open bid process, bid documents are evaluated in the presence of bidders or their representatives, and a decision regarding their eligibility is announced instantly on the spot. In the instant case, it is not clear whether any such evaluation of bids was done beforehand. For example, previously the Applicant received e-mails from the Respondent/Liquidator about the postponement of e-auctions from 08.09.2021 to 25.09.2021 and from 25.09.2021 to 01.10.2021, but there is nothing on record to suggest that the Applicant was intimated about its ineligibility. It is also seen from the record that the decision to postpone the e-auction from 25.09.2021 to 01.10.2021 was communicated to the Applicant vide email dated 24.09.2021 (page no. 108 of the IA filed by the Applicant), which implies that the Applicant was eligible till one day before the date of e-auction had the same been conducted as scheduled on 25.09.2021.

14. It is the case of the Applicant that despite e-mails and WhatsApp messages to the Liquidator, neither he received any Login Id nor Password



nor any communication from him till the commencement of e-auction at 03.00 P.M. on 01.10.2021. The Applicant further submitted that the Respondent/Liquidator could inform him by e-mail only at 11.02 A.M. on 02.10.2021 (page no. 112 of the IA) that the documents submitted by the Applicant were not found in conformity with the terms and conditions of the e-auction process documents and declared him ineligible to participate in said e-auction. In the e-mail dated 02.10.2021 (which is obviously issued post the e-auction process), the Liquidator/Respondent has not taken/mentioned the ground of collusion/cartel for the Applicant's ineligibility. Hence, it cannot be ruled out that it could be an afterthought on the part of the Respondent/Liquidator when the Applicant took up the matter with this Adjudicating Authority.

15. Even otherwise, if the Respondent/Liquidator had found the Applicant ineligible on the ground of collusion/cartel, he was bound not to proceed with the e-auction and seek orders of this Adjudicating Authority in terms of Regulation 33(3) of Liquidation Regulations. Instead, he chose to go ahead with the e-auction process with the positive exclusion of the applicant (without informing him about his exclusion from the bidding process or for that matter, this AA). Thus, as the facts reveal, the e-auction process appears to have been vitiated.

16. In para 11 of the Reply filed by him, the Liquidator has stated that the EMD amounts of all unsuccessful bidders were returned before the commencement of the e-auction process on 1st October 2021. However, the Liquidator has failed to enclose any communication/e-mail of 01st October



2021 in support of his averments or the proof of payment. The matter is serious inasmuch as had the Applicant not filed the application, the e-auction result would have materialised and the material irregularity on the part of the Liquidator would not have come to the notice of this Adjudicating Authority at all.

17. In the circumstances, Liquidator is directed to file an affidavit within a week disclosing/explaining therein:- (a) on which date the evaluation of bid documents of the intending bidders was taken up and by whom and in whose presence; (b) the reasons for going ahead with the e-auction on 01.10.2021 despite finding collusion/cartel of the parties and not filing of an application/report before this Adjudicating Authority as required under Regulation 33 (3) of Liquidation Regulations for seeking appropriate orders; (c) the date of return of EMD to the Applicant and other unsuccessful Bidders with proof. The Liquidator is further directed to file all the documents relating to the bid process before this Adjudicating Authority in a sealed cover. Let the needful be done within two weeks. In the meantime, the Liquidator and auction purchaser shall maintain status quo qua the auction property.

List the IA on 20.07.2023.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)