

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**I.A.(IB) No. 663/KB/2021  
In  
CP(IB) 440/KB/2018**

In the matter of:

An application under Section 60 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016.

In the matter of:

Huvepharma Sea (Pune) Private Limited

... Operational Creditor

Versus

Amrit Feeds Limited

... Corporate Debtor

And

In the matter of:

EVA Agro Feeds Private Limited

... Applicant

Versus

Sunil Mohan Acharya, the Liquidator of M/s. Amrit Feeds Limited (In Liquidation

... Respondent

Date of hearing : 29.07.2021

Date of pronouncement : 12.08.2021

*Coram:*

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

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**Counsel appeared through video conferencing:**

Ms. Manju Bhuteria, Advocate ] For applicant  
Mr. Sarbopriya Mukherjee, Advocate ]  
Ms. Sonia Sharma, Advocate ]

Mr. Krishnaraj Thaker, Advocate ] For Liquidator  
Ms. Sreenita Ghoshdastidar, Advocate ]

**ORDER**

**Per Rajasekhar V.K., Member (Judicial)**

1. This I.A. has been filed by EVA Agro Feeds Private Limited, a company within the meaning of the Companies Act, 2013 against Mr. Sunil Mohan Acharya, the Liquidator of Amrit Feeds Limited (in Liquidation).
2. This Adjudicating Authority vide order dated 22<sup>nd</sup> October, 2019 admitted the Corporate Debtor in Corporate Insolvency Resolution Process (CIRP). Thereafter on 19<sup>th</sup> February, 2021 an order of liquidation was passed in respect of the Corporate Debtor and Mr. Sunil Mohan Acharya was appointed as the Liquidator of the Corporate Debtor.
3. The Ld. Counsel for the applicant submits that by an e.mail dated 7<sup>th</sup> June, 2021 the respondent forwarded the sale notice dated 2<sup>nd</sup> June, 2021 for the assets of the Corporate Debtor (In Liquidation). Thereafter on 29<sup>th</sup> June, 2021 by an email dated 29<sup>th</sup> June, 2021 the respondent No.1 forwarded the sale notice dated 28<sup>th</sup> June, 2021 for the assets of the Corporate Debtor (In Liquidation) to one of the group companies of the Eva Group companies. The applicant was incorporated on 9<sup>th</sup> July, 2021 under the provisions of the

Companies Act, 2013. The applicant is one of the group company of “Eva Group”.

4. The Ld. Counsel further submits that on 17<sup>th</sup> July, 2021 the applicant submitted the Bid Application Form dated 16<sup>th</sup> July, 2021 to the respondent on 17<sup>th</sup> July, 2021 in respect of property mentioned in Sl. No. 3 of the sale notice. Thereafter on 17<sup>th</sup> July, 2021 the applicant deposited the Earnest Money Deposit (EMD) of Rs. 1 crore in respect of the assets mentioned in Sl. No. 3.
5. Thereafter on 19<sup>th</sup> July, 2021 in terms of the sale notice the last date/time of bid was 20<sup>th</sup> July, 2021 at 14.30 hrs. The applicant submitted its bid on 19<sup>th</sup> July, 2021 for a sum of Rs. 10 crore. The bidding ended at 14.30 hrs on 20<sup>th</sup> July, 2021. The applicant received an e-auction certificate certifying that the applicant has won the auction for the assets mentioned in sl. No. 3 of the said sale notice. On 21<sup>st</sup> July, 2021 the applicant by an email dated 21<sup>st</sup> July, 2021 requested the respondent to issue allotment letter in respect of the assets mentioned in Sl. No.3. Thereafter on 21<sup>st</sup> July, 2021 the applicant was shocked to receive an email dated 21<sup>st</sup> July, 2021 from the respondent informing that the Liquidator/respondent has cancelled the e-auction held on 20<sup>th</sup> July, 2021 under clause 3(k) of Disclaimer clause in e-auction process document and that a fresh e-auction shall be held for the said property.
6. The Ld. Counsel for the applicant further submits that the applicant was declared as successful bidder. However, the respondent has cancelled the said e-auction without any reasons after the applicant was declared as the successful bidder. Such cancellation of e-auction is in violation of the Liquidation Process Regulations. The Liquidator has not acted in a fair manner arbitrarily and since the applicant has been declared as successful bidder, the Liquidator has no reason to cancel the e-auction of the said assets.

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In these circumstances the applicant named above filed this application before this Adjudicating Authority for grant of the following reliefs:-

- i) The Liquidator be directed to comply with the clause 2(h) of the e-auction process document.
- ii) The Liquidator be directed to comply with clause 2(i) of the e-auction process document upon receipt of payment of the balance consideration from the applicant and execute certificate of sale and/or sale and deliver possession thereof to the applicant.
- iii) The Liquidator be restrained from conducting any auction or private sale in respect of the assets mentioned in Sl. No.3 of the sale notice dated 28<sup>th</sup> June, 2021 till the disposal of the instant application.

- 7. We have heard the Ld. Counsel Ms. Manju Bhuteria, appearing for the applicant and Mr. Krishnaraj Thaker, Ld. Counsel appearing for the respondent/Liquidator.
- 8. The only issue which is coming up for consideration is whether the Liquidator was justified in cancelling the e-auction after the auction was successfully concluded and the highest bidder stood identified.
- 9. It is undisputed that the e-auction process is in terms of regulation 33(1) which refers to schedule 1 of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In terms of the said schedule 1, clause (1) sub para 12, on the close of the auction the highest bidder shall be invited to provide balance sale consideration within 90 days of the date of such demand. This clause in its present form has been on the statute book from 25.07.2019. The previous sub clauses of clause (1) of schedule 1 specified the manner in which the auction is required to be conducted. Sub clause (12) really does not vest the

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Liquidator with a discretion to cancel an auction or to revisit the invitation to the highest bidder once the highest bidder is identified.

10. Regulation 33(3) of the Liquidation Regulation stipulates that the Liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyers, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.
11. However, in the present proceedings there is no whiff of any sort of collusion between the highest bidder and in all the others i.e. the other bidders or the Corporate Debtor's related parties and buyers or the creditors and the buyer. We see from the correspondence placed at page 55 of the application that the Liquidator has cancelled the auction without assigning any reason. Though it was submitted at the prayer that the Liquidator had chosen to cancel the auction seeing the results of the auction process conducted in respect of a plot which consists of a parcel of land situated in some other district of Uttar Pradesh, we cannot accept these contentions, for it will be compairing apples and oranges. There was no reason for the Liquidator to cancel the e-auction under consideration in the present matter especially when we see that the two earlier rounds of the auction process did not fructify and the reserve price had to be decreased on each auction. There is no material on record to sustain the perception of the Liquidator that cancelling the present auction would have resulted in a better price for the assets in question. There cannot be an endless wait to get the best price for the asset, especially when there is no material to support a conjecture that there may be a better price for the asset.
12. It was argued by the Ld. Counsel appearing for the Liquidator that the Liquidator was entitled to cancel the contract without assigning any reason on

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the basis of e-auction process document, in terms of clause 3(k) thereof which reads as follows:-

*“The Liquidator has absolute right to accept or reject any or all bids or adjourn/postpone/cancel the E-Auction or withdraw any asset/property or portion thereof from the E-Auction at any stage without assigning any reason thereof.”*

13. Mr. Krishnaraj Thaker vehemently argued that even under the earlier Companies Act, 1956 such discretion was vested in the Official Liquidator. This argument cannot be countenanced because under the Companies Act, 1956 the notice of auction was to be vetted by the Hon’ble High Court and the final confirmation of sale was also in the hands of the Hon’ble High Court. Such is not the case under the Insolvency and Bankruptcy Code and the Regulations, which constitute a complete code in itself. Further, accepting this argument will mean vesting uncanalised discretion in the hands of the Liquidator which is anathema to the rule of law. Therefore, any notice of auction should conform to the process envisaged in schedule 1 of the Liquidation Process Regulations; it cannot have clauses such as clause 3(k) referred to *Supra*.
14. In these circumstances, a case has been made out by the applicant for grant of the pleas prayed for at para V (a), (b) & (c) (pages 13 & 14 of the application). It is ordered accordingly that the Liquidator shall send communication to the applicant/successful bidder requiring him to deposit the balance sale consideration within the time specified in the e-auction notice.

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15. **I.A.(IB) 663/KB/2021** shall stand **disposed of** with the aforesaid directions.
16. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Harish Chander Suri**  
**Member (Technical)**

**Rajasekhar V.K.**  
**Member (Judicial)**

Order signed on 12<sup>th</sup> August, 2021.

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