

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IA/888/IB/2020 in CP/665/IB/2017**

*(Filed w/s 60 (5) of Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. SBQ Steels Limited*

**Liberty Steel SBQ Limited**

Having its Registered Address at  
D-No.16/7/28, Ramamurthy Nagar, Nellore,  
Andhra Pradesh 524 003.

Through its Authorized Signatory, Mr. Arjun Zalani,  
e-mail – [ashwani.ladha@libertysteelgroup.in](mailto:ashwani.ladha@libertysteelgroup.in)

*... Applicant*

-Vs-

**1. Ashish Arjun Kumar Rathi,**

(Liquidator Appointed in M/s. SBQ Steels Limited in Liquidation)  
Regd. No. IBBI/IPA-001/IP-P00568/201718/1101019/503,  
Having Registered Address at NRI Complex, Sector 54, 56, 58,  
Seawoods, Nerul, Navi Mumbai – 400 706.  
e-mail – [ipashishrathi@gmail.com](mailto:ipashishrathi@gmail.com)

**2. SBQ Steels Limited (in Liquidation).**

Having its Registered Address at 6/13, North Avenue,  
Kesavaperumalpuram, Chennai 600 028.  
e-mail – [liquidationsbq@gmail.com](mailto:liquidationsbq@gmail.com)

**3. Edelweiss Asst Reconstruction Company Ltd.**

At Edelweiss House, Off. C.S.T. Road,  
Kalina, Mumbai, Maharashtra – 400098.  
e-mail – [Nivedita.Shetty@edelweissfin.com](mailto:Nivedita.Shetty@edelweissfin.com)

*... Respondents*



**4. IMR Metallurgical Resources AG (IMR),**

Having its Registered Office at  
Dammstrasse 19, CH-6300, Zug.  
Switzerland.

Through its Authorized Representative  
Mr. Sanjay Sinha,  
E-mail : Sanjay [Sinha@imr-resources.com](mailto:Sinha@imr-resources.com)

*Proposed 4<sup>th</sup> Respondent*

**And**

**IA/968/IB/2020 in IA/888/IB/2020 in CP/665/IB/2017**  
*(Filed u/s 60 (5) of Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. SBQ Steels Limited*

**IMR Metallurgical Resources AG (IMR),**

Having its Registered Office at  
Dammstrasse 19, CH-6300, Zug.  
Switzerland.

Through its Authorized Representative  
Mr. Sanjay Sinha,  
E-mail : Sanjay [Sinha@imr-resources.com](mailto:Sinha@imr-resources.com)

*... Applicant*

**-Vs-**

**1. Liberty Steel SBQ Limited**

Having its Registered Address at  
D-No.16/7/28, Ramamurthy Nagar, Nellore,  
Andhra Pradesh 524 003.

**& 3 Ors.**

*... Respondents*



**And**

**IA/981/IB/2020 in CP/665/IB/2017**

*(Filed u/s 60 (5) of Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. **SBQ Steels Limited***

**Liberty Steel SBQ Limited**

Having its Registered Address at

D-No.16/7/28, Ramamurthy Nagar, Nellore,  
Andhra Pradesh 524 003.

Through its Authorized Signatory, Mr. Arjun Zalani,  
e-mail – [ashwani.ladha@libertysteelgroup.in](mailto:ashwani.ladha@libertysteelgroup.in)

*... Applicant*

-Vs-

**Ashish Arjun Kumar Rathi,**

(Liquidator Appointed in M/s. SBQ Steels Limited in Liquidation)

Regd. No.IBBI/IPA-001/IP-P00568/201718/1101019/503,

Having Registered Address at NRI Complex, Sector 54, 56, 58,  
Seawoods, Nerul, Navi Mumbai – 400 706.

**And 3 Ors.**

*... Respondents*

Order pronounced on **07<sup>th</sup> December 2020**

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant* : **IA/888/2020 & IA/968/2020**

*Ratnoke Banerji,*

*Saswat K. Acharya,*

*Nadiya Sarguoroh, Counsel for Applicant*



IA/981/2020

*Ramji Srinivasan, Senior Advocate for  
Raj Makesh, Counsel for Applicant*

*For Respondent* : IA/888/2020 & IA/968/2020

*Srinath Sridevan,  
Bhagawat Krishnan, Counsel for R1*

*Indumathi Ravi, Counsel for R3*

*R. Murari, Senior Advocate for  
Raj Makesh, Counsel for R4*

IA/981/2020

*Srinath Sridevan,  
Bhagawat Krishnan, Counsel for R2*

*Saswat K. Acharya, Counsel for R1*

**ORDER**

***Per: R. SUCHARITHA, MEMBER (JUDICIAL)***

1. IA/888/2020 is an Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (referred to as “**IBC, 2016**”), by a Successful auction bidder viz. Liberty Steel SBQ Limited, seeking an extension of time for payment of the bid amount.

2. Before going to the facts of the case, it is significant to note here that the Applicant has filed the present Application by way of e-mail to the Registry of this Tribunal on 06.11.2020, Friday at 12.48 P.M and the payment of fee was made at 2.34 P.M and the matter was mentioned before Tribunal on Monday, 09.11.2020 at 10.30A.M. It is to be noted here that at that point

of time the NCLT, Chennai is yet to commence its e-filing and the hard copy of the Application was filed before this Registry only on 16.11.2020. However, when the mentioning was being made through Video conferencing platform, the Applicant Counsel was present and there was no representation for the Respondents and this Adjudicating Authority was also not aware whether the Respondents were put on notice regarding mentioning or not. Since the CP along with other IA were listed for hearing on 18.11.2020, this unnumbered Application (now IA/888/2020) was also directed to be listed for hearing on 18.11.2020 with the direction to the Registry to number the same.

3. The Applicant in the interregnum, has filed an Appeal before the Hon'ble NCLAT in Company Appeal No.977/2020, and the Hon'ble NCLAT vide its order dated 12.11.2020, directed this Adjudicating Authority to list this matter on 18.11.2020 as an urgent matter and accordingly, this Application was taken up for hearing on 18.11.2020.

4. **BRIEF BACKGROUND OF THE CASE AND THE SUBMISSIONS MADE BY THE PARTIES: -**

- a. The 1<sup>st</sup> Respondent had issued 4<sup>th</sup> e-auction Process Information Document dated 03.07.2020 (3<sup>rd</sup> amendment issued on 04.08.2020) (“**Process Document**”) and conducted the 4<sup>th</sup> e-auction on 07.08.2020. The Applicant herein was a successful



bidder for an amount of Rs.262,45,00,000/- (Rupees two hundred sixty two crore forty five lakhs only) and as per the terms and conditions of the auction, the Applicant has provided valid bank guarantee to the tune of Rs.16,40,000/- (Rupees sixteen crore and forty lakhs only). The 1<sup>st</sup> Respondent issued a Letter of Intent dated 10<sup>th</sup> August 2020 indicating the right of the Applicant to form a Special Purpose Vehicle. The Applicant has incorporated Special Purpose Vehicle on 16.09.2020 with the name and style of "M/s. Liberty Steel SBQ Limited". However, the Applicant states that since it is COVID-19 pandemic period, there was a delay in getting approval for formation of the Special Purpose Vehicle with the Registrar of Companies. The Applicant, however, states that it was incorporated on 16<sup>th</sup> September 2020 and became a qualified bidder and a copy of the Certificate of Incorporation is also enclosed as **Annexure-D**.

- b. As per the terms of the auctions, the Applicant ought to have paid the bid amount to the tune of Rs.262,45,00,000/- (Rupees two hundred sixty two crore forty five lakhs only) on or before 6<sup>th</sup> November 2020, however the Applicant states that due to COVID-19 pandemic, there were some delay in arranging funds and hence the Applicant could not pay the same. Therefore, the

Applicant vide letter dated 02.11.2020 requested the Liquidator to grant extension of time till 31<sup>st</sup> December 2020 for the payment of the entire bid amount, which came to be rejected by the Liquidator vide his letter dated 05.11.2020, and consequently, the 1<sup>st</sup> Respondent / Liquidator cancelled the bid of the Applicant on 07.11.2020, which necessitated the Applicant to file the present Application.

5. The 1<sup>st</sup> Respondent/Liquidator has filed detailed counter. The Liquidator/1<sup>st</sup> Respondent states that the Applicant herein was declared as a successful bidder on 08.08.2020 and thereafter, Letter of Intent dated 10.08.2020, laying down the terms and conditions of the sale was sent to the Applicant and the Applicant accepted the same on 12.08.2020. Though the Applicant ought to have set up the Special Purpose Vehicle on or before 07.09.2020, the Applicant had sought for extension of 30 days vide their letter dated 17.08.2020 and the Liquidator has also granted extension for setting up the Special Purpose Vehicle by the Applicant. However, it was made very clear that overall time limit for completion of the transaction would remain unchanged. By letter dated 18.09.2020, the Applicant represented by Mr. Raghupathy Mishra assured by way of e-mail that *“as for the payment to be made by us, we shall do that on or before 6<sup>th</sup> November, 2020.”*

6. The Liquidator/1<sup>st</sup> Respondent states that by e-mails dated 08.10.2020, 12.10.2020, 16.10.2020 and 24.10.2020, the Liquidator reminded the Applicant to make the entire payment on or before 06.11.2020, however, the Applicant did not respond to the said e-mails. Thereafter the Applicant, by a letter dated 02.11.2020, sought for an extension till 31.12.2020 for payment of the bid amount, which request was rejected by the Liquidator by his letter dated 05.11.2020.

7. The Liquidator states that on 07.11.2020, in view of the default by the Applicant, the 1<sup>st</sup> Respondent/Liquidator, after consultation with stakeholders, on the course of action, conducted a meeting on 07.11.2020 and consequently the Liquidator/1<sup>st</sup> Respondent cancelled the Letter of Intent and invoked the guarantee of the Applicant and offered it to the next highest bidder i.e. the 4<sup>th</sup> Respondent herein. It is stated by the 1<sup>st</sup> Respondent/Liquidator that he has invoked the bank guarantee given by the Applicant towards EMD and the money has been placed in a separate fixed deposit. Further, on 07.11.2020, in accordance with the terms of auction, the 1<sup>st</sup> Respondent / Liquidator has confirmed the next highest bidder viz., 4<sup>th</sup> Respondent herein as the successful bidder. In pursuance thereof, the 4<sup>th</sup> Respondent herein, also has remitted upfront amount to the tune of Rs.50 crore.

8. In so far as the Applicant is concerned, the 1<sup>st</sup> Respondent/Liquidator states that the Applicant has only submitted letter dated 29.10.2020 issued by HDFC Bank, as a reason for seeking extension of time to pay the bid amount. It is seen that the letter dated 29.10.2020 issued by HDFC Bank is not a sanction letter but only an Expression of Interest, on the basis of which alone, the 1<sup>st</sup> Respondent/Liquidator was unable to act upon. It is to be noted here that the entire e-auction proceedings took place during the lockdown period and the Applicant has expressed his ability to complete his part of the obligations. Therefore, it is not appropriate for the Applicant to take a shield of COVID-19 pandemic situation. Regulation 47A of IBBI (Liquidation Process) Regulations 2016 applies only to transactions which cannot be completed owing to lockdown. This entire transaction took place during the lockdown and the Participants took part with complete knowledge of the socio-economic situation. Hence, Regulation 47A does not apply to facts of the present case. Further, the 1<sup>st</sup> Respondent/Liquidator does not have any power to modify or cancel the terms of auction as it would go contrary to the provisions of the Code and the Regulations.

9. The 3<sup>rd</sup> Respondent has also filed its counter and has also sought for dismissal of this Application filed by the Applicant. In the additional affidavit filed by the 3<sup>rd</sup> Respondent, it is stated that this Adjudicating



Authority may be pleased to decide this Application by which it may lead to maximisation of the value of the assets and early payment to the stakeholders.

10. Before going into the submissions made by the Learned Counsel for both the parties in the present Application, this Tribunal feels that it is imperative to unfurl as to what transpired in the 3<sup>rd</sup> E-auction.

11. **FACTS RELATING TO 3<sup>RD</sup> E- AUCTION**

11.1. Since IBC 2016, is a socio-economic legislation, it is appropriate, look behind few months in retrospect, and to study the socio-economic conditions and the opinions of the same stakeholders. The 1<sup>st</sup> Respondent / Liquidator filed IA/336/IB/2020 on 20.03.2020, before this Adjudicating Authority in this application, R1 to R3 are the stakeholders/secured creditors and 4<sup>th</sup> Respondent was IMR Metallurgical Resources AG. The Applicant was appointed as a Liquidator of SBQ Steels Limited by order dated 13.01.2019. The Company in liquidation was steel manufacturing company which has been unable to service huge debts to the tune of around Rs.4592.99 Crore (Total amount of claims admitted under liquidation). The Applicant has stated that 1<sup>st</sup> e-auction was held on 16.07.2019 and 2<sup>nd</sup> e-auction was held on 24.10.2019. Both the e-auctions failed since

there were no bidders and the 3<sup>rd</sup> e-auction was held on 06.01.2020. The date of e-auction was revised three times and was finally fixed as 06.01.2020 and again there were no bidders. However, one conditional bid was submitted by the IMR Metallurgical Resources AG, the 4<sup>th</sup> Respondent, and one proposal was received from one VRKP Steels & Power Private Limited. It is submitted by the Liquidator that various rounds of discussions were held between the 4<sup>th</sup> Respondent/IMR and stakeholders for sale of the company liquidation i.e., SBQ Steels Limited. Hence, the Liquidator has filed IA/336/IB/2020 seeking relief as follows;

*“4.2: to pass an order approving the proposal submitted by IMR Metallurgical Resources AG for acquiring the business undertaking of Corporate Debtor for Rs.200 Crores and permitting the Liquidator to sell all the assets of the Corporate Debtor on a slump sale basis to IMR as per Regulation 32(b) of the Liquidation Regulations.”*

11.2. In the said IA/336/IB/2020, the 2<sup>nd</sup> Respondent viz. Union Bank of India, has filed an additional affidavit and for the sake of brevity, the relevant portion is extracted hereunder;

*1. It is submitted that this Hon'ble Tribunal ordered liquidation of the Corporate Debtor on 30.01.2019. Subsequent to the said order, the Liquidator brought the property under Public Auction in order to realise the maximum value from the property. In order to*

ensure the complete transparency in the auction process, sale process was conducted by way of an e-auction.

2. It is further submitted that 3 e-auctions were conducted and there were no successful bidders for all the 3 e-auctions. However, for the 3<sup>rd</sup> e-auction conducted on 06.01.2020, one conditional bid was received from the 4<sup>th</sup> Respondent and one proposal from the 5<sup>th</sup> Respondent. The 4<sup>th</sup> Respondent placed a conditional bid indicating an upfront payment of Rs.57 Crores to be paid within 90 days and the remaining payment to be paid over a period of 5 years at quarterly instalment with an interest rate at 10% and discounting rate at 8%, aggregating the NPV to reserve price of Rs.243 Crores. However, the 4<sup>th</sup> Respondent had also submitted a list of conditions precedent and a list of dispensations.

3. It is submitted that the 5<sup>th</sup> Respondent did not submit a bid but submitted a proposal for purchase of assets of the Corporate Debtor for Rs.175 Crores, out of which 25% of the amount was proposed would be paid within 30 days and the balance amount be paid over a period of 180 days from the date of approval. A further option was also given in paying amount of Rs.58 Crores as upfront consideration in 30 days and the balance consideration within a period of 5 years without any interest which was much lower than the stipulated reserve price.

4. It is submitted that on 09.01.2020, the stakeholders considered the conditional bid and the proposal placed by the 4<sup>th</sup> and 5<sup>th</sup> Respondents and another chance was given to the potential bidders / investors to submit their final offer by 21.01.2020. Proposals were received from the 4<sup>th</sup> and 5<sup>th</sup> Respondents which were opened

on 21.01.2020. The 4<sup>th</sup> Respondent's revised its upfront payment from Rs.57 to Rs.72 Crores and the balance over a period of 5 years with interest at 10% and the discounting at 8% and aggregating the NPV to Rs.243 Crores. However, the 5<sup>th</sup> Respondent did not modify its proposal and submitted the same proposal as submitted earlier. Since both the bids / proposals in the 3<sup>rd</sup> e-auction were conditional and were not as per the regulations, the 3<sup>rd</sup> e-auction was declared as a failed auction. On 23.01.2020, Liquidator issued communications to both the 4<sup>th</sup> and 5<sup>th</sup> Respondents stating that the 3<sup>rd</sup> e-auction has also failed.

5. It is submitted that on 31.01.2020, the 4<sup>th</sup> Respondent evinced interest and approached the Applicant that it was willing and ready to purchase the business undertaking of the Corporate Debtor on a slum side basis for sale consideration of Rs.200 Crores within 90 days. After numerous discussions, a final proposal was submitted by the 4<sup>th</sup> Respondent on 28.02.2020.

6. It is further submitted that the said proposal was put up for discussions with the secured lenders on 14.02.2020, 20.02.2020 and 25.02.2020 and the final proposal was discussed on 02.03.2020. It was found that the offer of the 4<sup>th</sup> Respondent is the best offer considering the market conditions and the current status of the assets of the Corporate Debtor. It was also opined by the Respondents 1 to 3 in the meeting that the estimates of the capex and working capital given by the 4<sup>th</sup> Respondent was not unreasonable and hence agreed to the proposal placed by the 4<sup>th</sup> Respondent. Based on the said consensus given by the Respondents 1 to 3, the Liquidator filed an Application on 10.03.2020 before this Hon'ble Tribunal seeking approval.

7. However, due to unexpected pandemic and the consequent lockdown imposed due to Covid-19 and anticipating the matter might get delayed, an urgent hearing Application was filed by the Liquidator and the Application for approval of this Hon'ble Tribunal was listed for hearing on 05.05.2020. However, on 04.05.2020, the 4<sup>th</sup> Respondent citing the economic disruption due to the pandemic and the current changed economic realities expressed its opinion that they may not be in a position to still continue to maintain the offer of Rs.200 Crores. On 07.06.2020, the 4<sup>th</sup> Respondent submitted a revised proposal indicating an offer of Rs.190/- Crores in the place of Rs.200/- Crores. On 08.06.2020, in view of the revised proposal, there were several rounds of negotiations and discussions between the 4<sup>th</sup> Respondent, the Liquidator and the Respondents 1 to 3. The Respondents 1 to 3 after considering the revised terms and taking into consideration the market conditions opined that there cannot be a better value for the assets of the Corporate Debtor and that the said revised proposal was the best realisation that could be effected by all the stakeholders, under the said circumstances and that any further delay will only lead to further deterioration of the value. Hence having found the same acceptable, the Respondents 1 to 3 considered to the revised proposal placed by the 4<sup>th</sup> Respondent before this Hon'ble Tribunal for approval.

8. It is further submitted that the Post-Covid revised proposal submitted by the 4<sup>th</sup> Respondent still seems to be a better realisation when compared to the proposal given by the 5<sup>th</sup> Respondent which is only at Rs.175 Crores, much way below the revised proposal given by the 4<sup>th</sup> Respondent amounting to Rs.190

*Crores to be paid within agreed timelines. The Respondents 1 to 3 after having had several deliberations have therefore taken a collective decision in accepting the revised Post-Covid proposal submitted by the 4<sup>th</sup> Respondent.*

11.3. The 3<sup>rd</sup> Respondent has also filed an Affidavit on the similar lines as that of the 2<sup>nd</sup> Respondent as extracted *supra*.

11.4. The Applicant/Liquidator had filed additional affidavit wherein the Liquidator has stated that IA/336/IB/2020 was filed before this Adjudicating Authority seeking approval of a bid proposal by the 4<sup>th</sup> Respondent and at that time it was pre COVID-19 period and at para 3, it is stated as follows;

*“At the time of submission of the Pre-Covid Bid nobody could have anticipated the scope and breadth of the economic disruption and that would be occasion by the COVID-19 pandemic. As a result of this, when the Applicant herein took steps to bring up an application before this Hon’ble Tribunal for permission to approve the pre-covid bid. The 4<sup>th</sup> Respondent intimated the Applicant of its intention to submit a revised bid in place of the pre-covid bid vide its letter dated 4<sup>th</sup> May, 2020, in view of the changed economic realities.”*

11.5. In the same additional affidavit, the Applicant/liquidator states that on 08.06.2020, final post-covid bid was submitted by 4<sup>th</sup>

Respondent and same was placed before the secured creditor for their consideration and the secured creditors after considering the revised term, considering market condition, opined that there cannot be better value for the asset of the Corporate Debtor and that the post-covid bid was the best realization that could be effected for all stakeholders under the given circumstances and any further delay will only lead to further deterioration of value. Hence, the secured creditors gave approval for placing revised post-covid bid before this Adjudicating Authority and as per the revised post-covid bid, the 4<sup>th</sup> Respondent offered Rs.190 crore as sale consideration. Para 7 of the additional affidavit filed by the Applicant is reproduced below:

*“7.5. The 2<sup>nd</sup> tranche consisting of Rs.140,00,00,000/- (Rupees one hundred and forty crore only) shall be paid within 90 days from the date of approval of this Hon’ble Tribunal.*

*7.6. Apart from the payment of the mandatory 1<sup>st</sup> tranche, the 4<sup>th</sup> Respondent shall have an option to defer the 2<sup>nd</sup> tranche of the balance sale consideration beyond 90 days if it makes a minimum payment of Rs.25,00,00,000/- (referred to as “Payment 2.1 Amount” in the Post Covid Bid) on or before 90 days from the date of approval of this Hon’ble Tribunal.*

*7.7. In the event the 4<sup>th</sup> Respondent requires time to pay the balance sale consideration beyond a period of 180 days from the date of approval of this Hon’ble Tribunal, an additional amount of*

Rs.25,00,00,000/- (referred to as "Payment 2.2 Amount" in the Post Covid Bid) shall be paid within 180 days from the date of approval of this Hon'ble Tribunal along with an interest of 8% per annum on the amount from 91<sup>st</sup> day up to the date when such deferred payment.

7.8. The 4<sup>th</sup> Respondent shall mandatorily make payment of the aggregate balance consideration (referred to as "Payment 2.3 Amount" in the Post Covid Bid) on or before 19.3.2021 along with an interest of 12% per annum on the amount from 181<sup>st</sup> day up to the date when such deferred payment is made.

7.9. It is submitted that in the event there is a delay in the above said timelines, the 4<sup>th</sup> Respondent shall pay an additional interest of 18% per annum on such delayed payment from the due date up to the date of payment, However, this extension is subject to the acceptance of the Applicant herein."

11.6. The Applicant / Liquidator in IA/336/IB/2020 has made a prayer to this Adjudicating authority to permit the Applicant to conduct private sale as per the Liquidation Regulations. After considering all the points, this Adjudicating Authority by order dated 01.07.2020 cancelled the tender and dismissed the IA/336/IB/2020 with a direction to the Liquidator to call for fresh e-auction and also permitted the liquidator to operate as per the revised IBBI Regulations dated 27.05.2019.



11.7. Accordingly, the Liquidator has called for a fresh e-auction, i.e. the 4<sup>th</sup> e-auction, which is now the subject matter of IA/888/2020.

## **12. AMENDMENT APPLICATION IA/968/2020 FILED BY THE APPLICANT**

12.1. Coming to the IA/968/2020 filed for the Amendment of the prayer in IA/888/2020, the relief as sought for by the Applicant is as follows;

*“A. That this Hon’ble Tribunal may be pleased to allow the IA/888/IB/2020 as amended under this present Application.*

*B. That this Hon’ble Tribunal to grant the extension of time and allow the Applicant as the successful bidder as on the date of filing the IA/888/IB/2020 to make the payment of the Final Sale Consideration immediately not later than 3 working days and to further complete the pending formalities of the Sale.*

*C. That this Hon’ble Tribunal be pleased to declare the cancellation of the Letter of Intent by the Respondent No.1 against the Applicant as null and void, and also the declaration of the Respondent No.4 as the successful bidder by the Respondent No.1 and also the Letter of Intent executed by the Respondent No.1 with Respondent No.4 as null and void.*

*D. That this Hon’ble Tribunal be pleased to direct the Respondent No.1 to adjust and or set off the amount of INR 16.40*



*Crores encashed by the Respondent No.1 in lieu of the Bank Guarantee of the Applicant towards the Final Sale Consideration due and payable by the Applicant to the Respondent No.1.*

*E. That this Hon'ble Tribunal may be pleased to issue necessary directions to the Respondent No.1 to maintain the status quo and to refrain from taking any coercive actions with respect to the sale, the Letter of Intent and the Process Documents as well as the Bank Guarantee qua the Applicant pending the hearing and final disposal of IA bearing No.888/CB/2020.*

*F. That this Hon'ble tribunal be pleased to grant ad-interim/interim reliefs in respect of prayer clause (b), (c), (d), (e).*

*G. That this Hon'ble Tribunal may be pleased to grant any other relief or relief as may deem fit in the interest of justice."*

12.2. The IA 888/2020 was filed on 06.11.2020 by way of email. The hard copy was submitted on 16.11.2020, the H2 bidder was not impleaded as a party. Subsequently, another application was filed by the applicant on 20.11.2020, here again amendment of the prayer is sought for and no application for impleading the H2 bidder, a necessary party to the application was filed by the Applicant. However, it is seen from the records that IA/968/2020, which is an amendment to the IA/888/2020, is filed by a different counsel and the vakalat has not been properly stamped. The

Applicant has sought for permission to amend the prayers in IA/888/IB/2020 and there seems to be a procedural irregularity in the said Application. The Proposed 4<sup>th</sup> respondent ought to have been impleaded; however, the Unsuccessful H2 bidder was represented by a Counsel and has made their submission. This Adjudicating Authority has given adequate space and heard all the pleadings and submissions of the Proposed 4<sup>th</sup> Respondent. The Submissions of proposed 4<sup>th</sup> respondent was also taken into consideration before passing this order.

**13. SUBMISSION OF THE APPLICANT:-**

- a. The Applicant submitted that this Adjudicating Authority has jurisdiction to extend the time for the payment of bid amount by the Applicant. Reference is being made to Clause 11.7.6 of the Process Document which allows NCLT to approve any other timeline. It is also submitted that extension of time was made by the Applicant even before the Liquidator cancelled the LOI of the Applicant.
- b. Reliance is also being placed by the Applicant under Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016 seeking for extension of the time period. It is further stated that 90 days' time period prescribed in the Model timeline as per Regulation 47

will not be applicable to the present proceedings since, the same was inserted on 25.07.2019 and the Liquidation proceedings in relation to the Corporate Debtor was ordered on 15.02.2019 and as per IBBI Circular dated 26.08.2019, the amended Regulations are not applicable to the Liquidation process commenced prior to 25.07.2019.

- c. The Applicant further submitted that they are the bonafide purchaser and also stated that they are willing to pay the bid amount immediately i.e., not more than 3 days from the date of the order, if directed so. It is also submitted that the Applicant being a Successful bidder has accrued vested rights and as such the present application as filed by the Applicant is maintainable.

#### 14. SUBMISSION OF THE 1<sup>ST</sup> RESPONDENT

- a. The 1<sup>st</sup> Respondent – Liquidator submitted that the 1<sup>st</sup> Schedule to Rule 12 is applicable to the present case in view of this Tribunal's order dated 01.07.2020 and the applicant has defaulted and failed to remit the said amount within the prescribed period of 90 days. It is stated that the 1<sup>st</sup> Respondent has acted only as per the terms of the Auction and not otherwise. It is also submitted that if the Auction



process is interfered it will be a never ending process and will open a Pandora box.

- b. Reliance is being placed on the Judgment of Hon'ble NCLAT in the matter of *State Bank of India Vs. Maithan Alloys Ltd. & Ors.* reported in *2020 SCCOnline NCLAT 429*, wherein the NCLAT directed the successful bidder to withdraw the bid and also directed the Liquidator to return the amount and also clearly delineated the scope of NCLT to interfere in the Auction process.
- c. Also, reliance is being placed upon the Judgment of the Hon'ble NCLAT in the matter of *Majit Commercial LLP Vs. SPM Auto Pvt. Ltd. Company Appeal No.732 of 2019*, wherein it has been held that objectors should not be permitted to unnecessarily delay the liquidation process for an undue advantage to certain groups.
- d. Reliance is also being placed on the Judgment of the Supreme Court in *ValjiKhimji & Co Vs. Official Liquidator* reported in *(2008) 9 SCC 299*, wherein it has been held that objections to an auction sale should not be entertained unless the same is vitiated by fraud or irregularity.



- e. The 1<sup>st</sup> Respondent also submitted that the Applicant having once failed to pay the sale consideration within the prescribed time, has not placed on record any document to demonstrate / substantiate that they are financially viable to make the payment.
- f. It is also contended by the 1<sup>st</sup> Respondent / Liquidator that the Applicant has approached this Tribunal with unclean hands and also this application has been filed belatedly. Further, it is submitted that Regulation 47A would not apply to the present proceedings as the E-auction was conducted only on 07.08.2020 after the imposition of the lockdown by the Central Government.

15. **SUBMISSION OF THE 4<sup>TH</sup> RESPONDENT**

- a. The 4<sup>th</sup> Respondent is H2 Bidder. The 4<sup>th</sup> Respondent submitted that the present Liquidation proceedings are subject to the mandatory requirement of Schedule I, Rule 12 of the Liquidation Regulations and upon bidders' failure to make the payment within the mandatory timeline of 90 days, the sale shall be cancelled by operation of law. In order to buttress his argument, the 4<sup>th</sup> Respondent pressed into service the decision of this Tribunal in ***SS Chockalingam Vs. Nag Yang Shoes*** in ***MA/661/2018*** in ***TCP/IB/431/2019***, wherein the H1 bidder sought extension of time

to deposit the bid amount, and the same was rejected by this Tribunal on the ground that IBC, 2016 does not contemplate any such provision and as such the Liquidator proceeded with the sale with the H2 bidder. It is submitted that 4<sup>th</sup> Respondent is a bonafide third party purchaser for a value without notice and has a vested rights for the sale of the assets of R2.

- b. The 4<sup>th</sup> Respondent further submitted that there are numerous decision of the Supreme Court to hold that the inherent powers of this Tribunal cannot be exercised contrary to, ignoring or in derogation of express and specific provision of law. Reliance been placed upon the decision of NCLAT in the matter of *Kridhan Infrastructure Pvt. Ltd. -Vs- Venkatesan Sankarayan & Ors*; 2020 SCC Online NCLAT 639, wherein it has been expressed that the timelines prescribed under the IBC is required to be adhered and Rule 11 of NCLT Rules is to be invoked in exceptional circumstances and never in a manner that dilutes the provisions of the code. The 4<sup>th</sup> Respondent has also contended that Regulation 47A will not apply to the facts and circumstances of the present case.



c. It is further contended by the 4<sup>th</sup> Respondent that the Applicant has not stated why they could not arrange the funds within 90 days, however now submitted before this Tribunal that they will pay the sum immediately and thus miserably failed to establish any basis of law for exercise of equitable relief. It is submitted that the 4<sup>th</sup> Respondent has furnished proof of funds to pay the balance sale consideration and as such it would result in value maximization.


16. From the submissions made by the Learned Counsel for the respective parties, the issues that fell for consideration before this Adjudicating Authority are as follows;

- (a) Whether the Applicant is entitled to seek extension of time for making payment of the bid amount?
- (b) Does the Liquidator have a right to reject the extension of time as sought for by the Applicant vide e-mail dated 02.11.2020?
- (c) Whether the right of the H2 bidder has been affected?
- (d) The Applicant at the time of arguments has offered to make payment, immediately, whether such an indulgence can be granted by this Tribunal?
- (e) Whether the Application as filed by the Applicant is maintainable?

17. **ON ISSUE (a) & (e)**

17.1. The Applicant has stated that market conditions are not conducive. Therefore, due to the extraordinary pandemic period, in the interest of justice, it is just and fair that extension of time be granted for payment of the bid amount. It is to be seen here that this auction took place on 07.08.2020 and as per the terms of the e-auction, the amount ought to have been paid by the successful bidder, viz. the Applicant herein on or before 06.11.2020. It has been brought to our notice that during the month of August 2020 the market situation and the pandemic condition was very much worse and despite the given condition, the Applicant, having taken a decision to plunge into this act and participate in the bid and having won the bid during the most difficult period, it is now inappropriate on the part of the Applicant to take shield behind the pandemic situation for non-payment of the bid amount. During the period when the bid took place the market situation and the pandemic condition were much worse than now.

17.2. The Applicant ought to have taken a commercial decision before participating in the auction with a prudent mind. The Applicant has voluntarily participated in the bid and has been successful bidder.



It is not appropriate for the Applicant to now take the shield of the pandemic and market condition as unavoidable reason for failure to make the payment on or before 6<sup>th</sup> November 2020. Hence, for the said reasons, the extension of time till 31.12.2020 as sought for by the Applicant in IA/888/2020 in this regard cannot be granted. Ultimately, this leads us to issue (d) as to whether 3 days' time period can be granted to the Applicant to make the final amount.

18. **ON ISSUE (d)**

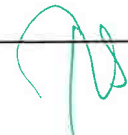
18.1. The Applicant has sought for time till 31.12.2020 for depositing the entire bid amount, which for the reasons discussed supra has been rejected by this Tribunal. However, subsequently, the Applicant during the course of oral submission has sought to make the payment immediately i.e. within 3 working days' time to pay the entire bid amount. It is also pertinent at this point to consider the offer made by the 4<sup>th</sup> Respondent. The 4<sup>th</sup> Respondent was unsuccessful H2 bidder and he has offered Rs.234 crore as a sale consideration. However, if the 1<sup>st</sup> successful bidder i.e. the Applicant herein fails to fulfil the terms and conditions of auction, automatically the 2<sup>nd</sup> highest bidder is entitled to pay sale consideration for the amount offered by them on the terms and conditions set out by the Liquidator. In the present case, the 4<sup>th</sup> Respondent herein has now increased his offer and is willing to



match and deposit the highest bid amount of Rs.262,45,00,000/- as sale consideration immediately. The competition between the Applicant and the 4<sup>th</sup> Respondent is so strong and both of them are willing to increase the bid amount and keen to consummate the sale. Such healthy competition is a welcome sign that the economy is slowly back on track. However, this Adjudicating Authority does not want to order for another auction as it would again lead to a cumbersome process. The Applicant herein ought to have paid the entire amount on or before 06.11.2020 and already a month's time has been wasted in litigation before NCLT and NCLAT.

19. In relation to IA/981/2020, it is an Application filed by M/s. IMR Metallurgical Resources AG, under section 60(5) of IBC, 2016 before this Tribunal on 04.12.2020, seeking thereof to urgently pronounce the order in IA/888/2020 which was reserved for orders on 24.11.2020. Upon a mention being made by the Learned Senior Counsel on 04.12.2020, this matter was listed as item No.1 in the cause list dated 07.12.2020.

20. Shorn of unnecessary details, the averment made in the said Application is that, the Applicant viz. M/s. IMR Metallurgical Resources AG has already deposited a sum of Rs.50 Crores with the Liquidator and has matched the bid with the H1 bidder and offered to pay a sum of Rs.262.45



crore and further proved their source to pay the sum within the stipulated time. It is further stated that the progress of the 4<sup>th</sup> E-auction remains pending as per the status quo order dated 18.11.2020 and each day delay in the pronouncement of order, constitutes one additional day of de-facto extension to successful bidder viz. M/s. Liberty Steel SBQ Limited, to pay the amount, which they ought to have been paid on or before 06.11.2020. Hence, the present Application has been filed.

21. This Adjudicating Authority is not going into the merits in relation to the 4<sup>th</sup> Respondent in IA/888/2020 as to whether they are viable to pay the amount or not. The IA/888/2020, is listed for pronouncement of order in the cause list dated 07.12.2020 at 4:30 PM, suffice it would allay the apprehension of the Applicant herein and as such the prayer made in IA/981/IB/2020 becomes redundant and consequently IA/981/IB/2020 stands **dismissed as infructuous.**

22. Thus, by considering the totality of the circumstances, the undertaking and the submissions of the applicant to deposit the balance bid amount within 3 working days is not accepted. However, this Adjudicating Authority, as a last resort to the Applicant, grants a days' time i.e., 24 hours to the Applicant to consummate the sale by paying the entire balance bid amount to the Liquidator. This order was pronounced at 4:30 PM on 07.12.2020, hence the

Applicant is required to deposit the balance bid amount to the Liquidator on or before **6:30 PM, Tuesday, the 8<sup>th</sup> December 2020**. However, if the Applicant fails to deposit the balance bid amount on or before 8<sup>th</sup> December 2020, the Liquidator shall proceed with the sale as per the terms and conditions of the e-auction by consummating the sale with the 4<sup>th</sup> Respondent herein.

23. In view of the dispositive reasons stated *supra*, the issue (b) and (c) need not be answered by this Tribunal.

24. Accordingly, **IA/968/2020 stands closed.**

25. **IA/888/IB/2020 stands disposed of.**

26. **IA/981/IB/2020 stands dismissed as infructuous**

27. The **Registry** is directed to forward the copy of the order by way of email to all parties immediately and upload the same in NCLT website today itself.

-sd-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-sd-  
**(R. SUCHARITHA)**  
MEMBER (JUDICIAL)

Raymond