

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

19.03.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.2269 of 2024

Sunrise Industries

Through Its Authorised Signatory
Mr. Pawan Kumar Gupta

...Appellant

Vs

Umesh Gupta

Liquidator for M/s Hema Automotive Pvt. Ltd.

...Respondent

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi in I.A. No.511 of 2024 in Company
Petition No. (IB) – 822/(ND)/2021)

For Appellant: Mr. Alok Kumar Aggarwal, Ms. Anushruti, Ms. Anushka
Sharma, Ms. Snigdha Rajpal, Ms. Aanavi Oberai,
Advocates

For Respondent: Mr. Sharad Tyagi, Ms. Archana Tyagi, Ms. K. Gayatri,
Mr. Samarth Gogia, Advocates for R-3
Mr. Vishal Ganda, Advocate for Liquidator
Mr. Sanjeev Singh, Ms. Sandipa Bhattacharjee,
Ms. Anshita Argal, Advocates for R-2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

The present appeal arises out of the order dated 20.09.2024 passed by the
National Company Law Tribunal, New Delhi, whereby IA No. 511 of 2024 filed by

the Appellant was dismissed. The application sought directions to consider the appellant's enhanced offer submitted during the auction process/NRRA assignment process conducted under Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016, and to set aside the selective and non-transparent acceptance of the offer of Respondent No.3.

The Facts:

2. Material facts relevant for the current purpose are:

- a) Hema Automotive Private Limited ("Corporate Debtor") was admitted into CIRP on 08.07.2022. The sole substantial asset of the Corporate Debtor comprised a leasehold industrial plot admeasuring approximately 10,000 sq. mtrs. situated at RIICO Industrial Area, Neemrana, Rajasthan.
- b) On 29.11.2022, during CIRP, the lease granted by RIICO was cancelled. The Resolution Professional challenged the cancellation before the Adjudicating Authority and it passed an order directing status quo on the matter. Subsequently, upon failure of resolution, liquidation proceedings were initiated on 11.04.2023 and Respondent No.1 was appointed as Liquidator.
- c) The Liquidator attempted sale of the asset through e-auction under Regulations 32 and 33 of the Liquidation Regulations at a reserve price of 17.93 Crores. The auction failed. Prior thereto, before the initiation of CIRP, the second respondent, the secured creditor, had conducted two auctions which also failed.
- d) In view of repeated failure of auctions and uncertainty regarding leasehold rights, the Stakeholders' Consultation Committee ("SCC") resolved to

explore assignment of the asset as a Not Readily Realisable Asset (“NRRA”) under Regulation 37A. A Process Information Memorandum was issued, which expressly contemplated negotiations, inter se bidding, Swiss Challenge or any other mechanism to maximise value.

- e) On 02.11.2023, public notice was issued to invite Expressions of Interest. The Appellant submitted its EOI with an EMD of Rs.1.0 Crore and on 20.11.2023, it was declared a qualified bidder, pursuant to which it deposited an additional sum of Rs.1.40 Crores towards 20% of its offer.
- f) The 10th SCC meeting was held on 04.12.2023. During the meeting, sealed offers were opened. While the SCC meeting was still ongoing and before its conclusion at 3:15 p.m. the appellant submitted an enhanced offer of 11.10 Crores at 2:19 p.m through e-mail. This offer was higher than the amount negotiated with the 3rd respondent.
- g) Despite receipt of the enhanced offer, the liquidator negotiated only with Respondent No.3 on payment timelines and declared Respondent No.3 as the successful bidder. The Appellant’s enhanced offer was neither placed before the SCC nor was it considered. On 29.12.2023, Sale certificate was promptly issued in favour of the 3rd respondent.
- h) The appellant thereafter filed IA No. 511 of 2024, which came to be dismissed by the impugned order, on the ground that the attempt of the appellant to enhance its offer after the bidding process had concluded and the successful bidder had been approved undermined the sanctity of a free and fair bidding mechanism.

The Arguments

3. The learned counsel for the appellant contended:

- a) Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016 mandates that assignment of Not Readily Realisable Assets be conducted through a transparent process, in consultation with the Stakeholders' Consultation Committee. Transparency under Regulation 37A, according to the Appellant, cannot be understood narrowly or mechanically, but must be read in consonance with Sections 35 and 53 of the Code, which cast a statutory duty upon the Liquidator to act in the best interest of the liquidation estate and to ensure maximisation of value of the corporate debtor's assets. Reliance was placed on the dictum of the Hon'ble Supreme Court in ***M/s R.K. Industries (Unit-II) LLP v. M/s H.R. Commercial Pvt. Ltd.*** [Civil Appeal No. 7722 of 2021, decided on 26.08.2022].
- b) the Process Information Memorandum issued by the Liquidator expressly contemplated negotiations, inter se bidding, and other mechanisms aimed at price discovery and value maximisation. Once negotiations were not only contemplated but were in fact undertaken with Respondent No. 3 after opening of bids, the process ceased to be a rigid sealed-bid process governed strictly by cut-off dates. The appellant submits that selective negotiation with only one bidder while excluding other qualified bidders, is per se arbitrary and violative of the principles of fairness and equality. Reliance was placed on a judgement of the Principal Bench of the NCLT in ***Bank of Baroda v. M/s Rathu Super Steel Limited*** [I.A. (I.B.C.) No.

3871(PB)/2021 and I.A. (I.B.C.) No. 4489(PB)/2021 in C.P. (IB) No. 1446(PB)/2018].

- c) It is an admitted factual position that the 10th SCC meeting commenced at 11:30 a.m. on 04.12.2023 and concluded at 3:15 PM, and that the Appellant's enhanced offer of Rs11.10 Crores was submitted at 2:19 p.m. while the meeting was still in progress. The Appellant submits that the enhanced offer was thus made during the subsistence of the decision-making process, at a stage when negotiations with Respondent No. 3 were still ongoing. Despite this, the enhanced offer was neither placed before the SCC nor evaluated in any manner, which, according to the Appellant, defeats transparency and value maximisation.
- d) When no concluded contract existed at the time the enhanced offer was made, and when 3rd respondent was permitted to negotiate and modify payment timelines after opening of bids demonstrates that acceptance was neither final nor unconditional. In such circumstances, exclusion of appellant alone from negotiations amounts to hostile discrimination between similarly placed bidders, which vitiates the entire process. Reliance was placed on the ratio of the Hon'ble supreme Court in (i) **Food Corporation of India v. Kamdhenu Agro Industries Pvt. Ltd.** [(1993) 1 SCC 71], wherein it was held that fairness and non-arbitrariness are essential components of not just of administrative or statutory but also in contractual matters; (ii) that of the Delhi High Court in **A.K. Jain Vs Canara Bank & Others** [(2007 SCC OnLine Del 2097)], wherein the Court upheld the cancellation of a sale that was found not to have been conducted in public interest, that fairness and transparency in the bidding

process are non-negotiable requirements in sale of assets, and where these are compromised, courts must intervene; (iii) dictum of this tribunal in ***Naren Seth Vs Sunrise Industries & Others*** [(Company Appeal (AT) No. 401 of 2023)], wherein the NCLAT set aside an e-auction on the ground that the liquidator failed to consider material submissions and EMD placed on record; and (iv) decision of this tribunal in ***Anita Jindal Vs M/s Jindal Buildtech Pvt. Ltd.*** [(Company Appeal (AT) (Ins.) No. 512 of 2021)], wherein this Tribunal held that commercial wisdom cannot be used as a shield to legitimise a process tainted by material irregularity or procedural unfairness.

Concluding his arguments the learned counsel submitted that the liquidator has acted in breach of the declared process document, that he failed to discharge his statutory duty under Sec. 35 of the Code, and disregarded the paramount objective of value maximisation, and that the Adjudicating Authority has erred in upholding an auction process that deserves to be rejected in law.

4. Per contra, the learned counsel for the liquidator submitted:

- a) The appeal is barred by limitation. The impugned order was passed on 20.09.2024, whereas the appeal came to be filed on 21.10.2024, without any application seeking condonation of delay.
- b) Appellant has suppressed the material fact of it accepting the refund of EMD after the decision of the SCC. It is submitted that the Appellant, having participated in the NRRRA process with full knowledge of its terms and timelines, and having failed to emerge as the highest bidder, cannot now seek to re-open a completed process by making belated offers.

- c) On his appointment, the liquidator attempted sale of the leasehold rights through e-auction in terms of Regulations 32 and 33 with a reserve price of Rs17.93 crores. The auction failed as no bids were received. It is further highlighted that even prior to CIRP, the sole secured financial creditor, Respondent No.2, had attempted to auction the same asset at reserve prices of Rs.14.0 crores and Rs12.60 crores, both of which also failed. Regulation 37A in the context vests discretion in the liquidator and the SCC to determine the appropriate mode of assignment, subject to transparency and arm's length dealing. Reliance is placed on the IBBI Discussion Paper dated 26.08.2020, which clarifies that NRRA may be assigned through auction or, where auction is not feasible, on an arm's length basis, guided by the principles of acting in the best interest of the liquidation estate, seeking maximum consideration, and consulting the SCC. The present assignment strictly adheres to these principles.
- d) the NRRA process was conducted in a transparent, consultative, and time-bound manner. Pursuant to public notice dated 02.11.2023, EOIs were invited. Four bidders, including the appellant, submitted the EOIs along with EMD within the stipulated time. On 20.11.2023, all the bidders were declared qualified, and were expressly informed that the last date for submission of the offers along with 20% of the bid amount was 02.12.2023. The sanctity of timelines was repeatedly emphasised in SCC meetings, and the liquidator was specifically directed to avoid any deviation or delay.
- e) The 10th SCC meeting was convened on 04.12.2023 at 11:30 a.m. and was attended by the representatives of all qualified bidders, including the

authorised representative of the appellant. All sealed offers were opened in the presence of SCC members and the bidders. The appellant's offer was for Rs.7.0 crores, whereas the 3rd respondent's offer was Rs10.55 crores, which is approximately 50% more than the appellant's bid. After evaluation, the SCC resolved to consider the offer of the 3rd respondent. The other bidders were informed that their bids were not being considered. Limited discussions thereafter was held only with the 3rd respondent in relation to payment timelines and not on the price, but it is a permissible administrative adjustment prior to acceptance.

- f) Appellant has sent its revised offer of Rs.11.10 crores vide its e-mail dated 04.12.2023, but it was submitted after the cut-off date of 02.12.2023, when the liquidator was under no instruction to extend the timeline. Secondly, such revised offer was not accompanied by the mandatory deposit of 20% of the revised bid amount, rendering it non-compliant with the process document. Thirdly, appellant's authorised representative who was present in the SCC meeting, raised no objection when the SCC resolved to consider Respondent No.3's bid, nor did he insist on placing the revised offer before the SCC. Fourthly, the appellant sought refund of its EMD on 07.12.2023 and had since received it. Thus, the appellant was aware that the process had concluded and had also accepted its outcome. In these circumstances, entertaining any belated offers would make NRRA assignment processes interminable, as unsuccessful bidders could indefinitely seek to improve their offers post-decision, thereby defeating finality and undermining the Liquidator's duty to adhere to timelines under the Code.

g) the appellant approached the Adjudicating Authority with I.A No. 511 of 2024 only on 25.01.2024, nearly 52 days after SCC approval and long after sale confirmation, which clearly evidenced acquiescence and waiver.

h) Pursuant to the sale certificate on 29.12.2023 to the 3rd respondent, substantial right has vested in it. And the 3rd respondent has since restored the leasehold rights with RIICO, cleared its statutory dues, obtained utilities, and has also commenced its operations. Such rights, once crystallised, cannot be disturbed except on exceptional grounds such as fraud or collusion, but the appellant's case was not founded on these aspects.

5. While both the counsel for the 2nd and the 3rd respondents made independent submissions, they in essence only reinforced the submissions of the liquidator.

The learned counsel for the 2nd respondent would argue:

a) Objections after confirmation of sale ought not to be entertained except on limited grounds such as fraud and mere expectation of securing a higher price cannot be a valid ground to cancel an otherwise lawful auction or sale as it would erode the credibility and sanctity of the auction process itself. Reliance was placed on the dictum of the Hon'ble Supreme Court in ***Eva Agro Feeds Private Limited Vs Punjab National Bank & another*** [(2023) 10 SCC 189], ***Celir LLP Vs Bafna Motors (Mumbai) Private Limited & Others*** [(2024) 2 SCC 1]

b) the appellant, having participated in the NRRA process and having been aware that it was not the highest bidder, is estopped from questioning the validity of the process post facto. Reliance was to the ratio of this tribunal

in ***Startree Retailers Private Limited Vs Anil Kumar Birla, Liquidator of Ennore Coke Limited***, [2022 SCC OnLine NCLAT 3645], wherein it was held that an unsuccessful bidder who participated in the auction cannot be permitted to challenge the legality or validity of the auction process after completion of sale.

- c) Once sale is complete and has been acted upon, it cannot be disturbed.

Reliance is placed on the ratio in ***M.S. Sanjay Vs Indian Bank & Others*** [2025 SCC OnLine SC 368].

6. The learned counsel for the 3rd respondent submitted that the appellant's challenge ignores the costs, efforts, and investments made by it after it was declared as the successful bidder. Indeed, since the lease of the property which was the asset that it had purchased had been terminated by the lessor RIICO, it expended ₹ 75,44,835 for restoration of the lease besides additional cost for renovation, construction, clearing of premises, obtaining utilities, and making the property operational for business use. It is at this stage the appellant came out with its plea for considering its enhanced bid.

Discussion & Decision

7. The auction in which the 3rd respondent was declared as the successful bidder was questioned not on grounds of patent illegality or fraud, but on grounds of unfairness as the SCC -liquidator combination overlooked the revised offer of the appellant, not made before the closed-bids were opened but towards the fag end of the meeting of the SCC on grounds of unfairness in denying it an opportunity of negotiation after it had made a revised offer. The statement of law having been strongly declared by the Hon'ble Supreme Court in the authorities which both

sides rely on, the principles that flow from them are still required to be applied to the facts before us. It is on the factual context of this case, we are not able to appreciate the contentions of the appellant, and our reasons are:

- a) Fairness is a constant that works differently in different factual context. And it needs to be understood in the context. The appellant who worries about denial of fairness to it has overlooked fairness to which the second respondent is entitled to. It is desperate to realise its dues. It tried its best to sell the property – a lease hold right over a piece of immovable property twice earlier but without success. The liquidator, the first respondent tried his best through the known methods of resorting to public auction but it too did not yield result. The SCC-liquidator combination chose to NRRA, very evidently as the last resort. What about the unfairness that might be inflicted on them. It is true miximisation of asset value ought to be the primary goal of every liquidator, but it still has to follow a certain path – a fair path which the law has provided. Fairness does not exist to the exclusion of all, but works in conjunction with all. It is not a one-way street.
- b) Secondly, the appellant very apparently has filed I.A. 511/2024, some 52 days since the 3rd respondent was declared as the successful bidder. It shows the appellant's concern for fairness, whose denial it complains of, is less serious and more speculative. This is fortified by the fact that the appellant has obtained the refund of the EMD amount and waited for few more days before choosing to file its petition. Doctrine of fairness is all pervasive from which even conduct of the parties cannot escape a scrutiny.

Strength of law lies in its certainty and hence its speculative application can hardly be appreciated. After all Courts are not casinos for any litigant to use law for adventurous speculation.

- c) Thirdly, its timing of making its revised offer. Rule of fairness requires that it be extended to all those who are equally placed. And when timelines for making the bid are well drawn and indicated, if the concept of fairness which the appellant now attempts to canvass is to be considered, then it changes the timeline for making the bid which affects the interest of the other three bidders in the fray. Where then the fairness to which those bidders are also entitled to would be?
- d) Today, the 3rd respondent has resolved the issue on the termination of lease with the lessor of the property at considerable cost and has invested its funds. Hence, clock cannot be put backwards to derail the interest of the 3rd respondent off its legitimate path on the pretext of maximisation of asset value. Appellant's intent, real or pretended, may be laudable, but it, on its own and in the absence of any proven material irregularity, shall not be allowed to defeat the legitimacy of what has been done when the 3rd respondent was declared as a successful bidder.

8. To conclude, we find no merit in the appeal and the same is dismissed.

No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Indevar Pandey]
Member (Technical)