

SL No.119

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Special Bench (Video Conference)

**CORAM: HON'BLE BHASKARA PANTULA MOHAN,--MEMBER (J)
CORAM: HON'BLE DR. BINOD KUMAR SINHA- MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 06.05.2022 AT 02:00 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/51&52/2022 in CP (IB) No.294/7/HDB/2017
NAME OF THE COMPANY	IVRCL Limited
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	IVRCL Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/51&52/2022 in CP (IB) No.294/7/HDB/2017 -

Applications filed in relation to Section 29A have been disposed of as rejected. Orders passed vide separate sheets.


MEMBER (T)

Syamala


MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA Nos.52 of 2022 & 51 of 2022
In CP (IB) No.294/7/HDB/2017
Under section 60(5) of the IB Code, 2016.

In the matter of :-
M/s. IVRCL Limited

Vishnuvallabh Infra Private Limited
19-1-912/D/1/A/1, Murali Nagar,
Golla Khid, Hussaini Alam,
Hyderabad – 500064.

...Applicant

Vs

1. IVRCL Limited, having its registered office
At M-22/3RT, Vijayanagar Colony,
Hyderabad – 500 057.

...Corporate Debtor

2. Sri Sutanu Sinha, Liquidator for IVRCL Ltd.
Mihir, 8-2-350/5/A/24/I 1B, Road No.2,
Panchavati Colony, Banjara Hills,
Hyderabad – 500 034, Telangana.

...Respondent/
Liquidator

Date of order: 06.05.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsel Present:

IA No.51 & 52 of 2022:

For the Applicant:

Mr. P B Vijaya Kumar, Senior Counsel
along with Mr. M.N. Agastya, Counsel



For the Respondent/ Liquidator: Mr. Om Prakash, Senior Counsel along
with Mr. Nirav Shah, counsel
Mr. Sutanu Sinha, Liquidator

Per: Bench

ORDER

1. The present IA No.51 of 2022 is filed under Section 42 R/W 60(5)(c) of IB Code, 2016 seeking the following relief:
 - a. To declare the 3rd E-auction process initiated under invitation for expression of interest to submit bid in respect of sale of IVRCL Ltd.(Under liquidation) as a going concern by notification dt.20-11-2021 by the 2nd Respondent herein accepting the bid of Sri Ponguleti Prasad Reddy, Promoter of M/s. Raghava Water and Raghava Constructions and directing him to deposit the balance of bid amount as arbitrary, illegal, and violative of Section 29(A) of Insolvency and Banckruptcy Code, 2016 and further to direct the 2nd Respondent to issue a fresh e-auction process taking all steps germane for the purpose of perfect competition in the bidding process.
2. The present IA No.52 of 2022 is filed under Section 42 R/W 60(5)(c) of IB Code, 2016 seeking the following relief:
 - a. To grant stay of all further proceedings of confirmation of the 3rd E-auction bid initiated under invitation of expression of interest to submit bid in respect of sale of IVRCL Ltd. (Under liquidation) as a going concern by notification dt.20.11.2021 by the 2nd Respondent in favour of Sri Ponguleti Prasad Reddy, Promoter of M/s Raghava Water and Raghava Construction.
3. Brief facts of the case as submitted by the Applicant are as follows:



- a) That the 2nd respondent herein published a notification "Invitation for Expression of Interest" to submit bids for IVRCL Ltd, under liquidation as a going concern, fixing the e-auction on 04.10.2019. In the said notification, it was clearly mentioned in paragraph 5 that the entire section 29A of the Code, 2016, was extracted as a prohibition of the relatives from participating. Further, in paragraph 10, EMD was fixed at Rs.5 Crs. only when the reserve price was fixed at Rs.1654.47 Crs. The said notification for "Expression of Interest" issued first time was cancelled by the 2nd respondent herein and in its place 2nd e-auction notice dated 16.06.2021 was issued, scheduling e-auction on 21.07.2021. This time, the reserve price was fixed at INR 1600 Crores and the EMD was fixed at Rs.50 Crs. Again, the same was cancelled for reasons well known to Liquidator but there was a widespread message in business circles that this Bid was cancelled due to the reason that submission of EMD was less than Rs.50 Crore by the only bidder M/s Vasavi Realtors.
- b) That again the 3rd E-auction process was commenced under the notice dated 20.11.2021 fixing E-auction schedule on 15.12.2021 and the reserve price was fixed at Rs.1200 Crores. This time the EMD was again fixed at Rs.50 Crs. The Liquidator while proportionately reducing the reserve price, enhanced the EMD and the request of the applicant herein and similarly placed other companies to extend time for due diligence, was not entertained. The time schedule published by the Liquidator on 20.11.2021 for submission of EOI with EMD of Rs.50 Crs. was fixed on 10.12.2021 and for the bid on 15.12.2021. When the Applicant made request for extension of time for payment of EMD, the same was rejected/unanswered and the Liquidator entertained the bid of M/s. Raghava Construction represented by Sri Ponguleti Prasad Reddy, who deposited Rs.50 Crs. as EMD. Here it is to note that the announcement of Bid result was not done by the Liquidator on 15.12.2021 as of his



published schedule. Rather as of the information received from the business sources, the Liquidator was engaged in doing secret meeting with M/s Raghava Constructions's representative Mr. Ponguleti Prasad Reddy till late night on 15.12.2021. There is no confirmation whether the EMD was deposited on 15.12.2021 or later which needs to be investigated. To our surprise, in this context, this was reliably learnt by a news item published in Economic Times dated 31.12.2021 and also another Telugu newspaper that the liquidator issued a demand notice to the said Sri Ponguleti Prasad Reddy requiring him to make payment within 90 days from the date of receipt of demand notice. It is also learnt through reliable sources that Sri Ponguleti Prasad Reddy is the promoter of Hyderabad based Raghava Water and Raghava Constructions and IVRCL was promoted by Sri E Sudhir Reddy and his brother Sri E Sunil Reddy. The present successful bidder Sri Ponguleti Prasad Reddy is a close relative of Sri E Sunil Reddy. It is also learnt that Sri E Sunil Reddy's daughter is married to the son of Sri Ponguleti Prasad Reddy, thus, the present bid as entertained by the 2nd respondent is impermissible and the 2nd respondent is having complete knowledge of the said fact and he violated Sec. 29A of Insolvency and Bankruptcy Act, 2016. Thus, the entire process under the 3rd Invitation for Expression of bid issued on 20.11.2021 is vitiated for deliberate violation of the provisions of 29A of Insolvency and Bankruptcy Act, 2016.

- c) That the first respondent herein owed more than Rs.14,000 Crs to the Financial and other creditors. When the first bid was called for, M/s Gabs Mega Corporation Ltd. backed out from the bid after due deliberations by writing a letter to the Tribunal as well as the liquidator that the Company's assets were overpriced by Rs.450 Crs. and it should be brought down to Rs.1200 Crs. Having rejected the request of M/s Gabs Mega Corporation Ltd. the 2nd respondent herein issued re-tender fixing



the reserve price at Rs.1600 Crs. for which M/s.Vasavi Realters took a stand that the assets were over priced by Rs.800-900 Crs. and backed out of the bid as of the wide spread messages across the business circles. Finally, the 2nd respondent accepted the price evaluation of M/s Gabs Mega Corporation Ltd. during the tender and reduced the reserve price to Rs.1200 Crs. However, 2nd Respondent enhanced the EMD to Rs.50 Crs. duly restricting the competition, when more than 12 Companies submitted their Expression of Interest earlier, because of the high pricing, requested for enlargement of time fixed for EMD for due diligence. If extension of time was considered, M/s Vishnuvallabh Infra would have quoted higher price then the Reserve Price subject to Due Diligence of IVRCL Limited making it more viable for CoC. However, the 1st respondent herein having siphoned off Rs.14,000 Crs. and other shareholders and stakeholders now fielded M/s Raghava Construction India Pvt. Ltd. which is the family business of the son-in-law of Mr. E. Sunil Reddy, the promoter and ex-Director of the first respondent. The entire process is extremely shady and Liquidator appears to be only responsible for it.

- d) That both the promoters Sri Eragam Sudhir Reddy and Mr. Eragam Sunil Reddy who are related (real brother) are actively involved in siphoning of funds in coordination with lenders. It is learnt that they are already active in their business and the siphoned money as mentioned supra was well invested for carrying out their business activities during construction and post construction activities. The third e-auction process is totally vitiated and tainted with malice and manipulation intended to help the Corporate Debtor in collusion by handing over the company to their own kith and kin in a clandestine manner. Announcement of successful bidder has not been published as per the schedule mentioned by the Liquidator and the Applicant herein, who intended to participate



in case the time fixed for EMD is extended for due diligence, came to know about the same only through the news published in the newspapers. The process of Bid was kept very secret by the 2nd respondent whereas the E-Auction notification was published.

- e) That it is disheartening to note that it is the public money that is misused and is enjoyed by the 1st respondent and the same money is reinvested to re-own the Company, without there being any competition by means of elimination of other bidders by not giving sufficient time for payment of EMD.
4. Counsel for Respondent filed counter stating as under:-
- a) That the Applicant has no locus to file the captioned Application as the Applicant has not submitted any bid for acquiring the Corporate Debtor as a going concern in liquidation.
- b) That the Applicant would have had locus to file the captioned Application if it had submitted its bid as per the Third E-Auction Process Information Document and such a bid were rejected by the Liquidator. In view of the aforesaid, I submit that the Applicant is not an aggrieved party who's bid has been rejected by the Liquidator and is approaching this Adjudicating Authority in that regard. The Applicant is merely trying to prejudice the mind of this Adjudicating Authority and delay and derail the liquidation process of the Corporate Debtor.
- c) That the present Application ought to be dismissed at the outset for being not maintainable.
- d) That the reserve price for the Third E-Auction Process was fixed at Rs.1200 Crore and EMD Amount was fixed at Rs.50 Crore after discussion and deliberation with the Stakeholders Consultation Committee ("SCC") and after considering the applicable law in this regard, more specifically Regulation 31A and Regulation 33 read with



Mode of Sale under Schedule 1 (Paragraph no.1 in Clause 4A) of the Liquidation Regulations.

- e) That the Liquidator did not extend timeline for submission of Expression of Interest ("EoI") including deposit of EMD etc., as the Applicant failed in providing necessary KYC documents and also other documents that were mandatorily required to be submitted by any prospective bidder in compliance to the pre-bid qualifications/requirements contained in the Third E-auction Process Information Document for his verification. Moreover, on the basis of the very limited documents viz. certificate of incorporation, memorandum of association and articles of association, that were submitted by the Applicant only on 06.12.2021, the Liquidator noted that the Applicant was only incorporated as recently as 08.12.2020, which clearly raised suspicion on its financial wherewithal and its ability to submit a viable bid for the purchase of the Corporate Debtor as a going concern. It is a pure conjecture when the Applicant states that if he had granted the extension, the Applicant would have quoted a higher price.
- f) That moreover, on 09.12.2021 (a day before the last date of filing documents and EMD as per Third E-Auction Process Information Document), the Applicant sought extension of time for submission of Bid and EMD till 31.12.2021, due to some "unavoidable situation". No cogent reason was given as to why was the applicant seeking extension. However, in accordance with the Third E-Auction Process Information Document, the Liquidator refused to grant any additional time to all prospective bidders to submit pre-bid qualifications /requirements documents and EMD as provided in the Third E-Auction Process Information Document, including the Applicant. In any event, the Respondent /Liquidator had received documents as were mandatorily required to be submitted by any prospective Bidder in compliance to the pre-bid qualifications/ requirements including EMD from the Successful



Bidders within timeline stated under the Third E-Auction Process Information Document.

- g) That the Liquidator received 23 EoI's from various bidders, however, except Successful Bidders, no EMD was submitted by any of other prospective Bidders. In fact, it was only the Successful Bidders who submitted their EoI along with documents in compliance to the pre-bid qualifications / requirements as well as the EMD of Rs.50 Crore, within the stipulated timeline viz. 10.12.2021, as per the Third E-Auction Process Information Document. In view of this, the Liquidator accepted the bid of the Successful Bidders in accordance with the applicable law and the e-auction process document, as their bid was compliant with the same;
- h) That M/s. Raghava Constructions (India) Private Limited ("RCIPL") did not submit its EMD or even participate in the third E-Auction Process. That as per the documents submitted by the Successful Bidders, RCIPL was merely a 'technical associate' of the Successful Bidders and that the Successful Bidders had submitted its EoI and EMD within the stipulated timelines. Thus, the averment made by the Applicant that the bid of RCIPL represented by Mr. Ponguleti Prasad Reddy was entertained by the Respondent No.2, is *ex facie* false, misleading and baseless and has not been supported by any evidence.
- i) That the Successful Bidders even submitted a disclosure affidavit on their eligibility under Section 29A of the code. Additionally, by Demand Drafts dated 09.12.2021, the Successful Bidders deposited the EMD as per the Third E-Auction Process Information Document.
- j) That the Applicant has made false, baseless and unsubstantiated allegations against the Respondent No.2, by stating that the Respondent No.2 was engaged in 'secret meeting' with RCIPL's representative i.e. Mr. Ponguleti Prasad Reddy till late night on 15.12.2021. Other than

Asst

making this bald statement, the Applicant has not provided any proof or evidence to support this allegation. For the sake of good order, the Liquidator says that he was not engaged in any such meeting and announcement of the bid result was done in accordance with the Third E-Auction Process Information Document. Thus, these unsubstantiated allegations being made by the Applicant ought not to be countenanced by this Adjudicating Authority.

- k) That it is incorrect to state that Mr. E. Sunil Reddy's daughter is married to the son of Mr. Ponguleti Prasad Reddy. The Liquidator says that Mr. E. Sunil Reddy's daughter is married to Mr. Ponguleti Prasad Reddy's – Elder Brother's Son. The Liquidator says that on 02.02.2022 when the captioned Application was listed before this Adjudicating Authority, a statement was made across the bar by the Counsel appearing on behalf of the Applicant that Mr. Ponguleti Prasad Reddy sits in the office of the Corporate Debtor on a daily basis. No proof has been provided on the same. And this statement was recorded in the order passed by this Adjudicating Authority in its Order dated 02.02.2022. Thus, these statements made by the Applicant are patently false, incorrect and erroneous.
- l) That the Successful Bidders, including Mr. Ponguleti Prasad Reddy have submitted their compliance affidavit *qua* disclosure and undertaking on eligibility under Section 29A of the Code;
- m) That pursuant to the preliminary inquiry by the Respondent No.2 it was noted that the Successful Bidders were not in violation of Section 29A of the Code;
- n) That the Liquidator has undertaken a due diligence and based on which he has arrived at the conclusion that the Successful Bidders are not ineligible under Section 29A of the Code.



- o) That even upon considering the fact that Mr. E. Sunil Reddy's daughter who is married to Mr. Ponguleti Prasad Reddy's – Elder Brother's son, it cannot be held that the Successful Bidders are barred under Section 29A of the Code.
- p) Moreover, the Applicant has provided no particulars to establish its case that the Successful Bidders are barred under Section 29A of the Code.
5. Heard. Perused the record.
6. The Applicant herein has preferred this Applications, inter-alia, seeking to stay the further proceedings and to declare the 3rd E-auction process initiated under invitation for expression of interest to submit bid in respect of sale of IVRCL Ltd under liquidation as going concern by notification dt.20-11-2021 by the 2nd Respondent herein accepting the bid of Sri Ponguleti Prasad Reddy, Promoter of M/s. Raghava Water and Raghava Constructions and directing him to deposit the balance of bid amount as arbitrary, illegal, and violative of Section 29(A) of Insolvency and Bankruptcy Code, 2016 and further seeking to direct the 2nd Respondent to issue a fresh e-auction process taking all steps germane for the purpose of perfect competition in the bidding process.
7. It is contented by the Applicant that the successful auction purchaser who has purchased the Corporate Debtor as a going concern is a related party as per Section 29A of the Code, and thus the said bid submitted by the said auction purchaser is illegal.
8. Before proceeding with the matter, it is germane herein to note the relation of the Auction purchaser herein with that of the Corporate Debtor, as alleged by the Applicant. It is stated that Sri Ponguleti Prasad Reddy is the promoter of Hyderabad based Raghava Water and Raghava Constructions and IVRCL was promoted by Sri E Sudhir Reddy and his brother Sri E Sunil Reddy. The present successful bidder Sri Ponguleti Prasad Reddy is a close relative of Sri E Sunil Reddy. It is also learnt that Sri E Sunil Reddy's daughter is married to the son of elder brother of Sri Ponguleti Prasad Reddy.



9. It is pertinent herein to quote Section 29A of the IB Code, 2016 for adjudication of the instant Application as under:-

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I— For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as



non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

(d) has been convicted for any offence punishable with imprisonment –

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(e) is disqualified to act as a director under the Companies Act, 2013;

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction,



undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation ⁸[I].— For the purposes of this clause, the expression “connected person” means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression “related party” shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares ⁴[or completion of such transactions as may be prescribed], prior to the insolvency commencement date;]

Explanation II—For the purposes of this section, “financial entity” shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;



(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government."

10. Upon comparison of the above provision of law with the alleged relationship, as levelled by the Applicant herein, it is seen that Sri Pongultei Prasad Reddy does not fall within ambit of ineligibility as per the provisions of the Section 29A of the IB Code, 2016.
11. It appears to us that the Applicant herein has moved the instant Application upon having failed to submit the requisite documents and EMD within the stipulated time and now by virtue of this Application is trying to make a back door entry by making frivolous allegations and also with an intention to stall the process of Liquidation.
12. In a nutshell, it is clear that the successful bidders are individuals and the next point is that they are not covered under Section 29A of the Code.
13. It is further seen that the Applicant herein failing to submit the requisite documents and EMD and having not participated in the Auction process, has



no *locus standi* to maintain the instant Application before this Adjudicating Authority and the instant Application is liable to be dismissed on this ground alone.

14. With the above observations, Applications bearing IA No. 51 & 52 of 2022 stand rejected. No order as to costs.



Dr. Binod Kumar Sinha
Member Technical



Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi