



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No. 82/2023 IN CP (IB) NO. 45/ALD/2019

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of:

Bankey Bihari Infrahomes Pvt. Ltd. Applicant

Versus

**Mr. Alok Kumar Kuchchal, Liquidator
Ratandee Infrastructure Private Limited**

..... Respondent

In the matter of:

Nitin Jain and others Financial Creditors

Versus

Ratandee Infrastructure Private Limited

..... Corporate Debtor

Order pronounced on 21st September, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)



Appearances:

Sh. Pranav Gupta alongwith Ms. Babita Jain, Adv.
: For the Applicant in IA No. 82/2023

ORDER

1. This Application was filed under section 60(5) of the IBC, 2016 r/w rule 11 of the NCLT Rules, 2016 to allow re-auction of the Corporate Debtor and remove liquidator on ground of non-disclosure of his relation with suspended director's family. The Applicant is seeking the following relief from this Tribunal:-

“.....

In the circumstances set forth above, it is therefore, most respectfully prayed that your lordships may graciously be pleased to:

(A) Allow the present Application and issue appropriate order(s)/ direction(s) for a fresh auction qua the assets of the Corporate Director. and/or;

(B) Allow the present Application and issue appropriate order(s)/ direction(s) for the removal of Liquidator.

(C) Allow the Applicant to participate in the fresh auction qua the assets of the Corporate Director.

(D) Pass such other and further orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.

.....”



2. It is contended by the Applicant that Liquidator/Respondent proceeded with auction of assets and dissolution of the corporate debtor without considering the revival of the corporate debtor as a going concern, which in view of the applicant, could have been revived through a successful resolution plan or considering the scheme under section 230 of the Companies Act, 2013. In the opinion of the applicant, the present market value of the assets under reference of the corporate debtor is about Rs. 12 to 15 crore and it was willing to pay Rs.11.48 crores. It is pointed by the applicant that the scheme earlier submitted by it, has been purported to make provision for payment of Rs.12.48 crores to stakeholders, wherein a major portion of the payments are meant for creditors whose claims are either not accepted in the CIRP or who are related parties of the Corporate Debtor. However, the Liquidator/Respondent had accepted the e-auction bidding of Rs. 7.45 crores of the sole bidder i.e. AKJ Realtech Private Limited. The said amount is pointed out by the applicant being 40% less than the amount offered by the Applicant in the Scheme, and hence, in view of the applicant, the bid amount is against the concept of maximization of assets to be achieved for welfare of stakeholders/creditors/homebuyers. By pointing out the said bid



value being much lesser than the value of scheme offered by the applicant, it has been contended by the applicant in the application that the Liquidator/Respondent violated the settled procedure as enshrined under the IBBI (Liquidation Process) Regulations, 2016 and thus, he conducted the entire resolution as well as the e-auction process in a highly prejudicial manner because as alleged by the applicant that the Liquidator himself was a related party to the Corporate Debtor. In this regard, the applicant provided certain details to show the relation of the Liquidator with Corporate Debtor.

3. As stated by the applicant that the Respondent Liquidator and his associate-Chanchal Yadav were during CIRP period holding a position as a director in the Silvertan Papers Limited since 30.09.2020 which is run by Mr. Praseon Agarwal who is son of Mr. Surendra Agarwal (Ex- Director of Corporate Debtor), thereby violating Regulation 3(1) of IBBI (Liquidation Process) Regulations, 2016, which prohibits an Insolvency Professional from being appointed as a Resolution Professional or Liquidator of a Corporate Debtor, if he is not independent of the Corporate Debtor. Copy of MCA Data of the Respondent and MCA Data of



Silvertoan Papers Limited has been annexed as **Annexure-1 and Annexure-2** with the Application.

4. The Applicant further stated that Liquidator/Respondent failed to disclose the fact that he is related party to the corporate debtor, which is also in violation of IBBI (Liquidation Process) Regulations, 2016.

5. Applicant further contends that the Liquidator failed to upload the list of creditors on the website of IBBI which is violation of IBBI Circular bearing no. IBBI/LIQ/40/2021 dated 29.03.2021 and also Regulations 31(5) (d) of the IBBI (Liquidation Process) Regulations, 2016.

6. Citing the above details brought before us by the applicant in its application and also argued by its Ld. Counsel during hearing, it is contended that in the whole process, the interests of the Applicant as well as Financial Creditors (home-buyers/stakeholders) have been kept in abeyance by the Liquidator/Respondent herein and therefore, it is pleaded that a fair and reasonable price-discovery of the assets of Corporate Debtor could be ascertained and a genuine value of the assets can be generated only when a fresh auction of the assets of the Corporate Debtor is initiated.



7. Apart from alleging the Liquidator being a related party to the Corporate Debtor, it is also mentioned in the application that M/S AKJ Reatech Private Ltd. declared at a bid value of Rs.7.45 crore as Successful Auction Purchaser, is the sole bidder defeating any possibility of giving any opportunity to any other bidders who could bid an amount higher than the successful bidder and hence, as viewed by the applicant that the present auction carried out by the liquidator is against the settled purpose of the code as well as several judgments of the court that the liquidation process should be focused upon the maximization of assets in the interest of the stakeholders/homebuyers/creditors. It is also pointed out that the final bid value of Rs.7.45 crore is almost Rs.3 crore less than the total admitted debt on Corporate Debtor as per the information available on the IBBI web portal at Rs.10,68,59,838/-. Therefore, in view of the applicant, the auction carried out by the Liquidator & amount proposed in the bid by M/S AKJ Realtech Pvt. Ltd. (the sole bidder) are against the mandate of IBC Code.

8. Judgment of the Hon'ble Supreme Court in case of **Swiss Ribbons Private Limited v. Union of India (2019) 4 SCC 17** is cited taking a plea that vital aim of the IBC, 2016 is maximization



of value. The relevant part of this judgment is reproduced as under:-

“.....

11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme - workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment.

.....”



9. The Applicant has further relied on the judgement of the Hon'ble NCLAT in case of ***Binani Industries Ltd Vs. Bank of Baroda & Another [CA (AT) (Ins) 82/2018 & Others]***, wherein it has been held that the first order objective of the IBC is resolution, the second order objective is maximization of the value of assets of the firm, and the third order objectives are promoting entrepreneurship, availability of credit, and balancing the interests of stakeholders. This order of objectives is sacrosanct. Citing this judgment, the applicant submitted that the market value of the land of the Corporate Debtor offered under auction to the Successful Auction Purchaser having area of 3700 sq. mtr., has far more market value than the amount proposed in the bid by the Successful Auction Purchaser, M/S AKJ Realtech Pvt. Ltd. In view of these facts and legal position as brought before us by the applicant, a fresh auction qua the assets of the Corporate Debtor has been requested to be conducted in the interest of homebuyers and other creditors of the Corporate Debtor.

10. The applicant cited another case law in the matter of ***M/S Rimjhim Inspal Ltd. & Anr. Vs. Jindal Stainless Ltd. Company Appeal (AT) (Insolvency) No.1212-1213 of 2022*** in which, the Hon'ble NCLAT in its order dated 21.10.2022 upheld the order



passed by the Adjudicating Authority giving fresh opportunity to the Appellants and Respondents and other two bidders to participate. The relevant part of the decision is reproduced as under.

“31. We thus are of the view that Adjudicating Authority did not commit any error in passing the Impugned Order. The Impugned Order gives an opportunity to both Appellants and Respondent-Jindal Stainless Limited and other two bidders to participate and Adjudicating Authority has also put condition to deposit Rs. 50 Crores by the Jindal Stainless Limited to ensure the bona fide as a pre deposit of the Jindal Stainless Limited, we thus do not find any good ground to interfere with the Impugned Order in exercise of our Appellate Jurisdiction”

11. Similarly, in the case of **Jindal Stainless Limited v. Mr. Harish Chandra Arora (I.A. 4489 (PB) /2021)**, the Hon'ble NCLT Principal Bench, New Delhi allowed another auction to take place, where M/s Jindal Steels proposed to be a bidding party subject to pre-depositing of certain amount, failing which the Liquidator has the authority to confirm the sale to the highest successful bidder.

12. Citing the above two judgments, the applicant proposed to bid an offer value of more than Rs.11,00,00,000/- (Rupees Eleven Crore) for the auction of the Corporate Debtor, greater than what



was offered by the successful bidder, M/S AKJ Realtech Private Ltd. i.e. Rs.7.45 crore (Rupees Seven Crores Forty Five Lakhs). It is also proposed that if this Tribunal allows and admits the accompanying application for fresh auction to take place in pursuit of an opportunity to the applicant to be a part of the bidding process, the applicant is ready to deposit Rs.2,00,00,000/- (Rupees two crores) as bid amount to show its bonafide in the bidding process. It is also emphasized by the applicant in order to prove its bonafide that it will not bid any amount less than Rs.10 crore, if fresh auction of the Corporate Debtor is allowed and further went on to undertake that in case if it fails to participate in the bid or makes a bid amount of less than Rs.11 crore, the above demand draft of the amount of Rs.2 crore to be forfeited.

13. Presenting the facts and circumstances of the case as discussed in aforesaid paras, a strong argument has been put up by the Ld. Counsel of the applicant for initiating a fresh auction of the Corporate Debtor's assets taking a plea that this action would be in the best interest of homebuyers and other creditors, ensuring a fairer and more equitable outcome.

14. It is also argued that the primary concern is to maximize returns for all stakeholders and adhere to the principles of fairness



and transparency laid out in the IBC. A fresh auction process can facilitate competitive bidding and potentially lead to a more favorable outcome for everyone involved. As per the applicant, the balance of convenience lies in favour of the applicant herein and no harm or prejudice will be caused, if the instant application is allowed.

15. Under the facts and circumstances as discussed above, the applicant finally prayed to order for a fresh auction qua the assets of the Corporate Debtor, order to removal of the present Liquidator and allow the applicant to participate in the fresh auction qua the assets of the Corporate Debtor.

16. Ld. Counsel for the Liquidator and Liquidator himself present during the hearing from time to time countered all the contentions of the applicants as discussed above. The Liquidator as well as his Ld. Counsel referred to the facts as enumerated in the IA No.193/2022 filed by the Liquidator seeking confirmation of liquidation process, which was earlier stayed by this Tribunal on filing of another IA No.177/2022 by a creditor, Mr. Prince Jain challenging the auction process in the similar manner as it is challenged in the instant IA. The Liquidator and his Ld. Counsel also referred to the various details and facts discussed in the



counter affidavit filed to IA No.177/2022 in order to show that auction was conducted in a legal manner by following all procedures and processes as prescribed in the provisions of IBC, 2016 and regulations of IBBI (Liquidation Process) Regulations, 2016.

17. The Ld. Counsel of the Liquidator explained the entire background of the case by taking us through the earlier orders passed by this Tribunal in IA No.154/2022, then by the Hon'ble NCLAT on appeal and thereafter, by the Hon'ble Supreme Court on filing of Civil Appeal in respect of the matter relating to challenging the initiation of auction process vide notice dated 19.05.2022 in this case, which was finally concluded on 06.06.2022.

The same applicant who has filed this IA has earlier filed IA No.154/2022, praying this Tribunal to order the Liquidator for considering the scheme of compromise and Arrangement proposed by the applicant u/s 230 of the Companies Act, 2013 for approval and to grant an interim injunction against the sale of the assets of the Corporate Debtor under auction initiated by the Liquidator vide notice dated 19.05.2023 till the scheme of compromise is approved. Against IA No.154/2022, this Tribunal passed order dated 01.06.2022 holding that no merit is found in the IA



No.154/2022 filed by the applicant to intervene at that time as the object of maximization of value of assets can be achieved during liquidation process also. It is also made clear in the said order that the Liquidator shall act with a view to maximize the value of the Corporate Debtor and in case the value offer in auction is found to be below the value offered made by the applicant (the same one who filed this application) herein, the auction process may be reinitiated.

The order dated 01.06.2022 of this Tribunal was challenged by this applicant in an appeal filed on 17.06.2022 before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi, filed as ***Bankey Bihari Infrahouse Pvt. Ltd. vs. Mr. Alok Kumar Kuchhal & Anr. Company Appeal (AT) (Insolvency) No.718/2022*** interalia praying to set-aside and/or modify the order dated 01.06.2022 passed by this Tribunal, to stay sale, if any, which concluded on 06.06.2022 in terms of the e-auction dated 31.05.2022 published on 01.06.2022 (*Earlier e-Auction Notice dated 19.05.2022 fixing the date of sale on 02.06.2022 was postponed to 06.06.2022 by another E-Auction Notice 31.05.2022*), by the Liquidator and also to direct the Liquidator to take into consideration the Scheme of Compromise and Arrangement of the



applicant before the Creditors/Stakeholders Consultation Committee of Corporate Debtor in transparent manner. Against the above appeal filed by this applicant, the NCLAT passed order dated 06.12.2022 holding clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA No.154/2022 by the impugned order, allowing the liquidator to proceed with the e-auction and not allowing any more time for consideration of the scheme proposed u/s 230 of the Companies Act, 2013 and therefore, appeal of the applicant is dismissed. The said scheme of compromise and arrangement proposing to investment Rs.12.48 crore is very much emphasized in this application to show the applicant being ready to pay amount of Rs.10 crore at one place and then Rs.11 crore at other place in the averments made in the instant application. However, it has been noted that this entire scheme has already been examined by the Hon'ble NCLAT while disposing off the appeal against the order dated 01.06.2022 of this Tribunal on IA No. 154/2022 and held in the appeal order dated 06.12.2022 that the Adjudicating Authority provided reasonable and sufficient opportunity to the applicant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the applicant was prima-



facie found to inflate the total payments by provisioning payments to creditors who are either related to the Corporate Debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction. Thus, it can be seen that value the Corporate Debtor claimed by the applicant to be in the range of Rs.10-12 crore in the Scheme of Compromise and Arrangement, has not been found to be credible by the NCLAT.

Being aggrieved by the order dated 06.12.2022 passed by the Hon'ble NCLAT, New Delhi, this applicant filed a Civil Appeal before the Hon'ble Supreme Court filed as ***Bankey Bihari Infrahomes Private Limited vs. Mr. Alok Kumar Kuchhal, Liquidator, Ratandeep Infrastructure Private Limited Civil Appeal No.125 of 2023***. After filing of the said appeal before the Hon'ble Apex Court, M/S Savita Housing India Private Limited filed I.A. NO.27202 of 2023 and IA No.27204 of 2023 for impleadment in the CA No.125 of 2023 filed by the applicant, praying for order to direct the liquidator to hold a fresh bidding auction of the Corporate Debtor allowing it to participate in fresh auction. Subsequently, certain group of homebuyers filed I.A. No.26568 of 2023 and I.A.



No.26569 of 2023 for seeking impleadment in the CA No.125 of 2023 seeking direction for a fresh auction qua the assets of the Corporate Debtor and also to issue appropriate order for the proper resolution and revival of the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016. After considering these appeal and impleadment applications and considering the request of one applicant to participate in auction process, the Hon'ble Apex Court vide order dated 17.01.2023 directed the Appellant (applicant in this IA) to deposit the sum of Rs.12 crore as raised under the scheme of Compromise and arrangement within the period of 15 days by observing in the said order as under:-

“We have heard learned counsel of the appellant for sometime the inception. We put to learned counsel for the appellant whether the appellant is willing to upfront deposit a sum of Rs.12.48 crores which is the amount he claims he is willing to deposit under the scheme in order to further proceed in the matter.

We passed over the matter once and called it a second time in the post lunch session when learned counsel for the appellant stated that he would obtain instructions and the amount of Rs.12.48 crores would be deposited with the Liquidator within a period of 15 days from today.



We put to notice the parties that if the aforesaid amount is deposited we may consider issuing the following directions:-

- (a) For the Liquidator to examine the scheme proposed by the appellant.*
- (b) In case, ultimately the appellant succeeds, to compensate the auction purchaser with appropriate interest on the 25% amount deposited by him.*
- (c) Not calling upon the auction purchaser at this stage to deposit the balance 75% amount but keeping his option to purchase open.*

List on 7th February, 2023.

We make it clear that no request for extension of time to deposit the aforesaid amount shall be entertained.”

However, the applicant failed to deposit Rs.12.48 crore within stipulated time and hence, the Hon’ble Apex Court vide its final order dated 07.02.2023 dismissed the appeal filed by the appellant (applicant in this order). The impleadment applications filed by the Company M/S Savita Housing Private Limited and homebuyers seeking for a fresh auction, have also been dismissed by the common order. This order is reproduced as under:-

I.A. (Dy.) No.27202/2023 and I.A. (Dy.) No.27204/2023

Applications are taken on board.



Learned Counsel for the applicant urges that he did not participated in the auction because somehow he missed out on the auction but he is willing to pay more. There is hardly a reason for the applicant to intervene.

Applications stand dismissed.

I.A. No.26569/2023 and I.A. No.26573/2023

These applications are by the home buyers who claim that the process is carried out in a hurry therefore the actual price is not being realized.

Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC).

Applications stand dismissed.

18. Ld. Counsel for the Liquidator presented chart before us showing that similar grounds as raised in the instant application were raised earlier in the application and appeals discussed in previous para and these grounds are already decided at higher judicial forum. This chart is reproduced below:-

AVERMENTS MADE BY THE APPLICANT BEFORE THE DIFFERENT JUDICIAL FORUMS		
I.A. No. 154 of 2022- NCLT	CA (AT) (Insl.) No. 718 of 2022- NCLAT	Civil Appeal No. 125 of 2023 Supreme Court
<i>That in response to the applicant's email dated 21st May 2022, on 24.05.2021 the Liquidator assigned the reasons for the delay to the</i>	<i>The requisite information were provided on 29th April, 2022, however there has been discrepancy in List of Creditors provided to the Appellant vide email</i>	<i>Only on 04.05.2022, the Respondent No.1/Liquidator provide the Appellant with the list of creditors which was crucial</i>



<p>Applicant and leveled allegation on the applicant that the applicant's emails are being sent to gain time ignoring the fact that it is the Applicant who is making all the efforts. It is further stated that in the said letter the respondent has attempted disregard the discrepancies in the list of Claim/stakeholders to Copy of the email of the respondent no 1 is attached herewith as Annexure -5.</p>	<p>dated 04.05.02022, in connection with the Email dated 21st May, 2022 was sent to In connection with which had not been replied so far,</p>	<p>in forming and preparing the scheme. However, the said list of creditor also had various discrepancies.</p>
<p>That it is further submitted that the List of Creditors has not been uploaded on IBBI website so far which is clear contravention of Liquidation of IBBI Circular No IBBI/LIQ/40/2021 dated 4th March, 2021, which was further modified in Nov 2021, accordingly In pursuance of clause (d) of sub-regulation</p>	<p>That it is further submitted that the List of Creditors has not been uploaded on IBBI website so far which is clear contravention of Liquidation of IBBI Circular No IBBI/LIQ/40/2021 dated 4th March, 2021, which was further modified in Nov 2021, accordingly in pursuance of clause (d) of sub-regulation (5) of regulation 31 of the IBBI (Liquidation</p>	<p>The list of creditors has not been uploaded on the IBBI website. The Appellant had been approached by one set of homebuyers and submitted its proposal which is almost twice the reserve price. All the actions of the liquidator are in gross violation of the provisions of law.</p>



<p><i>(5) of regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) requiring the liquidator to file list of stakeholders on the electronic platform of the Board for dissemination on its website directing the liquidators to file the list of stakeholders and modification thereof, in the stipulated format, on the electronic platform, www.ibbi.gov.in.</i></p>	<p>Process) Regulation, 2016 ('Liquidation Process Regulations') requiring the liquidation to file list of stakeholders on the electronic platform of the Board for dissemination on its website directing the liquidators to file the list of stakeholders and modification thereof, in the stipulated format, on the electronic, platform, www.ibbi.gov.in</p>	
<p><i>Direct the respondent No 1 to place the Scheme of Compromise and Arrangement of the Applicant before the Creditors/ Stakeholders Consultation Committee of M/s Ratandeeep Infrastructure Private Limited;</i></p>	<p>That the Ld. NCLT, Allahabad passed the order dated 01.06.2022 mechanically and disposed off the application filed by the appellant without even seeking reply from the respondent /liquidator to the glaring points raised in the IA 154 of 2022 filed by the appellant and the Ld. NCLT Allahabad failed to grant any opportunity to the stakeholder to avail the benefit of the scheme</p>	<p><i>The Appellant had submitted his Scheme of Compromise and Arrangement with the Respondent No.1 /Liquidator pursuance to the provision of Insolvency and Bankruptcy Code, 2016 read with Companies Act, 2013. It is pertinent to note that the scheme submitted by the Appellant herein purports to make</i></p>



	<p>proposed by the appellant which was not placed before the stakeholders. The Ld. NCLT, Allahabad failed to appreciate that the delay in submission of the scheme was attributable to the Respondent/Liquidator and delay if any, for submission for scheme was condonable and the Ld. NCLT, Allahabad made a grave error in passing the impugned order which is against the very objective and scheme of the code to run the company as a going concern, hence the present appeal.</p>	<p><i>provision for payment of Rs.12.48 crores to the stakeholders, but a major portion of payments are meant for creditors whose claims were either not accepted in the CIRP or who are related parties of the corporate debtor. However, the Liquidator has in turn accepted thee-auction by Respondent No.2 for a much lesser and almost 40% lesser price i.e. for Rs. 7.45 Crores. A true copy of the Scheme of Compromise and Arrangement dated 24.05.2022 submitted by the Appellant to the Respondent No. 1/Liquidator is annexed herewith and marked as ANNEXURE A-8 (Page No. 72 to 115)</i></p>
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19. The Ld. Counsel for the Liquidator also argued that it is significant to highlight here that prayer sought by the applicant is



similar to the prayer sought by the home buyers in the I.A filed by the set of home buyers before the Hon'ble Supreme Court of India.

This is shown in the chart below:-

Prayer in I.A 82 of 2023	Prayer in I.A filed by the Home Buyers- I.A. No.26569/2023 and I.A. No. 26573/2023
<i>A) Allow the present Application and issue appropriate order(s)/direction(s) for a fresh auction qua the assets of the Corporate Director. and/or; (B) Allow the present Application and issue appropriate order(s)/direction(s) for the removal of Liquidator. (C) Allow the Applicant to participate in the fresh auction qua the assets of the Corporate Director.</i>	<i>a) Allow the present Application and issue appropriate order(s)/direction(s) for a fresh auction qua the assets of the Corporate Debtor and/or; b) Allow the present Application and issue appropriate order(s)/direction(s) for the proper resolution and revival of the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016 and/or</i>

20. The relevant part of the order dated 06.12.2022 of the NCLAT upholding the order dated 01.06.2022 passed by this Tribunal in respect of IA No.154/2022 earlier filed by this applicant as discussed in previous para no.17 of this order, is reproduced as under.

“20. It is noted that the CIRP of the corporate debtor was initiated with appointment of Interim Resolution Professional (IRP) on 16.4.2019. Since no resolution plan could be obtained in the CIRP, the CoC in its 6th meeting



decided for liquidation of the corporate debtor, and the application for liquidation was filed before the Adjudicating Authority on 6.2.2021. It is further noted that while this application for liquidation was under consideration of the Adjudicating Authority, Mr. Rakesh Kumar Agarwal showed interest for the first time in submitting a resolution plan through his company AIG Infratech Private Limited in April, 2021 and as the Resolution Professional (in short 'RP') showed his inability to accept such a plan for consideration, Mr. Rakesh Kumar Agarwal director of the AKJ Realtech Private Limited filed IA No. 220/2021 seeking directions for submission and consideration its resolution plan. This IA 220/2021 was dismissed by the Adjudicating Authority on the ground that no useful purpose would be served in considering the request of the Applicant, when the CoC had already resolved to liquidate the corporate debtor. Thereafter, liquidation of the corporate debtor was ordered and it commenced on 31.1.2022.

21. It is further noted that while the liquidation process was on, Mr. Rakesh Kumar Agarwal again filed IA 115/2022 through the company Bankey Bihari Infracomes Private Limited (Appellant in the present appeal), in which he is a director seeking directions of the Adjudicating Authority for submission of a scheme of compromise and arrangement with respect to the corporate debtor on 7.4.2022. This IA 115/2022 was disposed of vide order dated 13.4.2022 with a direction to the Liquidator to consider the scheme and



a time period of three weeks from the date of order was allowed for submission of the scheme and decision thereon.

22. It is further noted that, thereafter, a series of e-mails were exchanged between Mr. Rakesh Kumar Agarwal and the Liquidator, starting with e-mail dated 20.4.2022 whereby Mr. Rakesh Kumar Agarwal requested certain information relating to claims from the Liquidator in order to prepare the scheme of compromise and arrangement. After a confidentiality undertaking was provided by the Appellant, a list of claims was provided to Mr. Rakesh Kumar Agarwal, the Appellant submitted a scheme to the Liquidator vide e-mail dated 24.5.2022.

23. It is relevant to note that the three weeks' time granted by the Adjudicating Authority for submission of the scheme of compromise and arrangement by the Appellant expired on 4.5.2022, and in view of complete silence on the part of Appellant since 2.5.2022 regarding submission of the scheme, the Liquidator was proceeding with the e-auction process. It was only on 21.5.2022, nineteen days after the last e-mail communication from Mr. Rakesh Kumar Agarwal to the Liquidator that Mr. Rakesh Kumar Agarwal sent an e-mail to the Liquidator, seeking more time for finalisation of the scheme.

24. It is also noticed that when the Appellant did not submit the scheme of compromise and arrangement within the allotted three weeks' time, which expired on 4.5.2022, the Liquidator issued a public notice on 20.5.2022 for auction



of the land property of the corporate debtor namely, land admeasuring 3542 sq. m. located in GH Plot No. 2 in “Jaipuria Sunrise Greens” Township, Bamheta, Ghaziabad.

25. The Appellant submitted the said scheme after considerable delay on 24.5.2022, and thereafter he filed IA 154/2022 on 25.4.2022 for staying the auction process and directing the Liquidator to place the scheme before the Stakeholders Consideration Committee for consideration. This IA 154/2022 was dismissed vide the Impugned Order. The relevant part of the order is as follows:-

“10. Considering this fact, we do not find any merit to intervene as of now as the object of maximization of value of assets can be achieved during the liquidation process also. We also make it clear that the Liquidator shall act with a view to maximize the value of the corporate debtor and in case the value offer is found to be below the value offered made by the applicant herein, the auction process may be reinitiated.

11. With these directions, this application stands disposed of in terms indicated above.”

26. A perusal of the order of the Adjudicating Authority dated 1.6.2022 shows that the Adjudicating Authority, after considering the past proceedings in the liquidation process and also the inability of the Appellant to submit a scheme of compromise and arrangement in the given time of three weeks from 19.4.2022, ordered that the e-auction process may be continued. The Adjudicating Authority further ordered that if the Appellant offers a better value for the land of the corporate debtor than what is discovered in the e-auction, the e-auction could be reinitiated.



27. A perusal of the series of events during the liquidation process makes it clear that the Appellant, through Mr. Rakesh Kumar Agarwal, made an attempt through the company AIG Infratech Private Limited to submit a resolution plan much after the CoC had decided to liquidate the corporate debtor and the application for liquidation has been filed by the Resolution Professional before the Adjudicating Authority. This IA 220/2021, was filed in July, 2021 through the company AIG Infratech Private Limited for seeking order to submit a resolution plan, was dismissed by the Adjudicating Authority on the ground that “no useful purpose would be served in keeping IA 220/2021, when the COC had already resolved to liquidate the Corporate Debtor.”

28. Thereafter, after the commencement of liquidation process vide order dated 31.1.2022, Mr. Rakesh Kumar Agarwal again sent a letter to the Liquidator on 3.3.2022, after passage of more than one month from the date of commencement of liquidation requesting to submit a scheme of compromise and arrangement, and upon the Liquidator expressing inability to accept such a scheme in view of the commencement and progress of liquidation, Mr. Rakesh Kumar Agarwal filed IA 115/2022 through another company ‘Bankey Bihari Infrahomes Private Limited’ seeking permission of the Adjudicating Authority for submission of a scheme of compromise and arrangement. This interlocutory application was disposed of by the



Adjudicating Authority vide order dated 13.4.2022 with the following observations: -

“This is an application filed by the “Bankey Bihar Infrahomes Private Limited” seeking a direction to the liquidator to consider the scheme propounded by the Applicant herein.

Ms. Babita Jain, learned counsel for the Applicant present. Ms. Snehal Sharda, learned counsel appearing on behalf of the liquidator present.

The liquidator is expected to act in accordance with the Liquidation Process Regulations. The decision on the proposed scheme be taken within a period of three weeks’ from today. No other directions are called for in IA No. 115/2022 and hence the same shall stand disposed.”

29. It is noted that after exchange of a number of e-mails between the Appellant and the Liquidator, starting with e-mail dated 20.4.2022, the Appellant finally submitted the requisite scheme vide e-mail dated 24.5.2022 (The e-mails exchanged between the Appellant and the Liquidator are attached at pp. 98-122 of the appeal paperbook). It is noted when the information regarding claims which was sought by the Appellant was provided by the Liquidator vide e-mail dated 4.5.2022 (attached at pp. 103-104 of the appeal paperbook), the Appellant forwarded the confidential information to erstwhile directors of the corporate debtor, which was in breach of the confidentiality undertaking provided by the Appellant.

30. The Liquidator, on not receiving no further information from the Appellant about submission of the scheme of compromise and arrangement after his e-mail dated



2.5.2022, and when the three weeks' time starting from 13.4.2022 granted by the Adjudicating Authority had expired on 4.5.2022, proceeded to publish the auction notice on 20.5.2022.

31. It appears that on publication of this auction notice, the Appellant sent an e-mail dated 21.5.2022 seeking more time for submission and finalization of the scheme on which the Liquidator expressed his inability to provide more time vide e-mail dated 24.5.2022. The Appellant, thereafter, submitted the requisite scheme to the Liquidator on the evening of 24.5.2022 and immediately thereafter filed IA 154/2022 before the Adjudicating Authority requesting for stay of the auction process and directions to place the proposed scheme before the Stakeholders Consultation Committee.

32. The above-stated actions of Mr. Rakesh Kumar Agarwal make it absolutely clear that he, through different corporate entities, has attempted to intervene in the process of liquidation by filing the three interlocutory applications viz. IA 220/2022, (which was dismissed by the Adjudicating Authority), IA 115/2022 and IA 154/2022. We also note that Mr. Rakesh Kumar Agarwal in utter disregard to the confidentiality agreement provided to the Liquidator to keep the information supplied to him by the Liquidator confidential, went ahead and shared such information with the counsel of Mr. Prince Jain, a creditor whose claim was not admitted during CIRP of the corporate debtor.



33. We also note that the Liquidator and the Adjudicating Authority have with due regard to fairness, natural justice and in consonance with the objectives of IBC, provided an opportunity through order in IA 115/2022, giving three weeks' time for the submission and decision on the purported scheme of compromise and arrangement as claimed by the Appellant which the Appellant failed to do in the time limit provided and was, thus, unable to establish his bonafide about his seriousness in proposing such a scheme. This has to be seen in the context of the fact that the liquidation order was passed on 31.1.2022, and that the prescribed time period for completing liquidation process was substantially over by this time.

34. Thus, in view of the fact that the Appellant neither submitted the scheme of compromise and arrangement within the stipulated time which was upto 4.5.2022 nor did he inform the Liquidator about the delay in submitting the scheme or seek any extension of time limit from the Adjudicating Authority, the intention and seriousness of the Appellant in submitting a scheme as prayed by him appears to be doubtful.

35. In view of the above-stated situation and the turn of events, we are of the clear opinion that the Liquidator, being duty bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations when the purported scheme was not submitted in three weeks, acted quite



appropriately and in consonance with the provisions of law by issuing the auction notice dated 19.5.2022 which was published in newspapers on 20.5.2022. The submission of the said scheme by the Appellant on 24.5.2022 after a delay of twenty days and the filing of IA No. 154/2022 on 25.5.2022, should therefore, be viewed in this context. The order of the Adjudicating Authority dated 1.6.2022 in IA 154/2022, whereafter a fresh auction notice was published by the Liquidator are also events that follow the correct course as stipulated in the liquidation process of the corporate debtor.

36. We now turn our attention to the features of the scheme submitted by the Appellant, albeit after much delay, to understand whether the Appellant was interested in providing a credible scheme of compromise and arrangement.

37. A perusal of the scheme (attached with the Affidavit of the Liquidator, filed vide Diary No. 40689 dated 1.11.2022) tells us that the total payments proposed to all the stakeholders is provisioned at Rs. 11,48,56,758. This amount includes a figure of Rs. 1.5 crores for payment to the creditors whose claims were not admitted by the RP during CIRP. Another amount of Rs. 1.32 crores has been provisioned for payment to other creditors/stakeholders, unsecured financial creditors who are related parties and other



creditors/stakeholders. Thus, an amount of approximately Rs. 2.82 crores is proposed as payment to creditors, who may not be entitled to any payment in the liquidation process of the corporate debtor or would come lower down in 'waterfall mechanism' and may not even get such large payments. Further the very important financial creditors in class, who are 33 homebuyers in number and have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor, are proposed to be paid within 90 days from the date of approval of the scheme whereas other creditors are to be made 100% payments irrespective of whether their claims are admitted or not by the Liquidator. The flats are supposed to be completed in 24 months and provided to the homebuyers against their claims filed with the Liquidator. It is not at all clear as to how the homebuyers who have only paid part of the total cost will be treated and whether they will be required to pay any extra amount and what would be its quantum.

38. It is, therefore, noted that the purported scheme proposes to make payments to a number of related parties/unsecured creditors/not submitted claims upto an extent of 100% of admitted claimed amounts. Another issue in the proposed scheme is that it proposes to make payments within 90 days of approval of scheme whereas in the event of auction-



sale the payments would be made promptly to claims in accordance with the ‘waterfall mechanism’ under section 53 of IBC.

39. The Learned Counsel for Appellant has cited the judgments of this Tribunal in the matters of S.C. **Sekaran vs Amit Gupta & Ors. [CA (AT)(INS) 495-496/2018]** and **Y. Shivram Prasad vs. S. Dhanapal & Ors. [CA(AT)(Ins) 224/2018]** wherein the Tribunal held that steps should be taken for the revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from corporate death by liquidation. We distinguish this judgment on the ground that while it affirms the spirit and ethos of the IBC in that “the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation”, and also “even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern” but it doesn’t hold that the any scheme of compromise or arrangement if proposed in breach of regular timelines of the liquidation process has to be necessarily considered.

40. We also note that only 33 allottees have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor which means that, on an average, each allottee has claimed Rs. 8.10 lakhs. Considering this full amount to have been used for construction of flats, it is quite understandable that the level of



construction would not be significant. How then the Appellant, as proponent of the scheme of compromise and arrangement, proposes to bring in additional funds to complete construction and how he will bring in the extra funds is unclear on a deeper examination of the scheme. The said scheme, therefore, appears to be a 'fictional one' ostensibly to appropriate the land to the benefit of a select few who are related parties of the corporate debtor.

41. Both the Learned Counsel for Appellant and the Learned Counsel for Respondent No. 2 have cited the judgment of Hon'ble Supreme Court in the matter of Arun Kumar Jagatramka vs. Jindal Steel and Power Limited & Anr. [(2021) 7 Supreme Court Cases 474] in support of their rival contentions with regard to any ineligibility that would attach to the Appellant in providing a scheme of compromise and arrangement under section 230 of the Companies Act, 2013 with reference to section 29-A of IBC which pertain to ineligibility of related persons to submit resolution plan and section 35(1)(f) of IBC, which is a provision applicable during liquidation. It is instructive to have a look at the relevant portion of the Arun Kumar Jagatramka judgment (supra), which is as hereunder:-

“71.....In the context of the statutory linkage provided by the provisions of Section 230 of the 2013 Act with Chapter III IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be farfetched to hold that the ineligibilities which attach under Section 35(1)(f)



read with Section 29-A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

72. An argument has also been advanced by the appellants and the petitioners that attaching the ineligibilities under Section 29-A and Section 35(1)(f) IBC to a scheme of compromise and arrangement under Section 230 of the 2013 Act would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the 2013 Act. We find no merit in this contention. As explained above, the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the 2013 Act, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally.”

42. A perusal of the above-mentioned observation in the Arun Kumar Jagatramka judgment (supra) makes it very clear that the promoter or those in the management of the company under liquidation cannot be allowed a ‘backdoor entry’ into the company and hence, would be considered ineligible to submit a proposal under section 230 of the Companies Act, 2013. When we view the continuous efforts of Mr. Rakesh Kumar Agarwal in seeking to



‘takeover’ the corporate debtor through various stratagems, and also the finding that he is in ‘collusion’ or acting in concert with the erstwhile management of the corporate debtor, the motive or intention in putting forward a useless scheme of compromise and arrangement in respect of the corporate debtor becomes seriously doubtful. The observation of Hon’ble Supreme Court regarding ‘backdoor entry’ in the corporate debtor by the erstwhile management then appears to be a very distinct, something that we should not disregard. In this background, the judgment of this tribunal in the matter of Y. Shivram Prasad (supra) should also be viewed, so that following such a judgment should not lead to undesirable consequences as are pointed out in the Arun Kumar Jagatramka Judgment (supra) of Hon’ble Supreme Court.

43. *The Learned Counsel for Appellant has also cited the judgment of this Tribunal in the matter of **Punjab National Bank vs. EVA Agro Feeds Pvt. Ltd. & Anr. [CA(AT)(INS.) No. 757 of 2021]**, wherein it is held that “the successful bidder in the auction sale does not acquire any vested right in law to enforce the auction.” We are conscious of the fact that the issue in this appeal is not about any right of the successful bidder, but where the Adjudicating Authority has considered all the related facts and circumstances concerning the request of the Appellant in proposing a scheme of compromise and arrangement, and thereafter*



passed an order which balances the liquidation process with the need to avoid liquidation of the corporate debtor. This judgment, therefore, does not support the case of the Appellant.

*44. The Senior Learned Counsel for Respondent No. 2 has adverted to the judgment of the Hon'ble Supreme Court in the matter of **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. [(CoC), (2022) 2 SCC 401]**, wherein it is held that the “if the CIRP is not completed within the prescribed timeline, the corporate debtor is sent into liquidation.....We cannot afford to be swayed by abstract conceptions of equity and ‘contractual freedom’ of the parties.” **We note that the Adjudicating Authority in the present case has struck a fine balance between the right of the Appellant in proposing the scheme for compromise and arrangement and the timely and successful completion of the liquidation process of the corporate debtor, a move that would be in accordance with the ruling in the Ebix Singapore judgment (supra).***

45. In view of the above-noted detailed discussion, it is clearly established that the Adjudicating Authority provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the Appellant was prima-facie found to inflate the total payments by provisioning payments



to creditors who are either related to the corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.

46. We, therefore, hold the clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA 154/2022 by the Impugned Order allowing the Liquidator to proceed with the e-auction and not allowing any more time for consideration of the scheme proposed under section 230 of the Companies Act, 2013. In view of this inescapable conclusion that the Adjudicating Authority has not erred in passing the Impugned Order, the appeal is dismissed, and is accordingly disposed of.”

[Emphasis Supplied]

21. The applicant, the Bankey Bihari Infrahomes Private Limited being aggrieved by the order dated 06.12.2022 passed by the Hon'ble Appellate Tribunal, approached the Hon'ble Supreme Court by filing the Civil Appeal No. 125 of 2023 against order dated 06.12.2022 under section 62 of the Insolvency and Bankruptcy Code, 2016 and raised the following prayers which are stated as under:-



“.....

PRAYERS

It is, therefore, most respectfully prayed that your lordships may graciously be pleased to:

(a) Admit and allow the present Appeal and set aside the impugned final judgment and order dated 06.12.2022 passed by the Hon'ble National Company Law Appellate Tribunal Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 718 of 2022; and/ or

(b) Pass such further orders / orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

....”

22. In the midst of this appeal, certain set of home buyers approached the Hon'ble Supreme Court by filing the interim applicant in CA No. 125 of 2023 for seeking the following relief:-

“.....

PRAYER

In the circumstances set forth above, it is therefore, most respectfully prayed that your lordships may graciously be pleased to

A. Allow the present Application and issue appropriate order(s)/ direction(s) for a fresh auction qua the assets of the Corporate Debtor and/ or;

B. Allow the present Application and issue appropriate order(s)/ direction(s) for the proper resolution and revival of the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016 and/ or



C. *Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

.....”

23. One Company, M/S Savita Housing India Pvt. Ltd. also filed an I.A. NO.27202 of 2023 and IA No.27204 of 2023 that wanted to participate in the auction but missed such participation earlier. In the application, following grounds were taken:-

“.....

Prayer

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to:

- a) Direct the Liquidator to hold Fresh Bidding Auction of the Corporate Debtor;*
- b) Pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

.....”

24. The Hon'ble Apex vide final order dated 07.02.2023 dismissed the aforesaid appeal and applications and held as under:-

“I.A. (Dy.) No.27202/2023 and I.A. (Dy.) No. 27204/2023

Applications are taken on board.



Learned counsel for the applicant urges that he did not participated in the auction because somehow he missed out on the auction but he is willing to pay more. There is hardly a reason for the applicant to intervene.

Applications stand dismissed.

I.A. No.26569/2023 and I.A. No. 26573/2023

These applications are by the home buyers who claim that the process is carried out in a hurry therefore the actual price is not being realized.

Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC).

Applications stand dismissed.

Learned counsel for the appellant states that the appellant has not been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/-. Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores haven not been brought as assured on the last date.

The civil appeal stands dismissed accordingly.”

25. After presenting the above facts and details, a written submission has been filed by the liquidator explaining the legal position in respect of the issues already decided at the higher judicial forum. In this regard, it is submitted that the principle of



res-judicata is applicable to proceeding under the IBC as held by the Hon'ble NCLAT, New Delhi in the case of **Vikas Dahiya (Ex-Director of Golden Tobacco Ltd.) vs. Arrow Engineering Ltd. & Anr. Company Appeal (AT) (Insolvency) Nos.699 of 2022** while relying upon the principle laid down by the **Hon'ble Apex Court in Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educamp**, categorically held that the doctrine of res-judicata is applicable even to the proceedings under IBC and the action of challenging the findings in any incidental or collateral proceeding amount to an abuse of the process of court.

The Liquidator in its written submission also cited a decision of Hon'ble Apex Court in the case of **Kunhayammed & Ors vs. State of Kerala**, dated 19.07.2000, wherein it is held that "*where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverse or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the later which subsists, remains operative and is capable of enforcement in the eye of law*". Then, he went on to say as regards to argument taken by the applicant in this applicant to conduct a fresh auction that the



Hon'ble Apex Court had already categorically rejected in an application IA No.27202/2023 filed by one company Savita Housing India Pvt. Ltd. and also by homebuyers in IA No.26569/2023 & 26573/2023 with prayer to direct the Liquidator to hold a fresh bidding auction of the Corporate Debtor, (as it has already been discussed in para 22 to 24 of this order) and therefore, no fresh auction can be conducted as per doctrine of merger as laid down by the Hon'ble Supreme Court in above cited decision.

26. As regards to allegation of the applicant against the Liquidator about him being a related party to the Corporate Debtor and hence, is ineligible to work as liquidator of the Corporate Debtor, following pleas have been taken by the liquidator.

“IX. RESPONSE TO RELATED PARTY ALLEGATIONS AGAINST THE LIQUIDATOR.

A. Barred by the Law of Res-Judicata

➤ **Related party allegations** leveled **against the Liquidator** have already been **looked into** and **dismissed by the Hon'ble Supreme Court** vide order dated 07.02.2023 passed in IA 26568/2023



- Despite two complaints filed against the Liquidator, **IBBI** being the **proper adjudicating authority has neither found any merit nor** has **proceeded against the Liquidator.**
- Since such allegations have already been dismissed by the Hon'ble Apex Court and as no action has been taken by IBBI against the Liquidator, the said **allegations made against the Liquidator are barred by the law of Res-judicata**

B. Was an Independent Director in Silvertan Paper Limited.

- Liquidator was qualified to be appointed as a Resolution Professional as per Regulation 3 of CIRP Regulations r/w Section 149 of the Companies Act, 2013 [*Refer to section 149 (6) (b) (ii) & 149 (6) (c) which show that Liquidator was not a related party*]
- Liquidator was **appointed as an Independent Director in Silvertan Papers Limited from 30.09.2020 to 26.03.2021** [*refer to the related party not passed on to the Hon'ble bench during the course of hearing*]

C. Liquidator has **neither derived any form of benefit nor** been **subject to** any allegations suggesting **unjust gain through the Ex-Directors.**



D. Even as per the exhaustive **definition of “related party”** in relation to a Corporate Debtor outlined in **Section 5(24) of the Code**, the **Liquidator cannot be categorized as a related party.**

E. **Despite being the IRP/RP** since beginning of the process, no **such allegations have ever been brought forth** by any stakeholder/flat buyer **until now.**

F. Considering the doctrine of ‘**Forum Non-Conveniens**’, this Hon’ble Tribunal should refrain from entertaining such allegations as the Applicants and the individual acting in concert have already exercised their rights before the Hon’ble Supreme Court and IBBI.”

FINDINGS AND ORDER

27. We have considered the submissions made before us by Applicant as well as the Respondent/Liquidator and the arguments put up by Ld. Counsels of both parties. We are of the considered view that after careful consideration and analysis of all the issues raised in the said application, it is important to substantiate that the contentions raised by the applicant in the present I.A have already been dealt with by the Hon’ble NCLAT in Company Appeal (AT)(Ins) No. 718 of 2022 vide order dated



06.12.2022 as well as by the Hon'ble Apex Court in order dated 07.01.2023 which are discussed in paras 17 of this order.

28. The Hon'ble NCLAT Delhi vide order dated 06.12.2022 directed the liquidator to proceed further with the liquidation process and held that.....45. *In view of the above-noted detailed discussion, it is clearly established that the Adjudicating Authority provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the Appellant was prima-facie found to inflate the total payments by provisioning payments to creditors who are either related to the corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.*

46. *We, therefore, hold the clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA 154/2022 by the Impugned Order allowing the Liquidator to proceed with the e-auction and not allowing any more time for consideration of the scheme proposed under section 230 of the Companies Act, 2013. In view of this inescapable conclusion that*



the Adjudicating Authority has not erred in passing the Impugned Order, the appeal is dismissed, and is accordingly disposed of.”

29. It must be noted that Hon’ble Apex Court in its order dated 07.02.2023 also, while dismissing the impleadment application filed by one company M/S Savita Housing India Pvt. Ltd. with prayer to direct the Liquidator to hold a fresh bidding auction of the Corporate Debtor, has categorically held that “.....*he did not participated in the auction because somehow he missed out on the auction but he is willing to pay more. There is hardly a reason for the applicant to intervene. Applications stand dismissed.*” And thus, holding of fresh auction of the Corporate Debtor is already rejected by the Hon’ble Apex Court.

30. Similarly, the Hon’ble Apex Court has dismissed application of the homebuyers of the Corporate Debtor, filed with a plea that “*the actual price is not being realized in the auction and hence fresh auction to be ordered or appropriate order for the proper resolution and revival of the Corporate Debtor in terms of IBC to be passed,*” holding that

“These applications are by the home buyers who claim that the process is carried out in a hurry therefore the actual price is not being realized.



Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC).

Applications stand dismissed.”

Thus, the second order of Hon’ble Apex Court makes it amply clear that any possibility of starting of any re-auction process is completely ruled out.

31. As regards the bonafide of the applicant to pay Rs.12 crore for revival of the Corporate Debtor as pleaded in this application, the order of the Hon’ble Apex Court dated 07.02.2023 has also settled the position in this regard, when it is held in the said order on failure of the applicant (appellant in the said order of Hon’ble Apex Court) to deposit Rs.12.48 court as agreed during the proceeding before the Hon’ble Apex Court, that:-

“Learned counsel for the appellant states that the appellant has not been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/-. Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores haven not been brought as assured on the last date.

The civil appeal stands dismissed accordingly.”



32. In view of the aforesaid discussion, the present application therefore, lacks bona-fide and is an abuse of process of law and is not sustainable. Such kind of action of the applicant will only prolong the process of the liquidation of the corporate debtor which will be contrary to the very objective of the IBC, 2016 as already held by the Hon'ble Supreme Court earlier in case of the applicant itself. Therefore, we are not inclined to entertain this application on the aforesaid grounds.

33. As regards the eligibility of the Liquidator being challenged alleging him being related party to the Corporate Debtor, this issue has already been decided in the order dated 21.09.2023 passed in respect of IA No.177/2022 and it is held that there is no relation of the Liquidator with the Corporate Debtor and the respondent in this case is legally competent to perform his duties of liquidator.

34. In view of our above decisions, **I.A No. 82 of 2023 hereby stands dismissed accordingly.**

35. **Ordered accordingly.**

-Sd-

(ASHISH VERMA)
Member (Technical)

-Sd-

(PRAVEEN GUPTA)
Member (Judicial)

Priya Agarwal
(Stenographer)