

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 401 of 2023

[Arising out of Order dated 02.03.2023, passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, Court – III in I.A. 947/2022 in C.P. (IB) 297/ (MB)/2018]

IN THE MATTER OF:

Naren Seth

Liquidator of Ciemme Jewels Ltd.
IBBI Reg. No.:IBBI/IPA-001/IP-P00133/201-
18/10275
1014-1015, Prasad Chamber, Tata Road No.
1,
Opera House, Charni Road (East)
Mumbai – 400004
Email : nvsheth@mkindia.com

...Appellant

Versus

1. Sunrise Industries

Partnership firm registered under
Partnership Act, 1932
Through Authorised Representative
Mr. Pawan Kumar Gupta
J-23, RBI Enclave,
Paschim Vihar,
New Delhi- 110063.
Email : aniruth@lex-legal.in

...Respondent No.1

2. State Bank of India

Stressed Asset Resolution Group
Commercial Branch,
112/115, 1st Floor, West Wing,
Tulsiani Chambers, Free Press Journal
Marg,
Nariman Point, Mumbai – 400021.
Email : team.161341@sbi.co.in

...Respondent No.2

3. Marine Electrical (India) Pvt. Ltd.

B-1, Udhyog Sadan- 3
MIDC, Andheri (East),
Mumbai- 400093,

Maharashtra.
(CIN) L31907MH2007PLC176443
Email: cs@marineelectricals.com

...Respondent No.3

Present:

For Appellant : Mr. Asav Rajan, Advocate.

**For Respondents : Mr. Malak Bhatt & Ms. Tanishka Khatana,
Advocates**

With

Company Appeal (AT) (Insolvency) No. 695 of 2023

**[Arising out of Order dated 02.03.2023 passed by the Adjudicating
Authority/National Company Law Tribunal, Mumbai Bench, Court – III
in I.A. 947/2022 in C.P. (IB) 297/ (MB)/2018]**

IN THE MATTER OF:

Marine Electrical (India) Ltd.

B-1, Udhog Sadan- 3
MIDC, Andheri (East),
Mumbai- 400093,
Maharashtra.

...Appellant

Versus

1. Sunrise Industries

Partnership firm registered under
The Indian Partnership Act, 1932
Through its Authorised Representative
Mr. Pawan Kumar Gupta
J-23, RBI Enclave,
Paschim Vihar,
New Delhi- 110063.

...Respondent No.1

2. Mr. Naren Seth

Liquidator for the Corporate Debtor
M/s Ciemme Jewels Ltd.
1014-1015, Prasad Chamber,
Tata Road No. 1,
Opera House, Charni Road (East)
Mumbai – 400004

...Respondent No.2

3. State Bank of India

Stressed Asset Resolution Group
Commercial Branch,
112/115, 1st Floor, West Wing,
Tulsiani Chambers, Free Press Journal
Marg,
Nariman Point, Mumbai – 400021.

...Respondent No.3

Present:

For Appellant : Mr. S.S. Naganand, Sr. Advocate with Ms. Komal Munkhka & Mr. Saurabh Agrawal, Advocates.

For Respondents : Mr. Malak Bhatt & Ms. Tanishka Khatana, Advocates

J U D G M E N T

(04.07.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present two appeals have been filed by the two Appellants under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short '**Code**') against the Impugned Order dated 02.03.2023 passed by the Adjudicating Authority [National Company Law Tribunal, Mumbai Bench] in I.A. No. 947/2022 in C.P. (IB) No. 297/ (MB)/ 2018, whereby the Adjudicating Authority set aside the e-auction dated 08.04.2022 of the sole property of the corporate debtor.

2. The Company Appeal (AT) (Ins) No. 401 of 2023 has been filed by Mr. Naren Seth, the liquidator of Ciemme Jewels Ltd./ Corporate Debtor, wherein he is aggrieved by the impugned order setting aside e-auction dated 08.04.2022 for sale of sole property of the corporate debtor in liquidation and directing the Appellant/ liquidator to personally bear the cost of auction/re-auction, contemplating haste on part of the Appellant/

liquidator. In another Company Appeal (AT) (Ins) No. 695 of 2023, the appeal has been filed by M/s Marine Electrical (India) Pvt. Ltd./ Successful bidder of the sole property of the Corporate Debtor consisting of land and building against the impugned order which cancelled the E-auction.

3. Since, both appeals are arising out of same impugned order dated 02.03.2023, on the same subject, therefore these have been clubbed and heard together and are now being dealt in subsequent paragraphs and shall be disposed accordingly by the same order of this Appellate Tribunal.

4. Heard the Counsel for the Parties and perused the records made available including cited judgments of the Hon'ble Supreme Court of India and earlier orders of this Appellate Tribunal.

5. One M/s Vijisan Exports Pvt. Ltd., the Operational Creditor of the Corporate Debtor/ Ciemme Jewels Ltd. filed an application under Section 9 of the Code before the Adjudicating Authority which was admitted and Corporate Insolvency Resolution Process was initiated against the Corporate Debtor on 18.04.2018. However, due to non-receipts of any Resolution Plan, the Adjudicating Authority vide order dated 25.03.2019 directed the corporate debtor to be liquidated in accordance with Section 33(1) of the Code and Mr. Naren Seth, the Appellant in CA (AT) (Ins) No. 401 of 2023 was appointed as the liquidator.

6. Learned Counsel for the Liquidator/Appellant submitted that he conducted two separate auctions for the sale of the premises, the first auction was conducted on 04.12.2019 and second auction on 01.03.2021 both the auctions was unsuccessful as no bid was received. Learned

Counsel for the Appellant stated that he prepared 3rd Notice dated 02.04.2022 for Sale of Assets and the same was uploaded on the official website of the Insolvency and Bankruptcy Board of India ("IBBI") & the E Auction Platform and also published in two newspapers, namely- Financial Express and Navakal on 02.04.2022.

7. Learned Counsel for the Appellant/Liquidator stated that due to a typographical error, in the last portion of the 3rd Notice for Sale of Assets, in point 5, the last date for submission of the Expression of Interest (in short "**EoI**") and the Earnest Money Deposit ("EMD") was wrongfully mentioned as 15.04.2022 and 16.04.2022 respectively. Upon realizing the error, the Appellant immediately rectified the same and the 3rd Notice for Sale of Assets free of error was re-uploaded on the IBBI Website and E-Auction Platform and published in the Navakal on 09.04.2022.

8. Learned Counsel for the Appellant stated that according to the rectified Notice for Sale of Assets, E-Auction was to be conducted on 08.04.2022, the Corrigendum clearly stated that the last date for submission of EoI is 04.04.2022 and the last day for the submission of EMD and other documents was 07.04.2022.

9. Learned Counsel for the Appellant stated that the correct dates and times for the several steps of the E-Auction were provided in a tabular form hereunder :-

S.No.	Particulars	Date and Time
1.	Submission of EoI	04.04.2022

		5.00 pm
2.	Submission of KYC documents	07.04.2022 5.00 pm
3.	Submission of EMD	07.04.2022 5.00 pm
4.	E-Auction	08.04.2022 2.00 pm to 4.00 pm

10. Learned Counsel for the Appellant/Liquidator alleged that the bidders interested in the purchase of the Premises took undue advantage of the typographical error made by the Appellant/ Liquidator despite the same having been rectified later.

11. Learned Counsel for the Appellant/Liquidator further stated after the Auction Notice was made part of the public domain, the Appellant/ Liquidator received a bid, above the Liquidation Value and above the Reserve Price and the Successful Bidder (Respondent No. 3/ Marine Electrical (India) Private Limited) submitted a bid for Rs. 11.6 Crores, submitted the EMD and also a 50% deposit. Learned Counsel for the Appellant/Liquidator stated that, admittedly due to the influence in the market by few individuals/ entities, the Appellant/Liquidator, felt it prudent to proceed with Respondent No. 3/ Marine Electrical (India) Private Limited without any delay.

12. Learned Counsel for the Appellant/Liquidator explained that the Respondent No. 1 i.e., Sunrise Industries submitted EoI on 06.04.2022, hence the time period for the submission of the same had already passed i.e., on 04.04.2022 and also did not submit Audited Financial Statements along with the EoI and thus was disqualified to bid. Learned Counsel for the

Appellant/Liquidator stated that the Respondent No. 1 i.e., Sunrise Industries submitted the EMD on 07.04.2022, however, since Respondent No. 1 was not an eligible bidder, he could not have submitted the EMD and it was done only with the intention of delaying and derailing the Auction process.

13. Learned Counsel for the Appellant/Liquidator submitted that his role was for the maximisation value of the assets of the Corporate Debtor and since he already received a bid above the liquidation value, he accepted the bid of Marine Electrical (India) Pvt. Ltd./ Successful Bidder.

14. Learned Counsel for the Appellant/Liquidator assailed the Order of the Adjudicating Authority who failed to appreciate that the Appellant has followed due procedure in conduction of the E Auction and reduction of the time by subsequent rectification is not reason enough for the auction to be set aside. In support of the same, the Appellant relied on the judgment of the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 732 of 2019 titled “**Manjit Commercial LLP v. SPM Auto Pvt. Ltd. & Ors.**” dated 05.09.2019 by holding as under:

"8. In so far as the allegations of the Appellant with regard to reducing the time period is concerned, the Liquidator followed the procedures as contemplated in clause 3 of Schedule I of the Regulations, which provides that the Liquidator shall prepare the terms and conditions of sale, Regulation 2 of Schedule I and the Liquidator shall prepare a marketing strategy with the help of marketing Professionals, if required for sale of the Asset. The strategy may include releasing advertisement, preparing of

information sheets for the asse, preparing a notice of sale and liaising with Agents. Moreover, in the code and in the liquidation Regulations, no time limit was specified for the auction process, other than the mode of Sale as prescribed in Schedule I of Liquidation Process Regulations, 2016. We do not find any merit in the allegation.

(Emphasis Supplied)

15. Learned Counsel for the Appellant/Liquidator stated that the Adjudicating Authority has erred in imposing the cost of the fresh auction on the Appellant as the auction which has been conducted and the sale of the Premises is legal.

16. Learned Counsel for the Appellant/Liquidator submitted that the Adjudicating Authority has failed to appreciate that the Appellant acting in his official capacity as the Liquidator has the right to accept or reject any bid in consonance with the terms and conditions of the auction process. In support of this, the Appellant relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 2024 and 2025 of 1972 titled **“State of Orissa & Ors. Vs. Harinarayan Jaiswal & Ors.”** decided on 14.03.1972.

17. Concluding his remarks, Learned Counsel for the Appellant/Liquidator submitted that he acted in bonafide manner and in interest to get maximum value out of the property, hence his appeal may be allowed and Impugned Order may be set aside.

18. Learned Counsel for M/s Marine Electrical India Limited (Successful Bidder in E-auction)/ Appellant in Company Appeal (AT) (Insolvency)

No. 695 of 2023 submitted that the Liquidator issued the Notice for Sale, according to which, EoI and KYC were to be given on 04.04.2022 and EMD was to be submitted on 07.04.2022 and E-auction was to be conducted on 08.09.2022. Learned Counsel for the Successful Bidder submitted that he has furnished EoI and KYC on 04.04.2022 and made the payment towards EMD for Rs. 1.15 Crores and participated in E-auction dated 08.04.2022. Learned Counsel for the Successful Bidder stated that on the auction date he emerged as Successful Bidder with a bid of Rs. 11.60 Crores and he completed all formalities including payments and obtained Sales Certificate dated 11.05.2022.

19. Learned Counsel for the Successful Bidder stated that his action was in accordance with the notice period and the Adjudicating Authority has wrongly passed the Impugned Order in setting aside the E-auction dated 08.04.2022 without granting an opportunity to the Successful Bidder.

20. Learned Counsel for the Successful Bidder also assailed the conduct of M/s Sunrise Industries/ Respondent No. 1 who was ineligible to participant in view of delaying submitting the EoI beyond the prescribed timeline of 04.09.2022 and therefore has no locus.

21. Concluding his remarks, Learned Counsel for the Successful Bidder submitted that the Impugned Order need to be set aside and process of E-auction dated 08.04.2022 and Sale Certificate dated 11.05.2022 should be declared as valid.

22. Per-contra, the Respondent No. 1 (Sunrise Industries contested all the averments of the Appellant/ Liquidator as well as Successful Bidder i.e.,

Marine Electrical (India) Pvt. Ltd. Learned Counsel for the Respondent No. 1 stated that the Sale Notice was issued by the Liquidator on 02.04.2022 (Saturday) and Sale Notice incorrectly provided the date of 15.04.2022 and 16.04.2022 for submission of KYC documents and payment of EMD respectively. Learned Counsel for the Respondent No. 1 stated that he submitted the KYC document alongwith EMD on 06.04.2022, whereas the last date to submit EMD was 07.04.2022 and the date of E-auction was 08.04.2022, thus he acted in time and his bid should have considered. Learned Counsel for the Respondent No. 1 also reiterated that the Liquidator published E-auction notice with vital errors with wrongful intention.

23. Learned Counsel for the Respondent No. 1 also alleged that no period for inspection of the premises was mentioned or provided and entire sale took place without any inspection. Learned Counsel for the Respondents assailed the conduct of the Liquidator who finished the entire exercise within five days including Saturday and Sunday without giving reasonable time. Learned Counsel for the Respondents stated that even the corrigendum on the IBBI website and newspapers was published on 08.04.2022 and 09.04.2022 after the sale was concluded.

24. Learned Counsel for the Respondent No. 1 also alleged that in fact only one working day i.e. Monday was given for submission of documents and no time was provided to do due diligence including site visit, execute the required documents and to arrange for funds for Rs. 11.15 Crores and submission of EMD accordingly.

25. Learned Counsel for the Respondent No. 1 emphasised that the entire exercise of E-auction was done with fraudulent intention and the entire process is to be considered wrong as upheld by this Appellate Tribunal in case of ***Raj Singhania Vs. Chinara Steel Segment Centre Pvt Ltd., (2022 SCC OnLine NCLAT 225)***, where it was held that material irregularity in conduct of auction vitiate the entire process of auction.

26. Learned Counsel for the Respondent No. 1 concluding his remarks requested to dismiss both the appeals.

27. The main issue in the present two appeals before this Appellate Tribunal is whether the correct procedure was followed in the E-auction or not. Similarly, it need to be ascertained whether auction was conducted in haste without giving adequate opportunity to all to participate.

28. It is observed that the Liquidator issued a notice for sale of assets on 02.04.2022 and date of E-auction was mentioned in the said notice was 08.04.2022 from 2 pm to 4 pm. In the said notice, 4th and 7th April, 2022 were stipulated as last dates for submission of KYC and EMD respectively. The notice also erroneously stated last date and time for submission of EoI by interested bidder as 15.04.2022 (5pm) with last date and time for payment of EMD as 16.04.2022 (5pm). These clear conflicting dates are sufficient to cause confusion and therefore can not be treated as mere typographical error as claimed by the Liquidator.

In this connection, we also take note of following table used in the Impugned Order to understand gravity of errors in the dates.

<i>S.No.</i>	<i>Particulars</i>	<i>Date</i>	<i>Day</i>	<i>Remarks</i>
1.	<i>Date of publishing E- Auction Notice</i>	<i>02.04.2022</i>	<i>Saturday</i>	<i>Issued on Bank Holiday</i>
2.	<i>Date of Submitting EOI/ Last Date of submitting KYC Documents</i>	<i>04.04.2022</i>	<i>Monday</i>	<i>Only one working day of Monday was given, as the notice was issued on bank holiday which was succeeded by Sunday.</i> <i>No time was allowed for due diligence nor a reasonable opportunity to submit</i>
3.	<i>Last Date of submitting EMD/ BID</i>	<i>07.04.2022</i>	<i>Thursday</i>	<i>Insufficient time to conduct due diligence of the asset including site visits to assess the opportunity</i>
4.	<i>Date of E-Auction</i>	<i>08.04.2022</i>	<i>Friday</i>	<i>Insufficient time for an auction process with asset value of INR 11.50 Crores located in SEEPZ, Mumbai</i>
5.	<i>Last date for submitting EoI</i>	<i>15.04.2022 5 pm</i>	<i>Friday</i>	<i>Last date of EoI is after the date of E-auction; which incidentally is a bank holiday.</i>

6.	<i>Last date and time for payment of EMD and other forms only by qualified bidder</i>	16.04.2022 5 pm	Saturday	<i>Last date and time for payment of EMD is after the date of e-auction.</i>
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29. From the relevant facts as brought out above, it is evident that the entire E-auction were rather conducted in a hurry and the Adjudicating Authority rightly observed that there was hardly any sufficient gap for date of application in completing the E-auction exercise. We also take note of serious allegations of the Respondent No. 1 that entire auction was conducted in flat five days including weekend.

30. We are not in position to appreciate any solid grounds for such hurry since at least two bidders shown their interest for the said property and have given their EMDs of Rs. 1.15 Crores. The averment of the Liquidator that he was trying to do away wrongful influence by few individuals/entities is not convincing at all and rather create suspects in the mind regarding true intentions. It is seen that date of publication of final E-auction notice is 02.04.2022 with merely one working day (Monday) to submit KYC, another three days upto 07.04.2022 to submit EMD of Rs. 1.15 Crores and finally one more day upto 08.04.2022 to give bids. Thus, the entire liquidation process was supposed to be completed in one week.

Although, no specific timelines have been given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016, normally notice period of 30 days is given to get best value. In this

connection, as a referring point only, we would like to refer to the provision of sub-rule (6) of Rule 8 of the SARFAESI Security Interest (Enforcement) Rules, 2002 which are as under:-

“Rule 8 Sake of immovable secured assets

*(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5) ****

(Emphasis Supplied)

This also indicates that sufficient time say 30 days ought to have been give. Thus, we find the Liquidator acted in hurry in concluding the E-auction.

31. We also observe that apparently no time frame was given for any inspection of the premise by the prospective bidder, which is not very rightful thing to do on behalf of the Liquidator.

32. It is also observed that the corrigendum for rectification of error in the notice for sale of assets was given in newspapers and IBBI website which was after the E-auction was completed, rendering these to be futile and at best paper exercise on post facto basis.

33. We also take note that the Adjudicating Authority has observed the following in Para 10 of the impugned order-

***“10. The liquidator has completed the e-auction in utmost haste within one week for the reasons best known to him.**
The hasty manner and the procedural irregularities committed by the liquidator in conducting the above auction clearly points out finger towards his conduct. The*

explanation of failure of earlier auctions and obtaining physical possession of the property after the prolonged litigation cannot be considered as a reasonable explanation.”

(Emphasis Supplied)

34. It may not be ethical and appropriate for the appellant to reject a bid that is more than the liquidation value just because of a typographical error in E-auction Notice. The Liquidator has submitted that they had also issued a corrigendum with correct dates, however, as per his own submission, the corrigendum was issued after the sale took place, i.e., on IBBI Website on 08.04.2022 and publication in newspaper on 09.04.2022. Since Respondent No. 1 i.e., Sunrise Industries had furnished with the EMD on 06.04.2022 i.e. before its last date along with KYC Documents, in light of defects in the date in E-auction notice published by the Liquidator himself, submissions and offer of Sunrise Industries atleast should have been examined on merit.

35. We also take help of the Judgment of Supreme court in case of ***M/s Jainsons Exports India vs Binatone Electronics Ltd.*** , AIR 1996 Delhi 105, where the Hon’ble Supreme Court of India has observed as under :

"The purpose of open auction is to get the most remunerative price and it is the duty of the Court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large.

The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case the steps for conducting the sale would be moulded."

(Emphasis Supplied)

36. In view of all these material irregularities, we do not find any error in the Impugned Order dated 02.03.2023, wherein the E-auction was set aside and it was held that the Liquidator must bear all expenses incurred for the auction. We also do not appreciate conduct of the Liquidator in whole process as observed by the Adjudicating Authority.

37. In fine, both the appeals are dismissed. No costs. Interlocutory Applications, if any, are Closed.

**[Justice Ashok Bhushan]
Chairperson**

**[Naresh Salecha]
Member (Technical)**

Simran