

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,**  
**COURT III**

**I.A. 947/2022**

**IN**

**C.P.(IB)-297/(MB)/2018**

(Under Section 60(5) of the Insolvency and  
Bankruptcy Code 2016 read with Rule 11 of the  
National Company Law Tribunal Rules 2016)

***Filed by,***

Sunrise Industries

**.....Applicant**

**Vs.**

Naren Seth

**.....Respondent**

***In the matter of***

Vijisan Exports Private Limited

**.....Operational Creditor**

**Vs**

Ciemme Jewels Limited

**..... Corporate Debtor**

Reserved for order on: **08.02.2023**

Order pronounced on: **02.03.2023**

**Coram:**

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

**For the Applicant:** Mr. Aniruth Purusothaman, Advocate

**For the Liquidator:** Mr. Shavez Mukri, Advocate

**Per: Shri. H.V. Subba Rao, Member (Judicial)**

1. Sunrise Industries who is the Applicant herein filed the above application claiming the following reliefs:

A. Be pleased to quash and set-aside the impugned Notice of Sale of Assets dated 02.04.2022 for the sale of assets of the Corporate Debtor under the Code and all consequent actions thereof.

**OR**

B. Be pleased to condone the delay of 2 (two) days in submission of KYC documents.

2. The brief facts behind filing the above application as pleaded in the following Paras are as follows:

Para-10: The Respondent/Liquidator issued a notice of sale of assets dated 02.04.2022 for the sale of assets of the Corporate Debtor under the Code. The important details in the notice of sale of assets are reproduced hereinbelow:

- i. The date of the Notice of Sale of Assets was **02.04.2022**.
- ii. Date and Time for E-Auction: **08.04.2022** from **02:00 pm to 04:00 pm** (with unlimited extension of 5 minutes each).
- iii. Last date for submission KYC documents and EMD/BID: **4<sup>th</sup> & 7<sup>th</sup>** April respectively.
- iv. The E-Auction would be for the sale of assets of the Corporate Debtor forming part of its Liquidation Estate under the provisions of the Code.

- v. The Sale of the Assets would be done by the Respondent through the e-auction platform: <http://eauctions.co.in>.
- vi. The asset and property for sale were described as reproduced hereinbelow:

<b>Asset</b>	<b>Block</b>	<b>Reserve Price</b>	<b>EMD Amount</b>	<b>Incremental Value</b>
<b>Factory at MIDC, Andheri East</b> All that part and parcel of the property consisting of land, building, situated at Plot No. Plot 71, MIDC, Cross Road C, OppSeepz Gate 2, Andheri (E), Mumbai-400093	A	INR 11.50 Crores	INR 1.15 Crores	INR 10 Lakhs

- vii. The sale would be **on “as is where is”, “as is what is”, “whatever there is”, “without any recourse”** Basis.
- viii. The last date and time for submission of Expression of Interest (EOI) by the Interested Bidders is **15<sup>th</sup>April, 2022 05:00 pm.**
- ix. The last date and time for payment of EMD & other forms only by qualified bidders is IST 16<sup>th</sup>April, 2022 05.00 pm.
- x. The liquidator has the right to accept or cancel or extend or modify any terms and conditions of the e-Auction.

Para 11: It is submitted that there is an obvious anomaly in the details of the Auction Notice on the IBBI Portal and the Notice of Sale of Assets dated 02.04.2022 uploaded on the IBBI and Notice of Sale of Assets dated 02.04.2022 published on 02.04.2022 in the Financial Express, Mumbai Edition given that the details of the Auction Notice on the IBBI portal state that the last date submission of the EMD (including extension) is 07.04.2022 and the last date and time for payment of the EMD and other forms is given as 16<sup>th</sup> April 05.00 pm.

Para 12: It is submitted that the Applicant has furnished the EOI, on 06.04.2022, well within the period given for furnishing the same in the newspaper publication i.e. 15.04.2022. Furthermore, the Applicant has also deposited the required EMD on 06.04.2022, whereas the last date for depositing the EMD is 16.04.2022.

Para 13: It is submitted that the Respondent had issued a E-Auction Process Information Document for the Sale of the Asset of the Corporate Debtor.

Para 14: It is submitted that 02.04.2022 was a Saturday and a Bank Holiday. The Applicant is a partnership firm having its office in New Delhi. Only one working day i.e. Monday 04.04.2022

was given for bidders to submit KYC documents. Moreover, the last date for submitting EMD/BID was 07.04.2022.

Para 15: The Applicant was, and remains, interested in bidding for the asset of the Corporate Debtor put on sale through an e-auction on 08.04.2022.

Para 16: Therefore, notwithstanding the unreasonable timelines given in the notice of sale of assets dated 02.04.2022, a partner viz. Mr. Pawan Kumar Gupta of the Applicant sent an email dated 06.04.2022 (11.24 am) to the Respondent authorizing Mr. Parveen Kumar Gupta (Second Partner) to visit the site being '*All that part and parcel of the property consisting of land, building, situated at Plot No. Plot 71, MIDC, Cross Road C, OppSeepz Gate 2, Andheri (E), Mumbai-400093*' on 06.04.2022.

Para 17: In a move which highlights the seriousness of the Applicant's intention in bidding for the asset of the Corporate Debtor, the Applicant, with great effort and alacrity, sent to the Respondent an email dated 06.04.2022 (15.51 pm) and attached the signed process information documents/EOI, Courier receipt dated 06.04.2022 for the package containing the hard copy of the signed process information documents/EOI sent by courier to the Respondent and provided the details EMD amounting to Rs.

1,15,00,000/- (Rupees One Crore Fifteen Lakhs Only). The details of the EMD deposited by the Applicant are reproduced hereinbelow:

6 Apr 2022	RTGS ciemme PASCHIM HDFCR52022040659420538	Dr-SBIN0005345- jewelslimited-in- VIHA- HDFCR52022040659420538	000000000820	06 Apr 2022	11,500,000.00
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The Applicant, vide the aforesaid email dated 06.04.2022 (15.51 pm), further requested the Applicant to consider their EMD and Process Information Documents/EOI given that the notice of sale of assets dated 02.04.2022 stated that the last date and time for submission of EOI is 15.04.2022 5.00 pm and last date of submission of EMD is 16.04.2022.

Para 18: It is submitted in response to the aforesaid email dated 06.04.2022 (03.50 pm), the Respondent simply informed vide email dated 06.04.2022 (03.55 pm) that 'Last date of EOI is over'.

Para 19: It is submitted that the Advocate of the Applicant sent a legal notice dated 07.04.2022 to the Respondent vide email dated 07.04.2022 (12.15 pm) objecting to the Respondent's illegal and malafide conduct in rejecting the EOI of the Applicant in the proposed auction of assets, of the

Corporate Debtor (in Liquidation), located at Andheri MIDC, SEEPZ, Mumbai 400093. The contents of the notice dated 07.04.2022 are summarized, in brief, hereinbelow:

- i. The Advocate for the Applicant tabulated the timeline for the e-auction which highlighted the fact that the notice of sale of assets dated 02.04.2022 was, seemingly, issued by the Respondent as mere empty formality with deliberate mala fide intent to put the prospective bidders in a disadvantageous position by allowing hardly any time to evaluate the opportunity, perform the required due diligence including site visits, execute the required documents as mentioned in the e-auction process information document issued by the Respondent on 02.04.2022 and to arrange funds of INR 1.15 Crores for submission of EMD to participate in the proposed auction.

- ii. The tabulation is reproduced hereinbelow:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date</b>	<b>Day</b>	<b>Remarks</b>
1.	Date of publishing E-Auction Notice	02.04.2022	Saturday	Issued on Bank Holiday
2.	Last date of submitting KYC documents	04.04.2022	Monday	Only one working day of Monday given as notice was issued on bank holiday which was succeeded by Sunday.

				No time allowed for due diligence nor a reasonable opportunity to submit EOI.
3.	Last date of submitting EMD/BID	07.04.2022	Thursday	Insufficient time to conduct due diligence of the asset including site visits to assess the opportunity.
4.	Date of E-Auction	08.04.2022 (2 pm to 4 pm)	Friday	Insufficient time for an auction process with asset value of INR 11.50 Crores located in SEEPZ, Mumbai.
5.	Last date for submitting EOI	15.04.2022 5 pm	Friday	Last date of EOI is after the date of E-Auction; which incidentally is a bank holiday.
6.	Last date and time for payment of EMD and other forms only by qualified bidder	16.04.2022 5 pm	Saturday	Last date and time for payment of EMD is after the date of e-auction.

iii. The Advocate for the Applicant stated that such actions put not only prospective bidders in a disadvantageous position but also affects the secured creditors and other stakeholders in the liquidation process and they have to incur a substantial loss with hardly any chance to expect any decent value maximisation from the auction process.

iv. The Advocate for the Applicant informed the Respondent that the role of the Liquidator as envisaged

in the Code and the applicable Regulations is in a fiduciary position to ensure maximisation of the value of the assets of the Corporate Debtor. The Advocate contended that the mala fide intentions and utter disregard of the Respondent to fair principles have not only put her client in jeopardy but also put the stakeholders at a potential loss by limiting the participation of her clients for reasons best known to the Respondent.

- v. The Advocate for the Applicant further pointed out that for submission of stated documents, the Respondent, in the **“Terms and Conditions of the E-Auction”** at point no. 3, had provided a date which was more than a year back to the actual date of auction:

*“The Prospective Bidders should submit the evidence for EMD deposit like UTR number along with the request letter for participation in E-Auction, self-attested copies of (i) Proof of identity (KYC) viz. Voter ID card/Driving License/Passport etc., (ii) Current Address-Proof for communication, (iii) PAN Card for Bidder, (iv) Valid Email ID, (v) contact number (Mobile/Landline) of the bidder etc., to the office of Liquidator by **6<sup>th</sup> March, 2021 till 7.00***

***PM.*** *Scanned copies of the original of these documents can also be submitted to the email-id of Liquidator”*

- vi. The Advocate stated that the aforesaid abundantly reflects on the Respondent’s absolute high handedness and deliberate misconduct in dealing with a sacrosanct process under the Code and providing misleading information to prospective bidders.
- vii. The Advocate for the Applicant stated that the site of the asset/property was a secured area and prospective bidders shall require sufficient time and approvals to visit the asset and perform due diligence.
- viii. The Advocate for the Applicant questioned the Respondent as to the basis on which such short timelines had been kept by him, which were in clear contravention of ensuring maximum participation by prospective bidders and maximisation of value of assets as mandated by the provisions of the Code and the applicable IBBI Regulations.
- ix. The Advocate for the Applicant referred to the necessary documents and EMD deposited by the Applicant despite the short timeline and the Respondent’s refusal to consider the same.

x. The Advocate for the Applicant called upon the Respondent to allow and admit her client in the process for participating in e-auction on 08.04.2022 scheduled at 2 pm and allow for the physical visit to the site of factory located at Plot No. 71, MIDC cross road C, Opp. Seepz Gate 2, Andheri E, Mumbai-400093.

xi. The Advocate for the Applicant called upon the Respondent to include her client to participate in the e-auction process scheduled on 08.04.2022.

The aforesaid email dated 07.04.2022 (12.15 pm) containing the Legal Notice dated 07.04.2022, along with the annexures therein, attached separately in the aforesaid email, was sent by the Advocate for the Applicant to the Respondent and to the officials of the State Bank of India.

3. The Liquidator herein Mr. Naren Seth filed a detailed affidavit in reply opposing the above application. The important Paras of the reply are extracted hereunder:

Para 5: That one Vijisan Jewels Private Limited (**VJPL**) was occupying the said premises in view of a leave and license agreement entered between the Corporate Debtor and the Respondent. Although the said agreement expired on 31.03.2019 but VJPL failed to handover the said premises

and as such the Respondent had to approach the Hon'ble National Company Law Tribunal, Mumbai Bench for necessary directions for handing over the said property and the Hon'ble National Company Law Tribunal, Mumbai Bench vide order dated 13<sup>th</sup> November, 2019 directed the Appellant to vacate the premises. However VJPL filed frivolous applications before the Hon'ble National Company Law Tribunal, Mumbai Bench to delay in handing over the possession of the said premises and also filed appeal before the Hon'ble NCLAT and the same came to be rejected 13<sup>th</sup> August, 2021. Thereafter due to non-cooperation from VJPL, the Respondent filed an application before this Hon'ble Tribunal for breaking up the lock and police protection for taking possession of the said premises and this Hon'ble Tribunal was pleased to allow the application vide order dated 3<sup>rd</sup> January, 2022 directing the concerned Commissioner of Police to render assistance to the Respondent/Liquidator for taking possession of the said premises.

Para 6: I say that I had immediately acted on the said order and took possession of the said premises of the corporate debtor and thereafter took steps to auction the said premises for the third time of the corporate debtor. I say that in earlier

two auction conducted on 04.12.2019 and 08.03.2021, not a single bid was received by the Liquidator. I say that I had uploaded the 3<sup>rd</sup> Notice for Sale of Assets dated 2<sup>nd</sup> April, 2022 on the IBBI website on the E-Auction platform and also published the same in two newspapers i.e. Financial Express and Navakal on 2<sup>nd</sup> April, 2022. I further say that alongwith the Notice for Sale of Assets the E-Auction process information document was also uploaded on the E-Auction Platform with the complete details of the Auction and the process for the interested bidders.

Para 7: I say that in the published notice for Sale of Assets dated 2<sup>nd</sup> April, 2022 it was mentioned that the last date for submitting KYC documents and EMD/BID is 4<sup>th</sup> and 7<sup>th</sup> April, 2022 respectively and the date and time of E-Auction as 8<sup>th</sup> April, 2022 from 2.00 pm to 4.00 pm, which are the correct dates as per the process document. However, due to inadvertent typographical error in the last portion of the said notice for sale of assets in point 5 the last date for submission of EOI was mentioned as 15<sup>th</sup>April, 2022 and last date for paymentof EMD and other forms as 16<sup>th</sup> April, 2022.

Para 8: I say that upon realizing the inadvertent error I had immediately rectified the said portion in the Notice for Sale

of Assets and re-uploaded the same on the E-Auction platform and the IBBI website on 4<sup>th</sup>April, 2022 and the same is also reflected on the E-Auction Platform as on date.

Para 9: I further say that again on 8<sup>th</sup> April a Corrigendum was uploaded on the IBBI website and also the same was published in the two newspapers i.e. Financial Express and Navakal on 9<sup>th</sup> April, 2022.

Para 10: I say that as per the published Notice for Sale of Assets and the E-Auction process information document the Respondent received the KYC documents from the interested bidders on 4<sup>th</sup>April, 2022. That the Respondent thereafter conducted its due diligence and 29A compliance and intimated to the interested bidders about their eligibility to participate in the bid process. Accordingly, EMD were submitted by the bidders on 7<sup>th</sup>April, 2022.

Para 11: I say that after that the date of submission of the KYC documents i.e. 4<sup>th</sup>April, 2022 the Applicant herein submitted its KYC documents on 6<sup>th</sup> April, 2022, which was not in accordance with the timelines of the E-Auction process information document. I say that according to the Timetable - Clause O in the E-Auction Information Process document (p.g. 16), it is explicitly mentioned that the KYC documents were to be submitted by 4<sup>th</sup>April, 2022 and EMD

and other forms by 7<sup>th</sup> April, 2022. It is pertinent to mention that the Applicant in complete disregard to E-Auction Information Process document neither submitted the KYC documents on 4<sup>th</sup> April and further has mentioned in application that they have furnished EMD on their own accord on 6<sup>th</sup> April, 2022, even when it were to be submitted by 7<sup>th</sup> April, 2022. I say that accordingly I replied to the Applicant vide email dated 6<sup>th</sup> April, 2022 that the last date was over.

Para 12: I say that the Applicant is now taking undue advantage of the inadvertent typographical error in the portion of Notice for Sale of Assets whereas it is also mentioned in the Notice for Sale of Assets the last date for KYC document submission is 4<sup>th</sup> April, 2022 and EMD is 7<sup>th</sup> April, 2022 and even otherwise all the interested bidders were obligated or rather they had to go through the E-Auction Information Process document for all the compliances to submit the KYC documents/EMD/Declarations and other forms. It is quite apparent that the Applicant has also gone through the E- Auction Information Process document as it has submitted the Declaration and other forms being part of the E-Auction Information Process document and is now portraying itself as having no knowledge of the timelines.

Para 13: I say that now the entire E- Auction process has been completed and the best bidder has been selected and the post E-auction process is being concluded and therefore the present application is infructuous and even otherwise is lacking any merits.

### **FINDINGS AND OBSERVATION**

Heard the submissions of Mr. Aniruth Purusothaman, counsel appearing for the Applicant and Mr. Shavez Mukri, counsel appearing for the Liquidator and perused the record.

1. As stated above in the application, the main grievance of the Applicant is that, he could not participate in the e-auction scheduled on 08.04.2022 due to arbitrary rejection of the KYC documents by the Liquidator even though they have furnished the EOI well within time on 06.04.2022 and also deposited the required EMD on 06.04.2022.
2. It is his further grievance that only one working day i.e. Monday 04.04.2022 was given for bidders to submit KYC documents and no reasonable time was provided by the Liquidator for inspecting the property by the intending bidders.
3. The Applicant also contends that the Liquidator has wrongly mentioned the last date and time for submission of EOI and EMD as 15.04.2022 and 16.04.2022 respectively in the paper publication dated 02.04.2022.

4. It is his further contention that the Liquidator has got published a corrigendum in two newspapers i.e. “Financial Express” and “Navkal” on 09.04.2022 i.e. one day after the e-auction date i.e. 08.04.2022 and therefore the entire process of auction is not in accordance with law and needs to be set aside. In support of his argument, he has also relied upon the order of the Hon’ble NCLAT in *Company Appeal (AT) (Insolvency) No. 465 of 2022* whereunder the Hon’ble NCLAT set aside the auction. The relevant observations of the Hon’ble NCLAT at Para No. 42 of the above order is extracted hereunder:

*42. In the present case, the Liquidator made an attempt to sell the ‘Corporate Debtor’ as ‘a Going Concern’ by Public Auction but committed a serious material irregularity in issuing corrigendum for extension of time for both submission of EMD documents and date and time for Auction, without specified date and time of inspection of ‘Corporate Debtor’ which vitiates the entire process.*

5. The learned counsel appearing for the Applicant on instructions submitted that the Applicant is ready and willing to purchase the schedule property for a higher price offered by the present successful bidder.
6. The learned counsel appearing for the Liquidator Mr. Shavez Mukri except saying that the Liquidator has obtained physical possession of the auction property 3 years after prolonged fighting and the earlier two auctions conducted by the Liquidator have failed and with great

difficulty he has conducted the 3<sup>rd</sup> auction successfully. The only argument of the Liquidator is that the Applicant did not submit the KYC document within the stipulated time and therefore he has rightly rejected the same. It is his further contention that the Applicant is taking unfair advantage of the typographical error in the paper publication to cover-up his latches.

7. In the light of the above rival contentions on both sides, the issue that arises for consideration is:

Whether the Liquidator has committed any illegality or material irregularity in conducting the e-auction? and whether the e-auction dated 08.04.2022 is liable to be set aside?

8. Before deciding the above issue, it is also relevant and appropriate to mention here that the above application I.A. 947/2022 was first listed on board on 11.04.2022 i.e. 3 days after concluding the e-auction and thereafter it was adjourned to 19.04.2022. On 19.04.2022 the counsel appearing for the Applicant Mr. Aniruth Purusothaman pressed for an order of interim direction restraining the Liquidator from proceeding further in respect of the e-auction which was already confirmed in favour of the Successful Bidder. Since issuing sale certificate and delivery of property would take considerable time, this Bench rejected the interim relief on 19.04.2022. The Liquidator taking advantage of the rejection of interim relief on 19.04.2022

appears to have delivered the property to the auction purchaser without even informing to the Tribunal. Thereafter, this Tribunal vide its order dated 03.06.2022 directed the Successful Bidder not to demolish or make any changes to the existing structures on the land at the request of the Petitioner.

9. After hearing the submissions of both sides and upon perusing the material on record, this Bench further observes that there was not even 30 days gap from the date of paper publication and the date of e-auction. The e-auction notice published in paper publication as well as in the IBBI portal does not contain the date and time of inspection of the property which is very important in every e-auction publication. As rightly contended by the Applicant, the Liquidator wrongly mentioned the last date and time for submission of EOI and EMD as 15.04.2022 and 16.04.2022 respectively when the e-auction is scheduled on 08.04.2022.
10. It is also observed that 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 and this Bench has taken a very serious note of the same. The explanation of failure of earlier auctions and obtaining physical possession of the property after prolonged litigation cannot be considered as a reasonable explanation. It is settled proposition of

law that the mistakes in the e-auction publication would certainly amount to material illegality and irregularity that vitiates the entire process of auction. As rightly contended by the Applicant, issuing of corrigendum after completion of the e-auction serves no purpose and the very object of issuing corrigendum is frustrated by issuing such corrigendum after completion of e-auction and such an e-auction has to be set aside on that score alone.

11. Therefore, for the aforesaid reasons, this Bench is of the considered opinion that the e-auction dated 08.04.2022 conducted by the Ld. Liquidator is not in accordance with law and is liable to be set aside.
12. Accordingly, the above I.A.947/2022 is allowed by setting aside the e-auction dated 08.04.2022 conducted by the Liquidator by directing the Liquidator to conduct fresh auction by maintaining at least 30 days' time between the paper publication and the e-auction so as to enable more bidders to participate in the auction for fetching high value of the property. The Liquidator shall also clearly mention the timings for inspection of the property in the paper publication. Since the Liquidator has conducted the above e-auction without any due application of mind he must bear all the expenses incurred for the auction.

Sd/-  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**  
//Shubham//

Sd/-  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**