

SL.No.1

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

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)  
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 30.06.2023 AT 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/152/2021 in CP (IB) No.278/7/HDB/2018</b>
<b>NAME OF THE COMPANY</b>	<b>BS Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>State Bank of India</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>BS Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

This application is allowed, vide separate orders.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.II**

**IA No. 152/HDB/2021  
IN  
CP (IB) No. 278/HDB/2018**

In the matter between:

Mr.Abhishek Agarwal,  
1-8-673, Azamabad,  
Himayathnagar,  
SECUNDERABAD – 500 003.

... **Applicant**

**And**

Mr.Yedavilli Sai Karunakar,  
Liquidator of B.S. Limited,  
Reg.No.IBBI/IPA-001/IP-P00191/2017-18/10370,  
Flat No.205, B-Block, 2<sup>nd</sup> Floor,  
Kushal Towers, D.No.6-2-975,  
Khairatabad, Hyderabad – 500 004.

... **Respondents**

**Date of order : 30.06.2023**

**Coram:**

**Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)**  
**Hon'ble Shri Charan Singh, Member (Technical)**

**Parties / counsels present:**

For petitioner : Mr.P.Pratap, Mr.N.Srikar, M.Karthik Goud,  
Ms.V.Sravya, Advocates.

For respondent: : Mr.M.Anil Kumar, Advocate

**ORDER**

1. This Application is filed by the Applicant who is the Bidder in the e-auction conducted by the Liquidator Respondent for the assets of the Corporate Debtor. The reliefs sought for in this application are to cancel the sale of the land to the application vide e-auction conducted on 15.02.2021 and to direct the Respondent to refund the EMD of Rs.90 lakhs.

2 The facts, to the extent that are relevant to decide the issues involved in this Application are as follows:

i) The National Company Law Tribunal by its Order dated 01.11.2018 admitted the Corporate Debtor (CD) into Corporate Insolvency Resolution Process (CIRP).

ii) In the 11<sup>th</sup> Committee of Creditors meeting held on 23.07.2019, the Resolution Plan submitted by the Resolution Professional was rejected by 84.673 percent voting. On that, the Resolution Profession filed an application for the liquidation of the Corporate Debtor, which was allowed and the Respondent was appointed as the Liquidator. A Public Announcement of e-auction of the land admeasuring 2 Acres 39 Guntas located at Sy.Nos.119, 120, 121 & 122 in Athvelly Village, Medchal, Ranga Reddy District, which was subsequently revised on 10.01.2021 and 29.01.2021.

ii) The Respondent conducted an e-auction, the Earnest Money Deposit for participation was fixed as Rs.90 lakhs and the Applicant deposited the same. E-auction was conducted on 15.02.2021 and the applicant was declared as the successful bidder. The Letter of Intent was

issued on 16.02.2021, but the land sold in the e-Auction fell under the buffer zone, which is preserved as Open Space Buffer Use Zone as per GO No.33 dated 24<sup>th</sup> January, 2013. No construction is permitted in the Open Space Buffer except for fishing, boating and picnics along the banks provided that only construction allowed is open to sky jetties for boating, platforms for fishing.

iii) The GO is in the public domain, as it is a public document and it ought to have been disclosed by the Respondent in the sale notice. The Respondent is ignorant of the said facts as the Corporate Debtor was admitted into CIRP on 01.11.2018, wherein the valuation was completed and all these facts would have come to his notice.

iv) The liquidation process is a comprehensive process and liquidator is duty bound to do proper diligence along with fresh valuations and if required call for fresh legal opinion of such property. The process of liquidation is not a normal sale of "as is where is basis and whatever is where is basis". The same was discovered by the applicant after the e-auction was completed. On further investigation, it was found that National Highway Authorities had already acquired some part of land in the compound wall way back in the year 2011. Hence, there is no title of land in the name of M/s.B S Limited.

v) The Applicant vide e-mail dated 26.02.2021 had requested the respondent for refund of entire EMD amount of Rs.90 lakhs and to withdraw the allocation of land, as the facts relating to the land under sale were suppressed. The Respondent vide reply e-mail dated

26.02.2021 replied, stating that the Respondent does not accept any warranty/responsibility for the discrepancies identified by the applicant. The e-auction has not been conducted in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. Hence, this Application with the above reliefs.

3. The Respondent filed Counter contending that the e-auction was conducted strictly as per the provisions of the IBC and the bidder unconditionally and irrevocably agreed to accept all the terms and conditions laid therein. It is also mentioned that the Liquidator makes no representation or warranty and shall have no liability to any person. The clauses of the process memorandum would make it clear that the e-auction was purely on the basis of "**Caveat Emptor**" which means, let the buyer be aware and the seller does not accept any express warranty. The bidder should participate in the e-auction only after satisfying themselves about the quantity and quality of the subjected e-auction. He has to conduct thorough due diligence before participating in the e-auction and the applicant submitted a declaration to that effect with the bid application. The allegation with regard to the bid price is also denied.

4. Heard both the Counsels and perused the written submissions filed by the applicant. The admitted facts are that the EMD of Rs.90 lakhs was deposited by the applicant after he was declared as a successful bidder and that the land is in the buffer zone. The Liquidator's contention is that it is the bidder who has to conduct due diligence with respect to the title and other details of the property and the bid document clearly stipulates

that the property is being sold in “As is where is basis and whatever is where is basis”. The counsel for the applicant submits that he could not conduct enquiry about the land, as the time given for the same was only two days. It may also be noted here that the said land was again put to e-auction and was purchased by another bidder for a higher price than the price for which the bid was struck in favour of the applicant.

5. The documents filed by the Liquidator would show that a letter was addressed by the Liquidator to the Tehsildar, Medchal Mandal on 19.07.2021 requesting him to exclude the said land from the list of prohibited properties. It is also mentioned therein that an application was filed in Dharani Portal by the Liquidator to the said effect. It was also requested that otherwise, reasonable explanations along with relevant documents shall be provided by the Liquidator for necessary applications before the Hon’ble NCLT. This would show that the liquidator was aware of the land being in prohibited list and that it continued to be in the said list even after the applicant was declared as successful bidder. The details of the land are very much available on Dharani Portal, to which everyone has access, more particularly, the liquidator. It appears that the liquidator did not even attempt to cause preliminary enquiry with regard to the land. He cannot take refuge under the Clause “As is where is basis and whatever is where is basis”. He is expected to disclose the available details of the land and details of the land which can be obtained from the public domain.

6. The Counsel for the Respondent relies on the following judgements:  
(a) AIR 2001 Allahabad High Court in M/s.Bhadohi Woollens Ltd (In Liquidation). Official Liquidator's Report No.75 of 1999 in Company Misc.Appln No.2 of 1996 dated 17.10.2000.

***“Companies Act (1 of 1956), S.457 – Winding up of Company – Sale of property – Sale made on “as in where is basis” – Auction purchases required to make entire payment in four instalments – Failure of auction purchases to pay even single instalment on ground that encroachment on property was not removed – Not proper since said removal of encroachment was not a pre-condition for payment of instalments by purchaser – Since more so when purchaser had offered bid after inspection of property and with notice of said encroachments - Earnest Money ordered to be forfeited for non-payment of instalments”.***

The issue involved in the above case was that the encroachment removal was not done by the seller therein. The Court observed that the encroachment removal was not a pre-condition for payment of the instalments by the purchaser. The encroachments therein are well known to the parties since it a known fact. It is only the removal that was in issue there. There was no issue of title.

(b) The other judgement relied upon and referred to by the Supreme Court in Union Bank of India V. Official Liquidator & others. It was held therein that:

***“When the official liquidator sells the property and assets of a company in liquidation under the orders of the court, he cannot***

***and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms, then claim diminution in the price on the ground of defect in title or description of the property”.***

7. On the other hand, the Counsel for the petitioner relies on the judgement rendered by the NCLAT between M/s.ASI Finsolutions Private Limited V. M/s Best Foods Limited & Others reported in (2023) inclaw. in 257. Hon’ble NCLAT held that :

***i)The factum of litigation by Writ Petition in High Court by a third party and suit by certain parties in the property cannot be ground for the Successful Bidder of not making payment of balance amount. The balance amount was to be deposited within the time as required in Schedule-I of Liquidation Regulation, 2016. This Appellate Tribunal while considering provisions of the Schedule-I of the Liquidation Regulation, 2016 in Potens Transmissions & Power Pvt Ltd Vs. Gian Chand Narang (2022) ibclaw.in 359 NCLAT has laid down that the said timeline is statutory.***

***ii)The Appellant having not deposited the balance amount within the time allowed, the Adjudicating Authority did not***

***commit any error in rejecting the application filed by the Appellant. Appeal is dismissed. Learned counsel for the Liquidator submits that now the SCC has taken a decision to re-auction the property and it is open for the Appellant to participate in the said auction process if they fulfil all the necessary conditions.***

8. It is a case where the bidder failed to deposit the balance amount on account of there being a bonafide litigation regarding the title of the property. In the said case also, e-auction notice did not contain details of litigation. The mode was “as is what is basis and whatever is where is basis”. as in this case. Considering that the factum of litigation and suit by certain parties cannot be ground for successful bidder for not making payment of the balance amount, the court ordered the bidder to pay the rest of the amount. But it can be seen that in the said case, the litigation was nevertheless mentioned in the sale notice which would imply that the party has paid for the property knowing very well about the existence of litigation over the property. But in this case, it is not within the knowledge of the applicant and is well within the knowledge of the liquidator that the property was in prohibited list which was not disclosed in the sale notice. Given the short time, the petitioner could not conduct due diligence and he had to deposit the Earnest Money. It is only after the deposit of Earnest Money that he came to know about the property being under prohibited list.

9. As already observed the property is now not available for the applicant to proceed with the sale as it is already put to another auction and the bid was struck in favour of another successful bidder. It is not a case of defective title but is a case of no title. The land was being shown as government land all through, even after the auction. There was every reason for the applicant to doubt about the title.

10. Hence, in the circumstances, we deem it just to order for the refund of the Earnest Money Deposit of the applicant since it would amount to undue enrichment of the Corporate Debtor. We see that the bidder had a genuine reason for not depositing the rest of the bid amount. Hence the above orders. However in the circumstances no interest is awarded.

Accordingly, the IA No. 152 of 2021 in CP (IB) No. 278 of 2018 is dismissed.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**(JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**