

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/1511(CHE)/2022 in CP/514/IB/2017

*(Filed under Sec. 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with
Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process)
Regulations, 2016)*

In the matter of M/s. Servalakshmi Paper Limited

S Dhanapal,
Liquidator of M/s. Servalakshmi Paper Limited
Kodaganallur Village
Vaduganpatti Post., I.C. Pettai
Tirunelveli – 627 010

... Applicant

-Vs-

M/s. Seshasayee Paper And Boards Limited
Pallipalayam, Cauvery RS PO,
Namakkal District,
Erode – 638 007

... Respondents

Along with

IA/1510(CHE)/2022 in CP/514/(IB)/CB/2017

*(filed under Regulation 44 of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016)*

Mr. S. Dhanapal, Liquidator
M/s. Servalakshmi Paper limited
(Under Liquidation)
Kodaganallur Village
Vaduganpatti Post, I.C. Pettai
Tirunelveli 627010.

... Applicant



Along with

IA/1241(CHE)/2022 in CP/514/(IB)/CB/2017

Application filed under Section 60(5) of the IBC, 2016 R/W Rule 11 of NCLT Rules, 2016.

In the matter of M/s. Servalakshmi Paper Limited

M/s. Bego Cars Pvt. Limited

A Company incorporated under the Companies Act, 2013
Having its registered office at Marker Village,
Kinfra Hi-Tech-Park, Near Government Medical College,
Kalamassery, Kochi – 683 503.

Represented by its Director, Badarudheen E M,
Residing at Elite Business Bay Residence,
Business Bay, Dubai,

... Applicant

-Vs-

1. Indian Overseas Bank,

Asset Recovery Management Branch,
Represented by its Chief Manager,
No. 11/952 Cross Cut Road,
Gandhipuram,
Coimbatore – 641 012.

2. Mr. S. Dhanapal, Liquidator,

M/s. Servalakshmi Paper Limited
(Under Liquidation)
Suite No.103, First Floor, Kaveri Complex,
No. 96/104 Nungambakkam High Road,
Chennai 600 034.

... Respondent

Along with

IA/1108(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of the IBC, 2016 R/W Rule 11 of NCLT Rules, 2016)

NextGen Geotrade LLP

Plot No. 550 B-3, Dal Mill Lane,
Bajraka Bati Road,
Cuttack, Orissa - 753001

... Applicant No. 1

VMS Industries Limited

Plot No. 550 B-3, Dal Mill Lane,
Bajraka Bati Road,
Cuttack, Orissa - 753001

... Applicant No. 2

-Vs-

Mr. S. Dhanapal, Liquidator,

M/s. Servalakshmi Paper Limited
M/s. S. Dhanapal & Associates Suite No. 103,
First Floor, Kaveri Complex, 96/104,
Nungambakkam High Road, (Next to NABARD & ICICI Bank),
Nungambakkam,
Chennai, Tamil Nadu, 600034

... Respondent No. 1

Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi - 110001

... Respondent No. 2

Along with

IA(IBC)/1099(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5)(c) of I&B Code, 2016 R/W Rule 11 of NCLT Rules, 2016)

M/s. Seshasayee Paper and Boards Limited

Having its Registered Office at
Pallipalayam, Namakkal District,
Erode – 638 007.

Represented by its CFO & Company Secretary
Mr. S. Srinivas

... Applicant

-Vs-

Mr. S. Dhanapal, Liquidator,

M/s. Servalakshmi Paper Limited
Suite No. 103, First Floor, Kaveri Complex,
96/104, Nungambakkam High Road,
(Next to NABARD & ICICI Bank),
Nungambakkam,
Chennai, Tamil Nadu, 600034

... Respondent

Along with

IA/IBC/1083(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of IBC, Read with Rule 11 of the NCLT Rules, 2016)

Indian Overseas Bank

Asset Recovery Management Branch,
Represented by its Chief Manager,
No. 11/952 Cross Cut Road,
Gandhipuram,
Coimbatore – 641 012.

... Applicant

-Vs-

Mr. S. Dhanapal, Liquidator,
M/s. Servalakshmi Paper Limited
(Under Liquidation)
Suite No. 103, First Floor, Kaveri Complex,
96/104, Nungambakkam High Road,
Chennai – 600 034

... Respondent

Along with

IA/IBC/1084(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of IBC, Read with Rule 11 of the NCLT Rules,
2016)

In the matter of M/s. Servalakshmi Paper Limited

Y. Shivarami Prasad
S/o. Mr. Y Mallikarjuna Prasad
No. 44, West Club Road, Race Course Road,
Coimbatore – 641 018,
Tamil Nadu.

... Applicant / Suspended Director

-Vs-

1. Mr. S. Dhanapal, Liquidator,
M/s. Servalakshmi Paper Limited
Suite No. 103, First Floor, Kaveri Complex,
96/104, Nungambakkam High Road,
(Next to NABARD & ICICI Bank)
Nungambakkam, Chennai – 600 034

... 1st Respondent / Liquidator

2. M/s. Seshasayee Paper and Boards Limited
Pallipalayam, Cauvery R.S.P.O,
Erode – 638007 Tamil Nadu

... 2nd Respondent / Auction Purchaser



3. Indian Overseas Bank
Large Corporate Branch
No. 10, Kannusamy Road,
Shri Shanmughapriya Towers
Ground Floor, RS Puram
Coimbatore – 641002

4. Pridhvi Asset Reconstruction and Securitisation Company Ltd.,
Door No. 1-55, 4th Floor, Wing I,
Plot 6, 6A & 6B,
Raja Praasdamu Masjid Banda Road,
Kondapur, Hyderabad – 500084

5. Asset Reconstruction Company (India) Limited,
10th Floor, The Ruby, 29, Senapati Bapat Marg,
Dadar West, Mumbai, Maharashtra 400028

...Respondent Nos. 3 – 5 / Financial Creditors

Along with

IA/844(CHE)/2020 in CP/514/(IB)/CB/2017

(Application filed under Section 35 of the Insolvency and Bankruptcy Code 2016)

In the matter of M/s. Servalakshmi Paper Limited

Mr. S. Dhanapal, Liquidator
M/s. Servalakshmi Paper limited (Corporate Debtor)
(Under Liquidation)
Kodaganallur Village
Vaduganpatti Post, I.C. Pettai
Tirunelveli 627010.

... Applicant

-Vs-

M/s. Seshasayee Paper and Boards Limited,
Pallipalayam, Cauvery RS PO,
Namakkal District,
Erode – 638007.

... Respondent

Along with

IA/846(CHE)/2020 in CP/514/(IB)/CB/2017

(Application filed under Section 35 of the Insolvency and Bankruptcy Code 2016)

In the matter of M/s. Servalakshmi Paper Limited

Mr. S. Dhanapal, Liquidator

M/s. Servalakshmi Paper limited (Corporate Debtor)

(Under Liquidation)

Kodaganallur Village

Vaduganpatti Post, I.C. Pettai

Tirunelveli 627010.

... Applicant

-Vs-

M/s. Sun Paper Mill Limited,

No. 11/6, Ratnapuri, 2nd Street,

Koyembedu, Chennai - 600107

... Respondent

Along with

IA/188(CHE)/2021 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

M/s. Servalakshmi Paper limited

(Under Liquidation)

Represented by Mr. S. Dhanapal, Liquidator

... Applicant

-vs-

M/s. Asset Reconstruction Company (India) Limited,

The Ruby, 10th Floor, 29, Senapati Bapat Marg,

Dadar (west), Mumbai - 400028

... Respondent



Along with

IA/IBC/1390(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of Insolvency Bankruptcy Code, 2016 Read with Rule 11 of the NCLT Rules, 2016)

In the matter of M/s. Servalakshmi Paper Limited

Panzarakan Industries Private Limited

Rep. by its Director, Mr. Pawan Ramachandra More,
GSTIN-27AAMCP7168F1ZY,
No. 10, Indradhanu Apartment,
UttaraNagar, Tapovan Road,
Nashik – 422011.

... Applicant

-vs-

Mr. S. Dhanapal, Liquidator

M/s. Servalakshmi Paper limited
Kodaganallur Village, Vaduganpatti Post,
I.C. Pettai, Tirunelveli,
Tamil Nadu - 627010.

... Respondent

Along with

IA/907(CHE)/2022 in CP/514/(IB)/CB/2017

(Application filed under Section 60(5) of IBC 2016 Read with Rule 11 of the NCLT Rules, 2016)

In the matter of M/s. Servalakshmi Paper Limited

Indian Overseas Bank

Asset Recovery Management Branch,
Represented by its Chief Manager,
No. 11/952 Cross Cut Road,
Gandhipuram,
Coimbatore – 641 012.

... Applicant

-Vs-

Mr. S. Dhanapal, Liquidator,
M/s. Servalakshmi Paper Limited
(Under Liquidation)
Suite No. 103, First Floor, Kaveri Complex,
96/104, Nungambakkam High Road,
Chennai – 600 034

... Respondent

Order Pronounced on 12th May 2023

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicants : Karthik Seshadri, Advocate
A.M. Ilango, Advocate
For S. Dhanapal, Liquidator

A.L. Somayaji, Senior Advocate
B. Dhanaraj, Advocate
Mohammed Umar, Advocate
For Seshasayee Paper And Boards Limited

M.L. Ganesh, Advocate
For Indian Overseas Bank

Vidya Shankar, Advocate
Pranav Shankar, Advocate
For Applicant in IA/1084/2022

Aditya Gauri, Advocate
Abhishek Anand, Advocate
For Applicant in IA/1108/2022

T. Ravichandran, Advocate
For Applicant in IA/1241/2022

For Respondents : Karthik Seshadri, Advocate
A.M. Ilango, Advocate
For S. Dhanapal, Liquidator

A.L. Somayaji, Senior Advocate
B. Dhanaraj, Advocate
Mohammed Umar, Advocate
For Seshasayee Paper And Boards Limited

Ravi Rajagopalan, Advocate
For Respondent IA/844/IB/2020

Abitha Banu, Advocate
*For Respondent ARCIL in IA/188/2021 and
IA/1084/2022*

COMMON ORDER

(Hearing conducted through physical mode)

IA(IBC)/1511(CHE)/2022

The present Application viz. **IA(IBC)/1511(CHE)/2022** has been filed by the Applicant / Liquidator under Sec. 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking relief as follows;

- a. To pass appropriate order for implementation / confirmation of sale of the Assets of the Corporate Debtor on a Going Concern Basis as contemplated in the order dated 26.11.2021 of the Hon'ble Adjudicating Authority, in favour of the Respondent.

b. To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his functions effectively and such further orders be passed as the Hon'ble Adjudicating Authority may deem fit and proper.

2. **BRIEF FACTS OF THE CASE:**

- (i) In an Application filed under Section 9 of IBC, 2016 as against the Corporate Debtor viz. M/s. Servalakshmi Paper Limited, this Bench of the Tribunal on 21.06.2017 admitted the Application and initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor. Since during the CIRP no resolution plan(s) was approved by the Committee of Creditors (COC) an order of Liquidation came to be passed by this Bench of the Tribunal on 24.04.2018, whereby the applicant herein came to be appointed as the Liquidator.
- (ii) Aggrieved by the said order of Liquidation dated 24.04.2018, appeals were filed before the Hon'ble NCLAT by erstwhile promoter of the Corporate Debtor in Company Appeal (AT)(Insolvency) No.224 of 2018 and by one of the Financial Creditors of the Corporate Debtor who happened to be one of the unsuccessful Resolution Applicant, in Company Appeal (AT)(Insolvency) No.286 of 2018 and both the above said appeals came to be disposed by a common order dated 27.02.2019.



- (iii) While disposing of the appeals, the Hon'ble NCALT after elaborate consideration of the erstwhile provisions of Section 391 of the Companies Act, 1956 as well as the present Section 230 of the Companies Act, 2013 and decided case laws of the Hon'ble Supreme Court in relation to the power vested in this Tribunal under the provisions of Companies Act, 2013 to consider and deal with a compromise or make arrangements that may be proposed with creditors and members of a company including in relation to a company in liquidation, as is the case in the present instance, had directed the Liquidator to take steps in terms of Section 230 of the Companies Act, 2013.
- (iv) With a view to give effect to the order of the Hon'ble NCALT, the applicant issued advertisements in 'Business Standard' and 'Malai Murasu' calling for 'Expression of Interest' (EOI) for the submissions of a Scheme and pursuant to the same two Schemes came to be propounded by two Scheme Applicants, namely, M/s. Seshayee Paper and Boards Limited and the other one by M/s. Sun Paper Mill Limited. Hence, in the circumstances of obtaining two Schemes pursuant to paper publications, the Liquidator had sought for directions of this Tribunal in MA/678/2019 to constitute a Committee of Creditors (COC) and for placing the said two Schemes before the COC for the purpose of ascertaining their opinion as to its viability, feasibility and having appropriate financial matrix for the revival of the Corporate Debtor in liquidation.

- (v) Directions as sought was issued by this Bench on 31.07.2019, and consequently the COC was constituted by the Liquidator. The Scheme as propounded by M/s. Seshayee Paper and Boards Limited was for a sum of Rs. 160 Crore and the Scheme propounded by M/s. Sun Paper Mill Limited was for Rs. 155 Crore.
- (vi) After receiving the opinions of the individual members of the COC in relation to the Schemes prior to the meeting and also circulating it, the COC had expressed its opinion favorably in relation to Scheme as propounded by M/s. Sun Paper Mill Limited, subject to certain changes being accepted by the said Sun Paper Mill Limited and expressed unfavourable opinion in relation to the Scheme propounded by M/s. Seshayee Paper and Boards Limited.
- (vii) However, the Liquidator in conclusion has expressed his opinion in favour of Scheme as propounded by Seshayee Paper and Boards Limited in contrast to the opinion of the COC which was in favour of Scheme as propounded by Sun Paper Mill Limited, based on the yard stick of Asset Maximization said to be satisfied from his point of view as expressed by the Hon'ble NCLAT in its order dated 27.02.2019 at paragraph 18, and thereby filed CA/1266/2019 seeking for the prayers to approve either the Scheme submitted by Seshayee Paper and Boards Limited or Sun Paper Mill Limited.

- (viii) Thus, in the light of the contrasting opinions of the Liquidator on the one hand and the COC on the other, this Tribunal vide its order date 13.03.2020 after analyzing the factual matrix of the case, has passed a detailed order, in and by which a direction was given to the Liquidator to resubmit both the Schemes by including the modifications to the terms of deposit of their committed amounts and its withdrawal by the stakeholders and also clearly specifying and quantifying the amount payable towards CIRP and Liquidation costs including the fees of the RP/Liquidator. For which purpose, a direction was also given to the Liquidator to constitute a Stakeholders committee in terms of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016.
- (ix) Aggrieved by the order passed by this Tribunal, M/s. Sun Paper Mill Limited filed an Appeal before the Hon'ble NCLAT vide Company Appeal (AT)(Ins) No. 451 of 2020 and the Hon'ble NCLAT vide its order dated 20.03.2020 has passed an *ad-interim* order to keep on hold the operation of the impugned order, till the next date of hearing i.e. 21.04.2020
- (x) However, due to outbreak Covid – 19 pandemic, hearing could not take place before the Hon'ble NCLAT and hence the matter was rescheduled on 25.06.2020. Ultimately on 28.08.2020 the Appellant viz. M/s. Sun Paper Mill Limited withdrew their Appeal before the Hon'ble NCLAT.



(xi) Thereafter, the Liquidator has filed IA/839/IB/2020 before this Tribunal on 17.09.2020 seeking relief to sell the Business of the 'Corporate Debtor' as a going concern. In the said matter, after examining the issue, a detailed order was passed by this Tribunal vide its order dated 26.11.2021, which is as follows;

- a) *The Liquidator is directed to carry out a fresh valuation of all the assets of the Corporate Debtor in terms of Regulation 35(2) of the IBBI (Liquidation Process) Regulations, 2016.*
- b) *After obtaining the Report from the valuers, the Liquidator is directed to take steps under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 to sell the assets of the Corporate Debtor on a 'going concern' basis.*
- c) *The Mode of sale of the assets of the Corporate Debtor shall be done as per Regulation 33(1) of the IBBI (Liquidation Process) Regulations, 2016 and the e-auction should be done by the 40th day.*
- d) *All these exercises are required to be carried out by the Liquidator within a period of 90 days from the date of this Order.*
- e) *The Liquidator is directed to file a status report before this Tribunal within 35 days from the date of this order to bring on record the steps taken by the Liquidator during the interim period.*

(xii) Thereafter, it is seen that the Liquidator could not complete the process within the time period stipulated by this Tribunal vide its order dated 26.11.2021 and hence moved another IA(IBC)/231/2022 before this Tribunal seeking further exclusion of time period, in order to complete the Liquidation process. This Tribunal vide its order dated 02.06.2022 has passed a detailed order in any by which

it deprecated the practice adopted by the Liquidator in completing the Liquidation process of the Corporate Debtor and granted a period of 6 months to complete i.e. till 02.12.2022 to complete the Liquidation process in relation to the Corporate Debtor. The brief particulars of the e-auction conducted by the Liquidator is as under:-

Sale Notice Dated	E Auction Date	Reserve Price in Crore	EMD Amount in Crore
27.12.2021	31.01.2022	173.00	17.00
03.02.2022	24.02.2022	156.00	15.00
25.02.2022	31.03.2022	148.20	14.00
09.06.2022	27.06.2022	134.00	13.00
29.06.2022	15.07.2022	121.00	12.00
27.07.2022	24.08.2022	110.00	11.00
02.09.2022	19.09.2022	105.00	10.00

- (xiii) It is seen that the on 19.09.2022 in the 7th e-auction conducted by Liquidator turns out to be successful and M/s. Seshasayee Paper and Board Limited emerged to be the successful e-auction purchaser of the assets of the Corporate Debtor for a consideration of Rs.105 Crore.
- (xiv) Under such circumstances, it was submitted that the present Application was filed in pursuance to the sale of the Corporate Debtor as a going concern in the 7th E – auction held on 19.09.2020 for a sum of Rs.105 Crore. It was also submitted that the Liquidator has issued the Letter of Intent (LoI) to the successful bidder M/s. Seshasayee Paper and Board Limited on 20.09.2022 and the said successful bidder has also deposited the entire amount of Rs.105

Crore with the Liquidator on 05.10.2022, which is evident from Annexure – II(6) of IA(IBC)/1099(CHE)/2022.

3. IA(IBC)/1241(CHE)/2022

3.1. This is an Application filed by one of the unsuccessful auction purchaser of the Corporate Debtor viz. Bego Cars Pvt Limited seeking relief as follows;

*“It is therefore, prayed that this Hon’ble Tribunal may be pleased to permit the Applicant to get itself intervened in the IA, direct the 1st Respondent to **implead** the Applicant herein as a party to the said IA and permit the Applicant to participate in the auction process if directed by this Tribunal and grant such other relief which are deemed fit and necessary in the nature and circumstances of the case and thus render justice.”*

3.2. It is stated in the Application that since the stakeholder viz. Indian Overseas Bank has filed an IA seeking various relief including the direction to the Liquidator to conduct the e-auction afresh, the applicant herein, who has the capability to purchase the assets of the Corporate Debtor as a going concern for Rs.135 Crores, in the interest of justice

wants itself to get intervened in the present I.A. for an effective adjudication.

3.3. The Applicant herein having been declared as an unsuccessful auction purchase is neither a proper party nor a necessary party to intervene in the application filed by the Stakeholder viz. IOB. In any event no concrete offer, supported by proof of funds was filed along with the IA. The absence of the same makes the applicant not a bonafide purchaser. Hence the present IA viz. IA(IBC)/1241(CHE)/2022 cannot be considered and accordingly stands **dismissed**.

4. IA(IBC)/1390(CHE)/2022

4.1. This is an application filed by one of the unsuccessful auction purchasers viz. **Panzarakan Industries Private Limited** of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- (i) *Direct the Respondent to provide the outcome / result of the e-auction held on 19.09.2022;*
- (ii) *Direct the Respondent to consider the proposal made by the Applicant for taking over the assets of the Corporate Debtor on a going concern basis;*
- (iii) *Permit the Applicant to inspect the properties of the Corporate Debtor;*



- (iv) *Pass appropriate orders, if necessary, for re-auction of the assets of the Corporate Debtor; and*
- (v) *Pass such other and further orders as this Hon'ble Tribunal deems fit.*

4.2. The Learned Counsel for the Applicant submitted that the Applicant Company is doing business related to Sugar manufacturing and it has proposed to take over the assets of the Corporate Debtor by investing a sum of Rs.145 Crore. However, it was submitted that due to certain bonafide reasons, the Applicant was unable to participate in the e-auction held on 19.09.2022.

4.3. The Learned Counsel for the Applicant submitted that they have reliably learnt that the sale has not been concluded and the sale certificate is yet to be issued by the Respondent and hence they have approached this Tribunal seeking appropriate direction.

4.4. During the course of hearing, the learned counsel for the Applicant submitted that they wanted to revoke the vakalat.

4.5. The Learned Liquidator filed the counter and stated that the applicant had enclosed copy of the Bank Guarantee for an amount of



Rs.65,00,000,00/- (Rupees Sixty Five Crores Only) as stated by them in the application. While perusing the attachment of Bank Guarantee and on verifying the details in the bank guarantee, it was found to be suspicious. Immediately, thereafter the Liquidator wrote an email communication on 12.12.2022 to the relevant branch of Bank of India to check the veracity and genuineness of the Bank Guarantee. The content of the said email communication is extracted hereunder:

Madam/Sir

I am writing this email as liquidator of M/s. Servalakshmi Paper Limited (in liquidation) (Corporate Debtor). As liquidator, I have conducted eAuction for sale of Assets of Corporate Debtor on a going concern basis pursuant to the order dated 26/11/2021 of Hon'ble National Company Law Tribunal which got completed on 19/09/2022 Subsequent to that, an application has been filed by one company namely Panzarakan Industries Private Limited(company) expressing their interest to takeover said assets of CD. In proof of and to show the Bonafide interest of the company. they have attached a copy of Bank Guarantee issued by Bank of India for Rs.65.00.00.000/- as stated in their application. I am attaching herewith the copy of the said Bank Guarantee to verify the genuineness of said Bank Guarantee as details provided therein are not clear and appears as suspicious one In view of the same. I request your bank to confirm the genuineness of said Bank Guarantee and issuance of the same by your Bank Please do the needful as earliest since this matter is listed before Hon'ble NCLT on 19/12/2022 for hearing.

4.6. In para 10 of the counter it is stated that on 13.12.2022, the Bank of India replied from their email id Nipaniya.Indore@bankofindia.co.in with a copy to HeadOffice.Legal@bankofindia.co.in and Legal.Indore@bankofindia.co.in, responding to the email communication of the Liquidator requesting confirmation on the Bank Guarantee and its genuineness.



R/Sir,

No such bank Guarantee has been issued by our branch Above Bank

Guarantee is a fake Bank guarantee

Thanks and Regards,

Mr Mayuresh Sathe Contact 9977159112

Branch Manager, Nipaniya

4.7. From the above, it is it is very apparent and clear that the application has been filed by the Applicant with a fake bank guarantee not issued by the bank concerned and has been placed in an attempt to mislead the Adjudicating Authority and is attempting to delay the process. It is an offence under the section 120-B, Section 420, Section 467, Section 468 and Section 471 of Indian Penal Code 1860. The Liquidator humbly submits that there are complete misrepresentations of facts by the Applicants to suit their convenience and they are trying to make an attempt to defraud and to derail the E-Auction process without participating in the E-Auction. It is pertinent to note that they have not participated in any of the earlier E-Auctions.

4.8. Heard the Submissions of both the parties. We have considered the submissions made by the Liquidator that the applicant



has produced a false Bank Guarantees. The act of the applicant in producing a false or Forged Bank Guarantees prima facie is wrong and an offence as indicated above. In these circumstances the Applicant cannot be left to go scott free. The Applicant should face the repercussions of his unlawful actions. *The Liquidator is directed to lodge a "Criminal Complaint" with regard to the aforesaid matter, before the appropriate forum in accordance with the provisions of law and pursue the same.*

4.9. Since, it is *prima facie* evident that the applicant had produced a fake or forged bank guarantee in order to derail the E-Auction process of the Corporate Debtor This Application holds no merits and accordingly IA(IBC)/1241(CHE)/2022 stands **dismissed**.

5. IA(IBC)/1510(CHE)/2022

5.1. This is an Application filed by the Liquidator of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- a) *Exclude the time period for Distribution / Liquidation period from 19.10.2022 to till the sale confirmation order passed by this*



Hon'ble Adjudicating Authority after disposal of aforesaid pending matters stated in para 11 of this Application ; and

- b) To extent the period of liquidation by 90 days after consideration of prayer (a) to conclude the process of liquidation and such further orders be passed or directions be given as your Lordship may deem fit and proper;

5.2. This Application has been filed by the Liquidator seeking exclusion and extension of the Liquidation period. As already alluded *supra*, it is seen that the sale has been concluded and only distribution of the amount to the stakeholders is pending. Thus, by taking into consideration the averments made in para 11 and 12 of the Application, the Liquidation period in respect of the Corporate Debtor is extended upto 01.06.2023. With the above said directions, this IA(IBC)/1510(CHE)/2022 stands disposed of.

6. IA(IBC)/188(CHE)/2021

6.1. This is an Application filed by the Liquidator of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- a) To direct the Respondent to make their share of payments covering reimbursement of expenses incurred by the Liquidator during

Liquidation period amounting to Rs.14,12,252.72 immediately and also to pay regularly their share of liquidation expense as may be incurred by the Liquidator.; and

- b) *To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his functions effectively;*

6.2. In this Application, it is seen that the Respondent has filed a memo on 26.02.2022 wherein it is stated that they have deposited 50% of the amount claimed by the Liquidator and has also submitted the proof in relation to the same. The said memo is taken on record. If the Applicant has not paid the balance 50% of the amount, the Liquidator is directed to adjust the said amount, from the disbursement to be made to the Applicant in terms of Section 53 of IBC, 2016.

6.3. With the above said directions **IA(IBC)/188(CHE)/2021** stands **disposed of.**

7. **IA(IBC)/907(CHE)/2022**

7.1. This is an Application filed by Indian Overseas Bank, the stakeholder of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;



- a) *Direct the Liquidator to stay the auction sale notice dated 27.07.2022 and consequently direct the Liquidator to consult the stakeholders for fixing the value of the assets of the Corporate Debtor company and thus render justice.*
- b) *To pass such further or other orders may deem fit and proper and thus render justice;*

7.2. The present Application filed by Indian overseas has become infructuous since the e-auction which was scheduled on 24.08.2022, in respect of the impugned sale notice dated 27.07.2022, did not fructify since there were no prospective bidders. Hence, **IA(IBC)/907(CHE)/2022 stands dismissed.**

8. **IA/844/IB/2020 & IA/846/IB/2020**

8.1. IA/844/IB/2020 is an Application filed by the Liquidator of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- a) *To pass appropriate orders to direct the Respondent (with respect to the Bank Guarantee No. 1104GPGE012019) to deposit the amount equivalent to the Bank Guarantee of Rs.2,00,00,000/- (Rupees Two Crore Only) each (which is due for renewal by them) in the liquidation account of the Corporate Debtor against withdrawal of the scheme after submission of the same with the Liquidator.*



- b) *To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his functions effectively and such further orders be passed or directions be given as your Lordship may deem fit and proper.*

8.2. IA/846/IB/2020 is an Application filed by the Liquidator of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- a) *To pass appropriate orders to direct the Respondent (with respect to the Bank Guarantee No. 002551G190000002) to deposit the amount equivalent to the Bank Guarantee of Rs.2,00,00,000/- (Rupees Two Crore Only) each (which is due for renewal by them) in the liquidation account of the Corporate Debtor against withdrawal of the scheme after submission of the same with the Liquidator.*
- b) *To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his functions effectively and such further orders be passed or directions be given as your Lordship may deem fit and proper.*

8.3. It was submitted by the Learned Counsel for the Liquidator that the Liquidator has filed an Application CA/1266/2019 before this Tribunal under Section 230 of the Companies Act, 2013 for approval of either one of the schemes received from the Scheme Applicants viz. (i) Seshasayee Paper and Boards Limited and (ii) Sun Paper Mill Limited. This Tribunal vide its order dated 13.03.2020 has passed the final order with certain directions. In terms of the final order, the Liquidator issued

a paper publication in Business Standard in English and Maalai Malar in Tamil and has also constituted a stakeholder committee in terms of Regulation 31A of IBBI (Liquidation Process) Regulations 2016 for considering the schemes and voting thereon.

8.4. In the meantime, it was submitted that one of the Scheme proponent M/s. Sun Paper Mill Limited filed an Appeal before Hon'ble NCLAT and the Hon'ble NCLAT vide its order dated 20.03.2022 has passed order as follows "ad-interim operation of the impugned order is kept on hold till the next date of hearing". Thereafter, on account of Covid – 19 pandemic, hearing could not take place.

8.5. It is seen that the Liquidator vide his email dated 12.08.2020 has written to the Scheme proponents to renew their bank guarantee and to keep it alive till the disposal of the matter pertaining to the Scheme filed under Section 230 of the Companies Act, 2013. In the meantime, the Appellant before Hon'ble NCLAT viz. Sun Paper Mill Limited has withdrawn its appeal on 28.08.2020.



8.6. The Learned Counsel for the Liquidator submitted that the Scheme proponents have taken advantage of the appeal proceedings before Hon'ble NCLAT and allowed the Bank Guarantee to lapse. Further, it was submitted that the Scheme proponents has completely failed in submitting the comprehensive scheme as directed by this Tribunal vide its order dated 13.03.2020 and due to their inaction, the Respondents have neither complied the order of this Tribunal nor the conditions imposed by the Liquidator with regard to keeping the validity of the Bank Guarantee alive, but is only attempting abruptly run away from the situation by giving lame excuses. This has caused grave prejudice to the liquidation estate, loss of value, to all stakeholders. Under the said circumstances, the Learned Counsel for the Liquidator submitted that the Respondents be directed to pay Rs.2 Crore into the Liquidation account of the Corporate Debtor.

8.7. In response to this Application, M/s. Seshasayee Paper and Boards Limited have filed their reply and it is stated that M/s. Sun Paper Mill Limited has filed appeal before the Hon'ble NCLAT as against the order passed by this Tribunal dated 13.03.2020 and that the M/s. Seshasayee Paper and Boards Limited has filed its reply and prayed

before Hon'ble NCLAT to modify the Scheme that it had submitted, without any constraint whatsoever including down – revision of the Scheme amount and then submit the same to the Liquidator for further consideration or in the alternative to permit the Respondent to withdraw the Scheme it had proposed. Thereafter, M/s. Seshasayee Paper and Boards Limited vide its letter dated 30.08.2021 has informed to the Liquidator that it was not interested in further pursuing its proposal to submit a Scheme and the same may be treated as formally closed. Also the appeal filed by M/s. Sun Paper Mill Limited came to be withdrawn on 28.08.2020 and the Hon'ble NCLAT has passed the following order in Company Appeal (AT)(Ins) No.451 of 2020:-

“Shri Adiya Verma, Advocate representing the Appellant seeks to withdraw the appeal as in terms of para 39 of the impugned order the Liquidator has been granted liberty to approach the Adjudicating Authority (National Company Law Tribunal), Bench – I, Chennai as and when required for necessary directions. The appeal is accordingly dismissed as withdrawn.”

Thus, it was submitted that the claim of the Liquidator for the Bank Guarantee sum is unfounded as the Scheme proposed by the Respondent stood withdrawn and neither did it meet with the approval of the CoC /



Stakeholders. Under such circumstances the Learned Counsel for the Respondent sought for dismissal of the present Application.

8.8. In so far as these Applications are concerned, it is seen that the Bank Guarantee in respect of the two scheme proponents have expired as early as on 30.04.2020. However on account of Covid – 19 pandemic and also due to nationwide lockdown imposed by the Central / State Government from time to time, it was submitted that the Liquidator could not access the documents which were lying in his office.

8.9. In the present case, it is seen from the averments made in the reply by the Respondent viz. Seshasayee Paper and Boards Limited that they have sought permission from Hon'ble NCLAT to withdraw the Scheme it had proposed. Thus, the Respondent very well knew that they cannot wriggle out from their obligation once they propound a scheme and just by sending a letter to the liquidator on 30.08.2021 would not absolve them from their liability. Hence, this Tribunal is of the considered view that the unilateral action of the Respondents in withdrawing from the Scheme, especially when an order has been passed by this Tribunal and when no application seeking leave of withdrawal of the same has

been filed before this Tribunal is not legally sustainable. Moreover the order of this Tribunal dated 13.03.2022 assumed finality and the Appeal challenging the same was filed but later withdrawn.

8.10. Accordingly, we direct the Respondents viz. (i) Seshasayee Paper and Boards Limited and (ii) Sun Paper Mill Limited to deposit a sum of Rs.2 Crore each into the liquidation estate of the Corporate Debtor within a period of 7 days from the date of this order. With the above said directions, IA/844/IB/2020 and IA/846/IB/2020 stands disposed off.

9. IA(IBC)/1099(CHE)/2022

9.1. This is an Application filed by the successful auction purchaser of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- (i) *Permit the Applicant to deploy enough and adequate security personnels both outside and within the premises of the Corporate Debtor in order to secure the assets, plant and machinery and to prevent the pilfering of detachable essential components ;*
- (ii) *Direct the Respondent to hand over the possession of the property of the Corporate Debtor to the Applicant;*



- (iii) *Direct the Liquidator to issue the Sale certificate to the Applicant for the sale of the property of the Corporate Debtor sold under E-auction dated 19.09.2022 to the Applicant;*
- (iv) *Pass such further or other orders as deemed fit and necessary by the Hon'ble Adjudicating Authority and thus render justice;*

9.2. The Applicant is the successful auction purchaser who has paid the amount of Rs.105 Crore on 05.10.2022. It was submitted that the Applicant has sought permission from the Liquidator to visit the plant and to access the investment to restart the plant, and the Liquidator in his response email dated 06.10.2022 permitted the Applicant to visit the Corporate Debtor's plant for assessment and the Applicant visited the Corporate Debtor's plant on 10.10.2022 and upon preliminary assessment it was revealed that all the Electrical Transformers have been found tampered and the copper – windings, motors and instruments have been found pilfered and all the electrical instruments control systems have been found tampered with. It was submitted that the security deployed by the Liquidator is inadequate to guard the assets and that the land of an extent of 349 acres with building, plant and machinery are guarded by 7 security personnels on relay shift.



9.3. Further, it was submitted that since the Applicant had complied with all the procedures of E-Auction, and had remitted the full sale consideration of Rs.105 Crores, the Liquidator is duty bound to issue immediate Sale certificate and handover the possession of the Corporate Debtor to the Applicant. Hence, the present Application.

10. IA(IBC)/1083(CHE)/2022

10.1. This is an Application filed by one of the stakeholders of the Corporate Debtor viz. Indian Overseas Bank under Section 60(5) of IBC, 2016 seeking relief as follows;

- (i) *To quash the e-auction sale conducted on 19.09.2022 by the Liquidator and consequently direct the Liquidator to conduct e-auction proceedings afresh after giving fair and reasonable opportunity to the eligible intending purchaser(s) or in the alternative, this Hon'ble Tribunal may be pleased to conduct e-auction by following Swiss Challenge Method Sale to ascertain whether any intending purchaser(s) willing to purchase more than 105 Crore to meet the ends of justice.*
- (ii) *To pass such further or other orders may deem fit and proper and thus render justice.*

10.2. The Learned Counsel appearing for the Indian Overseas Bank submitted that the sale of the Corporate Debtor as a going concern in the present case has not happened in a fair manner and it was



submitted that the Liquidator has not entertained many intending purchaser(s) by sharing the details of e-auction and virtually disabled them to participate in the e-auction proceedings by stating that their credit worthiness is not sound to pay the reserve price amount. It was submitted that some of the intending purchaser(s) have reported to the Applicant that they are having financial means to pay more than the reserve price as fixed by the Liquidator but unable to participate in the e-portal due to non-cooperation.

10.3. The Learned Counsel appearing for Indian Overseas Bank submitted that the Liquidator has caused a sale notice on 27.07.2022 fixing the reserve price at Rs.110 Crore which is far below as compared to the present value of the assets of the Corporate Debtor and after taking cognizance of the said sale notice one buyer M/s. BEGO HICONICS has agreed to purchase the same at Rs.135 Crore but the Liquidator was not interest to provide necessary information to the said buyer for obvious reasons.

10.4. It was submitted that the Liquidator has again reduced the Reserve price from Rs.110 Crore to Rs.105 Crore and issued a Sale Notice

dated 02.09.2022 fixing the e-auction proceedings on 19.09.2022 and the said e-auction, only one bidder viz. Seshasayee Paper and Boards Limited reported to have participated and knocked down the bid for Rs.105 Crore. It was submitted that the said bidder had originally offered Rs.160 Crore to purchase the Corporate Debtor property during the CIRP period.

10.5. The Learned Counsel for IOB submitted that the Liquidator cannot reduce the reserve price drastically with ulterior motive thereby causing great prejudice not only to the stakeholders but also to the Corporate Debtor's property. Under such circumstances, the present Application is filed by IOB seeking thereof to quash the sale conducted by the Liquidator on 19.09.2022.

11. IA(IBC)/1108(CHE)/2022

11.1. This is an Application filed by one of the unsuccessful auction purchaser of the Corporate Debtor seeking relief as follows;

- a. *An order be passed restraining the Liquidator from proceedings with the sale process of the Corporate Debtor (In Liquidation) pending hearing and final disposal of this Application;*
- b. *Ad-interim Order in terms of prayers above;*

- c. *An order be passed declaring the E-Auction held on 19.09.2022 as nullity;*
- d. *An order be passed setting aside the decision of the Respondent to not allow the Applicant to participate in the E-Auction Process or Applicant No.2's Bid of Rs.110 Crores be accepted;*
- e. *An Order be passed and the Respondent be directed to proceed with Fresh Auction Process of the Corporate Debtor in pursuance of the provisions of the Code and Regulations thereunder;*

11.2. The Learned Counsel for the Applicant submitted that in the E-Auction process of the Corporate Debtor, the Applicant herein has applied to become a bidder and has also furnished Refundable Participation Deposit Money of Rs.1,00,000/-. However, it was submitted that despite submission of the documents along with the Refundable Participation Deposit Money of Rs.1,00,000/- the Liquidator has sought information about KYC and other Financial Documents which were provided by the Application. It was submitted that the Liquidator vide his email dated 16.09.2022 communicated to the Applicant that sufficient documents with regard to proving the financial eligibility has not been furnished by the Applicant and so the Applicant cannot be allowed to continue in the process. Thus, the Applicant herein was not allowed to participate in the E-auction process. Aggrieved by the same, the Applicant has moved the present Application.



12. IA(IBC)/1084(CHE)/2022

12.1. This is an Application filed by the suspended Director of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking relief as follows;

- (i) *Set aside the e-auction sale 19.09.2022 issued by the Liquidator for sale of the assets of the Corporate Debtor and the auction proceedings conducted as illegal, vitiated by fraud and contrary to law; ;*
- (ii) *Set aside the sale in favour of the 2nd Respondent i.e. Seshasayee Paper and Boards Limited as fraudulent and collusive;*
- (iii) *Without prejudice and in the alternative to prayer (a) and (b) above, declare that the 2nd Respondent is estopped from purchasing the Corporate Debtor for a value less than Rs.160 Crores in terms of the Scheme submitted by it and consequently , direct the 2nd Respondent i.e. Seshasayee Paper and Boards Limited to purchase the Corporate Debtor at a value of Rs.160 crores;*
- (iv) *Direct an investigation by IBBI, into the manner of conduct of liquidation process by the 1st Respondent Liquidator including in respect of the allegations of fraud and collusion;*
- (v) *And pass such further or other orders as this Honourable Tribunal may deem fit in the interest of justice;*

12.2. The Learned Counsel for the Applicant submitted that the e-auction process which happened on 19.09.2022 is a collusion and fraud between the Liquidator and the 2nd Respondent viz. Seshasayee Paper and Boards Limited. It was submitted that the loss in the value from January 2022 is only owing to the inaction of the Liquidator and is linked

to the collusion between the Liquidator and the 2nd Respondent and in no scenario whatsoever, the value of the assets have depleted by Rs.55 Crores when as late as in January 2022, the assets was asked to be sold in auction upon revision from Rs.160 Crore.

12.3. The Learned Counsel for the Applicant submitted that even the Financial Creditor viz. IOB has challenged the auction sale in IA/907/2022 and the complaints have been filed concerning the conduct of the Liquidator and an investigation regarding the same is pending. Further, it was submitted that the manner in which the instant auction is concluded in favour of the 2nd Respondent is also apparently collusive and fraudulent.

12.4. The Learned Counsel for the Applicant submitted that the 2nd Respondent ought to be estopped in participating in the auction and in any event from purchasing the Corporate Debtor for any value less than Rs.160 Crore offered at the time of submitting the Scheme before this Tribunal and if such estoppel is not ordered it will result in unjust enrichment to Seshasayee Paper and Board Limited to the tune of Rs.55 Crores. Under such circumstances the Learned Counsel for the Applicant

sought to set aside the e-auction sale dated 19.09.2022 issued by the Liquidator.

13. ISSUES

13.1. In so far as the Applications filed by the stakeholders, unsuccessful auction purchasers, and suspended directors of the Corporate Debtor wherein they have impugned the e-auction sale made in favour of Seshasayee Paper and Boards Limited, the following issues arise for consideration and are required to be answered.

- (i) *Whether the Liquidator has committed any material irregularity in conducting the e-auction of the Corporate Debtor as a 'going concern'.*
- (ii) *Whether the E-auction conducted by the Liquidator has been done in a fair and reasonable manner in accordance with the provisions of IBC, 2016.*
- (iii) *Whether there is any statutory bar for Seshasayee Paper and Boards Limited to acquire the assets of the Corporate Debtor through e-auction when they have already propounded a Scheme under Section 230 of the Companies Act, 2013 and backed off.*
- (iv) *Whether the suspended Director / ex-promoter of the Corporate Debtor has any locus standi to challenge the e-auction sale process in respect of the Corporate Debtor.*



- (v) *Whether the unsuccessful auction purchaser who has not participated in the e-auction has any vested interest to challenge the E-auction sale made by the Liquidator.*
- (vi) *Whether the e-auction sale which is complete in all respects can be set aside on the ground that a prospective party is ready to offer a higher price?*

14. ISSUE NO. (I) & (II)

14.1. In so far as the issues relating to the manner in which the e-auction was conducted and the drastic reduction in the Reserve Price of the Corporate Debtor is concerned, it is seen that the Liquidator has filed his detailed reply refuting the said allegations. However, in order to better understand the said issues, it is necessary to refer to the earlier orders passed by this Tribunal.

14.2. This Tribunal vide its order dated 26.11.2021 passed in IA/839/IB/2020 has issued certain directions to the Liquidator in relation to the Liquidation process in respect of the Corporate Debtor, which are as follows;

- (i) *The Liquidator is directed to carry out a fresh valuation of all the assets of the Corporate Debtor in terms of Regulation 35(2) of the IBBI (Liquidation Process) Regulations, 2016.*



- (ii) *After obtaining the Report from the valuers, the Liquidator is directed to take steps under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 to sell the assets of the Corporate Debtor on a 'going concern' basis.*
- (iii) *The Mode of sale of the assets of the Corporate Debtor shall be done as per Regulation 33(1) of the IBBI (Liquidation Process) Regulations, 2016 and the e-auction should be done by the 40th day.*
- (iv) *All these exercises are required to be carried out by the Liquidator within a period of 90 days from the date of this Order.*
- (v) *The Liquidator is directed to file a status report before this Tribunal within 35 day from the date of this order to bring on record the steps taken by the Liquidator during the interim period.*

14.3. It is seen that in compliance of the aforesaid order passed by this Tribunal, the Liquidator has carried the valuation through 6 (six) Registered Valuers. After carrying out the said process, the Liquidator has arrived at the Liquidation value as Rs.173 Crore and the same has been taken as the Reserve Price. It is to be noted here that even before the passing the order of Liquidation of the Corporate Debtor on 24.04.2018, the Corporate Debtor has ceased its operation 3 years prior to the said date.

14.4. Thereafter, it is seen that the Liquidator has filed IA(IBC)/231(CHE)/2022 before this Tribunal for exclusion of the

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Liquidation period. In the said matter, this Tribunal has passed a detailed order, which is as follows;

13. *In the matter of liquidation of the Corporate Debtor scheme under Section 230 of the Companies Act, 2013 came to be allowed by Hon'ble NCLAT vide order dated 27.02.2019. Two scheme proponents viz. Seshayee Paper and Boards Limited (SPBL) and Sun Paper Mill Limited (SPML) presented the scheme before the Ld. Liquidator. In compliance of the directions, the Ld. Liquidator obtained Bank Guarantees of Rs. 2.00 Crores each from the two scheme proponents i.e. SPBL and SMPL. By order of this Tribunal dated 13.03.2020 resubmission of schemes was permitted with the option to only up-revise the scheme amount. Aggrieved by the order one of the scheme proponents challenged the order before Hon'ble NCLAT. The said appeal was disposed off on 28.08.2020 by the Hon'ble NCLAT as the Appellant therein unconditionally withdrew the said Appeal. During the time the Appeal was pending before the Hon'ble NCLAT, the Ld. Liquidator conveniently allowed the bank guarantees of Rs. 2.00 Crores each, to expire. Needless to add that these bank guarantees were furnished by the two scheme proponents SBPL and SMPL as security towards the scheme of which they were the proponents. The only action which the Ld. Liquidator took was to file two IA's being IA 844 and IA 846 of 2020 seeking directions by this Tribunal for renewal of the two bank guarantees. Now the question before us at this point of time is who allowed these bank guarantees to expire and why they were not enforced before the expiry date.*

14. *No effort has been made by the Liquidator to sell the assets of the Corporate Debtor on piece meal basis even when efforts made to sell the same on going concern basis failed.*

15. *Precious period from 28.08.2020 i.e. the date of order of Hon'ble NCLAT to 27.12.2021 i.e. the date of publication of first E-Auction notice for sale as going concern was lost due to inaction of the Liquidator.*

16. *With the above comments and directions and by taking into consideration all the facts mentioned above and also in the interest of the*

stakeholders, this Authority feels that it is just and proper to extend the Liquidation period for a further period of six months and as such the Liquidation period of the Corporate Debtor is extended for a period of six months from the date of this Order and the Liquidation process in relation to the Corporate Debtor is required to be completed on or before 02.12.2022.

14.5. Thereafter, it could be seen that in accordance with the orders passed by this Tribunal, the Applicant undertook efforts for selling the Corporate Debtor as a going concern and has conducted the following e-auctions;

Sale Notice Dated	E Auction Date	Reserve Price in Crore	EMD Amount in Crore
27.12.2021	31.01.2022	173.00	17.00
03.02.2022	24.02.2022	156.00	15.00
25.02.2022	31.03.2022	148.20	14.00
09.06.2022	27.06.2022	134.00	13.00
29.06.2022	15.07.2022	121.00	12.00
27.07.2022	24.08.2022	110.00	11.00
02.09.2022	19.09.2022	105.00	10.00

14.6. The 1st E-auction was scheduled on 31.01.2022 vide Sale notice dated 27.12.2021 and it was submitted that one interest person viz. M/s. Martin Happy Homes Private Limited showed their interest and submitted KYC documents along with interest free refundable deposit of Rs.10 Lakhs. It was submitted that the outcome of the E-auction was not successful as there was no EMD and final bid from the interested person.



14.7. The 2nd E-auction was scheduled on 24.02.2022 vide Sale Notice dated 03.02.2022 and one interested person viz. M/s. Tirumala Construction showed their interest and submitted KYC documents along with interest free refundable deposit of Rs.10 Lakhs. It was submitted that the outcome of the E-auction was not successful as there was no EMD and final bid from the interested person.

14.8. The 3rd E-Auction was scheduled on 31.03.2022 vide sale notice dated 25.02.2022 and the outcome of the E-auction was not successful as no one showed interest to participate.

14.9. The 4th E-auction was scheduled on 27.06.2022 vide Sale notice dated 09.06.2022. It was submitted that four interested persons namely viz. M/s. Sherisha Technologies Private Limited, M/s. Shree Ram Vessel Scrab Private Limited, M/s. R.S. Developers and Trade Circle Enterprise LLC showed their interest and submitted KYC documents along with Interest free Refundable Deposit of Rs.1 Lakh except R.S. Developers. It was submitted that the outcome of the E-auction was not



successful as there was no EMD and any final bid from any of the interested person.

14.10. The 5th E-auction was scheduled on 15.07.2022 vide Sale notice dated 29.06.2022 and one interested person viz M/s. Sherisha Technologies Private Limited showed their interest and submitted the KYC documents with interest Free Refundable Deposit of Rs.1 Lakh for the said E-auction. It was submitted that the outcome of the E-auction was not successful as there was no EMD and final bid from the interested person.

14.11. The 6th E-auction was scheduled on 24.08.2022 vide Sale Notice dated 27.07.2022 and that seven interest persons viz. (i) Usha Enterprises, (ii) Aqua World Exports Private Limited, (iii) MTC Business Private Limited, (iv) HR Commercials Private Limited, (v) Sherisha Technologies Private Limited, (vi) Trade Circle Enterprise LLC, (vii) Doshi Electrical and Metals, showed their interest and submitted KYC documents along with interest free Refundable Deposit of Rs.1 Lakh for the said E-auction. It was submitted that the outcome of the E-auction



was not successful as there was no EMD and final bid from any of the interested person.

14.12. The 7th E-auction was scheduled on 19.09.2022 vide Sale notice dated 02.09.2022 and eight interested persons viz. (i) SGR Enterprises, (ii) Anton Engineering, (iii) Dr. Ganesan Subramanian, (iv) Seshasayee Paper and Board Limited, (v) Nextgen Geotrade LLP, (vi) SKS Foundation India Private Limited, (vii) VMS Industries Limited, (viii) Lavditya Polytech Private Limited, showed their interest. It was submitted that except Anton Engineering, others submitted the KYC documents along with interest free refundable deposit of Rs.1 Lakh. It was submitted that the outcome of the E-auction was successful as the EMD and final bid was received from only one bidder viz. M/s. Seshasayee Paper and Board Limited, who participated in the E-auction held on 19.09.2022 and became the successful bidder for the bid value of Rs.105 Crore. It was submitted that other than the successful bidder no one has given the certificate for net worth and source of funds and has not paid the Earnest Money Deposit.



14.13. Thus, it could be seen that the Liquidator has conducted the e-auction process in respect of the Corporate Debtor as per the procedure laid down under Schedule I of the IBBI (Liquidation Process) Regulations, 2016, which is as follows;

**SCHEDULE I
MODE OF SALE**

1. AUCTION

(1) Where an asset is to be sold through auction, a liquidator shall do so in the manner specified herein.

(1A) Subject to provisions of regulation 2B, the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date unless the consultation committee advises to extend the timeline.

(1B) The liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.

(1C) Notwithstanding anything contained in this Schedule, the liquidator shall complete an auction process within thirty-five days from the issue of public notice for auction.

(1D) The liquidator shall provide at least fourteen days from issue of public notice for submission of eligibility documents by prospective bidder.

(1E) The liquidator shall provide to qualified bidder at least seven days, for inspection or due diligence of assets under auction, from the date of declaration of qualified bidder.



(1F) A prospective bidder in an auction process shall deposit earnest money deposit at least up to two days before the date of auction.

(2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-

- (a) releasing advertisements;
- (b) preparing information sheets for the asset;
- (c) preparing a notice of sale; and
- (d) liaising with agents.

(3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.

Provided that the liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process: Provided further that the earnest money deposit shall not exceed ten percent. of the reserve price.

(4) The reserve price shall be the value of the asset arrived at in accordance with regulation 35.

(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.

(5) The liquidator shall issue a public notice of an auction in the manner specified in Regulation 12(3); Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation

12(3)(a) keeping in view the value of the asset intended to be sold by auction.

(6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.

(7) From a date to be notified through circular by the Board, the liquidator shall sell the assets only through an electronic auction platform empanelled by the Board.

(8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.

(9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

(10) If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.

(11) If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.

(11A) Where the liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.

(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:

Provided that payments made after thirty days shall attract interest at the rate of 12%:

Provided further that the sale shall be cancelled if the payment is not received within ninety days.


(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.

14.14. In the present case, it is seen that the Liquidator has conducted a total of 7 E-auctions. The 1st E-auction failed since there was no EMD and final bid from the interest person and hence the Liquidator in terms of Regulation 4A and 4B of Schedule I of IBBI (Liquidation Process) Regulations, 2016 has reduced the Reserve Price of the Assets of the Corporate Debtor. Further, the same process has been followed till the 7th E-auction dated 02.09.2022. Hence the Reserve Price of Rs.105 Crore fixed by the Liquidator for the 7th E-auction Sale notice dated 02.09.2022 cannot be termed as illegal or irregular and the arguments made by the Learned Counsel for the Stakeholders that the Liquidator has reduced the reserve price drastically with ulterior motive thereby



causing great prejudice to the stakeholders *sans* merit and required to be eschewed. The mode of e-auction for price discovery is a time-tested mode.

14.15. Further, the Learned Counsel for IOB submitted that one buyer M/s. BEGO HICONICS has agreed to purchase at a sum of Rs.135 Crores however the Liquidator has not provided necessary information to the said buyer. In response to the same, the Learned Counsel for the Liquidator has submitted that the Liquidator has verified the credentials by making inspection of record in the portal of MCA and that the said company was incorporated on 30.07.2020 and the paid-up capital is Rs.10 Lakh and the said Company is in default in filing Financial Statement / balance Sheet and Annual Return for the Financial year ended 31.03.2021 and is yet to be filed. Thus, the reliance made by the stakeholder of the Corporate Debtor that another prospective buyer is ready to pay more amount cannot be a ground to quash the sale which has been concluded by the Liquidator. At this juncture we wish to refer to the Judgment of the Hon'ble High Court of Punjab and Haryana in the matter of **Scanomax India Limited -Vs- PSIDC [2008] 146 Comp Cas 102 at p.104**

 (P&H) wherein:-

“The assets of the company in liquidation were auctioned by the Official Liquidator but the same was not confirmed by the Court. Subsequently, the corporation, a secured creditor, objected to the confirmation of sale on the ground that if the assets of the company in liquidation were to be re-auctioned they might fetch a higher price than the price offered which was opposed by all the other secured creditors and the Official Liquidator. An order permitting re-auction of the property on fulfilment of the specified conditions was passed but the corporation failed to comply with the conditions and also failed to bring in any higher bidder. The sale was confirmed in favour of the highest bidder which was the reasonable price for the assets of the company in liquidation.”

14.16. Merely because the stakeholder viz. IOB has brought in one buyer for an higher offer however the same is not supported with any deposit or bank guarantee to show the seriousness of the buyer and thus it would not constitute a valid ground for refusing confirmation of sale.

14.17. Thus, it is seen that the E-auction sale process in respect of the Corporate Debtor has been done by the Liquidator in a fair and equitable manner and there are no documents placed on record to show that the property has been sold for inadequate consideration or there has been any fraud or collusion or any material irregularity or illegality in conducting the E-auction. Accordingly, issue no. (i) and (ii) is answered in favour of the Liquidator.



15. ISSUE NO. (III)

15.1. In so far as the issue whether there is any statutory bar for Seshasayee Paper and Boards Limited to acquire the assets of the Corporate Debtor through e-auction when they have already propounded a Scheme under Section 230 of the Companies Act, 2013 and backed off, eventhough a plea of such sort has been raised by the Learned Counsel for the stakeholders and by the suspended Directors, they have miserably failed to place on record the position of law to state that Seshasayee Paper and Boards Limited is barred to participate in the E-auction process.

15.2. Further, this Tribunal has directed Seshasayee Paper and Boards Limited to deposit a sum of Rs.2 Crore into the liquidation estate of the Corporate Debtor within a period of 7 days from the date of this order for unilaterally withdrawing from the Scheme which was propounded by them.

15.3. Hence there is no statutory bar on the Seshasayee Paper and Boards Limited to acquire the assets of the Corporate Debtor through the e-auction sale. Accordingly issue No. (iii) is answered.

16. ISSUE NO. (IV)

16.1. This issue pertains to whether the suspended Director / ex-promoter of the Corporate Debtor has any locus standi to challenge the e-auction sale process in respect of the Corporate Debtor. It is seen from the averments made in the Application that the Suspended Director of the Corporate Debtor has made a sweeping allegations of fraud and collusion on the part of the Liquidator in finalizing the Sale process in favour of Seshasayee Paper and Boards Limited. However, no corroborating documents have been placed on record in order to substantiate the said statement.

16.2. Further, the suspended Directors of the Corporate Debtor has not set forth as to how the sale in favour of Seshasayee Paper and Boards Limited constitutes a fraud. In the case of **Mercator Oil & Gas Limited -Vs- Oil & Natural Gas Corporation Limited**, in *O.S. Appeal No. 318 of 2019 in Arbitration Petition (L.) No.1085 of 2018*, the Division Bench of the Hon'ble Bombay High Court, in para 22, 26 and 27 had held as follows;



“Foremost, a case of fraud cannot be orally made. It must find a foundation in the pleadings. The evidence must be clear and mere accession without strong corroborative evidence is not enough.”

16.3. In any case, already this Tribunal in Issue No. (i), (ii) and (iii) has held that there is no material irregularity or illegality in conducting the E-auction and also there is no statutory bar on the Seshasayee Paper and Boards Limited to acquire the assets of the Corporate Debtor through the e-auction sale. Thus, on merits, the grounds raised by the Suspended Director *sans* merit and hence the issue of locus is not answered by this Tribunal.

17. ISSUE NO. (V) & (VI)

17.1. The Issue No. (v) and (vi) pertains to whether the unsuccessful auction purchaser who has not participated in the e-auction has any vested interest to challenge the E-auction sale made by the Liquidator and whether the e-auction sale which is complete in all respects can be set aside on the ground that a prospective party is ready to offer a higher price.



17.2. In the present case it is seen that one M/s. Nextgen Geotrade LLP has evinced interest for purchasing the Corporate Debtor on a going concern basis and accordingly approached the Liquidator by its email dated 08.09.2022. It is seen that the Liquidator had replied to the Nextgen Geotrade LLP to provide the pending documents as mentioned in E Auction Process Information Document vide email dated 12.09.2022 and on the same day, Nextgen Geotrade LLP informed vide their email that **Nextgen does not have the net worth of Rs. 50 crores** (*which is basic eligibility criteria for any interested person to express their interest in eAuction participation as per eAuction Process Information Document*) and further informed to the Liquidator that only partners and family members are having cash to conclude the sale.

17.3. On 13.09.2022, the Liquidator replied to Nextgen Geotrade LLP to refer to Clause 4.5 in E-Auction Information Process Document issued in respect of sale notice dated 02.09.2022 and arrange to provide eligibility documents and requirements as required under E-Auction Process Information Documents for submission of the same in order to facilitate the inspection immediately on receipt and verification of those



documents as provided therein. That on 13.09.2022, reply email communication dated 13.09.2022 has been sent by the Authorised Representative of Nextgen to the Liquidator.

17.4. The Liquidator replied to the above email communication on the same day 13.09.2022 stating that the Liquidator is legally obligated to follow the same process to any interested person and informed that the Liquidator was not in receipt of the documents for which the Liquidator had sent as requirements in his email. NEXTGEN has replied to the Liquidator vide email dated on 14.09.2022 informing again that NEXTGEN is not able to comply the clause mentioned E-Auction Process Information in Document. The extract of said email communication dated 14/09/2022 is given below for easy reference;

"I understand you are replying to my mail which is on record but ur are not answering the main point that I have categorically explained you in my various emails that the net worth of our firm is not 50 crs but we are capable of executing this 105cr deal which I have clarified in my various mails.

Pls approve or reject our bid application taking into consideration we will not be able to comply ur clause reg the networth of the company has to be minimum 50crs but I have explained you in my previous trailing mail that we are capable of concluding this deal."



17.5. Nextgen Geotrade LLP had subsequently sent Affidavit and Undertaking, Confidentiality Undertaking, Bid Application Form, Declaration, Board Resolution on 15.09.2022 through email. Liquidator has sent the reply email to the NEXTGEN requested the shortfall documents namely Certificate evidencing source of fund and Net worth certificate as required to be provided as per E-Auction Process Information Documents to move forward immediately. It is seen that immediately started sending certain documents of different company namely VMS INDUSTRIES LIMITED who did not approach the liquidator directly with documents expressing interest in e-Auction.

17.6. It was submitted that with regard to source of fund, VMS Industries Ltd had given in the form of self declaration that source of fund will be arranged by them from their own sources and with combination of secured and unsecured loans from friends and relatives followed by an another email communication dated 16.09.2022 received from the same person at 2.28 PM requesting inspection before 3 PM without even giving the time to liquidator to verify the documents forwarded by them.



17.7. The Liquidator submitted that though the Applicants were given sufficient opportunity to provide documents evidencing source of fund and to proceed further for inspection on 17.09.2022 at anytime but they have chosen not to do so within the timeline as provided in the e-auction process information document purposefully but attempted only to hinder the e-auction process with some hidden agenda only known to them by sending legal notice to stop the e-auction process by the Liquidator on baseless and false accusations against the Liquidator.

17.8. Thus, it is evident from the facts as narrated above, the Applicant has failed to provide the networth certificate and as such he not fulfilled the condition laid down in the E-auction process document. Thus, the unsuccessful auction purchase has no vested interest to challenge the E-auction sale process which has been concluded by the Liquidator.

17.9. Further the Hon'ble Supreme Court of India in the matter of **K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy**



Temple, (2022) 5 SCC 710 : 2022 SCC OnLine SC 196 at page 726 has held as under:-

17. *The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throwaway price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of the highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction-sale pursuant to the public auction is set aside on the basis of such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected.*

(emphasis supplied)

17.10. Thus, the e-auction sale which is complete in all respects can be set aside on the ground that a prospective party is ready to offer a higher price. Accordingly, issue No. (v) and (vi) are answered.

18. As a necessary sequitur, the Application filed by the Liquidator for approving the 'Sale as Going Concern' viz. IA(IBC)/1511(CHE)/2022 stands **allowed**.

19. In view of the dispositive reasoning stated *supra*, the IA(IBC)/1083/2022; IA(IBC)/1108/2022; IA(IBC)/1390/2022; IA(IBC)/1084/2022; IA(IBC)/1099/2022; stands **dismissed**. The IA(IBC)/1241/2022 stands **dismissed** in terms of para 4 of this order. The IA(IBC)/1510/2022 stands **disposed of** in terms of para 5 of this order. The IA(IBC)/188/2021 stands **disposed of** in terms of para 6 of this order. The IA(IBC)/907/2022 stands **dismissed** in terms of para 7 of this order. The IA/844/2020 and IA/846/2020 stands **disposed of** in terms of para 8 of this order.

— S D —

SAMEER KAKAR
MEMBER (TECHNICAL)

— S D —

Justice RAMALINGAM SUDHAKAR
PRESIDENT