

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2117 OF 2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Mr. Bhavik Bhimjyani

...Applicant

Vs.

Mr. Uday Vinod Chandra Shah
Resolution Professional

...Respondent

I.A. 1617 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Mr. Bhavik Bhimjyani

...Applicant

Vs.

Mr. Uday Vinod Chandra Shah
Resolution Professional

...Respondent

I.A. 1322 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Mr. Bhavik Bhimjyani

...Applicant

Vs.

Mr. Uday Vinod Chandra Shah

Resolution Professional

...Respondent

In the matter of

C.P.(IB) No. 69/MB/2017

Urban Infrastructure Trustees Limited

.... Financial Creditor

Vs.

Neelkanth Township & Construction

Private Limited

...Corporate Debtor

Order delivered on: 21/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Kalra a/w Mr. Shrey
Shah, Advocate

For the Respondent : Mr. Vikram Nankani a/w Ms.
Nikita Abhyankar, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Applicant Sh. Bhavik Bhimjyani, a Shareholder and a Financial Creditor of M/s Neelkanth Township & Construction Pvt Ltd. (In Liquidation) (“Corporate Debtor”) has filed this IA no. 1617/2022 in C.P. (IB) 69/2017 under section 60(5) r/w Rule 11 of the Insolvency and Bankruptcy Code, 2016 (“Code”) for (i) an Order of Investigation against the Liquidator, Sh. Uday Vinodchandra Shah (“Respondent”), appointed by this Hon’ble Tribunal vide an order dated 20.08.2018; (ii) to replace him with any other competent and unbiased professional; (iii) to initiate proceedings of professional misconduct and such other offences against the Liquidator; and stay of proceedings in IA No. 1577 of 2021 filed in the Company Petition No. 69 of 2017.
2. The Applicant has also sought to place an offer & Rs. 72,54,63,000/- (Rupees Seventy-Two Crores Fifty-Four Lakhs Sixty-Three Thousand Only) received by the Applicant from one M/s Myron Realtors Private Limited with respect to the sale of the property and assets of the Corporate Debtor in liquidation. The Applicant has stated that this offer is placed before this Tribunal as the Applicant has no trust or faith in the Respondent as it has learnt that the Respondent has taken steps to thwart genuine and fair offers to collude with a related party to sell the property and assets of Corporate Debtor at a gross undervaluation of Rs. 58.59 Crores, despite having better genuine offers from third party purchasers.

- 2.1. It is further stated that the Respondent has refused to divulge and share details to the Applicant or for that matter has kept it discreet with respect to the Liquidation of Corporate Debtor, despite being the stakeholder, and the Applicant has learnt that the Respondent is attempting to privately sell off the properties of Corporate Debtor to an LLP at a throw away price and at a price which is much lesser than the actual value of the land.
3. The Applicant has also filed an Application IA 1312/2022 to apprise this Tribunal further that the Respondent has taken steps to thwart genuine and fair offers to collude with a related party to sell the property and assets of Corporate Debtor at a gross undervaluation of Rs. 58.59 Crores, despite having better genuine offers from third party purchasers.
4. The Applicant has filed another Application IA 2177/2021 prior to IA 1617/2022 seeking impleadment in the Interlocutory Application No. 1577/2021 so as to enable the Applicant to place true and correct facts before this Tribunal, and has sought the necessary directions to the Respondent to provide copies of the applications filed by the Respondent to the Applicant and also to hold stakeholders meetings. It has further been prayed that no orders be passed in the IA No. 1577/2021 or other IAs filed by the Respondent pending the hearing and final disposal of the present Application.
5. We have heard the Counsel and perused the material available on record.
- 5.1. Since, all the three applications have common issue involved, this Bench consider it appropriate to take up all these application together in this Order.
- 5.2. It is the case of the Applicant that the Corporate Debtor owns a piece of land along with its subsidiaries measuring about 80.60 acres of Non-Agriculture lands at villages Boris, Gunjis and Kihim, in Taluka Alibag, District Raigad ("Property"). These lands are highly valuable and its ready reckoner value, as published by Government

of Maharashtra, is estimated to be Rs. 106 crores. Further, the Liquidation value of this land was estimated to be 69.55 crores in 2018.

5.3. This Bench had allowed the Liquidator to sell the land on private sale basis while disposing of IA

5.4. The Liquidator has proposed the sale of lands to a related party one M/s Leisure Enterprises LLP, which is related through Urban Infrastructure Trustees Ltd. ("UITL") claiming to hold 40% equity share in the Corporate Debtor and was equally involved in the management and affairs of the Corporate Debtor having its persons as directors on the board of the Corporate Debtor. Accordingly, this sale is illegal and contrary to the provisions of Section 35(1)(f) of IBC, where there is an express and absolute bar on the sale of assets to a related party.

5.5. We find that this Tribunal vide its Order dated 27.07.2021 had permitted the Liquidator to carry out the private sale of the property on the submission of the Liquidator that all efforts to auction said property have failed. It is case of the Liquidator that no buyer is forthcoming and it is only the present buyer, who has also paid the Earnest Money Deposit in 2021 pursuant to permission of the private sale.

5.6. We find that the basic premise of the submission against the conduct of the Liquidator are that the prices offered by other persons or the prices as per indicative rates available with Government Authorities are much higher than the price being offered by the present intending buyer in IA 1577/2021. It is the case of the Applicant that, the Tehsildar's office had estimated the price of said property to be Rs. 70 Crores approx. pursuant to directions of this Bench. The Liquidator had informed that the Applicant that "*As a Liquidator, I have certain limitation. I have earlier categorically stated that I am selling*

the said property on As and Where Basis. So sir you have to help yourself for collecting latest papers from various authorities. I may be above to guide or support you but due diligence have to be done at your end”.

- 5.7. We also find that the private sale of the property was confirmed by this Tribunal vide order dated 24.12.2021, however, the said order was set aside by Hon’ble Bombay High Court in Writ Petition (L) No. 31179 of 2021, on the ground that the Order was passed by a constitution of Bench other than the constitute which heard the matter on merits. Accordingly, IA 1577 of 2021 is still before us for adjudication, and was reserved for Order on 11.09.2023.
- 5.8. We further finds that the offer for purchased, as advocated by the Applicant, was withdrawn by the offeror as informed by the counsel for Liquidator in course of hearing, however, the applicant has alleged that such offer came to be withdrawn under the pressure from the buyer in IA 1577/2021, though no evidence has been brought on record.
- 5.9. We also find that the Liquidator held first meeting of stakeholders on 28.11.2019, even though the Liquidation commenced on 20.8.2018, and thereafter the next meeting was called on 4.10.2021, which is stated to have been convened by the Liquidator after an application in IA 2177/2021 filed by the Applicant.
- 5.10. Though, this Bench finds that property prices have gone up, and are always on upward trajectory, however, the Liquidator could not succeed in disposing of the property. The grievance of the Applicant pertains to proposed sale to a related party at the price much lower than the price as per external sources, and non-provision of copy of IA 1577/2021. We are of considered view that this does not justify the action against the Liquidator, the Liquidator proceeded with the private sale after permission of this Bench. Whether the Liquidator obtained such order after suppressing

material facts can not be decided on the basis of material available on record, and may require deeper examination, which this Tribunal can not go into. This Bench is of considered view that this aspect of investigation against the Liquidator may be examined while disposing of the other applications pertaining to conclusion of sale of property, including IA 1577/2021, and no Order can be passed at this juncture. Further, since the offeror as stated in this application has also withdrawn, we do not feel any order is called for in this respect also.

- 5.11. Since, the proceedings by Liquidator before this Bench in accordance with Liquidation Process Regulations, 2016 can not said to prejudice the rights of the applicant, the applicant can not be ordered to be impleaded in IA 1577/2021. Further, the Applicant is one of member of Stakeholder's committee, the records of liquidation proceedings must have been put before the Stakeholder's committee from time to time which could make the Applicant aware of decisions of the Liquidator in this regard. Hence, we do not feel any Order is called for directions to the Liquidator to provide copy of IA 1577/2021 or other connected applications.
6. In view of the aforesaid discussion, we feel that IA 1617/2022, IA 1322/2022 & IA 2177/2021 deserve to be dismissed, as no relief as prayed can be granted at this juncture.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)