



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No. 177/2022 IN CP (IB) NO. 45/ALD/2019

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of:

Prince Jain

..... Applicant

Versus

**Sh. Alok Kucchal,
Liquidator of Ratandeeep Infrastructure Pvt. Ltd.**

..... Respondent

In the matter of:

Nitin Jain and another

..... Financial Creditor

Versus

Ratandeeep Infrastructure Pvt. Ltd.

..... Corporate Debtor

Order pronounced on 21st September, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

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Appearances:

Sh. Sanjeev Panda alongwith Sh. Sumit Shukla, Adv.
: For the Applicant in IA No. 177/2022

Sh. Yash Tandon, Adv.
: For the Respondent in IA No.177/2022

ORDER

1. This Applications has been filed by the applicant, namely Prince Jain as a claimant of the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code , 2016 r/w rule 11 of the NCLT Rules, 2016 for seeking the following directions stated as under :-

“....

(ii) Stay the proceedings if any initiated by the respondent till the final disposal of the application; and/or

(iii) Grant stay on the sale, if any, which concluded on 06.06.2022 in terms of the E-Auction dated 31.05.2022 published on 01.06.2022; and/or;

(iv) Grant stay on the Earnest Money Deposit (EMD), if any received, from the prospective bidder in respect to the Notice for sale of assets published on 01.06.2022; and or;

(v) Quash the sale notice published on 01.06.2022 by the respondent; and/or;

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(vi) Direct that the sale proceeds and Earnest Money Deposit (EMD) (if so received by the respondent/liquidator) must not be distributed; and/or;

(vii) Take penal actions against the Liquidator in view of his conduct including his removal as liquidator as the Corporate Debtor; and or;

.....”

2. Applicant being a stakeholder of the Corporate debtor submitted his claim on account of his father's proprietorship firm and himself on 21.02.2022 refiled on 28.02.2022 and after removing defects and clarifying the issues he refilled it again on 09.03.2022 which are as under:-

S. No.	Name of the Claimant	Particulars	Amount
1.	Prince Jain	1 lacs equity shares of CD	35,00,000
2.	Prince Jain	Unsecured Financial Loan	50,00,000
3.	Dinesh Jain	Unsecured Financial Loan	16,00,000

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4.	Shree Jee Textiles through its proprietor Prince Jain		30,00,000
5.	Sakshi Enterprises through its proprietor Dinesh Jain	Unsecured Financial Loan	54,00,000

3. It is stated that this Tribunal vide order dated 16.04.2019 in the main petition CP (IB) No. 45/ALD/2019 titled as Nitin Kumar Jain & Anr. Versus Ratandeeep Infrastructure Private Limited directed to initiate the Corporate Insolvency Resolution Process (hereinafter referred as CIRP) against the Corporate Debtor and appointed Mr. Alok Kumar Kuchhal as the Interim Resolution Professional (IRP), who was later appointed as Resolution Professional (RP) by the Committee of Creditors (COC) on 11.06.2019. The RP published the invitation of expression of interest in Form-G on 01.07.2019 and 30.07.2019. Despite inviting the interest for submission of resolution plan twice, none submitted any resolution plan of the Corporate Debtor.

4. The duration of CIRP of 180 days expired on 13.10.2019 for which RP filed an interim application i.e. I.A. No. 319 of 2019 before this tribunal for seeking extension of CIRP duration by 90

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days under section 12(2) of the I&B, Code 2016 on 12.10.2019. This application was rejected by this tribunal vide order dated 07.01.2019.

5. It is averred by the Applicant/RP in the said application that insolvency resolution process was carried as per the provisions of the IBC, 2016 and corresponding rules and regulations made therein. The Progress Report of the CIRP and decisions taken by the RP were duly approved by the COC on timely basis. The RP informed to the Committee of Creditors in its meeting held on 28.01.2021 that this Tribunal vide order dated had rejected the Interlocutory Application filed for seeking extension of CIRP by 90 days vide order dated 07.01.2019. The COC were of the view that since no Resolution Plan submission has been received and there is no alternative relief, which may be sought, thus, it is advisable to proceed with liquidation of the Corporate Debtor. The COC authorized the liquidator to file an application before this tribunal for initiation of liquidation of the corporate debtor.

6. The RP filed an I.A. 73 of 2021 for seeking liquidation of the corporate debtor and appointed RP as the Liquidator.

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7. This Tribunal vide order dated 31.01.2021 directed liquidation of the corporate debtor and appointed Mr. Alok Kumar Kucchhal, RP of the corporate debtor as the liquidator. The directions of this tribunal in the said order are as follows:-

“.....

Prayers as sought for in I.A.No. 73/2021 filed by Mr. Alok Kumar Kucchhal RP of Ratandeep Infrastructure Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof; b. Mr Alok Kumar Kucchhal [Reg No IBBI/IPA-002/IP-N00114/2017-18/10284]; Email: akkucchhal.ip@gmail.com; Mobile No.+91-98108 94275, Address: C-154, Sector-51, Noida-201301; whose name has been proposed by CoC is hereby appointed as liquidator as provided under section 34(1) of the Code, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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8. It is stated in the application that liquidator proceeded with public announcement in the prescribed format in Form-B on 01.02.2022 as per regulation 12 of the liquidation process regulations 2016. The last date of submission of claims was 02.03.2022.

9. The Applicant has alleged that respondent failed to comply with Section 40(2) of the IBC, 2016 by not communicating the decision of admission or rejection of claim submitted by the applicant. The respondent acknowledged the claim of the applicant vide an email dated 19.05.2022 which is not in conformity with the procedure set out in section 40(2) of the IBC, 2016. In response to this email, the applicant requested the liquidator to arrange the meeting with all the stakeholders of the corporate debtor to discuss the progress of the liquidation of the last three months.

10. It is alleged by the applicant that the liquidator failed to upload e-auction notice as well as list of stakeholders on the website of IBBI and even failed to intimate about the said notice to the applicant. Copy of emails has been annexed as Annexure-3 Colly with the application.

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11. The Applicant came to know that the auction process is in the last stage and there is scheme proposed by some party which is offering value twice the reserve price and also seeking stay on the auction process through an order dated 25.05.2022 passed by this tribunal in I.A 154 of 2022. It is stated that this Hon'ble Tribunal vide order dated 25.05.2022 directed "*Mr. Alok Kumar Kuchchal, Liquidator who appeared in person was orally directed not to conclude the auction process, which is being conducted on 02.06.2022.*" Copy of order dated 25.05.2022 has been annexed as Annexure-4 with the application. The relevant para of the order is mentioned herein below:-

"Ld. Counsel Ms. Babita Jain appeared on behalf of applicant and submitted that in the case of "Ratandeeep Infrastructure Private Limited" auction process was in final stages, however, the scheme/ proposal given by her client was almost of twice the value of the reserve price. Hence, suitable directions may be given for stay on the auction process.

She also pointed out that an application had been submitted. However, such application was yet to be listed. The Bench directed her to approach the Registry immediately and get it numbered, so that the matter could be taken up for hearing at the end of the Board. The Registry informed that the defects had been removed and

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it was numbered as IA No.154/2022. The same is taken on the cause list of today at serial no.7 of the supplementary list by the direction of this Bench.

List this matter for further consideration on 31st May, 2022.

In the meantime, Mr. Alok Kumar Kuchchal, Liquidator who appeared in person was orally directed not to conclude the auction process, which is being conducted on 02.06.2022.”

12. It is stated that respondent/liquidator published the notice dated 19.05.2022 of e-auction of sale of assets of the CD on 20.05.2022 wherein e-auction was scheduled to be held on 02.06.2022 and last date of submission of documents was 31.05.2022. Copy of E-Auction notice dated 19.05.2022 has been annexed as **Annexure-5** with the application.

13. It is pointed out by the applicant that respondent/liquidator did not upload the E-auction notice dated 19.05.2022 on the website of IBBI and also failed to discuss and intimate the applicant along with other stakeholders about the said auction.

This Tribunal vide order dated 01.06.2022 directed the liquidator to act with the objective of maximizing the value of the corporate debtor and in case the value proposed is below the offer value of

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Bankey Bihari Infrahomes Private Limited, then the process of auction may be reinitiated. The relevant paragraph of the order is mentioned below:-

“.....

7. We have considered the submissions made by both the sides and material on record.

8. It is noted that this Adjudicating Authority vide its order dated 13.04.2022 in IA No.115 of 2022 directed the Liquidator to consider the scheme within a period of three weeks from the date of such order. It is further noted that there are correspondences between the applicant and Liquidator as regard to providing of details/ information for proposing the scheme. It is further noted that on 19.05.2022 an auction notice has been published which has set 02.06.2022 as the auction date.

9. During the course of hearing, the applicant was asked that why they did not approach this Adjudicating Authority for further directions as regard to providing of information which was required from the Liquidator to propose the scheme, no satisfactory reply was given to this query. It is also noted that the auction is going to take place on 02.06.2022, hence, the applicant herein can very well participate in that process and offer the maximum value for the assets of the corporate debtor.

10. Considering this fact, we do not find any merit to intervene as of now as the object of maximization of value



of assets can be achieved during the liquidation process also. We also make it clear that the Liquidator shall act with a view to maximize the value of the corporate debtor and in case the value offer is found to be below the value offered made by the applicant herein, the auction process may be reinitiated.

...”

14. It is also contended by the applicant that despite the order dated 25.05.2022 passed by this tribunal wherein liquidator was directed not to proceed with the auction process, the liquidator published the e-suction notice dated 31.05.2022 on 01.06.2022 before the pronouncement of the final order dated 01.06.2022. It is also alleged that the said notice was published without corrigendum in terms of order dated 25.05.2022. The said e-auction notice also postponed the date of auction from 01.06.2022 to 06.06.2022. The last date of submission of documents was 03.06.2022. Copy of the e-auction notice dated 31.05.2022 has been annexed as **Annexure-6** with the application. It may also be noted that this Tribunal vide order dated 06.07.2022 in I.A. 177 of 2022 stayed the auction process. The said order is mentioned herein below:-



“Sh. Sanjeev Panda, Advocate for the applicant requested time for filing the rejoinder.

The same will be filed within 2 weeks by serving an advance copy to the other side.

Till then auction process not to be continued.

List this matter on 03rd August, 2022.”

15. The Applicant vide an email dated 02.06.2022 raised all these aforesaid issues for which no response was received by the applicant from the liquidator. Copy of the email dated 02.06.2022 has been annexed as **Annexure-7** with the application. As further alleged by the applicant that all these actions of the liquidator clearly depicts that he wants to sell the assets of the corporate debtor at throw away prices which is in violation of IBC, 2016 along with relevant regulations of the liquidation process regulations. Therefore, applicant proceeded with filing of this application before this tribunal when having left with no option.

REPLY FILED BY THE LIQUIDATOR/RESPONDENT

16. In response to this application filed by the applicant Mr Prince Jain, respondent/liquidator filed his reply on 29.06.2022 wherein he has inter alia made the following submissions:-



i. It is contented by the respondent that this application filed by the applicant is not maintainable as applicant does not have any *locus standi* in this matter as this application has been filed in collusion with Mr Rakesh Kumar Agrawal who has claimed to be Director in M/S Bankey Bihari Private Limited that presented a scheme u/s 230 of the Companies Act just to prolong the liquidation process.

ii. It is also contented by the respondent that since the commencement of CIRP and liquidation process, the respondent has been acting initially as RP during CIR process and then as liquidator during liquidator process, within the framework of IBC, 2016

iii. It is further contented by the respondent that due to non-transfer of shares of the company held by the applicant, he could not be categorised as shareholder or a member of the company and this has been duly informed by the respondent to the applicant since the commencement of the CIRP process when he submitted his claim.



iv. It is contended by the liquidator that he published the EOI twice in the newspaper on 01.7.2019 and 30.07.2019 for submission of resolution plan for the corporate debtor, however, no response was received in this regard. Moreover, Liquidator also moved an application I.A 319 of 20219 under section 12(2) of the IBC, 2016 before this tribunal for extension of CIRP time period by 90 days, which was expired on 13.10.2019, was rejected by this tribunal vide its order dated 07.01.2021.

v. It is also contended by the respondent that the aforesaid order dated 07.01.2021 passed by this tribunal was communicated to the Committee of Creditors (COC) in their 6th meeting held on 28.01.2021 for their perusal and consideration. After this, COC recommended to liquidate the corporate debtor. Copy of MOM of 28.01.2021 has been annexed as **Annexure-1** with the Reply.

vi. The respondent further pointed out that it is important to emphasize that the members of the Committee of Creditors (COC) were unequivocal in their



desire to wind up the Corporate Debtor. As per him, this fact is supported by an email dated 09.03.2021, sent by the COC members (excluding flat buyers) to the Liquidator. In this communication, the COC members, including the Applicant, reiterated their approval for the liquidation of the Corporate Debtor and explicitly instructed the Resolution Professional (RP) that they had no interest in exploring any alternative options beyond liquidation. Copy of the e-mail dated 09.03.2021 received by the Liquidator from the COC members (except flat buyers) is annexed as **Annexure-2** with the reply.

vii. It is further contended by the respondent in support of his decision that the only assets available with the corporate debtor from the last 04 years is land and apart from this, there has not been any activity conducted in the company being the Corporate Debtor. Therefore, it was beneficial in the interest of the corporate debtor to avail the option of liquidation.

viii. As pointed by the respondent, it is crucial to highlight that the claim documents submitted by the



Applicant to the Liquidator through emails dated 21.02.2022 and 28.02.2022 contained certain discrepancies, which were promptly communicated to the Applicant by the Liquidator. However, a noteworthy aspect is that a portion of the claimed amount submitted by the Applicant actually represented funds invested by the Applicant's father-in-law, Mr. A K Jain. Mr. Jain has been actively involved in the Corporate Insolvency Resolution Process (CIRP) from its inception, regularly visiting the offices of both the former Insolvency Resolution Professional (IRP) and the subsequent Resolution Professional (RP), as well as the Liquidator.

ix. The respondent also pointed out that even during the Liquidation phase, the Applicant's father-in-law personally visited the Liquidator's office, accompanying the claim documents. He had requested the Liquidator to verbally explain the discrepancies found in the claim documents submitted by his son-in-law, the Applicant, as he faced difficulties in communicating via email. Mr. Jain preferred to rectify the issues and submit the



corrected documents in person rather than relying on email communication with Mr. Prince Jain. In response to this request, the Liquidator acted in good faith and provided Mr. Jain with the necessary information to rectify the defects. Consequently, the Liquidator could only be able to convey his final decision regarding the claim after physically receiving the defect-free documents from Mr. Jain. Therefore, it is essential to note that any delay in communicating the Liquidator's decision regarding the claim, as stipulated in Section 40(2) of the Code, can be attributed to the Applicant's delay in providing the requisite documentation. As per the respondent as contended by him in reply, the applicant is attributing blame to the Liquidator by attempting to shift his responsibility cunningly.

x. It is further contended by the liquidator that email dated 14.05.2022 and 19.05.2022 regarding appointment of legal representative and calling the meeting of stakeholders consultation committee respectively were received on completely different email rather than on email id: irp.ratandeep@gmail.com



which is mail mode of communication between the liquidators and other claimants of the corporate debtor.

xi. Furthermore, it is contended in the reply that the applicant was well aware of formation of Stakeholders Consultation Committee (SCC) as the email dated 05.05.2022 sent to Mr. Rakesh Kumar Agarwal by the Liquidator was shared with the Counsel of the Applicant on 05.05.2022 which formed part of the annexures of the I.A 154 of 2022 filed by Mr. Rakesh Kumar Agarwal vide his counsel Mrs. Babita Jain through an email id: consultinglawedge@gmail.com. Copy of email dated 05.05.2022 shared by Mr. Rakesh Kumar Agarwal with the Counsel of the Applicant has been annexed as **Annexure-3** with the Reply.

xii. As per regulation 31 and 31A of the IBBI (Liquidation Process) Regulations, 2016, liquidator filed report on the list of stakeholders and consultations meetings held with SCC, before this tribunal. It is stated that the said report couldn't be uploaded on the website of the IBBI due to some technical error, however, the same has been shared with the respective authorities of



IBBI vide an email dated 04.04.2022. Copy of email dated 04.04.2022 shared with the IBBI has been annexed as **Annexure-4** with the Reply.

xiii. While denying the allegation of the Applicant that he came to know about the auction process at final stage vide an order dated 25.05.2022, it is contended by the respondent/liquidator that Ld. Counsel was present on the day of hearing of the order dated 25.05.2022 on behalf of Mr. Prince Jain i.e. the Applicant. This tribunal did not find any locus of the Applicant while hearing the I.A 154 of 2022. On the same day, the Ld. Counsel of Mr. Rakesh Kumar Agarwal submitted the scheme of compromise and arrangement before this tribunal. Thus, the allegation of applicant that the said scheme was not presented before the SCC is hereby denied.

xiv. It is also contended in the reply that liquidator circulated the detailed information about the e-auction process of the assets of the corporate debtor with all the stakeholders vide an email dated 20.05.2022. Copy of the email dated 20.05.2022 has been annexed as **Annexure-5(colly)** with the Reply. Details of the



progress made in the liquidation process is mentioned below:-

- a. *The IA filed Mr. Rakesh Aggarwal through his Company "Bankey Bihari Infrahomes Private Limited for submission of Scheme of Compromise or arrangement;*
- b. *The directions given by the Hon'ble Bench pertaining to the said IA;*
- c. *The various e-mails exchanged between Mr. Rakesh Aggarwal through his Company "Bankey Bihari Infrahomes Private Limited" and the Liquidator pertaining to the Scheme;*
- d. *Non-receipt of scheme within the stipulated time-frame which eventually led to the Liquidator having proceeded further in terms of provisions of IBC for auction of assets of Corporate Debtor.*

xv. Further, while denying the allegation of the applicant that he was not aware or not intimated about the e-auction notice dated 19.05.2022, it is contended by the respondent that the said e-auction notice was emailed to all the stakeholders vide an email dated 20.05.2022 and same was published in the newspapers namely Financial Express (English) Delhi /edition and Jansatta (Hindi) Delhi Edition. It was also uploaded on the website of the



auctioneer. This in itself is an intimation to all the concerned parties or claimants.

xvi. It is further contended that this bench asked Mr Rakesh Kumar Agarwal to participate in the auction process and place his bid which he did not do so.

xviii. The liquidator in terms of the order dated 25.05.2022 of this Tribunal, issued a corrigendum notice for putting on hold the auction process which was uploaded on the website of the auctioneer. This tribunal wide order dated 01.06.2022 in I.A No. 154 of 2022 provided one last opportunity to the Bankey Bihari Infrahomes Private Limited to participate in the e-auction process. For this purpose, the liquidator postponed the e-auction from 02.06.2022 to 06.06.2022 and a fresh e-auction notice was published in the newspaper on 1.06.2022 and the same was uploaded on the website of the auctioneer.

xix. The respondent emphasized in the reply that it must be noted that if the Applicant genuinely intended to run the Corporate Debtor as a going concern, they should



have taken action during the Corporate Insolvency Resolution Process (CIRP) or during the E-Auction of the Corporate Debtor. However, the Applicant remained inactive throughout these critical phases and has now suddenly decided to make the Liquidator an escape goat for reasons that appear unjustified. It is important to emphasize that the decision to liquidate the Corporate Debtor was made by the Committee of Creditors (COC) only after their assessment in accordance with the provisions of the Code, which indicated that no feasible means to revive the Corporate Debtor was possible.

xx. Finally, the respondent concluded in his reply stating that in light of the instances highlighted above, which reveal the Applicant's manipulation and fabrication of facts in this application, seemingly with the intention to mislead this Hon'ble Tribunal and disrupt the liquidation process of the Corporate Debtor, the Applicant's conduct of providing false statements could be considered perjury.



Rejoinder filed by the Applicant

17. The Applicant in response to the reply filed by the Respondent/Liquidator filed a rejoinder on 17.10.2022 wherein he has raised the following contentions which are stated as under:-

i. It is contended by the applicant that liquidator proceeded with selling off assets of the corporate debtor by manipulating the nomenclature of the assets of the corporate debtor.

ii. It is also contended by the applicant that liquidator has been acting in complete violation of 40(2) of the Code by not communicating the decision of rejection and admission of his claim which he refilled on 09.03.2022. Liquidator vide an email dated 19.05.2022 acknowledged the claim filed by the applicant through his legal representative vide an email dated 06.05.2022 which is more than the prescribed period of seven days as per Section 40(2) of the I&B Code, 2016.

iii. It is further contended by the applicant that liquidator neither uploaded the list of claims sought by the claimants/stakeholders nor E-Auction notice dated 19.05.2022 on the website of IBBI and proceeded with issuance of auction notice



on 20.05.2022 without consulting the Stakeholders Consultation Committee (SCC). Liquidator blatantly ignored the email dated 19.05.2022 of the applicant requesting to call a meeting of stakeholders of the Corporate Debtor.

iv. It is further contended by the applicant in his rejoinder that liquidator violated the order dated 25.05.2022 passed by this Tribunal in I.A No. 154 of 2022 by publishing the E-Auction Notice dated 31.05.2022 on 01.06.2022 before the final order dated 01.06.2022 is passed. This constitute contempt of order dated 25.05.2022 passed by this Tribunal.

v. As pointed by the applicant in his rejoinder, the Respondent has engaged in misrepresentation before this Tribunal, by citing the following discrepancies:

a. It is contended by the Applicant that the Liquidator/Respondent failed to publish a corrigendum, as per the orders dated 25.05.2022. The notice for the sale of assets, seemingly treated as a fresh notice, lacks any reference to prior publications. This raises suspicion about the Respondent's undue haste, especially considering the final date for document



submission is 03.06.2022, and the E-Auction is scheduled for 06.06.2022. This situation suggests potential collusion between the Respondent and an external party to sell the corporate debtor's assets in the E-Auction dated 31.05.2022 at significantly reduced prices.

b. The Applicant, through their legal consultant, sent an email dated 02.06.2022 to the Respondent, highlighting various issues, such as the lack of response to the email dated 14.05.2022, non-uploading of claims on the IBBI website, failure to inform stakeholders about the E-Auction, and a breach of the order dated 25.05.2022. However, as pointed out by the applicant, the Respondent did not provide any response to the said email. It is essential to note that IBBI mandates the Liquidator to upload claims and sale notices on its website. This absence of communication implies a secretive approach by the Liquidator, seemingly designed to benefit specific individuals at the expense of the Corporate Debtor and its stakeholders.



c. As concluded by the applicant, the assertions made above clearly demonstrate significant violations of the IBC Code 2016, in addition to relevant Liquidation Process Regulations. These actions neglect the interests of the Corporate Debtor, the Applicant, other homebuyers, and stakeholders. The Liquidator's opaque conduct raises doubts about their suitability for such responsibilities.

vi. Furthermore, it is contended by the applicant that it's worth noting that both the Liquidator and the COC are obligated to adhere to the framework and objectives of the IBC. On the plea of the Respondent that the COC was explicitly in favor of liquidating the Corporate Debtor and had neither approved nor recommended "the liquidator to first explore the sale of the Corporate Debtor as a going concern," as stipulated by Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and supported this position by an email dated 09.03.2021 sent by COC members (excluding the flat buyers), it is contended by the applicant that the Respondent's decision appears to be solely based on this email from Mr. Bal Singh, with no rationale provided. The acceptance of the decision of only one individual, Mr.



Bal Singh, without considering its implications on other stakeholders, who constitute a majority and not a minority, raises concerns about the Respondent's intent to dispose of the Corporate Debtor at an undervalued price.

vii. The contention put forth by the Respondent that the Corporate Debtor is not a going concern is strongly disputed by the applicant. It is pointed by the applicant that the Respondent characterizes it as non-functional, it is crucial to recognize that the Code provides the opportunity to sell the Corporate Debtor as a going concern. It's pertinent to note that the primary asset referred to by the Respondent is a UP RERA registered housing project called "SILVER HOMES," with UP RERA Registration No UPRERAPRJ12399. This project is partially developed and ongoing, with validity until 28-06-2023 for completion. The Respondent has consistently manipulated the description of the Corporate Debtor's assets, making false statements under oath before this Hon'ble Tribunal. The Summary Report of the Project, accessible on the UP RERA website (<https://www.up-rera.in/projects>) with Registration No UPRERAPRJ12399, has been annexed as Annexure-2 with the Rejoinder. The Respondent has devalued the duty assigned to him as a liquidator. He has



verbally attributed discrepancies in claim documents to the father-in-law of the Applicant, instead of submitting in the written statement. This raises questions about his competence as an Insolvency Professional and the validity of his unfounded assertions.

viii. It is pertinent to note here that the Respondent's email address registered with the IBBI Website, akkuchhal.ip@gmail.com, received an email dated 14.05.2022 regarding the appointment of a legal advisor/Authorized Representative to represent claimants in the Liquidation Process, and this email did not bounce back. The Resolution Professional is obligated to monitor and respond to emails received on his IBBI-registered email address. This confirms the unfitness of the Liquidator for the assignment. The Respondent's claim appears to be fabricated and baseless, likely an attempt to conceal his incompetence and recklessness. A copy of the IBBI registration details of the Respondent, which indicates his official email id, has been annexed as **Annexure-3** with the Rejoinder.

ix. It is further contended that according to the IBBI Circular dated 24.11.2021, Insolvency Professionals were explicitly instructed to independently upload the list of stakeholders onto



the IBBI Website using the prescribed format. The Respondent has failed to adhere to this directive up to the present date. The statement made in this paragraph itself serves as an admission of the Respondent's misconduct, as he acknowledges his inability to upload the list of stakeholders on the IBBI website. This reflects Respondent's incompetence in his role as the Resolution Professional.

x. In an attempt to conceal his wrongdoing and the deliberate omission of uploading the list of stakeholders on the IBBI website, the Respondent created an excuse in the form of an email dated 04.04.2022, which he sent to the IBBI email address, purporting that he had tried but failed to upload it due to a technical glitch. Subsequently, he sent another email to the IBBI, attaching the list of stakeholders, claiming this as compliance. However, the actual circumstances reveal that the deliberate non-uploading of the list of stakeholders on the IBBI Website was part of the Respondent's ulterior motives, and the email was fabricated as a false alibi. This conduct on the part of the Respondent clearly demonstrates a deliberate and fraudulent action aimed at avoiding the upload of the list of stakeholders while operating covertly behind the scenes.



18. The details and documents filed before us, as discussed above have been examined and relevant records have been perused. We noticed that an Appeal was filed on 17.06.2022 before the National Company Law Appellate Tribunal, New Delhi by Mr. Rakesh Kumar Agarwal titled as “*Bankey Bihari Infrahomes Pvt. Ltd versus Mr. Alok Kumar Kuchhal & Anr. Company Appeal (AT) (Insolvency) No. 718 of 2022* against the order dated 01.06.2022 passed by this Tribunal in I.A No 154 of 2022 titled as “***Bankey Bihari Infrahomes Pvt. Ltd versus Mr. Alok Kumar Kuchhal, Liquidator of Ratandeep Infrastructure Private Limited***”. The first hearing of the said appeal was held on 05.07.2022 and Liquidator filed a detailed reply in response to the said appeal on 12.07.2022. It is also to be noted that in the said appeal an impleadment application was also filed by the successful bidder AKJ Realtech Private Limited on 14.07.2022. The Hon’ble NCLAT, New Delhi on the day of 2nd hearing vide order dated 18.7.2022 allowed the said appeal and impleaded M/S AKJ Realtech Private Limited as Respondent No.2 in the appeal. Further series of events, which took place during the course of hearing before NCLAT are enumerated below in the table.



S. No.	Date of Event	Event
1.	Appeal [Company Appeal (AT) (Ins.) No. 718/2022] filed by Rakesh Kumar Agarwal through his Company Bankey Bihari Infrahomes Private Limited before the Hon'ble NCLAT, New Delhi against the impugned order dated 01.06.2022 passed by this Tribunal in I.A No. 154 of 2022 in CP (IB) No. 45/ALD/2019	17.06.2022
2.	First Hearing of the Appeal before the Hon'ble NCLAT	05.07.2022
3.	Impleadment Application [IA No. 2251/2022 in Company Appeal (AT) (Ins.) No. 718/2022] filed by the successful bidder i.e AKJ Realtech Private Limited for seeking intervention/impleadment in the appeal filed by the Appellant against the order dated 01.06.2022 passed by the Hon'ble NCLT, Allahabad Bench	14.07.2022



4.	The Hon'ble Appellate Tribunal allowed the I.A filed by AKJ Realtech Private Limited and had directed AKJ Realtech Private Limited be impleaded as Respondent No.2 to the Appeal.	18.7.2022 (2 nd hearing)
5.	Reply filed by successful bidder i.e. AKJ Realtech Private Limited in terms of order dated 18.7.2022	30.7.2022
6.	Hon'ble NCLAT directed that Rejoinder, if any, may be filed before 22.08.2022	02.08.2022 (3 rd hearing)
7.	Rejoinder Filed by the appellant to the rely filed by the Liquidator i.e Respondent No. 1	18.08.2022
8.	Rejoinder Filed by the appellant to the rely filed by AKJ Realtech Private Limited i.e. Respondent No. 2	18.08.2022
9.	Appeal listed on 25.08.2022	22.8.2022 (4 th hearing)
10.	Appeal listed on 16.09.2022	25.08.2022 (5 th Hearing)



11.	Appeal listed on 14.10.2022	16.09.2022 (6 th hearing)
12.	Clarity provided on the ambiguous order dated 14.10.2022 with a direction to appellant to deposit the said amount (amount as deposited by the Auction purchaser i.e. 25% of the total bid amount in the liquidation account within 01 week.	Vide order dated 07.11.2022
13.	After hearing the parties at length, the Hon'ble NCLAT reserve the matter judgement and had directed the parties to file written submission. Additionally, liquidator was directed to submit the Valuation Report obtained recently of the assets.	Vide order dated 23.11.2022 (8 th hearing)
14.	Judgment pronounced by the Hon'ble NCLAT wherein the appeal was dismissed and the Appellate Tribunal opined that the Adjudicating Authority has not committed any error in disposing of the IA No. 154 of	Judgement dated 06.12.2022 (9 th and Final hearing)



	2022 by the impugned order dated 01.06.2022 allowing the liquidator to proceed with e-auction and not allowing any more time for consideration of the scheme proposed under section 230 of the Companies Act, 2013.	
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19. The Hon'ble NCLAT, New Delhi vide an order dated 06.12.2022 disposed the matter and upheld the order dated 01.06.2022 passed by this Tribunal.

“.....

20. It is noted that the CIRP of the corporate debtor was initiated with appointment of Interim Resolution Professional (IRP) on 16.4.2019. Since no resolution plan could be obtained in the CIRP, the CoC in its 6th meeting decided for liquidation of the corporate debtor, and the application for liquidation was filed before the Adjudicating Authority on 6.2.2021. It is further noted that while this application for liquidation was under consideration of the Adjudicating Authority, Mr. Rakesh Kumar Agarwal showed interest for the first time in submitting a resolution plan through his company AIG Infratech Private Limited in April, 2021 and as the Resolution Professional (in short 'RP') showed his inability to accept such a plan for consideration, Mr.



Rakesh Kumar Agarwal director of the AKJ Realtech Private Limited filed IA No. 220/2021 seeking directions for submission and consideration its resolution plan. This IA 220/2021 was dismissed by the Adjudicating Authority on the ground that no useful purpose would be served in considering the request of the Applicant, when the CoC had already resolved to liquidate the corporate debtor. Thereafter, liquidation of the corporate debtor was ordered and it commenced on 31.1.2022.

21. It is further noted that while the liquidation process was on, Mr. Rakesh Kumar Agarwal again filed IA 115/2022 through the company Bankey Bihari Infrahomes Private Limited (Appellant in the present appeal), in which he is a director seeking directions of the Adjudicating Authority for submission of a scheme of compromise and arrangement with respect to the corporate debtor on 7.4.2022. This IA 115/2022 was disposed of vide order dated 13.4.2022 with a direction to the Liquidator to consider the scheme and a time period of three weeks from the date of order was allowed for submission of the scheme and decision thereon.

22. It is further noted that, thereafter, a series of e-mails were exchanged between Mr. Rakesh Kumar Agarwal and the Liquidator, starting with e-mail dated 20.4.2022 whereby Mr. Rakesh Kumar Agarwal requested certain information relating to claims from the Liquidator in order to prepare the scheme of compromise and arrangement.



After a confidentiality undertaking was provided by the Appellant, a list of claims was provided to Mr. Rakesh Kumar Agarwal, the Appellant submitted a scheme to the Liquidator vide e-mail dated 24.5.2022.

23. It is relevant to note that the three weeks' time granted by the Adjudicating Authority for submission of the scheme of compromise and arrangement by the Appellant expired on 4.5.2022, and in view of complete silence on the part of Appellant since 2.5.2022 regarding submission of the scheme, the Liquidator was proceeding with the e-auction process. It was only on 21.5.2022, nineteen days after the last e-mail communication from Mr. Rakesh Kumar Agarwal to the Liquidator that Mr. Rakesh Kumar Agarwal sent an e-mail to the Liquidator, seeking more time for finalisation of the scheme.

24. It is also noticed that when the Appellant did not submit the scheme of compromise and arrangement within the allotted three weeks' time, which expired on 4.5.2022, the Liquidator issued a public notice on 20.5.2022 for auction of the land property of the corporate debtor namely, land admeasuring 3542 sq. m. located in GH Plot No. 2 in "Jaipuria Sunrise Greens" Township, Bamheta, Ghaziabad.

25. The Appellant submitted the said scheme after considerable delay on 24.5.2022, and thereafter he filed IA 154/2022 on 25.4.2022 for staying the auction



process and directing the Liquidator to place the scheme before the Stakeholders Consideration Committee for consideration. This IA 154/2022 was dismissed vide the Impugned Order. The relevant part of the order is as follows:-

“10. Considering this fact, we do not find any merit to intervene as of now as the object of maximization of value of assets can be achieved during the liquidation process also. We also make it clear that the Liquidator shall act with a view to maximize the value of the corporate debtor and in case the value offer is found to be below the value offered made by the applicant herein, the auction process may be reinitiated.

11. With these directions, this application stands disposed of in terms indicated above.”

26. A perusal of the order of the Adjudicating Authority dated 1.6.2022 shows that the Adjudicating Authority, after considering the past proceedings in the liquidation process and also the inability of the Appellant to submit a scheme of compromise and arrangement in the given time of three weeks from 19.4.2022, ordered that the e-auction process may be continued. The Adjudicating Authority further ordered that if the Appellant offers a better value for the land of the corporate debtor than what is discovered in the e-auction, the e-auction could be reinitiated.

27. A perusal of the series of events during the liquidation process makes it clear that the Appellant, through Mr. Rakesh Kumar Agarwal, made an attempt through the



company AIG Infratech Private Limited to submit a resolution plan much after the CoC had decided to liquidate the corporate debtor and the application for liquidation has been filed by the Resolution Professional before the Adjudicating Authority. This IA 220/2021, was filed in July, 2021 through the company AIG Infratech Private Limited for seeking order to submit a resolution plan, was dismissed by the Adjudicating Authority on the ground that “no useful purpose would be served in keeping IA 220/2021, when the COC had already resolved to liquidate the Corporate Debtor.”

28. Thereafter, after the commencement of liquidation process vide order dated 31.1.2022, Mr. Rakesh Kumar Agarwal again sent a letter to the Liquidator on 3.3.2022, after passage of more than one month from the date of commencement of liquidation requesting to submit a scheme of compromise and arrangement, and upon the Liquidator expressing inability to accept such a scheme in view of the commencement and progress of liquidation, Mr. Rakesh Kumar Agarwal filed IA 115/2022 through another company ‘Bankey Bihari Infracomes Private Limited’ seeking permission of the Adjudicating Authority for submission of a scheme of compromise and arrangement. This interlocutory application was disposed of by the Adjudicating Authority vide order dated 13.4.2022 with the following observations: -



“This is an application filed by the “Bankey Bihar Infracomes Private Limited” seeking a direction to the liquidator to consider the scheme propounded by the Applicant herein.

Ms. Babita Jain, learned counsel for the Applicant present. Ms. Snehal Sharda, learned counsel appearing on behalf of the liquidator present.

The liquidator is expected to act in accordance with the Liquidation Process Regulations. The decision on the proposed scheme be taken within a period of three weeks’ from today. No other directions are called for in IA No. 115/2022 and hence the same shall stand disposed.”

29. It is noted that after exchange of a number of e-mails between the Appellant and the Liquidator, starting with e-mail dated 20.4.2022, the Appellant finally submitted the requisite scheme vide e-mail dated 24.5.2022 (The e-mails exchanged between the Appellant and the Liquidator are attached at pp. 98-122 of the appeal paperback). It is noted when the information regarding claims which was sought by the Appellant was provided by the Liquidator vide e-mail dated 4.5.2022 (attached at pp. 103-104 of the appeal paperback), the Appellant forwarded the confidential information to erstwhile directors of the corporate debtor, which was in breach of



the confidentiality undertaking provided by the Appellant.

30. The Liquidator, on not receiving no further information from the Appellant about submission of the scheme of compromise and arrangement after his e-mail dated 2.5.2022, and when the three weeks' time starting from 13.4.2022 granted by the Adjudicating Authority had expired on 4.5.2022, proceeded to publish the auction notice on 20.5.2022.

31. It appears that on publication of this auction notice, the Appellant sent an e-mail dated 21.5.2022 seeking more time for submission and finalization of the scheme on which the Liquidator expressed his inability to provide more time vide e-mail dated 24.5.2022. The Appellant, thereafter, submitted the requisite scheme to the Liquidator on the evening of 24.5.2022 and immediately thereafter filed IA 154/2022 before the Adjudicating Authority requesting for stay of the auction process and directions to place the proposed scheme before the Stakeholders Consultation Committee.

32. The above-stated actions of Mr. Rakesh Kumar Agarwal make it absolutely clear that he, through different corporate entities, has attempted to intervene in the process of liquidation by filing the three interlocutory applications viz. IA 220/20221, (which was dismissed by the Adjudicating Authority), IA 115/2022 and IA



154/2022. We also note that Mr. Rakesh Kumar Agarwal in utter disregard to the confidentiality agreement provided to the Liquidator to keep the information supplied to him by the Liquidator confidential, went ahead and shared such information with the counsel of Mr. Prince Jain, a creditor whose claim was not admitted during CIRP of the corporate debtor.

33. We also note that the Liquidator and the Adjudicating Authority have with due regard to fairness, natural justice and in consonance with the objectives of IBC, provided an opportunity through order in IA 115/2022, giving three weeks' time for the submission and decision on the purported scheme of compromise and arrangement as claimed by the Appellant which the Appellant failed to do in the time limit provided and was, thus, unable to establish his bonafide about his seriousness in proposing such a scheme. This has to be seen in the context of the fact that the liquidation order was passed on 31.1.2022, and that the prescribed time period for completing liquidation process was substantially over by this time.

34. Thus, in view of the fact that the Appellant neither submitted the scheme of compromise and arrangement within the stipulated time which was upto 4.5.2022 nor did he inform the Liquidator about the delay in submitting the scheme or seek any extension of time limit from the Adjudicating Authority, the intention and seriousness of



the Appellant in submitting a scheme as prayed by him appears to be doubtful.

35. In view of the above-stated situation and the turn of events, we are of the clear opinion that the Liquidator, being duty bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations when the purported scheme was not submitted in three weeks, acted quite appropriately and in consonance with the provisions of law by issuing the auction notice dated 19.5.2022 which was published in newspapers on 20.5.2022. The submission of the said scheme by the Appellant on 24.5.2022 after a delay of twenty days and the filing of IA No. 154/2022 on 25.5.2022, should therefore, be viewed in this context. The order of the Adjudicating Authority dated 1.6.2022 in IA 154/2022, where after a fresh auction notice was published by the Liquidator are also events that follow the correct course as stipulated in the liquidation process of the corporate debtor.

36. We now turn our attention to the features of the scheme submitted by the Appellant, albeit after much delay, to understand whether the Appellant was interested in providing a credible scheme of compromise and arrangement.

37. A perusal of the scheme (attached with the Affidavit of the Liquidator, filed vide Diary No. 40689 dated



1.11.2022) tells us that the total payments proposed to all the stakeholders is provisioned at Rs. 11,48,56,758. This amount includes a figure of Rs. 1.5 crores for payment to the creditors whose claims were not admitted by the RP during CIRP. Another amount of Rs. 1.32 crores has been provisioned for payment to other creditors/stakeholders, unsecured financial creditors who are related parties and other creditors/stakeholders. Thus, an amount of approximately Rs. 2.82 crores is proposed as payment to creditors, who may not be entitled to any payment in the liquidation process of the corporate debtor or would come lower down in 'waterfall mechanism' and may not even get such large payments. Further the very important financial creditors in class, who are 33 homebuyers in number and have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor, are proposed to be paid within 90 days from the date of approval of the scheme whereas other creditors are to be made 100% payments irrespective of whether their claims are admitted or not by the Liquidator. The flats are supposed to be completed in 24 months and provided to the homebuyers against their claims filed with the Liquidator. It is not at all clear as to how the homebuyers who have only paid part of the total cost will be treated and whether they will be required to pay any extra amount and what would be its quantum.



38. It is, therefore, noted that the purported scheme proposes to make payments to a number of related parties/unsecured creditors/not submitted claims upto an extent of 100% of admitted claimed amounts. Another issue in the proposed scheme is that it proposes to make payments within 90 days of approval of scheme whereas in the event of auction-sale the payments would be made promptly to claims in accordance with the 'waterfall mechanism' under section 53 of IBC.

39. The Learned Counsel for Appellant has cited the judgments of this Tribunal in the matters of S.C. Sekaran vs Amit Gupta & Ors. [CA (AT)(INS) 495-496/2018] and Y. Shivram Prasad vs. S. Dhanapal & Ors. [CA(AT)(Ins) 224/2018] wherein the Tribunal held that steps should be taken for the revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from corporate death by liquidation. We distinguish this judgment on the ground that while it affirms the spirit and ethos of the IBC in that "the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation", and also "even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern" but it doesn't hold that the any scheme of compromise or arrangement if proposed in breach of regular timelines of the liquidation process has to be necessarily considered.



40. We also note that only 33 allottees have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor which means that, on an average, each allottee has claimed Rs. 8.10 lakhs. Considering this full amount to have been used for construction of flats, it is quite understandable that the level of construction would not be significant. How then the Appellant, as proponent of the scheme of compromise and arrangement, proposes to bring in additional funds to complete construction and how he will bring in the extra funds is unclear on a deeper examination of the scheme. The said scheme, therefore, appears to be a 'fictional one' ostensibly to appropriate the land to the benefit of a select few who are related parties of the corporate debtor.

41. Both the Learned Counsel for Appellant and the Learned Counsel for Respondent No. 2 have cited the judgment of Hon'ble Supreme Court in the matter of Arun Kumar Jagatramka vs. Jindal Steel and Power Limited & Anr. [(2021) 7 Supreme Court Cases 474] in support of their rival contentions with regard to any ineligibility that would attach to the Appellant in providing a scheme of compromise and arrangement under section 230 of the Companies Act, 2013 with reference to section 29-A of IBC which pertain to ineligibility of related persons to submit resolution plan and section 35(1)(f) of IBC, which is a provision applicable during liquidation. It is instructive to have a look at the relevant portion of the



Arun Kumar Jagatramka judgment (supra), which is as hereunder:-

“71.....In the context of the statutory linkage provided by the provisions of Section 230 of the 2013 Act with Chapter III IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be farfetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29-A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

72. An argument has also been advanced by the appellants and the petitioners that attaching the ineligibilities under Section 29-A and Section 35(1)(f) IBC to a scheme of compromise and arrangement under Section 230 of the 2013 Act would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the 2013 Act. We find no merit in this contention. As explained above, the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the 2013 Act, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally.”

42. A perusal of the above-mentioned observation in the Arun Kumar Jagatramka judgment (supra) makes it very clear that the promoter or those in the management of the company under liquidation cannot be allowed a



'backdoor entry' into the company and hence, would be considered ineligible to submit a proposal under section 230 of the Companies Act, 2013. When we view the continuous efforts of Mr. Rakesh Kumar Agarwal in seeking to 'takeover' the corporate debtor through various stratagems, and also the finding that he is in 'collusion' or acting in concert with the erstwhile management of the corporate debtor, the motive or intention in putting forward a useless scheme of compromise and arrangement in respect of the corporate debtor becomes seriously doubtful. The observation of Hon'ble Supreme Court regarding 'backdoor entry' in the corporate debtor by the erstwhile management then appears to be a very distinct, something that we should not disregard. In this background, the judgment of this tribunal in the matter of Y. Shivram Prasad (supra) should also be viewed, so that following such a judgment should not lead to undesirable consequences as are pointed out in the Arun Kumar Jagatramka Judgment (supra) of Hon'ble Supreme Court.

43. The Learned Counsel for Appellant has also cited the judgment of this Tribunal in the matter of Punjab National Bank vs. EVA Agro Feeds Pvt. Ltd. & Anr. [CA(AT)(INS.) No. 757 of 2021], wherein it is held that "the successful bidder in the auction sale does not acquire any vested right in law to enforce the auction." We are conscious of the fact that the issue in this appeal is not about any right of the successful bidder, but where the Adjudicating Authority has considered all the related facts and



circumstances concerning the request of the Appellant in proposing a scheme of compromise and arrangement, and thereafter passed an order which balances the liquidation process with the need to avoid liquidation of the corporate debtor. This judgment, therefore, does not support the case of the Appellant.

44. The Senior Learned Counsel for Respondent No. 2 has adverted to the judgment of the Hon'ble Supreme Court in the matter of Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. [(CoC), (2022) 2 SCC 401], wherein it is held that the “if the CIRP is not completed within the prescribed timeline, the corporate debtor is sent into liquidation.....We cannot afford to be swayed by abstract conceptions of equity and ‘contractual freedom’ of the parties.” We note that the Adjudicating Authority in the present case has struck a fine balance between the right of the Appellant in proposing the scheme for compromise and arrangement and the timely and successful completion of the liquidation process of the corporate debtor, a move that would be in accordance with the ruling in the Ebix Singapore judgment (supra).

45. In view of the above-noted detailed discussion, it is clearly established that the Adjudicating Authority provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the Appellant was prima-facie found to inflate the total



payments by provisioning payments to creditors who are either related to the corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.

46. We, therefore, hold the clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA 154/2022 by the Impugned Order allowing the Liquidator to proceed with the e-auction and not allowing any more time for consideration of the scheme proposed under section 230 of the Companies Act, 2013. In view of this inescapable conclusion that the Adjudicating Authority has not erred in passing the Impugned Order, the appeal is dismissed, and is accordingly disposed of.”

20. Being aggrieved by the judgement passed by the Hon’ble NCLAT , New Delhi, the Bankey Bihari Infracomes Private Limited approached the Hon’ble Supreme Court by filing the Civil Appeal No. 125 of 2023 against order dated 06.12.2022 under section 62 of the Insolvency and Bankruptcy Code, 2016. It is important to draw reference here of the applications filed by the Bankey Bihari Infracomes Private Limited as well as of homebuyers who



approached the Hon'ble Supreme Court challenging the process of liquidation conducted by the liquidator.

21. In the aforesaid Civil Appeal filed by the Appellant (Bankey Bihari Infrahomes Private Limited) through Mr. Rakesh Kumar Agarwal raised the similar contentions which were raised before his Hon'ble Tribunal in I.A 154 of 2022 and before the Hon'ble NCLAT in Company Appeal No. 718 of 2022.

22. Meanwhile, certain group of homebuyers filed an interim application in the CA No. 125 of 2023 for impleadment and seeking the following direction in the matter:-

PRAYER

a) Direct the Liquidator to hold Fresh Bidding Auction of the Corporate Debtor;

.....”

23. It is stated that the Hon'ble Supreme Court vide an order dated 17.01.2023 asked the Ld. Counsel of the Appellant (Bankey Bihari Infrahomes Private Limited) to deposit the sum of Rs. 12.48 crores under the Scheme of Compromise and Arrangement which he proposed to deposit within the period of 15 days from the date of this order. Failure to deposit the said sum of money under the scheme as proposed by the Appellant (Bankey Bihari Infrahomes Private Limited), the Hon'ble Apex Court vide an order dated



07.02.2023 dismissed the said appeals stating that *Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC)..... Learned counsel for the appellant states that the appellant has not been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/- . Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores haven not been brought as assured on the last date.*

24. After pleadings are completed, written submissions are filed by the Applicant as well as the Respondents. These written submissions are also analyzed before deciding this matter as discussed below:-

WRITTEN SUBMISSIONS BY THE APPLICANT

25. The Applicant filed written submission in the instant matter wherein the following submissions have been made as stated under:-

- i. The applicant is a stakeholder with substantial claim amount of Rs. 1,85,00,000/- holding one lakhs equity shares in the Corporate debtor. It is contended by the



applicant that respondent did not disclose before this tribunal that he is related with the promoters and relative of the promoters of the CD, due to which he is not eligible to become, IRP, RP and liquidator in the present matter. Copy of the table reflecting the pecuniary relationship between promoters of the CD has been annexed as Annexure-1.

ii. It is pointed out that during the Corporate Insolvency Resolution Process (CIRP), one of the members of the Committee of Creditors (COC), M/s BG Freight Shopee India Pvt Ltd. (holding 8.29% vote shares), has a connection with Silvertan Papers Limited, where the Liquidator served as a director. Additionally, one of the promoters of the Corporate Debtor was also a shareholder in Silvertan Papers Limited. Copy of the supporting documentation extracted from the Ministry of Corporate Affairs (MCA) has been attached as **Annexure 2**. It is further pointed out that the Liquidator did not provide updates on the progress of the liquidation process or the receipt of the Scheme submitted by the Bankey Bihari Infrahomes Private Limited. Therefore, it



is evident that all decisions made by the Liquidator in the current process have been made unilaterally.

iii. Additionally, the Liquidator has issued an Auction Notice with a bid price of Rs. 7 Crores but a pointed out by the applicant. That the land in question covers an area of 3542 square meters (SQM), which translates to a valuation of approximately Rs. 19763 per SQM. This valuation appears to be significantly lower than the prevailing circle and market rates, raising concerns of potential fraudulent valuation practices. Therefore, as contended by the applicant, it is imperative to issue a Notice to the Valuer, seeking clarification on the basis used for arriving at these valuations. Based on available information from the current market rates, it is evident that the said land should not be valued at anything less than Rs. 35000 per SQM.

iv. The applicant raised the contention of revaluing the land to arrive at the correct valuation of land of Corporate Debtor (being subject matter in auction) as his view, the valuation of land is required to be carried



out at the prevailing market rate since the rates of land keeps increasing with each passing day.

v. As contended by the applicant, reply of the liquidator in which he claimed that the Corporate Debtor is not a going concern due to its sole asset being land, is a false claim made by him. The applicant tried to clarify that the asset referred to as "Land" by the Liquidator is, in fact, a UP RERA registered housing project named "SILVER HOMES" with UP RERA Registration No. UPRERAPRJ12399, which is partially developed and an ongoing residential housing project, having validity till June 28, 2023, as the end date for its completion.

vi. In view of the applicant, the Liquidator's repeated misrepresentation of the basic description of the Corporate Debtor's assets and the false statements made under oath before this Hon'ble Tribunal are evident. To support his contention, he attached copy of supporting documentation obtained from the UPRERA website as Annexure-3. Furthermore, it is also pointed by the applicant that the Liquidator has chosen to proceed with the liquidation of the Corporate Debtor



unilaterally, without engaging in negotiations with Shree Bankey Bihari Infrahomes Pvt. Ltd.

vii. The applicant provided certain details showing that the Liquidator has established business relations with the former director of the Corporate Debtor, namely, Sh. Surendra Kumar Aggarwal, and his family member, raising concerns about the suitability of the respondent to act as the liquidator, as he has taken on directorial roles in a company alongside Sh. Surendra Kumar Aggarwal. The Liquidator, along with his associate Chanchal Yadav, was appointed as directors in Silvertan Papers Limited, a company in which Sh. Surendra Kumar Aggarwal, his son Praseon Aggarwal, his nephew Pankaj Aggarwal, and B.G. Freight Shoppee India Pvt. Ltd. (a Financial Creditor and COC Member) held shareholding on 30.09.2020. It is pointed out that Silvertan Papers Limited operates from the New Delhi office of the Liquidator, situated at B-6 Lakshmi Complex, Subhash Chowk, Lakshmi Nagar, Delhi-110092.



WRITTEN SUBMISSIONS BY THE RESPONDENT/LIQUIDATOR

26. The liquidator being respondent has also filed a written submission covering various interlocutory applications that were being considered in this case during the course of hearing mainly covering IA No.193/2022, IA No.177/2022 and IA No.82/2023. As in the instant order, we are dealing with various objections raised by the applicant on the validity of the auction process initiated by the liquidator, the written submissions pertaining to these issues as submitted by the liquidator, have been discussed here.

- i. In his written submission, the respondent/liquidator has tried to present details of all the attempts made by the applicant Sri. Prince Jain and his associate Sr. Rakesh Agarwal to intervene during the process of CIRP and thereafter, liquidation process by proposing initially Resolution Plan and then coming with scheme for compromise and arrangement from time to time and in this process, they have also taken to legal recourse by filing interlocutory applications/appeals at the level of NCLT and then NCLAT and finally to the Hon'ble Supreme Court, in order to impede first the Resolution Plan and then



Liquidation Process. In this connection, certain chronology of events have been presented by the Liquidator and the same are as under:-

Sr. No.	List Of Important Events	Date
1.	IA 220/2021 filed by Mr. Rakesh Agarwal through 'AIG Infratech Private Limited' seeking to submit a resolution plan. (First Attempt)	July, 2021
2.	IA 220/2021 dismissed by this Hon'ble Tribunal.	07.12.2021
3.	IA 115/2022 filed by Mr. Rakesh Agarwal before this Hon'ble Tribunal for submission of the scheme. (Second Attempt)	07.04.2022
4.	Mr. Rakesh Agarwal breached the confidentiality undertaking.	30.04.2022
5.	Stipulated time period for submission of the scheme had expired, yet no scheme was submitted by the Scheme Proposer.	04.05.2022
6.	Mr. Rakesh Agarwal submitted a scheme to the Liquidator via e-mail	24.05.2022 late at 10:40 pm



7.	Mr. Rakesh Agarwal filed IA 154/2023 the very next day Before this Hon'ble Tribunal. (Third Attempt)	25.05.2022 at 11:39 am.
8.	This Hon'ble Tribunal did not find merit to intervene in the auction process which was to take place on 02.06.2022 and hence disposed of IA 154/2022.	01.06.2022
9.	Mr. Rakesh Agarwal approached the Hon'ble NCLAT challenging the order dated 01.06.2022 of this Hon'ble Tribunal. (Fourth Attempt)	17.06.2022
10.	While hearing IA 177/2022, this Hon'ble Tribunal ordered a stay on the auction process vide order with the direction " <i>Till then auction process not to be continued</i> ".	06.07.2022
11.	Liquidator filed Valuation Reports of the assets of the Corporate Debtor before the Hon'ble Appellate Tribunal in terms of order dated 23.11.2022	25.11.2022
12.	Hon'ble Appellate Tribunal dismissed the appeal filed by Mr. Rakesh Aggarwal.	06.12.2022



13.	Mr. Rakesh Agarwal filed an appeal before the Hon'ble Apex Court challenging the final judgment passed by the Hon'ble NCLAT. (Fifth Attempt)	03.01.2023
14.	IA No. 26568/2023 filed by a group of home buyers before the Hon'ble Supreme Court praying for re-auction and also raised allegations against the liquidator being a related party.	06.02.2023
15.	Hon'ble Apex Court dismissed the Civil Appeal filed by Mr. Rakesh Agarwal.	07.02.2023
16.	Hon'ble Apex Court dismissed IA No. 26568/2023 filed by the group of home buyers.	07.02.2023

ii. By giving the above chronology of events, it has been presented before us that several attempts were made by Mr. Rakesh Kumar Agarwal who has been alleged to be working at behest of Sri Prince Jain for taking over the Corporate Debtor first through filing of Resolution Plan and then by giving a scheme for compromise and



arrangement but he could not succeed as he failed to deposit the requisite money even after agreeing to pay the amount during the course of the proceeding before the Hon'ble Supreme Court. In this regard, the details of orders passed by the NCLAT as well as the Hon'ble Supreme Court have also been discussed during the hearing. In this connection, first the order passed by the NCLT in IA No.154/2022 filed by Sri Rakesh Kumar Agarwal through his company M/S Bankey Bihari Infracomes Private Limited has been discussed, wherein this tribunal after hearing the matter had eventually disposed of the said IA vide order dated 01.06.2022 with the direction that **“they did not find any merit to intervene in the auction process and deem it appropriate to let the liquidator continue with the auction process”**. In this order this Hon'ble Tribunal has also directed that “the auction was to be take place on 02.06.2022, wherein the company “M/S Bankey Bihari Infracomes Private Limited” could very well participate and offer the maximum value” for the assets of the Corporate Debtor.



iii. Against the above order, Mr. Rakesh Agarwal had filed a Company Appeal (AT) Ins. No.718/2022 before the Hon'ble NCLAT challenging the order of this Hon'ble Tribunal dated 01.06.2022 in IA No.154/2022 with a prayer to grant stay on the auction dated 06.06.2022. The relevant part of this order of NCLAT has already been reproduced in Para 19. In this order, various crucial findings have been discussed by the Hon'ble NCLAT relating to the conduct of the applicant Mr. Prince Jain and Mr. Rakesh Agarwal before upholding the order of this Tribunal dated 01.06.2022 as below:-

- a. The **conduct of Mr. Rakesh Agarwal** and his **collusion with the erstwhile management** of the Corporate Debtor **and Mr. Prince Jain.** [*Refer to Para Nos. 14, 23, 29, 32, 34 & 42 of the NCLAT order*]
- b. **Conduct of the Liquidator was acknowledged** and **upheld to be in accordance with the provisions of IBC** and Liquidation Process Regulations and having **acted in consonance with the provisions of law.** [*Refer to Para Nos. 15, 30, 31, 33, 35 of the NCLAT order*]



- c. **Detailed evaluation of the scheme of compromise**, with the findings that the **scheme is “fictional”** with the intent to just **“Grab the land”** wherein the payments aimed to be made to related parties, *[Refer to Para Nos. 36, 37, 38, 40, 41, 42, 45 of the NCLAT order]*
- d. **Upheld order dated 01.06.2022 of this Hon’ble Tribunal** and also **justified the approach of this Hon’ble Tribunal** and subsequent **actions of Liquidator** to the same. *[Refer to Para Nos. 33, 35, 45 & 46 of the NCLAT order]*
- e. On direction of the Hon’ble NCLAT vide order dated 23.11.2022, a valuation report was filed by the liquidator which were looked into by the Hon’ble NCLAT and after evaluating this valuation report only, the order dated 06.12.2022 was passed by the Hon’ble Appellate Tribunal, dismissing the appeal filed by Sri Rakesh Agarwal, through M/S Bakey Bihari Infrahomes Private Limited.
- iii. After dismissal of the appeal of Sri Rakesh Agarwal by the NCLAT vide order dated 06.06.2022, Civil Appeal was filed by Mr. Rakesh Agarwal before the Hon’ble Apex Court. As stated by the Liquidator that on the very first date of the



hearing, the Hon'ble Apex Court had seen the actual intent of Mr. Rakesh Agarwal and accordingly, without even issuing notice to the respondent i.e. the liquidator, had provided one more opportunity to Mr. Rakesh Agarwal and asked him to deposit a sum of Rs.12.48 crore to show his true intention and bonafide, which had been confirmed to be deposited by the counsel after discussion with the Rakesh Agarwal. However, Mr. Rakesh Agarwal failed to raise the amount of Rs. 12.48 crores as assured before the Hon'ble Apex Court and eventually, it resulted in the Civil Appeal being dismissed by the Hon'ble Apex Court. While dismissing the Civil Appeal of Sri Rakesh Agarwal as well as the interlocutory application filed by the group of home buyers, the order dated 07.02.2023 passed by the Hon'ble Supreme Court as produced before us, is as under:-

I.A. (Dy.) No.27202/2023 and I.A. (Dy.) No.27204/2023

Applications are taken on board.

Learned Counsel for the applicant urges that he did not participated in the auction because somehow he missed out on the auction but he is willing to pay more. There is hardly a reason for the applicant to intervene.



Applications stand dismissed.

I.A. No.26569/2023 and I.A. No.26573/2023

These applications are by the home buyers who claim that the process is carried out in a hurry therefore the actual price is not being realized.

Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC).

Applications stand dismissed.

Learned counsel for the appellant states that the appellant has been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/-. Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores have not been brought as assured on the last date.

The civil appeal stands dismissed accordingly.

iv. From the above order, it can be seen that the Hon'ble Supreme Court has made a categorical observation that once the process is followed, such kind of endeavors will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC). In the above order, the Hon'ble Supreme Court has



also categorically rejected the prayer made by the home buyers to direct the liquidator to hold a fresh bidding/auction of the Corporate Debtor.

v. Certain arguments advanced by the counsel of the applicant in this IA No.177/2022 has been countered by the respondent/liquidator in his written submission as under:-

**RESPONSE TO ARGUMENTS ADVANCED BY
COUNSEL IN IA. NO. 177 OF 2022**

The **arguments** put forth **by the Counsel for Mr. Prince Jain in IA 177/2022** are based on **incomplete, half-formed narratives and unverified information, lacking** a firm basis for **authenticity**.

Moreover, **majority of the allegations and submissions made by Counsel** for Mr. Prince Jain before this Hon'ble bench are **not even covered in IA 177/2022**.

It is respectfully submitted before this Hon'ble bench that the Liquidator stands fully prepared to address and respond to each and every allegation or objection



raised by the raised during the course of proceedings, however for the sake of brevity and convenience of this Hon'ble bench, the response to the main allegations leveled against the Liquidator are as follows:

➤ **Violation of Section 40(2) of the Code**

The delay in sending the acknowledgment e-mail was solely on account of the **delay on the part of Mr. Prince Jain in providing the relevant documents in support of the amount claimed.** [*Refer to Para 5 on pages 8 & 9 of Liquidator's reply to IA 177/2022*]

➤ **Adequacy of Liquidator's Disclosure before this Hon'ble Tribunal**

The **Liquidator has duly furnished all relevant disclosures** as set forth in Circular No. IP/005/2018 dated 16.01.2018 which outlines the requirements for disclosures by IPs. Moreover, the **Liquidator's obligation to disclose is limited to the parameters set forth in the said circular**, and any request (as



made by Prince Jain's Counsel) to extend beyond the specified requirements is not obligatory.

➤ **Claims not uploaded on IBBI's website**

The liquidator had very well uploaded the List of Stakeholders on the e-portal of IBBI but due to technical glitches, the same was not reflecting on the e-portal of IBBI. [Refer to Para 10 & Page 49 of Liquidator's reply to IA 177/2022]

➤ **Liquidator had not disclosed the scheme to the stakeholders**

The **scheme** same **practically never submitted to the Liquidator** for examination. Nevertheless, when the **Liquidator** received information about the scheme, he had **circulated an update on the liquidation process via e-mail to all stakeholders** wherein **IA filed by the scheme proposer was categorically disclosed. [Refer to Para 12 on**



Page 14 & Pages 50 – 51 of Liquidator's reply to
IA 177/2022]

➤ **No consultation with the Stakeholders'
Consultation Committee**

The liquidator has on several occasions called for meetings with the SCC on 04.06.2022, 14.01.2023, 11.02.2023 & 01.03.2023 & 13.05.2023, however, not a single member of the SCC has ever cared to turn up for the scheduled SCC meetings.

Additionally, Liquidator has **conducted several Zoom meetings with the stakeholders (flat buyers) of the Corporate Debtor, apprising them about the developments taken place in the liquidation process and has addressed their concerns at length.**

➤ **Compliance of Regulation 35A of IBBI
(Insolvency Resolution Process for Corporate
Persons) Regulations, 2016**

Allegation w.r.t. non-compliance of the said Regulation is totally based on presumption.



Rather, an **application u/s 19(2)** of the Code was duly **filed by the Resolution Professional at the appropriate time.**

Furthermore, the Hon'ble NCLAT Chennai Bench vide its recent judgment dated 04.08.2023 in the matter **Mr. Tenny Jose & Ors. Mr. Pratahap Pillai Resolution Professional of M/s Tenny Hose Limited** [Company Appeal (AT) (CH) (INS) No. 95/2023] has categorically **held** that the “time period” prescribed under Regulation 35A is not a ‘Mandatory’ one, but, only ‘Directory’ in Character.

FINDING AND ORDER

27. We have heard Ld. Counsel for the parties and perused the materials available on the record and also considered the submissions made before us as discussed in foregoing paras.

28. In order to appreciate the issue raised in the application, we would take note of the provisions provided in IBBI (Liquidation Process) Regulation, 2016 hereinafter referred as the Liquidation



Regulations. Regulation 33 of the Liquidation Regulations, prescribe Mode of Sale stating that, the Liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in schedule I, which provides for detailed manner as to how an auction must be proceeded.

29. The Liquidation order is passed by this Tribunal vide order dated 31.01.2022. Thereafter, Respondent/Liquidator commenced the liquidation process. After Liquidation commencement date (LCD) i.e. 31.01.2022, the Liquidator made public pronouncement and started the process of examining the various claims received by him and preparation of Asset Memorandum in accordance with the relevant regulations of Liquidation Regulations. Meanwhile, on 01.03.2022, he received a mail from Mr. Rakesh Agarwal through his company M/s Bankey Bihari Infrahomes Private Limited to submit the scheme of compromise and Arrangement under Regulation 2B of the Liquidation Regulations. In response to this request, the Liquidator informed Mr. Rakesh Agarwal vide his e-mail dated 12.03.2022 about the decision of CoC in meeting dated 28.01.2021 to proceed with liquidation of the Corporate Debtor. Being aggrieved, Mr. Rakesh Agarwal filed IA No.115/2022 on 07.04.2022 through his company, M/S Bankey Bihari Infrahomes



Private Limited before this Tribunal praying for submission of a scheme of compromise and arrangement. This IA was disposed off by this Tribunal on 13.04.2022 with a direction to the Liquidator to consider the scheme and for submission of scheme was allowed within 3 weeks from the date of the order. 90 days time as prescribed under regulation 2B of Liquidation Regulations expired on 02.05.2022 and 3 weeks time granted by this Tribunal expired on 04.05.2022 but no scheme was received by the Liquidator till that date. Therefore, the Liquidator proceeded as per the code and the Liquidation Regulations and accordingly, the 1st Auction Notice dated 19.05.2022 was published on 20.05.2022 for e-auction providing the auction date as 02.06.2022. After release of Auction Notice dated 19.05.2022 on 20.05.2022, a scheme of compromise and arrangement was submitted by the Rakesh Agarwal on 24.05.2022 at 10.40 pm in night, with a request to condone the delay and a request to place the scheme before the stakeholders for their review and consideration. However, without waiting for the response of the Liquidator, Mr. Rakesh Agarwal through his company, M/S Bankey Bihari Infrahomes Pvt. Ltd. filed IA No.154/2022 before this Tribunal on very next date i.e. 25.05.2022 at 11.39 am requesting for staying the auction process



and to place the scheme before the SCC. This IA was disposed off by this Tribunal by passing the order dated 01.06.2022 observing that the auction is going to take place on 02.06.2022, hence, Mr. Rakesh Agarwal can very well participate in that process and offer the maximum value for the assets of the Corporate Debtor and did not stop the auction process holding that object of maximization of value of assets can be achieved during the liquidation process also. Thereafter, the Respondent/Liquidator re-issued 2nd Auction Notice on 01.06.2022 and the auction was re-scheduled on 06.06.2022 by postponing it from earlier date of 02.06.2022. Postponing the date of auction has been fairly explained by the liquidator as it was done keeping in mind that the said application IA No.154/2022 for consideration of scheme was pending before this Tribunal and therefore, with intent to provide one last fair chance to Mr. Rakesh Agarwal and his company, he deemed it fit to postpone the e-auction from 02.06.2022 to 06.06.2022. Thus, we find that the Liquidator has initiated the auction process complying with the provisions of IBC, 2016 and Liquidation Regulation made therein.

30. We have also taken note of the IBBI (Liquidation Process) Regulations, 2016 as it stood before the amendment dated



25.07.2019, which provided that the Liquidator shall liquidate the Corporate Debtor within a period of two years from the LCD. Keeping in mind the principle of time value as enshrined in the report of the Bankruptcy Law Reforms Committee (BLRC), the said time limit was reduced to one year vide amendment dated 25.07.2019.

31. Taking into account the chronology of events as discussed in para above, this Tribunal find that the required notice was issued correctly by the Liquidator in accordance with the Liquidation Regulations and the provisions provided in Code, 2016, and there was no infringement of rights of the stakeholders of the Corporate Debtor.

32. The issue for consideration before this tribunal is that whether the liquidator violated section 40(2) of the IBC, 2016 during liquidation process. Section 40 of the Code regarding admission or rejection of claims is produced below:-

**40. (1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:*

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and



corporate debtor within seven days of such admission or rejection of claims.

33. In this regard, it was contended by the Applicant that liquidator failed to adhere to the aforesaid timeline while communicating the admission and rejection of claim in terms of the aforesaid regulations. While countering the said issue, it is contended by the respondent that applicant submitted the claim documents vide an email dated 21.02.2022 and 28.02.2022 in respect of money which is invested by Applicant's father-in-law i.e. Mr. A.K. Jain who in person requested the liquidator to acknowledge the discrepancies verbally instead of written email to Prince Jain. Considering the request, the Liquidator informed Mr. Jain the defects which were to be removed and only after removing the defect free documents from Mr. Jain, the Liquidator could communicate his decision on 14.05.2022 admitting his claims in accordance with the provisions of the Code and Liquidation Regulations. Therefore, as explained by the Liquidator the delay in sending the acknowledgment e-mail u/s 40(2) was solely on account of the delay on the part of the applicant in providing the relevant documents in support of the amount claimed. Considering these facts, we don't find any merit in the allegation of the applicant as regards the violation of provision of section 40(2) by



the Liquidator. Moreover, his claims have been admitted in accordance with the provisions of the code and the Liquidation Regulations and hence, we don't find that the right of the applicant in this respect is infringed.

34. It is also contended by the Applicant that liquidator failed to adhere to the Regulation 31-A of the Liquidation by not holding the discussions with the Stakeholders Consultation Committee (SCC). Liquidator while dealing with the said issue has stated that meetings of SCC was scheduled on 04.06.2022, 14.01.2023, 11.02.2023 and 01.03.2022 and 13.05.2022 in which none of the members of the SCC was present. However, on 04.06.2022 Mr. Prasoon Agarwal attended the meeting on behalf of the Mr. Surendra Kumar Agarwal (Member of SCC) and Mr. Prince Jain on behalf of Rudra Rolling Mills Private limited. The detailed information regarding the liquidation process was informed by the liquidator to all the stakeholders vide an email dated 20.05.2022. Copy of email dated 20.05.2022 has been annexed with the Reply as Annexdure-5 Colly. Liquidator explained that he also conducted several zoom meetings with the stakeholders (flat buyers) of the Corporate Debtor, apprising them about the developments taken place in the liquidation process and has addressed their concerns



at length. It is also worth considering that during the entire process of Liquidation, a series of litigations happened challenging the auction process which travelled upto the Hon'ble Supreme Court with prayer to re-initiate a fresh auction but finally, the auction process initiated by the Liquidator was upheld and request for restarting the auction was rejected. All these events must be in the knowledge of stakeholders because some of them were part of the litigations and contention of not holding meetings by the Liquidator with stakeholders as raised before us by the applicant does not find any force. It is also noteworthy to mention here as informed by the liquidator that he has circulated **a detailed update on the liquidation process to all the concerned stakeholders vide e-mail dated 20.05.2022** alongwith the auction notice attached to the said e-mail for the reference of the stakeholders, wherein, the Liquidator had addressed all the developments including:

- i. The IA filed Mr. Rakesh Aggarwal through his Company "Bankey Bihari Infrahomes Private Limited" for submission of Scheme of Compromise or arrangement;
- ii. The directions given by the Hon'ble Bench pertaining to the said IA;



- iii. The various e-mails exchanged between Mr. Rakesh Aggarwal through his Company “Bankey Bihari Infracomes Private Limited” and the Liquidator pertaining to the Scheme;
- iv. Non-receipt of scheme within the stipulated time-frame which eventually led to the Liquidator having proceeded further in terms of provisions of IBC for auction of assets of Corporate Debtor.

Therefore, the contention of the applicant that the auction process came to his knowledge only after order dated 25.05.2022 of this Tribunal, deserves to be rejected.

35. With respect to submission of scheme to SCC, it is stated that Bankey Bihari Infracomes Private limited filed an I.A 154 of 2022 before this tribunal regarding submission of scheme of compromise and arrangement under section 230 which has already been dealt by this tribunal in I.A 193 of 2022 and the Hon’ble NCLAT vide its order dated 06.12.2022 and Hon’ble Supreme Court vide its order dated 07.02.2023.

36. The next issue raised by the Applicant in the instant application is that liquidator failed to comply with Regulation 31



and 31A of the Liquidation Process Regulations, 2016. It is stated that liquidator in its reply at Para 10 has categorically argued that report on the list of stakeholders along with constitution of SCC has already been filed before this tribunal and the same has been sent to the IBBI vide an email dated 04.04.2022 but due to some technical glitch, the same could not be uploaded on the website of IBBI.

37. Further, the Hon'ble NCLAT in *D.R Corporation (Proprietorship Firm) Vs. Shri Ravi Kapoor, Liquidator of City Tiles Ltd (2021) ibclaw.in 294* NCLAT has not allowed appeal against the decision taken by the Stakeholders Consultation Committee and Liquidator going ahead with the e-auction. The NCLAT in this decision held that the Adjudicating Authority is to appropriately consider the above observations while disposing of the petition and appellant was asked to approach first to the Adjudicating Authority for redressal of their grievances for any irregularity and only thereafter, they can approach NCLAT in appeal u/s 61(1). In the present case, decision of SCC and liquidator initiating auction has already been challenged before the appropriate forum and first approved by NCLT vide order dated 01.06.2022 and then on appeal by NCLAT vide order dated 06.12.2022 and finally approved by the



Hon'ble Supreme Court vide order dated 07.02.2023. Therefore, we now at this stage, do not find it appropriate to consider the validity of auction process in terms of provision of section 31 and 31A. Therefore, the above issue raised by the applicant is not sustainable in the light of aforesaid rulings.

38. The another issue raised by the applicant for consideration before this tribunal is regarding the eligibility of the liquidator for holding such position. It is stated that eligibility criteria of the liquidator is provided in Regulation 3 of the Liquidation Regulations, 2016, which is stated as under:-

3. Eligibility for appointment as liquidator.

(1) An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director, is independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he-

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or



(c) has not been an employee or proprietor or a partner:

(i) of a firm of auditors or [secretarial auditors] or cost auditors of the corporate debtor; or

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor contributing ten per cent or more of the gross turnover of such firm, in the last three financial years.

(2) A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate debtor or any of its stakeholders as soon as he becomes aware of it, to the Board and the Adjudicating Authority.

(3) An insolvency professional shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation process.

Section 149 of the Companies Act, 2013

.....

(6) An independent director in relation to a company, means a director other than a managing director--

or a whole-time director or a nominee director,

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;



(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no ²[pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed,] with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

39. The Applicant has alleged that since Mr. Prasoon Agwarwal was former Director of the Corporate Debtor and also served as Director of the Silverton Papers Limited wherein Prasoon Agarwal, Pankaj Agwarwal, Surendra Agwar (Father of Mr. Prasoon Agawal) B.G Freight Shoppe India Pvt. Ltd (COC Member/Financial Creditor) were shareholders.

40. The Liquidator was holding the post of Independent Director in Silverstone Private Limited from 30.09.2020 to 26.03.2021 and is eligible to be appointed as Independent Director on the Board of the Corporate Debtor in terms of the aforesaid provision since liquidator is not related to any serving Directors and Promoters of Silverstone Private Limited. Moreover, the liquidator did not had



any pecuniary relationship with the company or its director or promoters. Therefore, objection raised by the applicant challenging the eligibility of the respondent to be appointed as liquidator is rejected.

41. Another issue vehemently argued by the Ld. Counsel of the applicant is whether the Liquidator was justified in selling the assets of the company at Rs. 7 crores to discharge the liability of the company when it was observed in the order dated 01.06.2022 of this Tribunal, “**We also make it clear that the Liquidator shall act with a view to maximize the value of the Corporate Debtor and in case the value offered is found to be below the value offered made by the applicant herein, the auction process is reinitiated.**” The applicant in this order was M/s Bankey Bihari Infrahomes Pvt. Ltd. through Rakesh Agarwal. This issue has been thoroughly examined by the Hon’ble NCLAT and the Hon’ble Supreme Court. The Hon’ble NCLAT vide order dated 06.12.2022 exclusively dealt with the issue of submission of scheme of compromise and arrangement along with the claim of the home buyers. The relevant paras of the said order is mentioned herein below:-

“.....



26. A perusal of the order of the Adjudicating Authority dated 1.6.2022 shows that the Adjudicating Authority, after considering the past proceedings in the liquidation process and also the inability of the Appellant to submit a scheme of compromise and arrangement in the given time of three weeks from 19.4.2022, ordered that the e-auction process may be continued. The Adjudicating Authority further ordered that if the Appellant offers a better value for the land of the corporate debtor than what is discovered in the e-auction, the e-auction could be reinitiated.

27. A perusal of the series of events during the liquidation process makes it clear that the Appellant, through Mr. Rakesh Kumar Agarwal, made an attempt through the company AIG Infratech Private Limited to submit a resolution plan much after the CoC had decided to liquidate the corporate debtor and the application for liquidation has been filed by the Resolution Professional before the Adjudicating Authority. This IA 220/2021, was filed in July, 2021 through the company AIG Infratech Private Limited for seeking order to submit a resolution plan, was dismissed by the Adjudicating Authority on the ground that “no useful purpose would be served in keeping IA 220/2021, when the COC had already resolved to liquidate the Corporate Debtor.”

28. Thereafter, after the commencement of liquidation process vide order dated 31.1.2022, Mr. Rakesh Kumar Agarwal again sent a letter to the Liquidator on 3.3.2022, after passage of more than one month from the date of commencement of liquidation requesting to submit a scheme of compromise and arrangement, and upon the Liquidator expressing inability to accept such a scheme in view of



the commencement and progress of liquidation, Mr. Rakesh Kumar Agarwal filed IA 115/2022 through another company 'Bankey Bihari Infrahomes Private Limited' seeking permission of the Adjudicating Authority for submission of a scheme of compromise and arrangement. This interlocutory application was disposed of by the Adjudicating Authority vide order dated 13.4.2022 with the following observations: -

"This is an application filed by the "Bankey Bihar Infrahomes Private Limited" seeking a direction to the liquidator to consider the scheme propounded by the Applicant herein.

Ms. Babita Jain, learned counsel for the Applicant present. Ms. Snehal Sharda, learned counsel appearing on behalf of the liquidator present.

The liquidator is expected to act in accordance with the Liquidation Process Regulations. The decision on the proposed scheme be taken within a period of three weeks' from today. No other directions are called for in IA No. 115/2022 and hence the same shall stand disposed."

29. It is noted that after exchange of a number of e-mails between the Appellant and the Liquidator, starting with e-mail dated 20.4.2022, the Appellant finally submitted the requisite scheme vide e-mail dated 24.5.2022 (The e-mails exchanged between the Appellant and the Liquidator are attached at pp. 98-122 of the appeal paperbook). It is noted when the information regarding claims which was sought by the Appellant was provided by the Liquidator vide e-mail dated 4.5.2022 (attached at pp. 103-104 of the appeal paperbook), the Appellant forwarded the confidential information to erstwhile directors of the corporate debtor, which was



in breach of the confidentiality undertaking provided by the Appellant.

30. The Liquidator, on not receiving no further information from the Appellant about submission of the scheme of compromise and arrangement after his e-mail dated 2.5.2022, and when the three weeks' time starting from 13.4.2022 granted by the Adjudicating Authority had expired on 4.5.2022, proceeded to publish the auction notice on 20.5.2022.

31. It appears that on publication of this auction notice, the Appellant sent an e-mail dated 21.5.2022 seeking more time for submission and finalization of the scheme on which the Liquidator expressed his inability to provide more time vide e-mail dated 24.5.2022. The Appellant, thereafter, submitted the requisite scheme to the Liquidator on the evening of 24.5.2022 and immediately thereafter filed IA 154/2022 before the Adjudicating Authority requesting for stay of the auction process and directions to place the proposed scheme before the Stakeholders Consultation Committee.

32. The above-stated actions of Mr. Rakesh Kumar Agarwal make it absolutely clear that he, through different corporate entities, has attempted to intervene in the process of liquidation by filing the three interlocutory applications viz. IA 220/20221, (which was dismissed by the Adjudicating Authority), IA 115/2022 and IA 154/2022. We also note that Mr. Rakesh Kumar Agarwal in utter disregard to the confidentiality agreement provided to the Liquidator to keep the information supplied to him by the Liquidator confidential, went ahead and shared such information with the counsel of Mr. Prince



Jain, a creditor whose claim was not admitted during CIRP of the corporate debtor.

33. We also note that the Liquidator and the Adjudicating Authority have with due regard to fairness, natural justice and in consonance with the objectives of IBC, provided an opportunity through order in IA 115/2022, giving three weeks' time for the submission and decision on the purported scheme of compromise and arrangement as claimed by the Appellant which the Appellant failed to do in the time limit provided and was, thus, unable to establish his bonafide about his seriousness in proposing such a scheme. This has to be seen in the context of the fact that the liquidation order was passed on 31.1.2022, and that the prescribed time period for completing liquidation process was substantially over by this time.

34. Thus, in view of the fact that the Appellant neither submitted the scheme of compromise and arrangement within the stipulated time which was upto 4.5.2022 nor did he inform the Liquidator about the delay in submitting the scheme or seek any extension of time limit from the Adjudicating Authority, the intention and seriousness of the Appellant in submitting a scheme as prayed by him appears to be doubtful.

35. In view of the above-stated situation and the turn of events, we are of the clear opinion that the Liquidator, being duty bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations when the purported



scheme was not submitted in three weeks, acted quite appropriately and in consonance with the provisions of law by issuing the auction notice dated 19.5.2022 which was published in newspapers on 20.5.2022. The submission of the said scheme by the Appellant on 24.5.2022 after a delay of twenty days and the filing of IA No. 154/2022 on 25.5.2022, should therefore, be viewed in this context. The order of the Adjudicating Authority dated 1.6.2022 in IA 154/2022, whereafter a fresh auction notice was published by the Liquidator are also events that follow the correct course as stipulated in the liquidation process of the corporate debtor.

36. We now turn our attention to the features of the scheme submitted by the Appellant, albeit after much delay, to understand whether the Appellant was interested in providing a credible scheme of compromise and arrangement.

37. A perusal of the scheme (attached with the Affidavit of the Liquidator, filed vide Diary No. 40689 dated 1.11.2022) tells us that the total payments proposed to all the stakeholders is provisioned at Rs. 11,48,56,758. This amount includes a figure of Rs. 1.5 crores for payment to the creditors whose claims were not admitted by the RP during CIRP. Another amount of Rs. 1.32 crores has been provisioned for payment to other creditors/stakeholders, unsecured financial creditors who are related parties and other creditors/stakeholders. Thus, an amount of approximately Rs. 2.82 crores is proposed as payment to creditors, who may not be entitled to any payment in the liquidation process of the corporate debtor or would come lower down in 'waterfall mechanism' and may not even



get such large payments. Further the very important financial creditors in class, who are 33 homebuyers in number and have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor, are proposed to be paid within 90 days from the date of approval of the scheme whereas other creditors are to be made 100% payments irrespective of whether their claims are admitted or not by the Liquidator. The flats are supposed to be completed in 24 months and provided to the homebuyers against their claims filed with the Liquidator. It is not at all clear as to how the homebuyers who have only paid part of the total cost will be treated and whether they will be required to pay any extra amount and what would be its quantum.

38. It is, therefore, noted that the purported scheme proposes to make payments to a number of related parties/unsecured creditors/not submitted claims upto an extent of 100% of admitted claimed amounts. Another issue in the proposed scheme is that it proposes to make payments within 90 days of approval of scheme whereas in the event of auction-sale the payments would be made promptly to claims in accordance with the 'waterfall mechanism' under section 53 of IBC.

39. The Learned Counsel for Appellant has cited the judgments of this Tribunal in the matters of S.C. Sekaran vs Amit Gupta & Ors. [CA (AT)(INS) 495-496/2018] and Y. Shivram Prasad vs. S. Dhanapal & Ors. [CA(AT)(Ins) 224/2018] wherein the Tribunal held that steps should be taken for the revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from corporate death by liquidation. We



distinguish this judgment on the ground that while it affirms the spirit and ethos of the IBC in that “the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation”, and also “even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern” but it doesn’t hold that the any scheme of compromise or arrangement if proposed in breach of regular timelines of the liquidation process has to be necessarily considered.

40. We also note that only 33 allottees have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor which means that, on an average, each allottee has claimed Rs. 8.10 lakhs. Considering this full amount to have been used for construction of flats, it is quite understandable that the level of construction would not be significant. How then the Appellant, as proponent of the scheme of compromise and arrangement, proposes to bring in additional funds to complete construction and how he will bring in the extra funds is unclear on a deeper examination of the scheme. The said scheme, therefore, appears to be a ‘fictional one’ ostensibly to appropriate the land to the benefit of a select few who are related parties of the corporate debtor.

41. Both the Learned Counsel for Appellant and the Learned Counsel for Respondent No. 2 have cited the judgment of Hon’ble Supreme Court in the matter of Arun Kumar Jagatramka vs. Jindal Steel and Power Limited & Anr. [(2021) 7 Supreme Court Cases 474] in support of their rival contentions with regard to any ineligibility that would attach to the Appellant in providing a scheme of



compromise and arrangement under section 230 of the Companies Act, 2013 with reference to section 29-A of IBC which pertain to ineligibility of related persons to submit resolution plan and section 35(1)(f) of IBC, which is a provision applicable during liquidation. It is instructive to have a look at the relevant portion of the Arun Kumar Jagatramka judgment (supra), which is as hereunder:-

“71.....In the context of the statutory linkage provided by the provisions of Section 230 of the 2013 Act with Chapter III IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be farfetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29-A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

72. An argument has also been advanced by the appellants and the petitioners that attaching the ineligibilities under Section 29-A and Section 35(1)(f) IBC to a scheme of compromise and arrangement under Section 230 of the 2013 Act would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the 2013 Act. We find no merit in this contention. As explained above, the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the 2013 Act, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally.”



42. A perusal of the above-mentioned observation in the Arun Kumar Jagatramka judgment (supra) makes it very clear that the promoter or those in the management of the company under liquidation cannot be allowed a 'backdoor entry' into the company and hence, would be considered ineligible to submit a proposal under section 230 of the Companies Act, 2013. When we view the continuous efforts of Mr. Rakesh Kumar Agarwal in seeking to 'takeover' the corporate debtor through various stratagems, and also the finding that he is in 'collusion' or acting in concert with the erstwhile management of the corporate debtor, the motive or intention in putting forward a useless scheme of compromise and arrangement in respect of the corporate debtor becomes seriously doubtful. The observation of Hon'ble Supreme Court regarding 'backdoor entry' in the corporate debtor by the erstwhile management then appears to be a very distinct, something that we should not disregard. In this background, the judgment of this tribunal in the matter of Y. Shivram Prasad (supra) should also be viewed, so that following such a judgment should not lead to undesirable consequences as are pointed out in the Arun Kumar Jagatramka Judgment (supra) of Hon'ble Supreme Court.

43. The Learned Counsel for Appellant has also cited the judgment of this Tribunal in the matter of Punjab National Bank vs. EVA Agro Feeds Pvt. Ltd. & Anr. [CA(AT)(INS.) No. 757 of 2021], wherein it is held that "the successful bidder in the auction sale does not acquire any vested right in law to enforce the auction." We are conscious of the fact that the issue in this appeal is not about any right of the successful bidder, but where the Adjudicating Authority has considered all the related facts and circumstances concerning the



request of the Appellant in proposing a scheme of compromise and arrangement, and thereafter passed an order which balances the liquidation process with the need to avoid liquidation of the corporate debtor. This judgment, therefore, does not support the case of the Appellant.

44. The Senior Learned Counsel for Respondent No. 2 has adverted to the judgment of the Hon'ble Supreme Court in the matter of *Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd.* [(CoC), (2022) 2 SCC 401], wherein it is held that the “if the CIRP is not completed within the prescribed timeline, the corporate debtor is sent into liquidation.....We cannot afford to be swayed by abstract conceptions of equity and ‘contractual freedom’ of the parties.” We note that the Adjudicating Authority in the present case has struck a fine balance between the right of the Appellant in proposing the scheme for compromise and arrangement and the timely and successful completion of the liquidation process of the corporate debtor, a move that would be in accordance with the ruling in the ***Ebix Singapore judgment (supra)***.

45. In view of the above-noted detailed discussion, it is clearly established that the Adjudicating Authority provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the Appellant was prima-facie found to inflate the total payments by provisioning payments to creditors who are either related to the corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the



proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.

46. We, therefore, hold the clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA 154/2022 by the Impugned Order allowing the Liquidator to proceed with the e-auction and not allowing any more time for consideration of the scheme proposed under section 230 of the Companies Act, 2013. In view of this inescapable conclusion that the Adjudicating Authority has not erred in passing the Impugned Order, the appeal is dismissed, and is accordingly disposed of.

47. There is no order as to costs.

.....”

[Emphasis supplied]

42. In the above order, the Hon’ble NCLAT not only confirmed the order dated 01.06.2022 of this Tribunal allowing the auction process initiated vide auction notice dated 19.05.2022 but also after detailed examination of the scheme of compromise and arrangement of Rs.11,48,56,758/- presented by Mr. Rakesh Agarwal through his company, M/S Bankey Bihari Infrahomes Pvt. Ltd. as discussed from para no.37 to 44 of above order, held that this scheme was *prima facie* found to inflate the total payments by provisioning payments to creditors who are either related to the



corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction. Thus, it is clearly held by the Hon'ble NCLAT that the value offered by Mr. Rakesh Agarwal, applicant in IA No.154/2022 was inflated and in effect not of great value than the amount being offered by the successful bidder in auction.

43. Also, the Hon'ble Apex Court vide order 17.01.2023 directed the Appellant(Bankey Bihari Infrahomes Private Limited) to deposit the sum of Rs. 12 crore as raised under the scheme of compromise and arrangement within the period of 15 days from the date of this said order. However, the Civil Appeal filed by M/S Bankey Bihari Infrahomes Pvt. Ltd. was dismissed on failure to deposit the said amount as raised under the proposed scheme by the appellant vide an order dated 07.02.2023 with the followings observations.

"I.A. (Dy.) No.27202/2023 and I.A. (Dy.) No. 27204/2023

Applications are taken on board.

Learned counsel for the applicant urges that he did not participated in the auction because somehow he missed



out on the auction but he is willing to pay more. There is hardly a reason for the applicant to intervene.

Applications stand dismissed.

I.A. No.26569/2023 and I.A. No. 26573/2023

These applications are by the home buyers who claim that the process is carried out in a hurry therefore the actual price is not being realized.

Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016 (IBC).

Applications stand dismissed.

Learned counsel for the appellant states that the appellant has not been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/-. Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores haven not been brought as assured on the last date.

The civil appeal stands dismissed accordingly.”

44. It is important to state that the action of Liquidator stands to be valid as the process was conducted in accordance with the IBBI Rules and Regulations, especially as per clause 4A and 4B of Schedule-I provisions of Liquidation Process Regulation 32, it is



the discretion of the Liquidator, as to in what way he wants to conduct the Sale procedure, subject to said rules.

45. The Hon'ble NCLAT Chennai Bench in **Mr. V.S. Palanivel, Share Holder/ Ex-Managing Director, M/s Sri Lakshmi Hotels Pvt. Ltd. Vs. Mr. P. Shriram, CS, Liquidator, M/s Sri Lakshmi Hotels Pvt. Ltd. (2022) ibclaw.in 733 NCLAT** held that: *The concept of Commercial Wisdom has to be interpreted with prudence and its evolution has to be vigilantly observed for striking the balance between the Liquidation and Reorganization, which is enshrined to be the base for the design of the Insolvency and Bankruptcy Code, 2016. The value of property(s) as a whole and in parts, if sold may experience a depreciation in their value or appreciation. The determinants of market value of a property differ in many aspects, sometimes a property as whole holds more market value and if sold in parts, the value may depreciate and vice versa. The Commercial wisdom of the Liquidator is not questionable by the Adjudicating Authority, and if the Liquidator is of the idea that, then, it should be understood that the Liquidator is appointed to benefit and improve the situation of the Corporate Debtor and not degrade it. We do not know that what would appreciate or depreciate the value of the property, but the Liquidator is a person who has*



knowledge on the ground and can identify the best possible way to benefit the Corporate Debtor and understands the practical aspects of Commercial Real Estate Markets, then, it should not be questioned. Also, the Hon'ble Supreme Court of India in case of **R.K. Industries LLP v. H.R. Commercial (P) Ltd., reported in (2022) ibclaw.in 104 SC** held that Liquidator's commercial wisdom not open to judicial review by the Adjudicating Authority.

46. The Hon'ble NCLAT has also categorically held in **M/s Mohan Fabtex Ltd. Vs. Rajesh Jhunjunwala Liquidator, Parasrampuriah Synthetics Ltd.** that maximisation of the value of the Corporate Debtor is one of the objectives of the IBC, however, the said objective has to be achieved within timelines.

47. We have already made a detailed analysis and recorded our findings in the foregoing paragraphs giving the facts of the present case, the RP cannot be said to have exceeded the powers vested upon it by the IBC. Further, we notice that the liquidation of the Corporate Debtor was unanimously approved by the CoC with 100% votes in favour of liquidation in the 6th CoC meeting held on 28.01.2021. Prima-facie on this count, no illegality or impropriety



can be attributed to CIRP process undertaken by the RP till this meeting.

48. The RP on his part had made all possible efforts for insolvency resolution of the Corporate Debtor before the decision was taken by the CoC to sell the Corporate Debtor as a going concern. It has not been challenged by the Applicant that Form G was issued by the RP to invite resolution plans. Further it as an undisputed fact that no resolution plans were received. The minutes of the 6th CoC meetings clearly shows CoC with 100% voting decided to liquidate the corporate Debtor.

49. We also notice that only in pursuance of the decision taken in the 6th CoC meeting, I.A. No. 73 of 2021 was filed by RP before the Adjudicating Authority on 06.02.2021 seeking initiation of liquidation of the Corporate Debtor.

50. We however notice that the Hon'ble Appellate Tribunal passed a speaking order on 06.12.2022 wherein the developments in the liquidation process were adequately examined including the fact that the CoC discussed the prospects of selling the Corporate Debtor as a going concern at length in the 6th CoC meeting. The decision of initiation of liquidation proceedings of the Corporate



Debtor was taken by the CoC in its commercial wisdom within the ambit of powers granted to it under the provisions of the Code, pursuant to failure of Corporate Debtor to achieve successful resolution under the provisions of the Code. Therefore, the CoC had made all endeavors for resolution of the Corporate Debtor in the first place and had voted upon liquidation only as the last resort. The resolution process along with moving on with liquidation process has run for more than 03 (three) years. Therefore, no lack of bonafide on the part of liquidator can be attributed to this.

51. Keeping into consideration the aforesaid discussions and submissions, we are of the view that present I.A No. 177 of 2022 is liable to be dismissed. Ordered Accordingly, Consequently, the interim order dated 06/07/2022 passed by this tribunal in the present I.A shall also stand vacated.

-Sd-

(ASHISH VERMA)
Member (Technical)

-Sd-

(PRAVEEN GUPTA)
Member (Judicial)

Priya Agarwal
(Stenographer)