

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.492 of 2023

IN THE MATTER OF:

ASJ Finsolutions Pvt. Ltd.

...Appellant

Versus

Best Foods Ltd.

Through Liquidator & Ors.

...Respondents

Present:

For Appellants: Ms. Sadiqua Fatma, Mr. Aamir Zafar Khan and Mr. Abhishek Yadav, Advocates.

For Respondents: Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Viren Sharma, Mr. Mohak Sharma, Mr. Sajal Jain and Mr. Supriyo Banerjee, Advocates.

O R D E R

21.04.2023: Heard learned counsel for the Appellant. This Appeal has been filed against the order passed by the Adjudicating Authority dated 31.03.2023 by which order application filed by the Appellant for issuing direction to the Liquidator for claiming the chain documents of the property sold to the Appellant through e-auction process initiated vide notice dated 25.10.2021 for verification before balance sale consideration amounting to Rs.19,17,00,000/- be paid, has been rejected. The Company Petition was admitted on 02.02.2018 by the Adjudicating Authority and order of Liquidation was passed on 01.03.2021. The Liquidator issued e-auction notice for 15.11.2021. In the e-auction notice several properties were mentioned and the Appellant was declared as highest bidder with regard to property at Item No.5. The Appellant made a deposit of amount of Rs.6.39

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Crores on 16.11.2021. Liquidator issued the letter of intent on 16.11.2021. As per the letter, the balance amount has to be deposited in 30 days or with interest upto 90 days. Balance amount was not deposited by the Appellant and thereafter an application being I.A. No. 85 of 2022 was filed, which has been decided by the impugned order. The application has been rejected by the Adjudicating Authority.

2. Learned counsel for the Appellant challenging the order submits that with regard to the property for which the Appellant has submitted its bid there was a Writ Petition filed in the Punjab and Haryana High Court, which was ultimately decided on 02.02.2022. It is submitted that the original sale deed of two parts have not yet been shown to the Appellant and due to the bonafide litigation regarding title of the property, balance amount was not deposited.

3. Learned counsel for the Liquidator submits that the details of the property were mentioned in the e-process document and e-auction notice which also contained details of litigation. Sale was on “as is where is”, “as is what is” basis and the Appellant was required to do due diligence and the Appellant having declared as successful bidder cannot turn round and refuse to deposit the balance amount within the time provided. The Adjudicating Authority did not commit any error in rejecting the application of the Appellant.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. Admittedly, the Appellant was the successful bidder of the property mentioned at Item No.5 in the e-auction document. The Liquidator sent a communication on 16.11.2021 informing the Appellant that Appellant is the successful bidder and is required to deposit amount as per the Liquidation Regulation, 2016. The submission of learned counsel for the Appellant that there was dispute raised with regard to the property in filing a Writ Petition and Suit, there was a bonafide litigation regarding title of the property and original sale deed have not shown to it. Suffice it to say that in the e-auction notice details of property including the note was also mentioned, where the following details were mentioned in Note 3:

“Note 3-Details of Land Comprised in Lot 5

i) land measuring 68K-3M as per Regd. Sale deed no. 4903 dated 29-8-2008

ii) Land measuring 0K-14M as per Regd. Sale deed no. 1317 dated 22-5-2009-Area 0K-8M and Sale Deed No. 4902 dated 29-8-2008- Area 0K-6M. In respect of said sale deeds Suit no. CS/1264/2021- Shiv Kumar Gupta vs. Best Foods Ltd. has been filed before Civil Court, Sonipat, wherein it is claimed that land is covered by a contract to sell and therefore seeking ad-interim stay. No stay has been granted by Civil Court, Sonipat. The Liquidator is filing an application before NCLT for taking custody of title deed Sale deed no. 1317 dated 22-5-2009 and Sale Deed No. 4902 dated 29-8-2008 from promoters/ Shiv Kumar Gupta.”

6. The factum of litigation by Writ Petition in High Court by a third party and suit by certain parties in the property cannot be ground for the Successful Bidder of not making payment of balance amount. The balance amount was to be deposited within the time as required in Schedule-I of Liquidation Regulation, 2016. This Appellate Tribunal while considering provisions of the Schedule-I of the Liquidation Regulation, 2016 in **“Company Appeal (AT) (Insolvency) No. 532 of 2022, Potens Transmissions & Power Pvt. Ltd. vs. Gian Chand Narang”** has laid down that the said timeline is statutory. In Para 8 following has been laid down:

“8. When we look into the above regulation, it is clear that 90 days’ period provided for making the deposit is the maximum period under which the Auction Purchaser had to make the deposit. 2nd Proviso of the Item 12 of the Schedule I provided that sale shall be cancelled if the payment is not received within 90 days. When the Consequence of non-compliance of the provision is provided in the statute itself, the provision is necessary to be held to be mandatory. Item 12 provides that payment is to be made within 90 days and with interest after 30 days at the rate of 12 percent. Non-compliance of 2nd Proviso, sale shall be cancelled if the payment is not received within 90 days. The Adjudicating Authority has rightly observed that in view of the Appellant having not made payment in 90 days, Adjudicating Authority has no option except to allow the Application filed by the Liquidator for cancellation of the sale. The action taken by the Adjudicating Authority is in accordance

with the statutory provisions. We do not find any merit in the submissions of Learned Counsel for the Appellant as noticed above. Prayer 'a' in the Application which was filed through I.A. No. 3153 of 2021, itself is indicative that Appellant was never interested in making the payment and he by different prayers wanted to prolong the proceedings."

7. We are of the view that the Appellant having not deposited the balance amount within the time allowed, the Adjudicating Authority did not commit any error in rejecting the application filed by the Appellant. Appeal is dismissed.

8. Learned counsel for the Liquidator submits that now the SCC has taken a decision to re-auction the property and it is open for the Appellant to participate in the said auction process if they fulfil all the necessary conditions.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

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