

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

Company Appeal (AT) (Insolvency) No. 449 of 2025

**[Arising out of the Impugned Order dated 21.01.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai Bench
in I.A. 1365 OF 2023 In CP(IB) No. 1833/2017]**

In the matter of:

Sushil Jejani S/o Atmaram Jejani,

Flat No. 601, Arihant Apartment –
SDPL Wathoda layout Near
Swaminarayan temple Nagpur,
Maharashtra 440008

...Appellant

Versus

1. Mr. Pasad Dharap

(Liquidator of Jejani Pulp & Paper Mills Pvt Ltd.)
Having Registered address at:
Plot No 47, Prasad New, Ramdasjeth,
Nagpur- 440010

...Respondent No.1

2. Dicksons Overseas Private Limited

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur.

...Respondent No.2

Present:

For Appellant : Mr. Gaurav Mitra Sr. Advocate with Mr. Rohit Anil R., Mr.
Yashas R. K, Mr. Lawanya Pathak, Advocates.

For Respondent : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Monish
Surendaram, Advocates for R1.

Mr. Sunil Fernandes Sr. Advocate with Ms. Sukhda Kalra,
Mr. Nitesh Ramani, Advocates for R2.

WITH

Company Appeal (AT) (Insolvency) No. 473 of 2025

**[Arising out of the Impugned Order dated 21.01.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai Bench
in I.A. 560 of 2022 in CP(IB) No. 1833/2017]**

In the matter of:

DICKSONS OVERSEAS PRIVATE LIMITED

Having Registered Office at:
W-46, MIDC Industrial, Hingna Road,
Nagpur, Maharashtra

...Appellant

Versus

MR. PASAD DHARAP

(Liquidator of Jejani Pulp & Paper Mills Pvt Ltd.)
Liquidator of Jejani Pulp and Paper Mills Pvt. Ltd.
Having Address At:
Plot No. 47, Prasad New,
Ramdaspath, Nagpur,
Maharashtra – 440010

.... Respondent

Present:

For Appellant : Mr. Gaurav Mitra Sr. Advocate with Mr. Rohit Anil R., Mr. Yashas R. K, Mr. Lawanya Pathak, Advocates.

For Respondent : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Monish Surendaram, Advocates for R1.

Mr. Sunil Fernandes Sr. Advocate with Ms. Sukhda Kalra,
Mr. Nitesh Ramani, Advocates for R2.

WITH

Company Appeal (AT) (Insolvency) No. 485 of 2025

[Arising out of the Impugned Order dated 21.01.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in I.A. 12 of 2021 in CP(IB) No. 1833/2017]

In the matter of:

DICKSONS OVERSEAS PRIVATE LIMITED

Having Registered Office at:
W-46, MIDC Industrial, Hingna Road,
Nagpur, Maharashtra

...Appellant

Versus

MR. PASAD DHARAP

(Liquidator of Jejani Pulp & Paper Mills Pvt Ltd)
Liquidator of Jejani Pulp And Paper Mills Pvt Ltd
Having Address at:
Plot no. 47, Prasad New, Ramdaspath,
Nagpur, Maharashtra – 440010

... Respondent

Present:

For Appellant : Mr. Gaurav Mitra Sr. Advocate with Mr. Rohit Anil R., Mr. Yashas R. K, Mr. Lawanya Pathak, Advocates.

For Respondent : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Monish Surendaram, Advocates for R1.

Mr. Sunil Fernandes Sr. Advocate with Ms. Sukhda Kalra, Mr. Nitesh Ramani, Advocates for R2.

WITH
Contempt Case (AT) No. 16 of 2025 in
Company Appeal (AT) (Insolvency) No. 449 of 2025

[Arising out of the Impugned Order dated 21.03.2025 passed by the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 449 of 2025]

In the matter of:

SUSHIL JEJANI S/O ATMARAM JEJNAI

Flat No. 601, Arihant Apartment
SDPL Wathoda layout Near
Swaminarayan temple Nagpur
Maharashtra – 440008

...Appellant

Versus

1. MR. PASAD DHARAP

(LIQUIDATOR OF JEJANI PULP & PAPER MILLS PVT LTD
Having Registered address at:
Plot No. 47, Prasad New, Ramdasjeth,
Nagpur – 440010

... RESPONDENT CONTEMNOR NO. 1

2. DICKSONS OVERSEAS PRIVATE LIMITED

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

... RESPONDENT CONTEMNIOR NO. 2

3. RAVI ASHOK RAMANI

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 3

4. ROHIT SURESH DIXIT

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 4

5. RAHUL PRAKASH DIXIT

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 5

6. PANKAJ NANDLAL MOTWANI

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 6

7. HIMESH NARAYAN DEMBLE

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 7

8. JESAMAL ARJUNDAS MOTWANI

Having Registered Office at:
W-46, MIDC Industrial Area,
Hingna Road, Nagpur

...RESPONDENT CONTEMNOR NO. 8

Present:

For Appellant : Mr. Rohit Anil Rathi, Mr. Yashes R. K., Advocates.

For Respondent : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Monish Surendaram, Advocates for R1.

Mr. Sunil Fernandes Sr. Advocate with Ms. Sukhda Kalra,
Mr. Nitesh Ramani, Advocates for R2.

WITH

Company Appeal (AT) (Insolvency) No. 463 of 2025

[Arising out of the Impugned Order dated 21.01.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in IA/560/2022 in CP(IB)/1833(MB)/C-III/2017]

In the matter of:

Dicksons Overseas Private Limited

W-46 MIDC Industrial Area,
Hingna Road, Nagpur -441110
ca.ravi@dembleramani.com,
Mobile – 9096369994

...Appellant

Versus

Mr. Prasad Dharap, Liquidator

Jejani Pulp and Paper Mills Pvt. Ltd.
47, Prasad, New Ramdaspath,
Nagpur – 440 010 Maharashtra
Mobile 98227 36867,
dharp65@rediffmail.com,
prasad.dharap@jjkandco.com

...Respondent

Present:

For Appellant :
For Respondent : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Monish
Surendaram, Advocates for R1.

Mr. Sunil Fernandes Sr. Advocate with Ms. Sukhda Kalra,
Mr. Nitesh Ramani, Advocates for R2.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**IBC** in short) arises out of two Orders both dated 21.01.2025 (hereinafter referred to as **First and Second Impugned Order**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP (IB) No. 1833 of 2017. By the first impugned order, the Adjudicating Authority has dismissed IA No. 1365 of 2023 filed by Mr. Sushil Jejani-Promoter of Corporate Debtor seeking the setting aside of the auction sale conducted by the Liquidator and holding of fresh auction. By the second impugned order, the

Adjudicating Authority has dismissed I.A. No. 12 of 2021 filed by Dicksons Overseas Pvt. Ltd.-Successful Auction Purchaser seeking stoppage of the running of 90 days time to make auction sale payment due to force majeure circumstances and stoppage of interest liability. This second impugned order also dismissed IA No. 560 of 2022 filed by Dicksons Overseas Pvt. Ltd. seeking to acquire the Corporate Debtor as a going concern. Aggrieved by the first impugned order, Company Appeal No. 449 of 2025 has been preferred by the Appellant- Mr. Sushil Jejani and aggrieved by the second impugned order, Company Appeals No. 485 of 2025, 473 of 2025 and 463 of 2025 have been preferred by the Appellant-Dicksons Overseas Pvt. Ltd.

2. Since all these appeals stem from the same set of facts, for reasons of convenience we will outline them conjointly. We propose to treat Company Appeal No. 449 as the principal appeal and apply the finding in this appeal to decide the remaining appeals. The relevant facts which require to be noticed are as under:

- The Corporate Debtor- Jejani Pulp & Paper Mills Pvt Ltd. was admitted into the rigours of CIRP on 22.06.2018.
- On 18.10.2019, Liquidation proceedings of the Corporate Debtor was initiated by the Adjudicating Authority by allowing M.A. No. 1614/2018.
- As the first auction held on 15.02.2020 did not succeed, on 07.09.2020, Respondent No. 1-Liquidator published a public notice for the second round of auction for sale of the Subject Land.
- On 28.09.2020, an online auction was conducted with a revised reserve price of Rs 9,30,00,000, in which three bidders submitted applications.

Respondent No. 2-Dicksons Overseas Pvt. Ltd. emerged as the Successful Auction Purchaser (“**SAP**” in short) of the Subject Land for a total consideration of Rs. 9.23 Cr. which included the previously deposited EMD of Rs 90,30,000/-.

- Pursuant to the auction, a Letter of Intent (“**LoI**” in short) dated 01.10.2020 was issued by the Liquidator in favour of SAP stipulating that balance consideration be paid within 90 days i.e. by 29.12.2020.
- On 02.11.2020, SAP addressed a letter to Liquidator informing that an application for conversion of subject land had been made by them which got rejected on the ground that only the landholder could apply for conversion. Assistance was sought from Liquidator for conversion.
- On 03.11.2020, Liquidator applied to the Collector for the conversion of the Subject Land from Class II to Class I occupancy.
- On 10.12.2020, the conversion process was stayed by the Government through a notification under the Maharashtra Land Revenue (Conversion of Occupancy Class II and Leasehold Lands into Occupancy Class I Land) Rules, 2019.
- On 28.12.2020, SAP filed W.P. No. 3821/2020 before the Hon’ble Bombay High Court, challenging the stay on conversion. Hon’ble High Court passed interim order restraining Liquidator from taking coercive action against SAP.
- On 29.12.2020, I.A. No. 12 of 2021 was filed by SAP before the Adjudicating Authority making the following prayers:

- (a) Declare and hold that running of ordinary time of 90 days has been stopped due to force majeure circumstances, hence there is no consequent liability or responsibility on any of the parties;*
- (b) Declare and hold that the liability of interest also stopped due reasons of force majeure;*
- (c) Grant time of four weeks after the date of grant of the required permissions to get the sale deed draft adjudicated from the collector of stamps, payment of stamp duty and complete other sale formalities,*
- (d) Issue direction, without prejudice to any of the aforesaid prayers, to explore and initiate the steps for under Regulation 30A as well as under Regulation 32 (e) of the corporate debtor as a going concern.*
- (e) Direct the Liquidator to seek all other permissions and pay relevant fees applicable under all the relevant laws;*

- On 28.01.2021, the Government issued a communication lifting the stay on land conversion.
- On 05.07.2021, the Hon'ble High Court extended interim protection to SAP while directing competent authority to consider the conversion application within four weeks.
- On 04.08.2021, the Hon'ble High Court further extended the time by three months to decide the conversion application.
- On 02.11.2021, the SDO rejected the conversion application. Subsequently, Liquidator challenged the decision of SDO before the Additional Collector. On 28.10.2022, the Additional Collector set aside the SDO's order directing reconsideration of the application.
- On 28.02.2022, SAP filed I.A. No. 560 of 2022 before the Adjudicating Authority making the following prayers:
 - a. Permit the withdrawal of clause c), d) and f) of I.A. No. 12 of 2021;*
 - b. Permit Dicksons to acquire the Corporate Debtor as a going concern in accordance with the Acquisition Plan annexed;*

- c. *Grant reliefs, permissions and concessions as specified in paras 12 of the I.A. and Schedule 1 of the Acquisition Plan;*
 - d. *Declare and hold that the Applicant is not liable to pay any interest to the Liquidator.*
- On 23.03.2023, the Appellant filed I.A. No. 1365 of 2023 making the following prayers:
 - a) *Allow the present Application; and*
 - b) *Quash and set aside the sale dated 28.09.2020 conducted by the Liquidator and direct a fresh auction to be conducted in accordance with the provisions of IBC, 2016;*
 - c) *In the alternative, direct the Respondent- Liquidator to set aside the sale dated 29.09.2020 on account of violation of the stipulation prescribed in the auction notice;*
 - d) *Pass such other order/ directions as this Bench may deem fit and proper in the facts and circumstances of the case.*
- On 26.08.2024, the SDO again rejected the conversion application.
- On 21.01.2025, the Adjudicating Authority passed the first impugned order dismissing I.A. No. 1365 of 2023 and directed SAP to pay the balance sale consideration along with interest within 30 days. The Adjudicating Authority vide second impugned order disposed of IA Nos. 12 of 2021 and IA No. 560 of 2022 rejecting prayers of the SAP seeking declaration of force majeure circumstances and for treating the sale for acquiring Corporate Debtor as a 'going concern'.
- Pursuant to the order of the Adjudicating Authority dated 21.01.2025, SAP has paid the full sale amount with 12% interest totalling Rs 13.52 Cr. and has been granted possession along with a sale certificate issued on 21.02.2025. The possession of the subject land was also handed over on 12.03.2025 to the SAP.

- The proceeds received from the SAP have been duly disbursed on 12.03.2025 to the Stakeholders by the Liquidator in accordance with the statutory provisions of IBC and applicable regulations.
- Aggrieved by the first impugned order, Company Appeal No. 449 of 2025 has been filed by Appellant-Sushil Jejani while aggrieved by the second impugned order, appeals have been preferred by SAP vide Company Appeal Nos. 473, 485 and 463 of 2025.

3. Making his submissions, Shri Gaurav Mitra Ld. Counsel for the Appellant submitted that it is an undisputed fact that M/s Dicksons Overseas Pvt. Ltd. was declared as the Successful Auction Purchaser following which the Liquidator had issued them LoI on 01.10.2020. In terms of the LoI and Regulation 33 of the Liquidation Process Regulations, the SAP was required to remit the balance sale consideration within 90 days i.e. by 29.12.2020. However, as the SAP did not submit the balance sale consideration within a period of 90 days in terms of the auction document, it was contended that the Liquidator should have cancelled the auction. Reliance was also placed on the judgment of this Tribunal in ***Potens Transmission and Power Pvt. Ltd. Vs Gian Chand Narang*** in ***CA(AT)(Ins.) No. 532 of 2022*** in which it has been held that failure to submit balance consideration of auction proceedings within the stipulated period of 90 days shall entail cancellation of the auction. The Liquidator was under statutory obligation to call upon the SAP to remit the balance sale consideration in terms of the LoI and alternatively, in default, was required to forfeit the EMD and cancel the sale as mandated under Clause 1(12) of Schedule-I read with Regulation 33 of

Liquidation Regulations. The Liquidator failed to enforce this mandate and thereby violated the objectives of the IBC.

4. Assertion was made by the Appellant that the Liquidator made a colourable attempt to aid the SAP in circumventing the statutory mandate of remitting the balance sale consideration within 90 days and allowed the SAP to continue in breach of the Liquidation Process Regulations. The Liquidator brazenly facilitated the request of the SAP for conversion of land which act was in the teeth of the Liquidation Process Regulations and the IBC liquidation framework. When the sale of assets to the SAP had been done on “as is where is” basis, there was no justification for the Liquidator to engage himself with following up the conversion application at the behest of SAP. The Liquidator acted like an agent of SAP and acted outside the scope of his duties under the IBC.

5. It was asserted that the IBC contemplated the liquidation to be a time-bound process wherein value maximisation for the benefit of stakeholders is the paramount objective. Hence, the auction process was required to be concluded by strictly following the prescribed time-lines. The conduct of the Liquidator in getting mired in the conversion process of the land in utter disregard of the stringent time-line was an act in violation of the prescribed time-line under the Liquidation Process Regulations.

6. Submission was made that the first impugned order rejecting IA No. 1365 of 2023 and the second impugned order suffers from contradictions in that on the one hand, the Adjudicating Authority has rejected the force majeure arguments espoused by the SAP for not making payment on time but on the other hand has allowed relief to the SAP to belatedly pay the auction amount

after a gap of nearly five years. The Appellant has contended that the Adjudicating Authority by permitting 30 days further time-period for the deposit of balance sale consideration at this belated stage did not act in accordance with the statutory provisions of IBC and hence the impugned order is liable to be set aside. It was contended that giving such relief by the Adjudicating Authority to the SAP had no statutory foundation and was contrary to the tenets of IBC. Moreover, the Adjudicating Authority by allowing the SAP to have the subject land on the bid price of 2020 at a time when there has been a steep value escalation, injustice has been caused to the creditors and other stakeholders of the Corporate Debtor.

7. The contentions made by the Appellant was refuted by Shri Sunil Fernandes, Ld. Senior Advocate representing Respondent No.2-SAP and Shri Sandeep Bajaj, Ld. Counsel for the Respondent No.1-Liquidator. As their arguments are found to largely overlap, we have captured them conjointly. It was contended that the legality or integrity of the auction process has not been questioned by any party nor any allegations or claims of irregularity raised in the conduct of the auction. The Appellant being part of the ex-management with no financial stake or personal guarantee cannot claim to be an aggrieved party. The Appellant has made multiple attempts in the past to challenge the liquidation and auction sale all of which has been dismissed at various judicial stages. This seems to be yet another attempt to impede the lawful closure of the affairs of the Corporate Debtor which is evident from the fact that the same has been filed after inordinate delay of 905 days without even impleading the SAP.

8. Both Ld. Counsels strenuously contended that the auction for liquidation had been conducted in accordance with the statutory provisions of the IBC and Liquidation Process Regulations. It was submitted that the SAP was endowed with sufficient funds to pay the balance sale consideration and was always willing to deposit the same. This is clearly not a case where the SAP was avoiding to pay the balance consideration or seeking additional time to make the payment. Further, the delay in the realization of the balance payment from SAP within 90 days was not due to any lapse on the part of the Liquidator. This delay was occasioned partly by judicial restraint on coercive recovery imposed by the Hon'ble Bombay High Court. Further since IA's filed by the SAP which *inter-alia* sought extension of time for payment beyond 90 days on grounds of force majeure which remained pending before the Adjudicating Authority, the Liquidator took the considered decision to await the outcome of the said applications before taking any precipitate action either in terms of cancelling the auction sale or accepting balance payment from the SAP after 90 days. It was contended that the Adjudicating Authority has erroneously attributed the delay on the conduct of the Liquidator.

9. Further, on the finding returned by the Adjudicating Authority that the Liquidator had filed a conversion application before the revenue authorities on the request of the SAP which led to delay in finalisation of the auction sale, it was submitted that this was a misplaced argument. Submission was made that the conversion application was filed as part of discharge of duties of the Liquidator. Since the SAP's application before the revenue authority for conversion was not entertained on the plea that only the holder of the subject

land could move the conversion application, in this backdrop it became necessary for the Liquidator to procure necessary permission from the revenue authorities to effectuate the transfer of the immovable property and for putting into effect the sale deed. The Liquidator had not taken any step beyond mere filing of a singular Form for conversion. Thus, it would be wrong to impute motives on the Liquidator of trying to extend any additional benefits to the SAP.

10. It was asserted that the Adjudicating Authority had correctly sized up the fact that on account of development of certain external circumstances which had come in the way of finalising the auction sale, it was justifiable to allow further period of 30 days beyond the permissible 90 days statutory period to the SAP to remit the balance consideration. Reliance was placed on the judgment of this Tribunal in ***Rajabhau Shinde Vs S.M. Electric Works*** in ***CA(AT)/(Ins.) No. 826 of 2024*** wherein this Tribunal after noticing the judgement of the Hon'ble Supreme Court in ***V.S. Palanivel Vs P. Sriram 2025 SCC Online SC 559*** held that Adjudicating Authority has inherent power to extend the time period given to the auction purchaser to undertake payment.

11. It was pointed out by the Liquidator that the SAP had already deposited the balance sale consideration along with 12% interest as per the orders of the Adjudicating Authority. It was added that the Liquidator has issued a sale certificate on 21.02.2025 to the SAP and even distributed the proceeds received from the SAP to the stakeholders of the Corporate Debtor. No prejudice has been caused to any stakeholder in allowing the liquidation process to be closed. Any order cancelling the auction would have huge ramifications for the sole security interest holder-JM Financial Reconstruction Company Ltd. due to high cost

being expended towards security charges. If the auction is set aside it would only result in further delays and costs to be borne by the members of the SCC which would be prejudicial to their interests.

12. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

13. The broad issues which require our consideration are as outlined below:

- (i) Whether on the expiry of 90 days time-period for making the balance sale consideration by the successful bidder, the auction process conducted by the Liquidator stood vitiated by the operation of law warranting its cancellation;
- (ii) Whether it was permissible on the part of the Adjudicating Authority to allow 30 days to the successful bidder to remit the balance sale consideration which has been allowed much after the lapse of 90 days time-period permitted under the relevant clauses of Liquidation Process Regulations;
- (iii) Whether the conduct of the auction process by the Liquidator was marred by gross irregularities that run contrary to the liquidation regulatory framework envisaged under the IBC.

14. Since questions No. (i) and (ii) are inter-linked, we would like to proceed to take up both these issues together.

15. It is the case of the Appellant that the SAP having failed to remit the balance consideration of the bid amount within the stipulated period of 90 days, the Liquidator was duty bound to cancel the auction. It has been contended that

Regulation 33 of the Liquidation Process Regulation casts a duty on the Liquidator to sell the subject asset in the manner specified in Schedule I Clause 12 thereto which Clause clearly specified that the auction sale shall be cancelled if payment is not received within 90 days. Submission has also been made that even the E-Auction Process Information Document dated 07.09.2020 placed at page 93 of the Appeal Paper Book (“**APB**” in short) provided that the sale shall be cancelled if the payment is not received within 90 days. In the present case, the SAP had not remitted the balance payment within the stipulated time-line of 90 days. The auction sale was therefore vitiated by operation of law and liable to be cancelled and it was incumbent upon the Liquidator to act accordingly.

16. To return our findings, we may first look at the regulatory provisions as well as the Auction Process Document basis which the auction sale was conducted to know the time-period within which the balance consideration was required to be paid.

17. Regulation 33 of the Liquidation Process Regulation, 2016 stipulates that the Liquidator shall ordinarily sell the assets of the Corporate Debtor through an auction in the manner specified in Schedule I. When we look at Clause 12 of Schedule I under Regulation 33 of Liquidation Process Regulation, the said Clause reads as under:

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

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

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

18. It is clear from a plain reading of the second proviso to the above Clause 12 of Regulation 33 of the Liquidation Process Regulation that auction sale shall be cancelled if the payment is not received within 90 days from the successful bidder by the Liquidator. In other words, the maximum period available to deposit the sale consideration is 90 days.

19. We now turn our attention to the relevant terms of Auction Process Document dealing with payment terms as placed at page 93 of APB. Chapter 'O' dealing with timetable as placed at page 112 of APB clearly states that payment of balance consideration by successful bidder has to be completed within 90 days from the LoI. The successful bidder was mandatorily required to deposit the balance sale consideration within a maximum of 90 days from the date of LoI.

20. Having noticed the regulatory provisions and the terms of the Auction Process Document, we now proceed to find out whether the SAP had paid the balance consideration within 90 days and, if not, whether the non-payment was wilful and deliberate default on the part of SAP or was triggered by development of external circumstances as held by the Adjudicating Authority.

21. It is an undisputed fact that the auction sale was conducted by the Liquidator on 28.09.2020. It is also an admitted fact that the bid submitted by the SAP was declared successful following which LoI was issued to the SAP on 01.10.2020. The Auction Process Information Document required the SAP to execute the LoI and the relevant terms read as follows:

“Issuance of Letter of Intent and Transaction Documents

The Successful Bidder, within a period of 7 days from submission of bid, shall be required to execute a letter of intent (LOI) provided by the Liquidator, the terms of which shall be binding on him.

A sale certificate and / or conveyance document and/ or transfer documents for the relevant asset/assets shall be issued / executed between the Successful Bidder and the Company through Liquidator upon receipt of the balance sale consideration.

22. This now brings us to the question whether the balance consideration was paid within 90 days by the SAP as mandated by Liquidation Process Regulation; Auction Process Document and LoI. From all indications, the answer is in the negative.

23. When we see the first impugned order, we find that the Adjudicating Authority has committed no mistake in also noticing that the balance payment was not remitted by SAP within 90 days. Nevertheless, it held that cancellation of this valid auction sale would go against the principles of IBC. It was also observed that SAP was always willing and ready to pay the entire sale consideration but was prevented from doing so due to the “development of certain external circumstances”. Hence, non-payment of balance consideration cannot be viewed as a default in payment on the part of the SAP warranting cancellation of sale.

24. Basis this finding, the Adjudicating Authority gave the SAP 90 days time period to deposit the balance consideration. This liberty given to the SAP has been assailed by the Appellant as illegal and arbitrary and the tenability of their contention is now before us for our consideration.

25. To begin with our analysis, we would like to delve into the issue of “external circumstances” which has been noted by the Adjudicating Authority to conclude that there was no default on the part of the SAP in making the payment.

26. At this stage, it may be appropriate to have a look at the exchange of correspondence by the SAP with the Liquidator in the context of making good the balance payment. The first letter from the SAP accepting the LoI was dated 08.10.2020 is at page 35 of Reply Affidavit of Respondent No 2-SAP. The second letter from SAP in response to draft sale deed received from Liquidator is at page 38 of Reply Affidavit. The third letter dated 17.12.2020 at page 67 of Reply Affidavit emphatically puts forth the desire of the SAP for prompt execution of sale deed in their favour and their readiness and willingness to pay for which they were agreeable to open an escrow account. The said letter is as reproduced below:

DICKSONS OVERSEAS PRIVATE LIMITED

17/12/2020

*To
CA Prasad Dharap,
Hon'ble Liquidator,
Jejani Pulp and Paper Mills Private Limited,
prasad.dharap@jjkandco.com*

Subject: Prompt execution of Sale Deed in our favour

- 1. We are concerned with the transfer of immovable property of the Corporate Debtor, Jejani Paper and Pulp Mills. In this respect, you had issued a Letter of Intent in our favour wherein, you were obligated to execute sale deed in our favour simultaneously, upon receipt of purchase consideration.*
- 2. In this reference, we draw your attention to our communications dated 08/10/2020 and 26/10/2020 and subsequent oral and written communications, wherein we had specifically requested you to obtain*

- necessary permission from the concerned authorities, which are required for the purpose of transferring the said property.
3. However, despite being ready and willing to pay the entire purchase consideration, the permissions required for transfer have not been obtained.
 4. Under such circumstances, we sincerely request you to do the needful at the earliest and execute sale deed in our favour. In the meantime, we propose keeping the balance purchase consideration in an escrow account, until receipt of necessary permissions and execution of sale deed, after which the balance amount shall be remitted in the liquidator's account. In this context, we have no issues if the Liquidator intends to seek Hon'ble NCLT's post facto permission for an Escrow arrangement with us. We have no objection if such escrow arrangement is subject to the orders of Hon'ble NCLT.
 5. Considering time is of the essence, we request prompt action from your end.

Thanking You

(Emphasis supplied)

27. A fourth letter dated 25.12.2020 was sent by the SAP to the Liquidator in which they lamented that the Liquidator had not accepted their offer of escrow account besides submitting proof of sufficient funds in their bank account to meet the balance consideration. The said letter is extracted as under:

DICKSONS OVERSEAS PRIVATE LIMITED

25.12.2020

*To,
CA Prasad Dharap,
Hon'ble Liquidator,
Jejani Pulp and Paper Mills Private Limited,
prasad.dharap@jikanandco.com*

*Dear Sir,
Execution of Sale Deed in our favour in respect of Jejani Pulp and Paper Mills Pvt Ltd.*

Reference: Our letter dated 17.12.2020 referring to Staying of conversion process by the Govt of Maharashtra - Force Majeure, Postponement running of time for compliances by either party.

Another letter of same date i.e.17.12.2020, referring to the prompt execution of sale deed.

In continuation of our letters on the subject and personal discussions we had with you from time to time, we wish to inform you that we are ready and willing to pay simultaneously and get the sale deed executed in our favour.

We understand that you have applied for conversion of class of land from II to I. Since the conversion has been stayed by Govt. of Maharashtra, the conversion is not forthcoming soon.

Our offer for escrow account has also been not accepted.

That you are aware that out of the total land under sale is consisting of two categories i.e., Occupants Class- I (Bhumiswami) and Occupants Class-II (Bhumidhari) within the meaning of the Maharashtra Land Revenue Code. That very definition of the Occupant Class II land is that it is a land held in perpetuity but with restrictions on the right to transfer. This land cannot be transferred unless its category is converted from Class II to Class I.

Please also appreciate that "as is where is' concept does not mean, and cover your "incapacity to execute the sale deed". We have also made inquiries from the office of sub-registrar, who has also informally advised that no such sale deed can be registered.

In absence of such permission, you are not competent to execute the sale itself. Please note that we have funds ready for the purpose. We are enclosing herewith Certificate dated 24.12.2020 issued by State Bank of India, reflecting sufficient balance in our Bank Account.

In fact, we have been advised that it is in the fitness, if you could challenge the said stay order dated 10.12.2020, before the High Court. However, since we are affected party, and you have not been inclined to challenge the same, we are taking steps for challenging the said stay order before the Hon'ble High Court, by filing a writ petition, and in such litigation, you may appear and make appropriate submissions. We reiterate our stand that we have ready funds and always ready and willing to perform our part of contract.

Submitted accordingly

Yours faithfully

(Emphasis supplied)

28. A plain perusal of the four letters cited above clearly substantiates the bonafide intent of the SAP to pay the balance sale consideration. It is equally important to note that all these correspondences showing their willingness to

pay were exchanged before the expiry of the prescribed 90 days period which was to end on 29.12.2020. These letters effectively demonstrate that the SAP was all along willing to pay the balance amount within the 90 days period and that they were also financially capacitated to remit the said account. To prove their bonafide, the SAP was persistently requesting the Liquidator to open an escrow account so that the amount could be deposited.

29. We also notice that the Adjudicating Authority in the first impugned order has also taken into cognizance the ***Potens Transmission judgement*** which has been relied upon by the Appellant to contend that failure to remit payment by successful bidder within 90 days warranted cancellation of the auction sale. The Adjudicating Authority has distinguished the facts of this case from the ***Potens Transmission judgement*** since in that case the Liquidator had himself pressed for cancellation of auction since successful bidder had not paid within 90 days, while in this case the Liquidator did not have any occasion to find the SAP to be in a position of wilful default. We do not find any material on record to show that Liquidator had any occasion to remind the SAP to pay the balance consideration. We are inclined to agree with the Adjudicating Authority that the ratio of ***Potens Transmission judgement supra*** clearly does not come to the rescue of the Appellant in the present factual matrix.

30. We are therefore persuaded to agree with the Adjudicating Authority that the SAP was all along amenable to depositing the balance consideration and that they had given ample proof of having sufficient funds to pay the remaining consideration. This is clearly not a case where the SAP was avoiding to pay the balance consideration or seeking additional time to make the payment.

31. Reliance has also been placed by the Appellant on the judgment of this Tribunal in ***MCM Pacific PTE Ltd. Vs Pankaj Dhanuka*** in ***CA(AT)(Ins.) No. 416 of 2022*** to contend that the bidder is bound by the relevant clauses of the LoI in following time-limits provided therein for making payment of consideration amount. On a scrutiny of the facts of the ***MCM Pacific judgment supra***, we find the facts to be clearly distinguishable as in that case it was the successful bidder who had sought time extension and resiled from his obligation to pay as he was facing cash crunch. In the present case, there is a nuanced difference. Present is a case where the SAP had repeatedly expressed his willingness to pay and given credible proof of his financial wherewithal. In this light, we are of the view that ***MCM Pacific judgment supra*** does not come to the rescue of the Appellant.

32. This now brings us to the related issue as to whether the Adjudicating Authority was right in holding that certain “external circumstances” had developed which resultantly stalled payment by the SAP.

33. We would therefore first examine as to whether the ground of “external circumstances” taken by the Adjudicating Authority has sufficient force and whether the circumstances were of such exceptional nature so as to warrant the Adjudicating Authority to allow 30 days time-period at this belated stage to complete the auction sale.

34. To appreciate the “external circumstances” which have been adverted to by the Adjudicating Authority, we may quickly glance through the sequence of events in the present facts of the case. It is an undisputed fact that certain parcels of subject land under auction sale was classified as Class-II under Maharashtra Land Revenue Code (MLRC) on which category of land there were

restrictions on the right of transfer unless permission of the competent authority was obtained. Material placed on record shows that the SAP had approached the competent revenue authority for this purpose but did not succeed in getting permission as they were not the holder of the auction land. The SAP therefore wrote to the Liquidator to obtain necessary permissions from the concerned statutory revenue authorities for effecting the transfer of the subject land and to register the sale deed. The Liquidator thereafter took up the matter with the competent revenue authority on 03.11.2020 whereinafter the atmospherics changed.

35. Before the necessary permission could be secured by the Liquidator, we notice that the issue of conversion became contentious and got surrounded by a spate of litigations. On 10.12.2020, the conversion process was stayed by the Government through a notification under the Maharashtra Land Revenue (Conversion of Occupancy Class II and Leasehold Lands into Occupancy Class I Land) Rules, 2019 which in turn led to SAP filing W.P. No. 3821/2020 before the Hon'ble High Court challenging the stay on conversion. Hon'ble High Court passed interim order restraining Liquidator from taking coercive action against SAP. On 28.01.2021, the Government issued a communication lifting the stay on land conversion. On 05.07.2021, the Hon'ble High Court extended interim protection to SAP while directing authorities to consider the conversion application within four weeks which was further extended by three months on 04.08.2021. On 02.11.2021, the SDO rejected the conversion application which was challenged by the Liquidator before the Additional Collector. On 28.10.2022,

the Additional Collector set aside the SDO's order and directed reconsideration of the application which was rejected again by SDO on 26.08.2024.

36. We also notice that besides the protracted conversion proceedings with the revenue authorities, the SAP had also filed I.A.s before the Adjudicating Authority. I.A. No. 12 of 2021 was filed by SAP on 29.12.2020. On 28.02.2022, SAP filed another I.A. No. 560 of 2022 praying for permission to acquire the Corporate Debtor as a going concern. On 23.03.2023, the Appellant filed I.A. No. 1365 of 2023 seeking the quashing of the original sale dated 28.09.2020 and directions for a fresh auction. The I.A.s remained under consideration of the Adjudicating Authority which eventually passed the final orders on 21.01.2025. In one of these orders, SAP was directed to pay the balance sale consideration along with interest within 30 days.

37. This labyrinthine of protracted litigation both before the revenue authorities and Adjudicating Authority has been depicted as development of external circumstances by the Adjudicating Authority. The Adjudicating Authority also observed that considerable time had passed since the conduct of auction due to the filing of the conversion application. We also find substance in the argument canvassed by the Liquidator and the SAP that this impasse precluded on the one hand, the SAP from making the balance payment and on the other hand, the Liquidator from seeking further payments. The Adjudicating Authority further observed that since SAP was still ready and willing to pay the balance consideration, in the event of any further delay happening in concluding of the auction sale, the value of the assets of the Corporate Debtor would suffer further depletion which would cause violence to one of the overarching principles

of maximization of the value of assets which permeates the IBC. Given these special and exceptional developments, to our minds, the Adjudicating Authority did not commit any error in coming to the conclusion that the auction having been held in a valid manner, the auction sale ought not to be cancelled as it would disrupt the liquidation process.

38. To overcome the exigencies of the situation, the Adjudicating Authority directed the SAP to pay the balance consideration alongwith interest @12% for the entire period of delay within 30 days of the first impugned order. This issue before us is whether this window of 30 days period could have been allowed by the Adjudicating Authority, when this extended period of 30 days is beyond the permissible 90 days statutory period permitted under the Liquidation Process Regulation.

39. It is the case of the Appellant that this extension of time is illegal and arbitrary and militates against the statutory framework of IBC which has laid down a mandatory time-line in this respect. Much emphasis was laid by the Appellant in submitting that it is settled law that the timeline of 90 days is mandatory. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **V.S. Palanivel Vs. P. Sriram, 2023 SCC OnLine SC 672** in which it has been held that Rule 12 of Liquidation Process Regulation has to be treated as mandatory in character as it contemplates a consequence in the event of non-payment of balance consideration by the highest bidder within the stipulated time line of 90 days by way of cancellation of the sale by the Liquidator.

40. Per contra, the SAP has relied on the judgment of this Tribunal in **Rajabhau Shinde Vs S.M. Electric Works in CA(AT)(Ins.) No. 826 of 2024** to

contend that in this judgement, this Tribunal after noticing the **Palanivel judgment** took the view that the Adjudicating Authority has the power to extend the time period given to the auction purchaser to undertake payment. It was vehemently contended that the Adjudicating Authority by exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016 is empowered to allow extension of time to deposit the balance sale consideration by successful bidder on sufficient cause being shown.

41. The relevant paragraphs of **Rajabhau Shinde judgment supra** is as reproduced below:

“4. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant submits that the successful bidder has not been able to make the payment of the entire sale consideration within 90 days’ time which was allowed by Liquidation Regulations 2016 Schedule 1 Clause 1(12). The sale was rightly cancelled by the liquidator. The provision of Clause 1(12) of Schedule 1 is a mandatory provision and there was no jurisdiction of the liquidator or SCC to extend the time. Adjudicating Authority committed error in passing the order dated 27.02.2024 granting 60 days’ further time to the successful bidder to make the balance payment which order is not in accordance with the Liquidation Regulations 2016 and deserves to be set aside. Counsel for the Appellant has relied on the judgment of this Tribunal in “Potens Transmissions & Power Pvt. Ltd. vs. Gian Chand Narang-Company Appeal (AT) (Insolvency) No. 826 & 1655 of 2024 Appeal (AT) (Ins.) No.532 of 2022” decided on 12.05.2022 as well as the judgment of the Hon’ble Supreme Court in “Civil Appeal Nos.9059-9061 of 2022- “V.S. Palanivel vs. P. Sriram, CS, Liquidator, Etc.”. Counsel for the Appellant submits that when the sale itself was liable to be cancelled and has rightly been cancelled by the liquidator, there is no question of approval of sale by the Adjudicating Authority by subsequent order dated 15.07.2024, hence, the said order also deserves to be set aside.

...

...

16. The liquidator, thus, approached the Adjudicating Authority for approval of the sale after receiving the entire amount and prayed for certain reliefs and concessions.

17. The Hon'ble Supreme Court in "V.S. Palanivel vs. P. Sriram, CS, Liquidator, Etc." (supra) itself had occasion to consider the power of the Adjudicating Authority in reference to extension of time for deposit of the balance consideration. It is useful to extract paragraphs 35.15 and 35.16 of the judgment of the Hon'ble Supreme Court which is as follows:-

"35.15 The aforesaid Rule is not to be read in isolation but in conjunction with Section 35 of the IBC that deals with the powers and duties of the Liquidator and states that the Liquidator shall have the powers and duties specified in clauses (a) to (o) of sub-section 1 including the power to sell an immovable/movable property of the Corporate Debtor in liquidation by public auction/private sale as per clause (f), subject to the directions of the NCLT. Pertinently, it has been observed in *Arun Kumar Jagatramka v. Jindal Steel and Power Limited*⁵⁴ that "the Liquidator exercises several functions which are quasi-judicial in nature and character. Section 35(1) itself enunciated that the powers and duties which are entrusted to the Liquidator are "subject to the directions of the Adjudicating Authority". The Liquidator, in other words, exercises functions which have been made amenable to the jurisdiction of NCLT, acting as the Adjudicating Authority.....".

35.16 In the facts of the present case, the Adjudicating Authority exercised statutory powers under Section 35 of the IBC read with its inherent powers under Rule 11 of the NCLT Rules, 2016 for extending the time to deposit the balance sale consideration on sufficient cause being shown, i.e., in view of the countrywide lockdown due to the Covid19 pandemic. This latitude that was given in the aforesaid extraordinary circumstances to meet the ends of justice, cannot be faulted."

18. The Hon'ble Supreme Court held that the Adjudicating Authority exercised statutory powers under Section 35 read with Rule 11 of the NCLT Rules for extending the time. Thus, Hon'ble Supreme Court itself did not find any fault in the order of the Adjudicating Authority extending the time of payment after expiry of time of payment prescribed. As noticed above, an application filed by successful bidder/ successful auction purchaser for extension of time was allowed by the Adjudicating Authority on 05.05.2020 which was challenged by the Appellant in Company Appeal (AT) (Ins.) No.343 of 2021 which came to be dismissed on 16.09.2022. The Hon'ble Supreme Court did not interfere with the order passed by this Tribunal dismissing the appeal of the appellant affirming the order extending the time by the Adjudicating Authority. The law laid down by the Hon'ble Supreme Court in paragraphs 35.15 and 35.16 as noted above, clearly

comes to the aid of the successful bidder in the present case. Adjudicating Authority having extended the time for deposit of the amount which deposit was made and thereafter application was filed for approval of the sale which has also been granted by the Adjudicating Authority.”

42. Interestingly, we notice that the Adjudicating Authority has also relied on the judgment of the Hon’ble Apex Court in the matter of ***Palanivel judgment supra*** to allow further time to SAP for remitting balance consideration. The Adjudicating Authority at para 47 of the first impugned order has observed that the Hon’ble Apex Court in ***Palanivel judgment supra*** while holding that the timelines specified in Regulation 33 of Liquidation Process Regulation is mandatory, also held that Adjudicating Authority has the power to extend the time period if it finds serious flaws in the conduct of the auction.

43. Given this backdrop, we are of the considered view, that it is settled law that it is open to the Adjudicating Authority to exercise its inherent powers under Rule 11 to grant extension of payment as long as it is satisfied that sufficient grounds exist. We also notice that Adjudicating Authority in its order allowed further time to the SAP in view of certain external circumstances having developed but also simultaneously directed the SAP to make additional payment to balance out equities.

44. Thus, to answer the first two inter-related questions, we are of the considered view that ordinarily the time-line of 90 days specified in Regulation 33 of Liquidation Process Regulations needs to be adhered to for making payment by the successful bidder. However, it is well settled law that if it comes to the notice of the Adjudicating Authority that extraordinary circumstances have arisen which has impeded the conduct of auction process, it can allow

further time to the successful bidder as a special measure in exercise of its inherent powers. Further since the ***Palanivel judgment supra*** does not define in specific terms as to the circumstances in which the time extension can be allowed, we do not see any prohibition on the exercise of this power as long as the Adjudicating Authority was satisfied that there are extraordinary and extenuating circumstances to do so. In the present case, the Adjudicating Authority has clearly expressed its satisfaction of the external circumstances which afflicted the conduct of auction and led to the non-payment of balance consideration by the SAP inspite of his willingness to pay. The Adjudicating Authority while allowing extended time has also made it subject to payment of interest for balancing equities. We therefore do not find any infirmity in the order of the Adjudicating Authority in allowing further time to the SAP to make balance payment in view of what it described as “external circumstances”.

45. This now brings us to the third question as to whether the conduct of the auction process by the Liquidator was marred by irregularities and contrary to the tenets and spirit of IBC.

46. It is the case of the Appellant that in terms of Regulation 33 of Liquidation Process Regulations, 2016, the Liquidator was duty bound to sell the assets in the manner specified in Schedule-1 of Clause 1(12) of Liquidation Process Regulations, 2016 in terms of which the sale was to be cancelled if the payment was not received within 90 days. Even the Auction Process Information Document clearly specified that payment was to be made within 90 days. The same time-period of 90 day was also mentioned the LoI. The Liquidator by not cancelling the sale even after the payment was not received from SAP within 90

days acted in violation of the Liquidation Process Regulations as well as the Auction Process Documents and the LoI. It was therefore asserted that there were material irregularities in the auction process and hence the Liquidator by allowing the auction sale to continue acted in violation of the IBC.

47. It is also the case of the Appellant that SAP had voluntarily participated in the liquidation auction and consciously submitted their bid with full knowledge of the nature of title. Having taken a commercial decision to participate in the bid document, the SAP ought not to have been permitted by the Liquidator to resile from its obligations to pay the balance amount on title issue. Even if the alleged regulatory restrictions impeded the registration process, this was not a valid ground for the Liquidator not to insist on the balance payment. The Liquidator deferred the enforcement of the statutory consequences of default which was contrary to the regulatory framework of IBC and therefore committed a serious irregularity.

48. Per contra, it is the contention of the Liquidator that this was not a case where the SAP was not willing to pay or that it was not equipped to pay the balance consideration. As Liquidator, he however had no occasion to forfeit the EMD or cancel the auction because of court restraint orders and other litigation pending before the Adjudicating Authority. Initially there was an interim order of the Hon'ble Bombay High Court in WP No. 3821 of 2020 which directed the Liquidator to refrain from coercive action against the SAP. Liquidator has contended that he was further constrained by the fact that both the Appellant and the SAP had preferred separate applications before the Adjudicating Authority which were pending adjudication. Hence the surrounding

developments were such that the Liquidator was not in a position to take any precipitate action either by permitting the opening of an escrow account or cancelling the auction sale.

49. In the present case, we are inclined to agree that there were compelling circumstances which constrained the Liquidator from securing the sale consideration of the auction land within 90 days. These special circumstances arising out of the conversion imbroglio, restraint orders of the Hon'ble Bombay High Court and IAs pending before the Adjudicating Authority which have been noted in the preceding paras did form justifiable ground for the Liquidator not to cancel the auction sale even though the balance sale consideration had not been received. That there has been a protracted delay in the conclusion of the auction sale cannot be denied, but we do not find sufficient reason to hold that the entire delay was the making of the Liquidator.

50. Submission has been made by the Appellant that the SAP has now agreed to make the payment belatedly since there has been substantial appreciation in land value. This is evident from the fact that the SAP has agreed to remit the balance consideration even though there has been no change in the classification of land as it was at the time of auction. This tantamount to commercial opportunism besides vindicating the fact that the SAP's non-payment arose not on ground of removal of any legal impediment but was a deliberate and a strategic default. It is the rival contention of the SAP that mere expectation that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and has relied on the judgement of the Hon'ble Apex Court in ***EVA Agro***

Feeds Private Limited Vs Punjab National Bank and Anr. in Civil

Appeal No.7906 of 2021 which is as extracted below:

“42 Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid.....”

51. We do not have any objective material or basis before us to show that there has been a value escalation of the subject land. Neither do we propose to get into any fishing and roving enquiry to find out whether there has been any material increase or decrease in the value of the property post auction. We wish to confine ourselves to the question as to whether there has been any material irregularity or illegality in the conduct of the auction.

52. The other contention raised by the Appellant is that the Liquidator had exceeded his power in trying to convert the status of the land from Class-II to Class-I. It was pressed that the auction notice by the Liquidator indicated that the auction was conducted on “as is where is”, “as is what is” and “whatever there is basis” and “no recourse basis”. Submission was also made that the SAP was fully aware of the title conditions at the time of filing the bid and therefore could not have claimed conversion of the status of subject land as a pre-requisite for depositing the balance sale consideration. Since the sale of land was on “as is where is basis”, there was no cogent reason for the Liquidator to have approached the Regulatory Authorities for conversion of land. The Liquidator

thus went beyond the call of his duties and powers in pursuing the conversion of the said land from Class-II to Class-I and in giving a better title to the SAP than was contemplated in the Auction Process Document.

53. Per contra, it is the case of both the Liquidator and SAP that ordinarily the Liquidator is not required to approach the Regulatory Authorities for conversion of land but in the present case, this requirement was impelled by Rule 3 of the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold Lands into Occupancy Class-I Lands) Rules 2019 according to which the subject land could not be transferred without conversion and such conversion application could be moved only by the holder of the land. In the instant case, the holder was clearly the Liquidator and hence it was an inescapable requirement for the Liquidator to file the application for conversion. Hence, it is their contention that the Liquidator cannot be blamed for any wrongdoing in filing the conversion application.

54. When we look at the facts of the present case, we notice that the legal validity of the auction proceeding till the stage of issue of LoI remained unchallenged and unquestioned. The conduct of Liquidator has been questioned only after the issue of LoI on account of the Liquidator filing the conversion application. We are also mindful that the concluded auction process conducted by the Liquidator has now been challenged after a lapse of 905 days from the date of issue of LoI by the Appellant who is undisputedly part of the ex-management with no financial stake or personal guarantee involved. When we look at the flow of events after issue of LoI, we find that owing to the purported prohibition on transfer of the land falling in Occupancy Class-II without due

permission received from the competent authority, the SAP requested the Liquidator to file the conversion application following which the conversion permission was sought by the Liquidator on 03.11.2020. The request letter is seen at page 250 of APB. It is therefore an undisputed fact that the SAP had sought the intervention of the Liquidator to secure the necessary permission for effecting the transfer of the subject land. As a Liquidator, he was duty bound to facilitate and provide assistance to the SAP so as to take the auction sale to its logical culmination. We are therefore of the view that in the given circumstances it was justifiable on the part of the Liquidator to have filed the conversion application since the revenue authorities recognised only the Liquidator as the lawful authority qua the assets of the Corporate Debtor to file such an application.

55. Further at that point of time, it appears that the SAP and the Liquidator were both under the impression that the LoI contemplated conveyance of the title of the land which would not be possible without the conversion application. As Maharashtra Land Revenue Code (MLRC) provided that the holder of the land, i.e. the Liquidator alone who could legally apply for such conversion, by making the conversion application the Liquidator was acting in furtherance of the spirit and essence of the auction notice. Furthermore, even if the auction was on “as is where is basis”, the Liquidator could not have bypassed the regulatory permissions. Prima-facie, we are satisfied that the intent of the Liquidator behind filing of the conversion application was compliance of law, even though, there may have been an error of judgment on the part of the Liquidator to have acted

on the presumption of the need to file conversion application as a precursor for transfer of ownership of the subject land.

56. Thus, to answer the third issue framed by us, we are of the considered view that the balance of convenience is clearly in favour of the Liquidator. There is no substance to show that any deliberate irregularity or gross illegality was committed by the Liquidator in the conduct of the auction process. We are of the considered view that it was a validly conducted auction sale. In all fairness, therefore, we cannot allow the findings of the Adjudicating Authority on the conduct of the Liquidator to subsist as it would cause unnecessary prejudice to the interests of the Liquidator.

57. We find that consequential actions have been taken by the Liquidator and the SAP in pursuance of the first impugned order. The SAP has already made the payment of the balance sale consideration along with 12% interest within 30 days period given to them to remit the payment. The 6th SCC meeting of the Corporate Debtor held on 20.02.2025 has taken notice of the receipt of the consideration amount of Rs 13.52 Cr. from the SAP. The Liquidator also has issued a sale certificate on 21.02.2025 to the SAP. The Liquidator has distributed to the stakeholders of the Corporate Debtor the auction proceeds received from the SAP on 12.03.2025. Clearly no prejudice has been caused to any stakeholder. It would suffice to say that the interest payment @ 12% p.a. made by the SAP on the directions of the Adjudicating Authority would balance the equity and secure the ends of justice. It is therefore clear that the auction process stands concluded and has been taken to its logical culmination. We have not found any gross illegality or irregularity in the conduct of the auction process or subversion of the

liquidation framework of IBC. We are of the firm view that no purpose would be served if the auction is set aside as it would only result in delays and costs to be borne by the members of the SCC which we cannot commend.

58. In view of the above discussions, we do not find any merit in Company Appeal 449 of 2025 filed by the Appellant therein. The Appeal is dismissed. While we affirm the first impugned order of the Adjudicating Authority, we direct that observations made by the Adjudicating Authority on the conduct of the Liquidator may not be viewed as adverse. Since the balance consideration has already been paid alongwith interest by the successful bidder, Company Appeals No. 485, 473 and 463 of 2025 filed by the successful bidder have become infructuous and stands disposed. With the dismissal of Company Appeal 449 of 2025, the Contempt Petition No. 16 of 2025 having no legs to stand on is also dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

Place: New Delhi

Date: 18.07.2025

Harleen/ Abdul