IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

I.A. (I.B.C)/807(KB)2026

In

C.P. (I.B)/164(KB)2022

Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

Versus

Ambay Coke Industries Private Limited

...Corporate Debtor

AND

IN THE MATTER OF:

Souvik Agarwal Proprietor of M/s. Iconic Coal Company having office at 2nd,2B, Gardenia Homes, 227 l1A, AJC Bose Road Kolkata-7OO 02O.

...Applicant

Versus

Mr. Vijendra Sharma, Liquidator of Ambay Coke Industries Private Limited

having his office at Building No. 11, 3rd Floor, Hargovind Enclave, Vikas Marg, New Delhi-110 092

...Respondent

Date of Pronouncement: 10.08.2026

CORAM:
Shri. Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Counsel appeared through physically or virtually

Ms. Tannya Baranwal, Adv.	] for CoC in I.A. 807 of 2026.
Mr. Shaunak Mitra, Adv.	] For Applicant
Mr. Patita Paban Biswal, Adv.	]
Mr. Amandeep Singh, Adv.	]
Mr. Jishnu Chowdhury, Adv.	] For the liquidator
Ms. Shruti Singhania, Adv.	]
Mr. Vijender Sharma	]

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, MEMBER (JUDICIAL)

1. The present application has been filed by Mr. Souvik Agarwal Proprietor of M/s. Iconic Coal Company under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (Hereinafter referred as "IBC" or "The code") read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking for the following reliefs:

a) *Stay the e-auction sale notice dated 10th June,2026 or any re-auction proceedings in respect of the auctioned property;*

b) *Direct the respondent/concerned authority to confirm the sale conducted by auction dated 1st June, 2026 in favour of the applicant, as the auction was conducted without any irregularity;*

c) *Set aside and quash the decision/communication dated 9th June,2026 whereby the Respondent cancelled the auction sale despite the Applicant having been declared the highest bidder.*

d) *Declare that the cancellation of the auction process is arbitrary, illegal and contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable regulations;*

e) *Direct the Respondent to complete the sale transaction in favour of the Applicant in accordance with the auction terms and conditions upon payment of the balance sale consideration, if any;*

f) *Pending disposal of the present application, restrain the Respondent from conducting any fresh auction in respect of the auctioned property;*

g) *Pass any other or further order(s) as this Court/Tribunal may deem fit and proper in the* *interest of justice.*

2. On or about 21st May 2026, the Applicant came across an e-auction sale notice issued by the Respondent titled "E-Auction Sale Notice under IBC, 2016, Ambay Coke Industries Private Limited (In Liquidation)". The notice intimated that an auction would be conducted by the Respondent on 1st June 2026 **(ANNEXURE "A-1" of the Application)** between 11:00 AM and 12:00 Noon for the sale of assets and properties of the Corporate Debtor, referred to as the "auctioned property," on an "as is where is," "as is what is," and "whatever there is" basis. The reserve price for the auctioned property was fixed at Rs. 1,75,00,000/- and the Earnest Money Deposit (EMD) was fixed at Rs. 17,50,000/-.

3. The Applicant participated in the e-auction dated 1st June 2026 by making payment of the EMD on 27th May 2026, which was acknowledged via an electronic mail from the Respondent on the same date. During the bidding process, the Applicant emerged as the highest bidder with a bid amount of Rs. 2,13,50,000/-. By an electronic mail dated 1st June 2026, the Respondent informed the Applicant that they were declared the highest bidder and stated that the balance sale consideration was payable within ninety days from the date of demand. The applicant, while relying upon such declaration, arranged funds and took necessary steps to complete the sale transaction.

4. On 9th June 2026 at 12:56 PM, the Applicant received an electronic mail from the Respondent wherein it was stated that the Applicant had been found eligible to participate in the auction process in accordance with the prescribed eligibility criteria. However, the Respondent further informed the Applicant that the Committee of Creditors ("CoC"), at its meeting held on 08.06.2026, had resolved not to declare the Applicant as the Successful Bidder in respect of either Block-1 or Block-2 in the e-auction conducted on 01.06.2026. The Respondent stated that the CoC had resolved to cancel the e-auction conducted on 01.06.2026 for both blocks and directed the Respondent to initiate a fresh re-bidding process by way of e-auction for both blocks. Subsequently, the Respondent sent electronic mails to the Applicant on 9th June 2026 (at 3:21 PM) and 10th June 2026, requesting the Applicant to furnish bank account details for the purpose of refunding the EMD amount.

5. The Applicant thereafter learned from the website of the Insolvency and Bankruptcy Board of India (IBBI) that the Respondent had published a fresh e-auction sale notice dated 10th June 2026. This notice announced a new auction to be conducted on 24th June 2026 for the same assets and properties of the Corporate Debtor mentioned in the previous auction. In the fresh auction sale notice, the reserve price of the property was fixed at Rs. 2,13,50,000/– matching the Applicant's bid amount and the EMD was fixed at Rs. 21,35,000/-. The Respondent's records indicate that during the original auction on 1st June 2026, a technical glitch occurred which purportedly prevented another bidder, H2, from placing a higher bid. The bidder sent an electronic mail on 06.06.2026 indicating the glitch and contending they were prevented from bidding through no fault of their own.

6. The Respondent-Liquidator was appointed by this Tribunal vide order dated 07.03.2025 in C.P. (I.B) No. 164/KB/2022. By an order dated 23.06.2026, this Tribunal permitted the Respondent to proceed with the auction on 24.06.2026, with the condition that no sale certificate be issued without prior permission of this Tribunal. In the fresh auction conducted on 24.06.2026, a bid of Rs. 2,45,50,000/- was received for Block-1. The title to the property in question remains the subject of active adjudication in I.A. (I.B.C) No. 843/2025.

7. The Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply stating therein that the present Application is wholly misconceived, premature, and legally untenable. It is submitted that the Application proceeds upon a fundamental misreading of the e-auction process documents, the applicable provisions of the IBBI

(Liquidation Process) Regulations, 2016, and the Applicant's own correspondence. The Applicant was only the "highest bidder" in respect of Block-1 & 2 in the e-auction held on 01.06.2026 and was never declared the "Successful Bidder". No Letter of Intent was ever issued, no sale was ever confirmed in his favour, and the Applicant acquired no vested or enforceable right in the asset.

7.1 It is submitted that, Consequent upon the coming into force of Section 21(11) and Section 35(2) of the Insolvency and Bankruptcy Code, 2016, as amended with effect from 26.05.2026, the CoC shall supervise the conduct of the liquidation process. Accordingly, the meeting held on 08.06.2026 to decide upon the auction result shall be treated as a meeting of the CoC, and all references to the "Stakeholders Consultation Committee" or "SCC" shall be read as references to the "Committee of Creditors" or "CoC".

7.2 It is submitted that the impugned decision is the commercial decision of the CoC and is not justiciable on merits. The decision not to declare the Applicant as the Successful Bidder, to cancel the e-auction dated 01.06.2026, and to direct a fresh re-bidding was taken in the exercise of commercial wisdom by the CoC, in which the sole secured financial creditor, the State Bank of India holds 100% of the voting share. The commercial wisdom of the CoC is paramount, and neither the Liquidator nor this Tribunal is empowered to substitute its own view, save on limited grounds of patent illegality, material irregularity, collusion, or fraud.

7.3 It is submitted that the Applicant's assertion that they were "declared the successful bidder" is false and incorrect, as the contemporaneous e-mail dated 01.06.2026 unequivocally records only that the Applicant had "emerged as the highest bidder". The said communication further expressly stipulated that "*The declaration of the successful bidder shall be made only after consultation with the SCC in terms of Clause (12C) above,*" making it clear that no declaration had been made on that date. Under Regulation 33(1), the liquidator shall ordinarily sell assets through an auction in the manner specified in Schedule I, and Clause (12C) empowers the liquidator to declare the highest bidder as the successful bidder only "*after approval of committee with 66% voting share*".

7.4 It has further been submitted that the decision was guided by the objective of value maximisation for the benefit of all stakeholders. Pursuant to the CoC's decision, a fresh E-Auction Sale Notice dated 10.06.2026 **(ANNEXURE "A-7" of the Application)** was issued for an auction on 24.06.2026, wherein the reserve price of Block-1 was increased from Rs. 1,75,00,000/- to Rs. 2,13,50,000/- representing an enhancement of approximately 22%. This enhancement demonstrates that the decision was taken bona fide to maximise the value of the assets.

7.5 It is further submitted that, during the auction conducted on 01.06.2026, there was a technical glitch which prevented another participant, H2, from placing a final revised bid. H2 issued an e-mail on 06.06.2026 contemporaneously indicating the glitch and contending that, through no fault of its own, it was prevented from bidding. Upon verification, the CoC ascertained that there was a technical impediment beyond the control of a participant, and in the interest of maintaining transparency and the principles of competitive bidding, the CoC did not accept the petitioner as the successful bidder and required a re-auction.

7.6 It is submitted that the Applicant participated on the express terms of the Sale Notice, which reserved to the Liquidator an unqualified right to reject, cancel, or annul the auction. The Applicant is therefore estopped from challenging the non-confirmation of the sale. Clauses 7 and 10 of the Sale Notice reserved the absolute right to the Liquidator to cancel the e-auction or annul the invitation without assigning any reason. Moreover, Clause 11 explicitly stipulated that *"the sale is subject to final outcome of I.A. (I.B.C) No. 843/2025 presently pending before the Hon'ble NCLT, Kolkata Bench"*.

7.7 It is submitted that the Respondent's e-mail dated 01.06.2026 **(ANNEXURE "A-3" of the Application)** reiterated that possession would be handed over only after the final adjudication of the said IA and that the Applicant would have no claim whatsoever except refund in the event the outcome of the IA frustrated the proposed sale. The title to Block-1 remains the subject matter of active adjudication in I.A. (I.B.C) No. 843/2025. In these circumstances, the decision to refrain from confirming the sale and instead re-test the market through a fresh auction was a prudent, bona fide, and commercially rational decision.

7.8 It is submitted that no prejudice or irreparable injury is caused to the Applicant, as they have parted with nothing save the EMD, which the Respondent has repeatedly called upon the Applicant to facilitate for refund. The EMD is refundable precisely because no Successful Bidder was declared. The Respondent alleges that the petitioner is perpetrating fraud upon this Tribunal, as his father, Mr. Sushil Kumar Agarwal(proprietor of SS Enterprises), participated in the fresh auction on 24.06.2026 through SS Enterprises and put a last bid of Rs. 2,45,50,000/- which is higher than the petitioner's bid.

7.9 It is submitted that this demonstrates a connected-party design and establishes the mala fides of the Application. It has also come to the knowledge of the Respondent that one

M/s Orange Refractories has instituted Title Suit No. 377 of 2026 before the learned Civil Court at Asansol, arraying the Applicant as Defendant No. 2. The fresh e-auction scheduled on 24.06.2026 fetched a value higher than that offered by the applicant, serving the objective of value maximisation. The reliefs sought by the Applicant are misconceived as they seek specific performance of an un-concluded auction and a direction to act contrary to the commercial wisdom of the CoC. The Application is therefore liable to be dismissed with exemplary costs.

8. The applicant filed rejoinder to reply filed by the respondent reiterating the facts pleaded in the application and denying the averment made by the respondent in its reply affidavit. The entire facts pleaded in the rejoinder are not reproduced for the sake of brevity.

9. It has been submitted in rejoinder that the Respondent's Reply-Affidavit itself concedes the facts of this case, that the Applicant was the highest bidder, that his eligibility was duly verified, and that the e-auction dated 01.06.2026 was conducted without any irregularity. The entire edifice of the Respondent's defence rests on the claim that the CoC exercised its "commercial wisdom" to cancel the auction; however, this purported exercise of commercial wisdom is neither immune from judicial review nor insulated from the settled principles of fairness and legitimate expectation that govern auction processes under the Insolvency and Bankruptcy Code, 2016.

9.1 It is submitted that the e-mail dated 01.06.2026 unambiguously declared *"we are pleased to inform you that you have emerged as the highest bidder"* and proceeded to communicate terms of payment and other conditions, treating the Applicant as a party with enforceable obligations. Having found the Applicant eligible, there was no ground whatsoever other than an exercise of commercial discretion to refuse to declare the Applicant the Successful Bidder.

9.2 It is submitted that the reliance on Clause 12C as conferring an unqualified and unreviewable power to reject the highest bidder is misconceived, as such power is coupled with a duty and its exercise must conform to the principles of fairness, rationality and legitimate expectation. The "commercial wisdom" of the CoC is not an absolute bar to judicial review and must be supported by reasons for the decision made by it, and must not violate any provision of the Code or Regulations made thereunder.

9.3 The Applicant submitted that neither the pendency of I.A. No. 843/2025 nor the alleged technical glitch affecting bidder H2 constitutes a valid ground for the cancellation of a completed, fair and transparent auction process. The pendency of the said IA was known to the Respondent and the CoC prior to the issuance of the Sale Notice dated

14.05.2026 and it is entirely impermissible for the CoC to treat a pre-existing and fully disclosed judicial proceeding as a justification for cancellation after the auction has been held and a highest bidder declared.

9.4 It is submitted that this reason is a mere afterthought, invented solely to justify the cancellation of a valid and lawfully conducted auction process. Regarding the alleged technical glitch affecting H2, this ground was never disclosed in the e-mail dated 09.06.2026 **(ANNEXURE "A-4" of the Application**) and constitutes a new and afterthought ground raised for the first time in the Reply-Affidavit. The Respondent's claim to have received an electronic mail from H2 only on 06.06.2026, five days after the date of the e-auction, is wholly implausible, lacks credibility, and is contrary to the normal course of an electronic auction process.

9.5 It is submitted that the Respondent's reliance on the enhancement of the reserve price (from Rs. 1,75,00,000/- to Rs. 2,13,50,000/-) as evidence of "value maximisation" is itself an admission that the original bid reflected market value, as the reserve price of the fresh auction is fixed at exactly the Applicant's bid amount. This internal contradiction completely undermines the Respondent's plea of value maximisation and establishes that the cancellation was an arbitrary and irrational exercise of discretion.

9.6 It is submitted that the Respondent has, for the first time in the Reply-Affidavit, made serious allegations of fraud and connected-party design, alleging that the Applicant's father (through SS Enterprises) participated in the fresh auction dated 24.06.2026 and placed a higher bid. The Applicant emphatically denies these allegations and states that his father is an independent person engaged in independent business activities; there is no bar under the IBC or Section 29A thereof on family members of a bidder independently participating in a separate auction process.

9.7 It is submitted that the Respondent's allegation of "fraud upon the Tribunal" is scandalous, unfounded and deserving to be expunged, especially since the Respondent's own e-mail dated 09.06.2026 expressly confirms that the Applicant was found eligible. As regards M/s Orange Refractories and Title Suit No. 377 of 2026, the Applicant states that he has no knowledge of or connection with the said suit, other than having been impleaded as a defendant without his consent or involvement.

9.8 It is submitted that the mere fact of being impleaded in a civil suit by a third party is no basis whatsoever for imputing mala fides or any collusive design to the Applicant, and the Respondent's Reply-Affidavit is conspicuously silent on any factual material establishing any connection between the Applicant and M/s Orange

Refractories. These allegations have been raised for the first time in the Reply-Affidavit solely to divert attention from the Respondent’s own arbitrary conduct.

9.9 It is submitted that the refund of the EMD is no substitute for the actual loss and prejudice suffered, which encompasses the loss of business opportunity, the time, effort and expense incurred in participating, and the confidence of bona fide participants in the resolution process. The law recognises that damages are not always an adequate remedy, particularly in matters concerning immovable property and concluded commercial transactions.

9.10 It is further submitted that the amendments to Section 21(11) and Section 35(2) of the IBC, having come into force on 26.05.2026 after the issuance of the original sale notice, cannot retrospectively alter the nature and extent of the rights and obligations that had already crystallised. The Applicant does not seek specific performance of an un-concluded contract but seeks judicial review of the arbitrary exercise of statutory powers by the Respondent while conducting the liquidation process. The exercise of statutory discretion cannot be arbitrary, unguided or based upon reasons subsequently invented to justify an otherwise unsustainable decision. The impugned decision is therefore violative of the principles of fairness and legitimate expectation and is consequently liable to be set aside.

10. We have carefully considered the rival submissions of the parties and perused the record. The core issue before this Adjudicating Authority is whether the Liquidator, acting on the decision of the CoC, was justified in cancelling the e-auction held on 01.06.2026, wherein the Applicant emerged as the Highest Bidder, and subsequently initiating a fresh auction process with an enhanced reserve price.

11. In order to decide the question before us, it is pertinent to look at the updated statutory procedure in IBBI(Liquidation Process) Regulation 2016. It has been provided in clauses 12B and 12C of Schedule I (Regulation 33 of the IBBI Liquidation Process Regulations, 2016), the Liquidator cannot decide on an auction unilaterally. The Liquidator must submit the auction results, bidder details, and due diligence report to the Committee under Regulation 31A. Only after consulting the Committee can the Liquidator either declare the highest bidder successful or reject the bid. The relevant amended provision of Clause 12A, 12B and 12C of Schedule-1 of IBBI(Liquidation Process) Regulation 2016 reads as follows:

> *"(12A) Within three days of declaring the highest bidder, the liquidator shall conduct due diligence and verify the eligibility of the highest bidder.*

(12B) The liquidator shall present the auction results, details of highest bidder, and the due diligence conducted on it to the committee.

(12C) The liquidator shall declare the highest bidder as the successful bidder or reject such bid, after the approval of the committee with voting share of sixty-six percent under regulation 31A."

12. In the present case, a technical glitch had occurred during the auction process which prevented bidder H2 from participating in the ongoing bidding process. The Bidder H2 submitted his grievance vide email dated 06.06.2026 before the Liquidator claiming that a technical impediment prevented them from placing a final revised bid. The Liquidator/respondent placed the entire material including an email communication dated 06.06.2026 **(ANNEXURE "2" of the reply affidavit)** from the H2 bidder.

13. Hon'ble Supreme Court in case of Om Sakthi Sekar Versus V. Sukumar and Others (2026) SCC OnLine SC 368 held in para no. 15 that:

"While there can be no quarrel with the settled proposition of law that the rights of a bonafide auction purchaser deserves due protections and confirmed auction sale should not be ordinarily interfered with, it is equally well established that such protection is not absolute. Where credible issues are raised regarding the adequacy of valuation or the fairness of the process leading to fixation of the reserve price, the supervisory jurisdiction of the court may be invoked to ensure that the recovery proceedings have been conducted in a manner that secures the best possible price of the property. The object of the recovery proceedings is not merely to complete the sale but to realise the maximum value of the secured asset so as to balance the interest of the creditors and the borrower. In this regard, reference may be made to the decision of this court in Rajiv Kumar Jindal V. BCI Staff Colony Residential Welfare Association, wherein it was observed that the purpose of an auction is to obtain the most remunerative price for the property by affording an opportunity to the intending purchasers to participate in a process of competitive bidding, thereby ensuring transparency and fairness in the sale. The court further emphasised that if the process of the competitive bidding is curtailed or compromised, the possibility of underbidding or securing an inadequate price cannot be ruled out. In such circumstances, the court is required to exercise its discretion with circumspection so as to safeguard the legitimate interests involved in the sale process. The following paragraph are apposite:

"The object of an auction is to secure optimum realizable value of the property by giving opportunity to the potential buyers facing competitive bids either in open or closed format. The term 'auction' or 'bid' are interrelated as both give the idea of selling the product to the public. Bidding involves the process where a person offers a price which is known as a bid. The process of bidding takes place in a situation where large number of people show their willingness to buy a particular product or a service and bidding in a sealed envelope is often used by various companies, industries and small businesses for assessing the need of the public at large. On the other hand, auction is the process that involves buying and selling goods and services by offering them forbids, taking bids and selling the item to the highest bidder and that is possible if there is a competitive bidding between the bidder.

The purpose of auction (open or close format) is to get the most remunerative price and giving opportunity to the intending bidder to participate and fetch higher realizable value of the property. If that path is cut down or closed, the possibility of fraud or to secure inadequate price or under *bidding would loom large. In the given circumstances, it is the duty of the court to exercise its discretion wisely and with circumstances and keeping in view the facts and circumstances of each case.*

The object of auction has been considered by this court in Lakshmanaswami Gounder V C.I.T Selvamani as under:

"...The object of sale is to secure the maximum price and to avoid arbitrariness in the procedure adopted before sale and to prevent underhand dealing in affecting sale and purchase of the debtor's property. Public auction is one of the mode of sale intending to get highest competitive price for the property. Public auction also ensure fairness in actions of the public authorities or the sale officers who should act fairly and objectively. The action should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the debtor...".

14. The CoC, in its commercial wisdom, was duty bound to examine the bid carefully before taking final decision on the same to achieve value maximisation of the assets to be sold by way of auction. The CoC, in the present case, has taken a right decision not to confirm the auction sale of the highest bidder due to non-participation of another bidder in the bidding process due to technical glitch.

15. Following the cancellation, the Liquidator issued a fresh Sale Notice on 10.06.2026, wherein the reserve price was increased to Rs. 2,13,50,000/- exactly the amount of the Applicant's previous bid. Thus, it is not a case where the auction sale is being conducted at the same reserve price which was for the earlier bid. The decision to cancel the auction was not a unilateral act but a conscious commercial decision taken by the CoC in its 13th Meeting held on 08.06.2026.

16. In light of the above, we find that the cancellation of the e-auction dated 01.06.2026 and the decision to conduct a fresh auction were based on legally sustainable grounds.

17. The Interlocutory Application I.A. (I.B.C)/807(KB)2026 is hereby dismissed.

18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

19. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

20. Before parting with this order, this Bench places its appreciation to the able assistance rendered by Sridhar R, Legal Research Assistant (LRA) attached to this Bench.

Rekha Kantilal Shah	**Labh Singh**
Member (Technical)	**Member (Judicial)**