

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 465 of 2022

(Arising out of the Order dated 02nd March, 2022 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No. 830/KB/2021, I.A. No. 848/KB/2021, I.A. No. 962/KB/2021, I.A. No. 963/KB/2021, I.A. No. 969/KB/2021 in C.P. (IB)No. 1542/KB/2018)

IN THE MATTER OF:

Raj Singhania

Official Liquidator of Gontermann-Peipers (India)
Limited (In liquidation)
Chartered Accountant.

Having address at:

Central Plaza, 41, B.B. Ganguly Street, 5th Floor,
Room No. 5A,
Kolkata 700012.

...Appellant

Versus

1. Chinar Steel Segment Centre Pvt. Ltd.

Registered Office at:
301, Centre Point, 21,
Hemanta Basu Sarani
Kolkata – 700001,
Nirmatrha Road,
Mahavir Complex,
Baidyabati, District – Hooghly, 712222.

...Respondent No. 1

2. HR Commercials Private Limited

Registered Office at: A Wing, 802 D,
Pinnacle Corporate Park, Near Trade Centre,
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.

...Respondent No. 2

3. JSW Steel Limited

Registered Office Address at:
Bandra Kurla Complex, Kolivey Village,
MMRDA Area, Bandra Kurla Complex,
Bandra East, Mumbai,
Maharashtra 400051.

...Respondent No. 3

4. Rahul Roy Chowdhary

S/o Shri Ranatosh Roy Chowdhary,
Residing at C/11, Barbagan,
Vidyasagar Sarani, East Barisha,

Kolkata – 700063.

...Respondent No. 4

5. DTC Projects Pvt. Ltd.

Registered Office at:

1, Netaji Subhas Road,

Kolkata – 700001, West Bengal.

...Respondent No. 5

6. Snaefell Heights LLP

Office at: 36/1A

Elign Road,

Kolkata 700020.

...Respondent No. 6

Present

For Appellant: Mr. Abhijeet Sinha, Mr. Gaurav Gupta,
Mr. Saikat Sarkar & Mr. Kumarjit Bannerjee,
Advocates.

For Respondent No. 1: Mr. Mainak Bose, Mr. Anand Sukumar and
Mr. Bhupesh Kumar Pathak, Advocates for R-1.

For Respondent No. 3: Mr. Kaustubh Prakash and Mr. Satvik Issar,
Advocates for R-3.

For Respondent No. 4: Mr. Sudhanshu Prakash, Ms. Neha Tandon and
Sabyasachi Roy Chaudhary, Advocates for R-4.

WITH

COMPANY APPEAL (AT) (INSOLVENCY) NO. 264 of 2022

(Arising out of the Order dated 02nd March, 2022 passed by National Company
Law Tribunal, Kolkata Bench, Kolkata in I.A. No. 830/KB/2021, I.A. No.
848/KB/2021, I.A. No. 962/KB/2021, I.A. No. 963/KB/2021, I.A. No.
969/KB/2021 in C.P. (IB)No. 1542/KB/2018)

IN THE MATTER OF:

Sanefell Heights LLP,

Office at 36/1A,

Elign Road, Kolkata 700020.

...Appellant

Versus

1 Chinar Steel Segment Centre Pvt. Ltd.

Registered Office at:

301, Centre Point, 21,

Hemanta Basu Sarani
Kolkata – 700001.

And also at: 2/A/7/A/C,
Nirmaitrha Road,
Mahavir Complex,
Baidyabati, District – Hooghly, 712222.

...Respondent No. 1

2. HR Commercials Private Limited
CIN No: U45400DL2015PTC287318
Registered Office at: A Wing, 802 D,
Pinnacle Corporate Park, Near Trade Centre,
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.

...Respondent No. 2

3. JSW Steel Limited
CIN: L27102MH1994PLC152925
Registered Office Address at:
Bandra Kurla Complex, Kolivey Village,
MMRDA Area, Bandra Kurla Complex,
Bandra East, Mumbai,
Maharashtra 400051.

...Respondent No. 3

4. Rahul Roy Chowdhary
S/o Shri Ranatosh Roy Chowdhary,
Residing at C/11, Barbagan,
Vidyasagar Sarani, East Barisha,
Kolkata – 700063.

...Respondent No. 4

5. DTC Projects Private Limited
CIN: U51909WB1995PTC067230
Registered Office at:
1, Netaji Subhas Road,
Kolkata – 700001, West Bengal.

...Respondent No. 5

6. Raj Singhania
Official Liquidator of Gontermann-Peipers (India)
Limited (In liquidation)
Having its Office at:
Central Plaza, 41, B.B. Ganguly Street, 5th Floor,
Room No. 5A,
Kolkata 700012.

...Respondent No. 6

Present

- For Appellant:** Mr. Anup Kumar, Ms. Neha Jaiswal, Mr. Shivam Kumar, Ms. Shruti Singh & Mr. Sumit Ranjan, Advocates.
- For Respondent No. 1:** Mr. Mainak Bose, Mr. Anand Sukumar and Mr. Bhupesh Kumar Pathak, Advocates for R-1.
- For Respondent No. 3:** Mr. Kaustubh Prakash and Mr. Satvik Issar, Advocates for R-3.
- For Intervenor:** Mr. H.P. Sharma, Sr. Advocate with Mr. Satish Rai and Mr. Akhil Shankhwar, Advocates for Intervenor.
- For Respondent No. 4:** Mr. Sudhanshu Prakash, Ms. Neha Tandon and Sabyasachi Roy Chaudhary, Advocates for R-4.
- For Respondent No. 6:** Mr. Abhijeet Sinha, Mr. Kumarjit Bannerjee, Mr. Gaurav Gupta and Mr. Saikat Sarkar, Advocates for R6.

(J U D G E M E N T)

[Per: Hon'ble Mr. Justice M. Satyanarayan Murthy]:

1. These Appeals have been filed challenging the Order passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) dated 02.03.2022 passed in I.A. 830/KB/2021, I.A. 848/KB/2021, I.A. 962/KB/2021, I.A. 963/KB/2021 and I.A. 969/KB/2021 in C.P. (IB) No.1542/KB/2018. By the Order impugned in the Appeal, set aside the entire e-Auction Process conducted by the Liquidator on 13.09.2021, directed the Liquidator to initiate fresh bidding process for sale of the Assets of 'Corporate Debtor' and complete the entire process within specified time from the date of Order, inviting fresh bids and according an opportunity to the interested bidders.

2. The Balaji Metals/‘Operational Creditor’ filed petition to initiate Corporate Insolvency Resolution Process and the same was admitted by the Learned Adjudicating Authority, however, the process could not be completed and ordered Liquidation of Assets of the ‘Corporate Debtor’, Gontermann-Peipers India Limited, appointed Raj Singhania, the Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, directing to follow necessary procedure to Liquidate the Assets of the Company and the amount realized on sale of the Liquidated Assets be distributed among the Creditors as per the procedure.

3. The Appellant/RP itself in *Comp. App. (AT) (Ins.) No. 465/2022* issued a notification to conduct an e-Auction of the property by issuing a notification in “Business Standard”, fixing the date of Auction as 24.08.2021 and Reserve Price, Earnest Money Deposit (‘EMD’) and incremental bid, fixing the date and time of e-Auction as 09.09.2021 from 3:00 PM to 5:00 PM and the last date to apply and submission of the documents and EMD as 07.09.2021 before 6:00 PM while fixing date and time of inspection between 10:00 AM and 5:00 PM on 07.09.2021. In pursuance of the Notification for e-Auction of the property no bidders submitted their Application for participation in the bid, depositing EMD. Thereupon, the Liquidator Raj Singhania issued a corrigendum on 08.09.2021, extending time for submission of bids for e-Auction till 11.09.2021 upto 6:00 PM by fixing date and time of e-Auction as 13.09.2021 between 2:00 PM to 4:00 PM, while maintaining the other terms and conditions of sale notified earlier.

4. The Respondents/Chinar Steel Segment Centre Pvt. Ltd. filed IA 830/KB/2021, claiming the following:

“A. The e-auction process for the sale of the assets of the corporate debtor be set aside,

B. Stay of all further proceeding of sale of the assets of the corporate debtor till the disposal of the application.

I. Injunction restraining the liquidator and Respondent No.1 to take any further action and giving further effect to e auction held on 13-09-2021.

II. Alternatively, Respondent No. 1 be directed to hold Re-auction. It has been stated, applicant was an interested bidder and participated in the bid, submits that on enquiry about the e-auction process, the applicant came to know that by a corrigendum published on September 08, 2021, the last date for submission of the EMD was extended till September 11, 2021 and the e-auction was scheduled for September 13, 2021 from 2pm to 4 pm.

III. As an interested bidder, the applicant deposited the EMD amount of Rs. 8.60 cr. and participated in the e-auction held on September 13, 2021.

IV. The bidding process started from Rs. 86.00 cr. In the course of bidding, the applicant made four bids in excess of other bidder. The last registered bid of the applicant was standing at Rs.87.75 but at this point the applicant faced the connectivity issue and the applicant was unable to proceed further in the bidding process and there were interruptions and buffering.

V. Applicant has further stated the last registered bid of Rs.87.75 crores. made: by the applicant and the Snaefell Heights made. a bid of Rs.88 crores which, in excess by Rs.25 lakh to the bid given by the applicant. As a counter to the bid of they the applicant wanted to make a bid for Rs.88.25 crores but because of some connectivity issue the applicant was unable to register the increased bid of Rs.88.25 crores.

VI. The issue relating to the network connectivity of the applicant during the bidding process was brought to the notice of the liquidator at 4pm by an email and upon consideration the liquidator decided to reschedule the bidding process. However, the connectivity issue

persisted and in spite of best efforts the applicant was unable to register as the highest bidder.

VII. This application was filed on 17-09-2021.

VIII. LOI was issued to Respondent No.1 on 02-11-2021.”

5. The Respondents/HR Commercials Private Limited filed IA 848/KB/2021

claiming the following:

“A. The E-Auction process for the sale of the Assets of the Corporate Debtor be set aside/quashed,

I. Re-auction of assets,

II. Allow it to participate in auction process,

I. In this IA it is stated that the Applicant on September 10, 2021 came to learn that pursuant to the liquidation order dated April 30, 2020 the liquidator on August 24, 2021 has published an c-auction sale notice, and September 07, 2021 was the last date to submit EMD.

II. The Applicant is based in Mumbai and belatedly came to know about the advertisement published by the Liquidator. Under these circumstances, the Applicant was unable to apply and submit the documents and EMD within the specified period.

III. The Applicant is an interested party for purchasing the assets of the Corporate Debtor.

IV. Later, on September 13, 2021 the Applicant came to know that the e-auction was not held on September 09, 2021 but rather on September 13, 2021 and the bidders who deposited the EMD on September 13, 2021, were also permitted to participate in the c-auction.

V. All along the Applicant was interested to participate in the bidding process of the Corporate Debtor. Further, the auction process of the Corporate Debtor was vitiated by Procedural Irregularities, inasmuch as, the liquidator could not have accepted the EMD after September 11, 2021 and proceeded with the sale.

VI. He did not have sufficient time to furnish the bid.”

6. The Respondents/JSW Steel Limited filed IA 962/KB/2021 claiming the following:

“A. Order seeking intervention and impleadment as party;

I. Direction for cancellation and, setting aside of the B-auction Information Process Document dated August 24, 2021 and E-auction dated September 13, 2021.

II. Cancellation and setting aside of entire E auction dated 13-09-2021 and the LOI issued by the Liquidator to Snaefell Heights.

III. Direction on the liquidator to conduct a fresh bidding for the sale of the Corporate Debtor as a going concern.

IV. Interim Order directing the liquidator and Snaefell Heights to maintain status Quo as regard to the assets of the Corporate Debtor.

i. The Applicant claims to be part of O.P. Jindal Group and one of the India's leading business houses. The Applicant is in business in sectors such as energy, infrastructure, cement, paints, sports and venture capital.

ii. Balaji Metals ('Operational Creditor') had initiated insolvency proceedings against the Corporate Debtor being CP (IB) No.1542/KB/2018 under Section 9 of the Code. The Corporate Debtor was admitted to the CIRP vide order dated December 11, 2019.

iii. Pursuant to the order of admission, the IRP took over the management of the Corporate Debtor.

iv. In 15- COC meeting held on April 3, 2021, the CoC decided to request this Adjudicating Authority for an order of liquidation of the Corporate Debtor. Subsequently, on April 30, 2021 the order of liquidation was passed by this Adjudicating Authority and Mr. Raj

Comp. Apps. (AT) (Ins.) No. 465 & 264 of 2022
Singhania was appointed as the liquidator.

v. On August 24, 2021 the liquidator issued an E-Auction Process Information Document towards the sale of the Corporate Debtor and the E-Auction was conducted on September 13, 2021 and the LOI was issued to the highest bidder i.e. Snaefell Heights.

vi. The Applicant further submits that in order for the Corporate Debtor to go as a going concern, it is necessary that the liquidator should have restricted bidders only to steel industry. The liquidator failed to appreciate that selling of the Corporate Debtor to a real estate company will defeat the very object of the Code.

vii. The Applicant is the only participant who had submitted the compliant resolution plan. The Applicant was always interested in acquiring the Corporate Debtor as a going concern and reviving its steel business but could not participate in the E-Auction process.

viii. The successful bidder is an LLP incorporated in the year 2019 with a turnover for the Financial Year ending on March 31, 2019. Match 31, 2020 and Match 31, 2021 as NIL.

ix. The liquidator has failed to do a proper due-diligence and to verify as to how an LLP with Rupees One Lakh as the Capital will be able to continue the Corporate Debtor as a going concern.

x. There are also two prospective bidders who could not submit their bid and have filed an intervention application. The Applicant also submits that there are approx. 500 workmen and employees on the muster roll of the Corporate Debtor on the insolvency commencement date and the workmen and the employees are keen for the steel operation of the Corporate Debtor be revised instead of the real estate.

xi. The Applicant is willing to offer 90 Cr in the event this Adjudicating Tribunal allows for the re-bidding of the Corporate Debtor. It is settled law that the Liquidator is the custodian of the interest of the Corporate Debtor and has to exercise its power in bona-

fide. The purpose of the auction is to get the most remunerative price.”

7. The Respondents/Rahul Roy Chowdhury filed IA 963/KB/2021 claiming the following:

“A. Liquidator be directed to Re-auction,

B. Liquidator not to declare Successful Bidder of to issue LOI to the HI bidder till disposal of this IA.

i. Applicants states that as per the e-auction, Snaefell Heights was the highest bidder with the bid of Rs. 88 Crores. However due to some technical issue M/s. Chinar Steel could not put his bid of Rs.88.25 Cr and the same was communicated to the liquidator.

ii. The Applicant approached the liquidator praying. that the Corporate Debtor be sold as a going concern because of 500 workmen and employees.

*iii. In the meantime, one of the bidders, M/s. Chinar Steel, who participated in the e-auction process, mentioned the matter before the Hon'ble NCLT, Kolkata Bench on 16.09.2021, wherein the Liquidator was also present. On the queries raised by the Hon'ble Bench, the Liquidator apprised them about the entire process. The Liquidator said that he has received one e-mail for extension of time which he allowed, but is not in a position to confirm if at all there was any technical issue later on during the process. The Hon'ble Bench then enquired from the Liquidator whether *he has any objection if a re-auction is conducted, to which the Liquidator replied that if the said re-auction starts at a value higher than. the highest bid given, inasmuch as the same would maximize proceeds from auction of Corporate Debtor as a going concern, and take care of the interest of all the stakeholders, he would not have any objection if an Order to such effect is passed by the Hon'ble Bench.*

iv. The Hon'ble Bench directed the Liquidator to file an application for conducting re-auction giving reasons and justification for the same and not to declare

Successful Bidder or issue LOI to HI bidder till such application is disposed of.

v. The representative of workers and employees present in the meeting also requested that in the interest of the workers and employees the Liquidator should go for re-auction and there is a possibility that some engineering concern will participate in the process and if successful, they can run the corporate debtor's undertaking as a going concern and saving the livelihood around 500 workers / employees.

vi. The applicants state that JSW is a leading steel manufacturing company in the country. The applicants have come to know that JSW is interested to take over the corporate debtor and run the factory by employing those 500 workers/employees who became jobless due to liquidation. In this regard the applicants had fruitful discussions with JSW and have appreciated their bonafide intention.

vii. Hence, this application praying for re-auction of the bidding process of the Corporate Debtor.”

8. The Respondents/DTC Projects Private Limited filed IA 969/KB/2021

claiming the following:

“A. Cancel the previous E auction conducted by Liquidator on 09-09-2021 and 13-09-2021;

I. Liquidator be directed to reconvene/re-conduct the auction sale last held on 13.09.2021.

II. Allow the prospective Bidder to participate in the reconvened re-auction;

i. It has been stated in this application, the last date for applying in the e-auction sale and submission of documents along with the Earnest Money Deposit (EMD) was 07.09.2021 before 18:00 hours. The date of e-auction sale was scheduled to be held on 09.09.2021 from 15:00 hours to 17:00 hours. However, on the date of e-auction bids by only one bidder could be submitted

and a prospective bidder, namely Nortech could not submit its bid despite its intent.

ii. Consequentially, in an application listed as IA. 720/2021, the Hon'ble Tribunal extended the outer time limit for sale of the Corporate Debtor as a 'going concern' till 13.09.2021 and the e-auction which was originally scheduled to be held on 09.09.2021, came to beheld on 13.09.2021. Pertinently, the prospective bidder, namely Nortech, along with all intending prospective bidders were permitted to participate in the E-auction.

iii. Notably, this was done so as to ensure maximization of the value of the Corporate Debtor. However, the Applicant herein, who is a prospective bidder, had no notice or knowledge of the said extension of time for participation in the e-auction till 13.09.2021 and was, as such, unable to submit the EMD and consequently participate in the e-auction process. The Applicant/ Prospective Bidder became aware of the said extension recently.

iv. Upon becoming aware of the same, the Applicant wrote an email to the Liquidator and UCO Bank and Indian. Bank (erstwhile Allahabad Bank), being the members of the Stakeholders Committee of the Corporate Debtor, requesting to conduct the auction again and allow it to participate in the said auction. However, no response to the same has been received. Therefore, the Applicant is constrained to file the present Application.”

9. The allegations made in all these Interlocutory Applications are identical but on different grounds. However, the endeavor of the Applicants is to get the Auction held on 13.09.2021 be set aside.

10. During the course of argument, Ld. Counsel appearing for the applicants submitted that the Applicant/s challenge the auction proceedings held by the Liquidator of Gontermann Peipers India Limited for sale of its assets and properties. The Applicants were interested bidders. In one IA, it had participated

in the auction by submitting an EMID of Rs.8.60 Cores. In course of the c-auction, as a participating bidder, the Applicant faced connectivity issues and accordingly, by an email to Respondent No.1 Liquidator, made: a request for consideration. Considering the request, though the auction time expired at: 16.00 hrs. the time period was extended and during the extended period, a bid of Respondent No.2 of Rs.88.00 Crores was received on the portal which was in excess of the Applicant's last bid of Rs.87.75 Crores. The Applicant wanted to give a higher incremental bid of Rs.88.25 Crores but despite best efforts, due to lack of connectivity and network issues, the Applicant was unable to register the incremental bid of Rs.88.25 Crores. As such, the last bid made by the Respondent No.2 at Rs. 88.00Crores was not registered by the e-auction portal as the highest bid.

11. It is submitted that an email, written on behalf of the Applicant in IA 962/2021, seeking refund of the EMD, immediately after the auction, has been relied upon to suggest that the Applicant had accepted the fate of the auction. What needs to be referred to is the subsequent email by which the Applicant specifically informed the Liquidator that the previous mail seeking refund was sent inadvertently by a staff of the Applicant without consultation with the management. Immediately upon coming to know of such fact, such letter was withdrawn and the Liquidator was directed not to consider such request.

12. It is further submitted that though much has been said on the said email but the fact remains that the auction process, immediately upon its completion was

brought to the notice of the Tribunal by the applicant and the fact that the same was entertained in the presence of the Liquidator.

13. It is further submitted by the Ld. Counsel for the applicant in IA. No. 830/2021 that since the petitioner was prevented by sufficient cause from suitably making its offer during the auction process, the matter was immediately mentioned before this Adjudicating Authority upon notice for the Liquidator on 16th September, 2021. The Liquidator in his Affidavit has unequivocally admitted the said fact at paragraph 'm' at page 7.

14. It is stated that it has also been admitted that based on the oral directions of this Adjudicating Authority, the Liquidator was directed to consider re-auction and was further directed not to declare the successful bidder or issue any LoI to the H/1, bidder in the meantime till such time the proposed application of the Applicant was listed for consideration.

15. It is submitted that the application was filed on 17 September, 2021, and the Respondents were duly served.

16. It is submitted that on 28 September, 2021, the application was considered, admitted and the Respondents were directed to file their Affidavit. From the Liquidator's Reply Affidavit to the Application, it is apparent that no steps had been taken by the Liquidator between the period from 13.09.2021 to 31.10.2021. However, a purported LoI appears to have been issued by R1 in favour of R 2 on 02.11.2021.

17. It is argued that in the facts of the present case and as a participating bidder whose Earnest Money of Rs.8.60 Crores still remains deposited, it is respectfully

stated that in the interest of justice and towards maximization of the value of the assets of the Corporate Debtor and also in the interest of all stakeholders, the Applicant's higher bid of Rs.93 Crores be accepted and the Sale be confirmed in its favour. Alternatively, the assets of the Corporate Debtor, now in liquidation, be reopened and the Applicant and the Respondent No.2 be directed to make their offers as participating bidders to make sure the maximization of value and the assets be sold to the person.

18. It is further evident that the Applicant was a bona fide bidder who has participated in the auction process, but for reasons beyond its control could not lodge a higher bid. It has also been unequivocally admitted what transpired on participated in the auction process, but for reasons beyond its control could not lodge a higher bid. It has also been unequivocally admitted what transpired on 16.09.2021 before this Adjudicating Authority and the oral directions (paragraph (m) at page 7 of the Reply Affidavit). Strangely enough, the reply affidavit is silent as to why, despite the applicant having offered to give a higher bid which is not only in the interest of the stakeholders of the Corporate Debtor but towards the object of the IBC Code, qua, maximization of value, the Liquidator after 1 and ½ months changed his stand and purportedly issued the LoI. It is also evident that between. 13.09.2021 and 31.10.2021 no steps have been taken by the Liquidator. However, surprisingly, stakeholders, meeting appears to have been conducted, though there are no documents in support thereof, where the H/1 bidder's offer was allegedly agreed to be accepted. It is stated that the consultation with stakeholders was uncalled for and in any event, it is preposterous to suggest

that the stakeholders would agree to accept a lower bid when the Applicant for offering a higher bid had already made an application which was pending adjudication.

19. It is submitted that based on the principle of maximization of value, which is the object of the Code, there are overwhelming reasons in the facts of the present case that an opportunity is required to be given to the Applicant to make a higher bid. The Applicant wishes to make a bid of Rs.93 crores to purchase the assets and properties of the Company in Liquidation and further undertakes to improve its offer, if required.

20. It is further submitted that though much has been said on the said email but the fact remains that the auction process, immediately upon its completion was brought to the notice of the Tribunal by the applicant and the fact that the same was entertained in the presence of the Liquidator.

21. It is submitted that in the present applications, the Applicant seeks to set aside the sale held on 13th September, 2021, reconsider its higher bid and alternatively, re-auction of the assets of the Company in Liquidation.”

22. The Appellant/Raj Singhania, the Liquidator contended that the Public e-Auction is held and the highest bid is received and the property is sold in a Public Auction in favour of the highest bidder, such sale cannot be set aside on the basis of the offer made by the third parties, subsequently, and that too when they did not participate in the Auction Proceedings and made any offer is only for the sake of making it. The Liquidator further contended that the Liquidation Notification was published for sale of the ‘Corporate Debtor’ as ‘a Going Concern’ in the

“Business Standard”, all India Edition and “AajKal”, a vernacular Bengali Newspaper on 24.08.2021 and also uploaded the e-Auction Process Information Document at the e-Auction portal and website of the ‘Corporate Debtor’. As per the terms of Sale Notice dated 24.08.2021, the Reserve Price for the proposed e-Auction was Rs.86Crore with the EMD of Rs.8.6Crore. The last date of submission of EMD was initially fixed on 07.09.2021 and e-Auction was scheduled to be held on 09.09.2021. As no buyers showed interest to participate in the e-Auction of the ‘Corporate Debtor’ as ‘a Going Concern’. The last date of submission of EMD i.e., 07.09.2021 was extended the Liquidator issued corrigendum to the earlier e-Auction Sale Notice on 08.09.2021 in the same newspapers and extended the date of e-Auction from 09.09.2021 to 13.09.2021. As per the corrigendum dated 08.09.2021, the date for submission of e-Auction was 13.09.2021. As on the last date of submission of EMD on 11.09.2021, the Liquidator received EMD from only one interested bidder but did not receive any bid documents from them. On the next day i.e., 12.09.2021, Liquidator received advance copy of an Application filed before the Adjudicating Authority by M/s. Nortech Property Private Limited where the Company sought extension of e-Auction Process for participating in this bid. On the next day, i.e., 13.09.2021, M/s. Nortech Properties Private Limited mentioned their Application before the Adjudicating Authority but on hearing, the Adjudicating Authority issued the oral directions to the Liquidator in the open Court wherein this Adjudicating Authority allowed the Applicant as well as any other participant who submits the EMD before 1:30 PM.

23. As the time left for verification of documents and the eligibility was less in the hands of the Liquidator, the Liquidator proceeded to issue the User ID and password for participation in the e-Auction Process to both M/s. Snaefell Heights LLP and M/s. Chinar Steel Segment Centre Pvt. Ltd. based upon the EMD received. The e-Auction Process was commenced at 2:00 PM and both the bidders had submitted at least one bid till 4:00 PM. Subsequently, the Liquidator received an e-mail from the Applicant that they are having network issues and sought extension of 45 minutes on such ground. The Liquidator extended 30 minutes time and again both the bidders submitted further bids. The e-Auction Process concluded with the last bid being placed at 4:49 PM by M/s. Sanefell Heights LLP for an amount of Rs.88Crores/-.

24. Subsequently, the Liquidator immediately proceeded to issue Notice for conducting of meeting of the Stakeholders' Consultation Committee on 15.09.2021 for meeting to be held on 16.09.2021 through Virtual Mode for suggestion on future course of action. While so, one of the Applicants, who participated in the e-Auction Process mentioned the matter before the Adjudicating Authority on 16.09.2021, wherein in the presence of Liquidator and the Liquidator apprised the Adjudicating Authority about the entire process in free and fair manner in which the entire Auction Process was carried out. On the issue of Applicant's contention regarding the technical glitch, the Liquidator apprises the Adjudicating Authority that he has received email for extension of time which he allowed but he was not in a position for confirming. Upon hearing the parties, the Adjudicating Authority proceeded to only direct the Liquidator to

consider if the Liquidator would want to file an Application for conducting re-Auction upon citing reasons and justification for the same and not to declare Successful Bidder or issue LOI to H1 bidder, till proposed Application impugning the Auction Process was listed before the Bench for consideration.

25. The Liquidator received copies of Applications filed under Section 60(5) of the Insolvency and Bankruptcy Code (hereinafter referred to as '**IBC**') before the Adjudicating Authority to set aside the e-Auction held on 13.09.2021 and to issue a direction for conducting fresh Auction enabling a parties to participate in the bid.

26. The Liquidator contended that the e-Auction Process was strictly in accordance with the Regulations for maximization of assets the Liquidating Assets for the benefit of the Creditors and strictly adhere to various Regulations particularly Regulation No. 32 & 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and requested to dismiss the Application. The other contentions by the Liquidator are not much relevance as the e-Auction was set aside by the Adjudicating Authority on the sole ground of material irregularity in holding e-Auction.

27. The Learned Adjudicating Authority based on the law laid down by '*Manoj I Naik & Associates' Vs. 'Official Liquidator'*¹ and '*Bank of India' Vs. 'Enfield Apparels Limited & Ors.'*² set aside the auction holding that there is a material irregularity in conducting e-Auction of the 'Corporate Debtor' as 'a

¹ SLP Nos. 34783-34783/2012

² MANU/NC/5994/2020

Going Concern' and directed to hold fresh Auction inviting bids afresh, strictly adhering to the procedure.

28. The Common Order passed in all Interlocutory Applications in I.A. No. 830/KB/2021, I.A. No. 848/KB/2021, I.A. No. 962/KB/2021, I.A. No. 963/KB/2021 and I.A. No. 969/KB/2021, is challenged on various grounds by both highest bidder Snaefell Heights LLP and Raj Singhania, the Liquidator on various grounds.

29. The first and foremost grounds in both the Appeals is that the Adjudicating Authority did not appreciate the facts on record and erroneously concluded that the Liquidator Appellant in *Comp. App. (AT) (Ins.) No. 465/2022* in allowing the Interlocutory Applications to set aside the same filed by non-participants which is a serious flaw in the Order, apart from that the Liquidator has strictly adhered to the procedure contemplated under Regulation for sale of the 'Corporate Debtor' as 'a Going Concern' as per Corporate Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and that the alleged illegality pointed out by the Petitioners is not material irregularity, it is only an accidental.

30. The Learned Counsel for the Respondents supported the Order in all respects while placing reliance on '*Bharat Heavy Electricals Ltd.*' Vs. '*Anil Goel & Ors.*'³, '*Arun Kumar Jagatramka*' Vs. '*Jindal Steel & Power Limited*'⁴, *Circular bearing reference no. IP(CIRP)/006/2018*, '*Prakash Chandra Kapoor & Anr.*' (referred *Supra*), '*Ekambareswara Rao Manne*' Vs. '*Gonugunta*

³ Comp. App. (AT) (Ins.) No. 22/2020

⁴ (2021) 7 SCC 474

*Madhusudhan Rao, Liquidator*⁵ and in '*Binani Industries Limited*' Vs. '*Bank of Baroda*'⁶. On a strength of the Principal laid down in the Judgement, Learned Counsel for the Respondent No. 3 in *Comp. App. (AT) (Ins.) No. 264/2022*, supported the Order of the Tribunal. The Learned Counsel for the other Respondents particularly Chinar Steel Segment Centre Private Limited, HR Commercials Private Limited, JSW Steel Limited, Rahul Roy Chowdhary, DTC Projects Pvt. Ltd. and Snaefell Heights LLP etc., the Applicants in the Interlocutory Applications also supported the Order.

31. Since the Adjudicating Authority set aside the Order on the ground of material irregularity in holding e-Auction of 'Corporate Debtor' as 'a Going Concern', this Appellate Tribunal is not required to adjudicate the other contentions and suffice it to examine the irregularity pointed out by the Applicants as material irregularity which vitiates the entire process of e-Auction of 'Corporate Debtor' as 'a Going Concern'. If this Tribunal finds that it is not a material irregularity the Auction can be upheld while allowing this Appeal dismissing Applications. Otherwise, the Order under challenge is to be affirmed.

32. Considering the rival contention perusing the material on record, the sole point needs to be answered by this Tribunal is;

(1) whether the Appellant in Comp. App. (AT) (Ins.) No. 465/2022, the Liquidator committed any material irregularity in conducting e-Auction of 'Corporate Debtor' as 'a going Concern', if so the irregularity is material which vitiates the entire Auction process and whether the Auction dated 13.09.2021, is liable to be set aside.

⁵ C.P. (IB) No. 265/9/HDB/2017

⁶ (2018) SCC OnLine NCLAT 521

Point:

33. It is an admitted fact that the Adjudicating Authority ordered Liquidation of the 'Corporate Debtor' appointing Raj Singhania as a Liquidator/the Appellant in *Comp. App. (AT) (Ins.) No. 465/2022* who is under obligation to follow the procedure prescribed under IBC and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 in the process of Liquidation.

34. The Respondent did not dispute the procedure followed by the Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, till issue of corrigendum, extending time to entertain bids on deposit of EMD, therefore this Tribunal is not required to examine the irregularities till issue of corrigendum extending time for submitting bids and deposit of EMD and date and time for Auction.

35. The Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, proposing to sell the assets of the 'Corporate Debtor' as 'a Going Concern' issued e-Auction Notification dated 24.08.2021 fixing the date of e-Auction as 09.09.2021 from 3:00 PM to 5:00 PM and the last date to apply and submission of the documents and EMD as 07.09.2021 before 6:00 PM while fixing date and time of inspection between 10:00 AM and 5:00 PM on 07.09.2021. The notification was issued strictly adhering to Regulation 32(e) read with Regulation 32A and 33(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

36. The Adjudicating Authority examined the corrigendum and found that no opportunity was given to the prospective bidders in the corrigendum dated

08.09.2021 to inspect physically the 'Corporate Debtor' while maintaining other condition of initial notification as provided in any initial bid documents. It is irrational and unreasonable and fail to conduct the e-Auction in the fair manner and also pointed out that a Successful Highest Bidder is an LLP incorporated in the Year 2019 with a turnover for the FY ending by 31.03.2019, 31.03.2020 & 31.03.2021 was not considered by the Liquidator while confirming the bid in favour of Snaefell Heights LLP Appellant in *Comp. App. (AT) (Ins.) No. 264/2022*.

37. It is an undisputed fact that in the e-Auction Notification the Liquidator fixed time for inspection etc., date and time of e-Auction, time for submitting bids and deposit of EMD, date and time of inspection as 07.09.2021 between 10:00 AM and 5:00 PM. Since no bidders submitted their documents along with EMD, the Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, the Liquidator issued corrigendum only extending time for submission of EMD and the other documents till 11.08.2021 upto 5:00 PM and e-Auction date was extended till 30.09.2022 between 2:00 PM and 4:00 PM, while maintaining the other conditions of the Notification. The corrigendum is silent as to the date of inspection for submitting their documents of bid and deposit of Earnest Money, no date and time was fixed for inspection of the Corporate Creditor before and after submission of EMD documents. The Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022* in the Reply to the Interlocutory Applications contended that he issued an addendum but whereas he actually issued a corrigendum published in "Business Standard" and that the corrigendum was not published in

the “Ajkal” in vernacular in Calcutta State and that was not pointed out before the Adjudicating Authority. A corrigendum, errata and addendum are three different connotations. The word corrigendum was not defined anywhere except in dictionaries, as per Business Dictionary, the definition of errata “a short and minor revisions to a printed or published documents to correct spelling and/or typing mistakes. In contrast to addendum, an errata does not add to the text and, in contrast to the ‘corrigendum’, does not subtract from it.” In *‘Pravati Devi’ Vs. ‘State of U.P.’*⁷ the Allahabad High Court had an occasion to discuss words “Erratum”, “Errata” and “Corrigendum” etc. The word “Corrigendum” (plural corrigenda) is a word of Latin origin which means a thing to be corrected. The word “Erratum” (French) means a mistake in printing or writing; a note drawing attention to such a mistake. A list of mistakes added at the end of a book. The word “Errata” is a word of French origin and means ‘a thing should be corrected.’ After a book has been printed, it often happens that certain mistakes are found to have been overlooked. In later editions, it is usual to insert, a list of such mistakes and to point out the necessary corrections, these are called ‘corrigenda’.

38. In the present facts of the case, the Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022* issued corrigendum extending time not an addenda. Irrespective of nomenclature of the Notification, the purport of the Notification if taken as it is, the Notification dated 24.08.2021 i.e., by the corrigendum is intended to extend time for submission of documents of EMD and change of date and time of Auction. Admittedly, the Liquidator received no documents of EMD

⁷ 2007 7 AWC 7064 All

till expiry of time limited in the Original Notification dated 24.06.2021 and thus nobody intends to participate in the e-Auction Process. Therefore, it is the duty of the Liquidator to afford an opportunity to inspect the 'Corporate Debtor' enabling the participant or interested bidders to submit the EMD Application, as participation in the e-Auction Process is to maximize the Assets of the 'Corporate Debtor'. But in the corrigendum extending date and time for submission of EMD and fixing time and date for conducting the e-Auction of the 'Corporate Debtor' the other conditions shall remain as it is, that means, the date of inspection as fixed in the Original Notification was remained as it is, though, none inspected the 'Corporate Debtor' within the time prescribed in the Original Notification for inspection. In such case, the intending bidder deprived of their right to inspect the 'Corporate Debtor' to participate in the e-Auction Process for the maximization of Corporate Assets that causes serious prejudice to the Committee of Creditors and depriving the proposed interested bidders to bid the 'Corporate Debtor' in competitive bidding process.

39. On account of failure to fix date and time for inspection of 'Corporate Debtor' by the interested bidders before conducting the Auction, possibility for submission of documents of EMD to participate in the e-Auction would not arise normally, thereby the questions of maximization doesn't arise hence it is a matter of serious material irregularity, which vitiates the entire e-Auction Process.

40. At this stage, it is relevant to extract the Insolvency Board of India (Liquidation Process) Regulations, 2016 and the Schedule prescribed under

Regulations 32 and 32A, Chapter 6 of the IBBI Regulations, 2016 deals with sale of assets etc., by the Liquidator. The same is being extracted as hereunder:

“32. [Sale of Assets, etc.

The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*
- (f) the business(s) of the corporate debtor as a going concern:*

[Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

[32A. Sale as a going concern.

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under subregulation (2) of regulation 39C of the Insolvency and Bankruptcy Board

of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]”

41. According to Regulation 33, the Liquidator shall order and to sell the assets of the ‘Corporate Debtor’ to an Auction in a manner specified in the Schedule. Schedule I describes the mode of sale. The first mode is Auction whether an asset is to be sold through an Auction that Liquidator shall do so in a manner satisfied herein:

33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties."

42. In the present case, the Liquidator made an attempt to sell the 'Corporate Debtor' as 'a Going Concern' by Public Auction but committed a serious material irregularity in issuing corrigendum for extension of time for both submission of EMD documents and date and time for Auction, without specified date and time of inspection of 'Corporate Debtor' which vitiates the entire process.

43. The Adjudicating Authority has relied upon the Judgement in '*Isherweod*' Vs. '*WhitMore*'⁸ wherein a tender made at such a late or of the appointed date that the buyer has no time to inspect them is not good, the reliance is also placed on a Judgement in '*Startup*' Vs. '*Macdonal*'⁹. A reasonable opportunity of inspection is all that the Act requires. It is the receiving parties business to verify, not the delivery party's supply that the further goods are according to the contract. Keeping in view of the principle laid down in the above Judgements the Adjudicating Authority tested the validity of the Auction and the corrigendum and Auction conducted in pursuance of the same receiving bids in '*Manoj I Naik & Associates*' (referred *Supra*), the Hon'ble Supreme Court held

⁸ (1843) 11 M & W 347 : 63 RR 634

⁹ (1843) 6 Man & G 593 : 64 RR 810

that there can be no speck of doubt that the properties of a company under Liquidation when sold there has to be a proper Auction, a fair one. It must fetch the maximum price. It takes care of Statutory Dues, dues of the workmen and the Creditors. It has its own public character. In another Judgement in '**Bank of India**' (*referred Supra*), the Court held as follows:

“The sanctity of auction process has to be maintained i.e., once it is closed, normally it should not be reopened as generally understood. As stated earlier, generally the same can be done only on two grounds i.e., fraud or material irregularity occurred in the process of auction. However, another ground is added by IBC, 2016 i.e., maximization of value of assets of corporate debtor’. Thus, when a situation of challenge to auction process arises on the ground of assets not being sold at the maximum possible value, then, also in our considered view, auction process can be enquired into and such process can be set aside on this ground also”.

44. The principle laid down in the above Judgement are not in controversy and it is evident from Regulation 33 and as per Schedule I, the Liquidator must make every endeavor to get maximum sale price for the benefit of the Committee of Creditors but in the instant case, on account of failure of the Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022* failure to fix time and date for inspection, deprived the many interested bidders to participate in the bid and consequently failed to maximize the 'Corporate Debtor' such irregularity can be termed as material irregularity which vitiates the entire process of Liquidation. Therefore, the Adjudicating Authority rightly held that the Liquidator committed material irregularity in conducting e-Auction of 'Corporate Debtor' and failed to realize the maximum price on account of such irregularity.

45. The Learned Counsel for the Respondents submits that the material irregularity in holding the Auction of the property may sometimes cause serious prejudice and completion of process of Liquidation within one year is not mandatory, in support of his contention that he has drawn the attention of this Tribunal in '*Prakash Chandra Kapoor & Anr.*' (*referred Supra*).

46. In view of the principle laid down in the above Judgement, completion of Liquidation Process within one year in terms of Regulation 32A(4) is not mandatory. The main endeavor of the Liquidator must be value of maximization of the 'Corporate Debtor' in case of holding the Auction in a hurried manner without complying the procedure, it would vitiate the entire proceedings.

47. In '*Binani Industries Limited*' (*referred Supra*), this Tribunal held that there is an urgency and rush shown by the Liquidator to complete the same within 90 days, not an issue the value of maximization of the 'Corporate Debtor' especially when the entity is being transferred as an ongoing concern basis and the value maximization being inherent goal under CIRP. In the present facts of the case, the Liquidator/Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, did not make an endeavor to maximize the value of the 'Corporate Debtor' which would result in reduction of the amount being distributed to the Creditors. Therefore, such attempt made by the Liquidator is against the interest of Committee of Creditors.

48. The Learned Counsel also has drawn the attention of this Tribunal to '*Bharat Heavy Electricals Ltd.*' (*referred Supra*), to contend that failure to provide pre-bidding qualification leads to defect to Auction whereas in '*Arun*

Kumar Jagatramka' (referred Supra), the principle regarding the bar contained under Section 29A is applicable to the proceedings under Liquidation even to the qualification of the Liquidator. But those two Judgements are not relevant for the purpose of deciding the present issue. In any view of the matter, it is clear that the Appellant in *Comp. App. (AT) (Ins.) No. 465/2022*, committed a material irregularity which resulted in reduction of amount to be distributed among the Creditors and against the interest of the Committee of Creditors and so also failed to maximize the value of the 'Corporate Debtor'. Though, Regulation 32A(4) is not mandatory. Consequently, the Order passed by the Adjudicating Authority is held to be in accordance with law. We find no ground to interfere with the well-considered Order of the Adjudicating Authority, warranting interference of this Tribunal.

49. Consequently, the Appeals are liable to be dismissed.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayan Murthy]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

**Principal Bench,
New Delhi
30th September, 2022**

himanshu