IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT II

IA No. 1012/2021
IN
CP No. 1042 (IB)/MB/C-II/2017

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Mr. Udupi Vasudev Ganesh Nayak

...Applicant/Liquidator

In the matter of

CP No. 1042 (IB)/MB/C-II/2017

P&S Jewellery Limited
...Corporate Applicant/Corporate Debtor

Order Delivered on: 29.10.2021

Coram:

Mr. Ashok Kumar Borah	:	Hon'ble Member Judicial
Mr. Shyam Babu Gautam	:	Hon'ble Member Technical

Appearance:

For the Liquidator : Mr. Harish Pandya, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is an application filed by Liquidator Mr. Udupi Vasudev Ganesh Nayak, seeking necessary directions under Section 60(5) of

Insolvency and Bankruptcy Code, 2016 for ratifying and confirming the e-auction sale of the Lot – 1 assets of the Corporate Applicant comprising of Gala Nos. 272, 273, 274 and 275, 2nd Floor, B-Wing, Sanjay Building No. 5, Akshay Mittal Industrial Premises Co-Op Society Ltd. (hereinafter referred to as the "said Lot-1 asset") and Lot – 2 asset of the Corporate Applicant, comprising of Land & Building Known as P&S Corporate House situated on Plot No. A 56, Road No. 1, Marol Industrial Estate, MIDC, Andheri (E), Mumbai – 400093 (hereinafter referred to as the "said Lot – 2 asset"), in favour of the successful bidder(s), Mr. Hitesh Vasantlal Bhanushali and parties acting in concert for Lot – 1 asset and M/s. Jain International Trade Organisation for Lot – 2 asset, in E-auction held on 26th February 2021.

<u>Submissions made by Applicant</u>:

2. The Applicant states and submits that this Tribunal vide order dated 30.07.2018, ordered Liquidation of the Corporate Applicant and Applicant herein appointed as the Liquidator.
3. It is pertinent to note that as on the date of Liquidation of the Corporate Applicant, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 amended upto 01.04.2018 (**"Liquidation Regulations as at 01.04.2018"**) is applicable.
4. That in the Regular course of Liquidation, the Applicant herein issued as E- Auction sale notice dated 19.11.2019 for the E-Auction scheduled to be held on 05.12.2019, for inter-alia the auction sale of the said Lot – 1 and Lot – 2 asset as described above and invited bids thereon. It is further submitted that, the Reserved Priced fixed

for the sale of the said Lot -1 asset was Rs.4.66 crores and Lot – 2 was Rs.50.69 crores. Thereafter, the said E-auction held on 05.12.2019 failed and no bids were received for the sale of the said Lot – 1 and Lot – 2 asset. The Applicant, therefore, issued another E-Auction sale notice dated 11.12.2019 for the E-Auction scheduled to be held on 21.01.2020, but met the same fate and was concluded as failed since no bids were received from any interested purchaser.

5. Further applicant submits that due to the repeated failed attempts, the Applicant herein once again called for a stakeholders committee meeting dated 16.01.2021 and it was decided therein to further reduce the Reserved Price of Lot – 1 asset to Rs.3.10 crores and Lot – 2 assets to Rs.36.25 crores, respectively. Accordingly, the Applicant issued another E-Auction sale notice dated 23.01.201 for the E-Auction scheduled to be held on 11.02.2021. Thereafter, E-Auction scheduled to be held on 11.02.2021 was further postponed and it was then decided to extend the date of submission of EMD till 23.02.2021 and accordingly the E-Auction was then scheduled to be held on 26.02.2021. In connection to the said development, the Applicant herein had issued a Corrigendum dated 06.02.2021, to the earlier E-Auction sale notice dated 23.01.2021.

In the said E-Auction held on 26.02.2021, successful bids were received for both Lot – 1 and Lot – 2 assets and the same were accordingly sold for Rs.3.10 crores and Rs.41.25 crores, respectively. The Applicant on behalf of the Corporate Applicant issued Letter of Intent (**“LoI”**) dated 03.03.2021.

6. Further Applicant submits that the successful bidders of both the Lot – 1 and Lot – 2 assets were allotted a time limit of 90 days to pay the entire sale consideration as per the amended Liquidation Regulations and thus, the LoIs were executed stipulating 90 days period to pay the balance sale consideration, however, the same being subject to approval by this Tribunal.
7. It is further submitted that since the Liquidation commencement date of the Corporate Applicant is 30.07.2018, the Liquidation Regulations as at 01.04.2018 is applicable to the present Corporate Applicant. As per the Schedule – I, point 12 of the said Liquidation Regulations as at 01.04.2018, the maximum time limit stipulated to pay the balance sale consideration is 15 days opposed to 90 days in the amended Liquidation Regulations. The relevant extract of the said point 12 of Schedule – I of the Liquidation Regulations as at 01.04.2018 in juxtaposition to the point 12 of Schedule – I of the latest amemded Liquidation Regulations is reproduced hereunder for the convenience of this Tribunal:

Particulars	**Liquidation Regulations as at 01.04.2018. (Applicable to the present Corporate Applicant).**	**Liquidation Regulation as at 04.03.2021. (Presently in force).**
Schedule – I, Point 12	*(12) On the close of the auction, the highest bidder shall be invited to provide balance sale*	*(12) On the close of the auction, the highest bidder shall be invited to provide balance sale*

	*consideration **within fifteen days of the date when he is invited to provide the balance sale consideration.** On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.*	*consideration **within ninety days of the date of such demand:*** *Provided that payment made after thirty days shall attract interest at rate of 12%* *Provided further that the sale shall be cancelled if the payment is not received within ninety days.*

8. Thus, from a perusal of the above extract of the Liquidation Regulation as at 01.04.2018 (applicable) and the amended Liquidation Regulation in juxtaposition to each other, it is clear that due to a change in law, the present circumstances requires indulgence of this Tribunal to ratify and allow the Auction Sale of the Lot – 1 and Lot – 2 assets of the corporate Applicant, since the Applicant herein is not empowered as a Liquidator to accommodate the requests of the successful bidders to pay the balance sale consideration within 90 days as per the amended Liquidation Regulations, when the Liquidation Regulations as at 01.04.2018 (old) is applicable to the present Corporate Applicant Which

stipulate a time – limit of only 15 days from the date of demand i.e. the signing of the LoI.

9. --------

10. --------

11. We have perused the records available in the present application, it would be appropriate to reproduce relevant provisions for reference to the context. Schedule I of Liquidation Regulations deals with 'Mode of sale' under Regulation 33. Regulation 33 reads as follows:-

"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."

Schedule I relates to Auction. Clause 12- earlier read as follows:

"(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within fifteen days of the date when he is invited to provide the balance sale consideration. On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale."

After substitution vide Notification No. IBBI/2019-20/GN/REG.047 dated 25.07.2019, Paras 12 and 13 now read as follows:-

"(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 payment interest is not received within ninety days.

(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale."

12. Timeline of 15 days was considered by the IBBI and the concerned amendment in Regulation was brought in. Reference has been made to other amendments also which were made when Gazette dated 25.07.2019 was published. Then there is Circular dated 26.08.2019 which may in the present matter be referred which reads as follows:-

"Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

CIRCULAR

No. IBBI/LIQ/024/2019 26th August, 2019

To

All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Applicability of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 notified on 25th July, 2019.

The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (Amendment Regulations) on 25th July, 2019. They came into force on the date of their publication in the Official Gazette, that is, on 25th July, 2019.

2. The stakeholders have expressed a difficulty in applying the Amendment Regulations to a liquidation process, which commenced before 25 th July, 2019. It is reiterated that the provisions of the Amendment Regulations are not applicable to the liquidation processes, which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to liquidation processes, which commenced on or after 25th July, 2019.

3. This Circular is issued in exercise of the powers under section 196 of the Insolvency and Bankruptcy Code, 2016.

Yours faithfully,
(I. Sreekara Rao)
Chief General Manager
Email: sreekararao@ibbi.gov.in"

13. This Adjudicating Authority not inclined to give benefit of provision of 90 days to pay balance sale consideration as per amended clause 12 of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Relying on

Circular issued by the IBBI, we hold that benefit cannot be granted as the liquidation order in the proceeding was passed before the amendment dated 25.07.2019 benefit under amended clause 12, could not be granted. Therefore, E-Auction dated 26.02.2021 is null and void as bad in law.

14. Liquidator is directed to get assets valued again and issue fresh E-Auction sale notice in accordance with Liquidation Regulations as at 01.04.2018 (applicable) and complete Auction expeditiously.
15. With the aforesaid observations Application IA 1012 of 2021 In CP No. 1042 of 2017, is stands disposed of.

Dated the 29th day of October, 2021

Sd/-	**Sd/-**
SHYAM BABU GAUTAM **Member (Technical)**	**ASHOK KUMAR BORAH** **Member (Judicial)**

SAM
29.10.2021