NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 1059 of 2021

IN THE MATTER OF:

Jain International Trade Organization,
101, Solitare Corporate Park,
Andheri (East) Mumbai- 400053 **...Appellant**

Versus

Mr. Udupi Vasudev Ganesh Naik,
Liquidator of M/s. P&S Jewellery Limited
(A company under Liquidation)
303/305, Rajmata CHS Ltd., Near RTO,
Four Bungalows, Andheri (W),
Mumbai - 400053 **...Respondent**

For Appellant: Mr. Gopal Jain, Senior Advocate with Mr. Sachin Midha, Advocate.

For Respondent: Mr. Mohd. Azeem Khan, Ms. Ishani Mukherjee, Advocates for Liquidator. Mr. Vasudev Ganesh Nayak Udupi, Liquidator in person. Mr. Abhijeet Sinha, Mr. Girirajpati Kaushal, Mr. Anuj Tiwari, Ms. Tuhina Mishra, Mr. Aman Pandey, Advocates (Intervenor for Shareholder)

With
Company Appeal (AT)Insolvency No. 1096 of 2021

IN THE MATTER OF:

1. Hitesh Vasantlal Bhanushali,
198/1583, Motilal Nagar – I,
Road No. 5, Goregoan (West),

Mumbai – 400104

...Appellant No. 1

2. Jivan Parbat Patel
A-62/304, Meghdoot CHSL,
C S Road, Near Bank of Baroda,
Anand Nagar, Dahisar East,
Mumbai – 400068

...Appellant No. 2

3. Ravji Murji Mange,
B – 1101, Ekta Suprabhat CSL,
New Siddharth Nagar, Goregaon West
Mumbai – 400104

...Appellant No. 3

4. Dhaval Balwantrai Mehta
302, Shubham Heritage, Behind Gopal
Building, Ambadi Road, Vasai Road,
Dist. Palghar - 401202

...Appellant No. 4

Versus

Mr. Udupi Vasudev Ganesh Naik,
Liquidator of M/s. P&S Jewellery Limited
(A company under Liquidation)
303/305, Rajmata CHS Ltd., Near RTO,
Four Bungalows, Andheri (W),
Mumbai - 400053

...Respondent

For Appellant: Mr. Gaurangi Patil, Mr. Aditya Ajgaonkar, Mr. Yash Pandya, Ms. Damini Joshi, Advocates.

For Respondent: Mr. Mohd. Azeem Khan, Ms. Ishani Mukherjee, Advocates for Liquidator. Mr. Vasudev Ganesh Nayak Udupi, Liquidator in person.

<u>J U D G E M E N T</u>

Ashok Bhushan, J:

1. These two Appeals have been filed against the same Impugned Order dated 29.10.2021 passed by National Company Law Tribunal, Mumbai Bench, Court –II (Adjudicating Authority) in I.A. No. 1012/2021 in CP No. 1042(IB)/MB/C-II/2017. By which Order, I.A. No. 1012/2021 filed by the Liquidator for confirmation of the Auction Sale of Lot No. 1 and Lot No. 2 has been disposed of directing the Liquidator to issue fresh e-Auction Sale Notice.

2. The Appellants in both the Appeals are the 'Successful Auction Purchasers' of e-Auction Sale held on 26th February, 2021, wherein the Appellant-'Jain International Trade Organisation' submitted its bid for Lot No. 2 whereas the Appellants-'Hitesh Vasantlal Bhanushali and Ors.' submitted its bid for Lot No. 1.

3. Brief facts of the case and the sequence of the events need to be noted for deciding these Appeals. By an Order dated 30th July, 2018, National Company Law Tribunal, Mumbai Bench allowed an Application filed under Section 33 of the Code and passed an Order directing for liquidation of the Corporate Debtor-'M/s. P&S Jewellery Limited'. The Liquidator-Respondent No. 1 issued e-Auction Sale Notice for e-Auction to be held on 05th December, 2019, 21st January, 2020 and 11th January, 2020 respectively for sale of the assets of the Corporate Debtor which included the reserve price for Lot No. 2 Asset at Rs. 50.69 Crore and Rs. 41.25 Crore for Lot No. 1. All the above three auctions failed. On 23rd January, 2021, Liquidator issued another e-Auction Sale Notice by further reducing the reserve price for Lot No. 2 Asset to 36.25 Crore and Rs. 3.10 Crore for Lot No. 1. Date of submitting EMD (Earnest Money Deposit) was extended till 23rd January, 2021. e-Auction was to be held on 26th February, 2021, Appellant-'Jain International Trade Organisation' gave bid of Rs. 41.25 Crore which was declared to be 'Successful Bidder' for Lot No. 2. The Appellant-'Mr. Hitesh Vasantlal Bhanushali and Ors.' gave bid of Rs. 3.10 Crore for Lot No. 1. Both the Appellant had paid the EMD Amount and deposited the entire sale consideration with interest of twelve per cent (12%) per annum for consideration deposited after 30 days. The Letter of Intent ('LoI' in short) dated 3rd March, 2021 was issued to 'Jain International Trade Organisation' for Lot No. 2 providing for payment of sale consideration similarly LoI was issued dated 3rd March, 2021 to 'Hitesh Vasantlal Bhanushali and Ors.'. Both the Appellants deposited the entire sale consideration within the period of 90 days as provided in the Letter of Intent as well as in the Statutory Regulation of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. After depositing the entire sale consideration by both the Appellants, an I.A. No. 1012 of 2021 was filed by the Liquidator before the Adjudicating Authority seeking relief for confirmation of the sale conducted by Liquidator under the e-Auction dated 26th February, 2021 of Lot Nos. 1 and 2. Both the Appellants filed an I.A. No. 1535 of 2021 and 1510 of 2021 respectively with prayer seeking direction to Liquidator to handover possession thereof and execute the sale certificate in respect of Lot No 2 and Lot No. 1 respectively.

4. Liquidator before the Adjudicating Authority submitted that e-Auction conducted on 26th February, 2021 for Lot No. 1 and Lot No. 2 were in accordance with the Liquidation Regulations and 90 Days time was allowed to the Auction Purchaser as per Schedule I, Clause 12 of the IBBI (Liquidation Process), Regulations, 2016.

5. Schedule I, Clause 12 was amended by Notification dated 25th July, 2019 by which it was provided that the highest bidder shall be invited to deposit balance sale consideration within 90 days of the date of such demand whereas prior to 25th July, 2019, Schedule I, Clause 12 provided that Bidder shall be invited to deposit the balance sale consideration within 15 days. The Adjudicating Authority noticed the amendments in the Liquidation Regulations by Notification dated 25th July, 2019 as well as the Circular dated 26th August, 2019 issued by the Board. The Adjudicating Authority took the view that in view of the Circular dated 26th August, 2019, the amended Liquidation Regulations, Schedule I, Clause 12 as amended by Notification dated 25th July, 2019 was not complied with regard to e-Auction held on 26th February, 2021 and the Adjudicating Authority held that amendment notification dated 25th July, 2019 shall be applicable to the Liquidation Process which occur after the said date and in the present case, Liquidation was passed on 30th July, 2018, un-amended Liquidation Regulation, Schedule I, Clause 12 shall apply and the Auction Purchasers could not have been given 90 days time to deposit balance sale consideration hence the e-Auction cannot be approved. By the Impugned Order, the Adjudicating Authority virtually rejected the I.A. No. 1012 of 2021 filed by the Liquidator for confirmation of the Auction and directed to issue fresh e-Auction Sale Notice. Aggrieved by the said Order, both the Appellants have come up in these Appeals.

6. We have heard Mr. Gopal Jain, Sr. Advocate with Mr. Gaurangi Patil, Advocate for the Appellants and Mr. Vasudev Ganesh Nayak Udupi, Liquidator has appeared in person. Mr. Abhijeet Sinha, Advocate with Mr. Girirajpati Kaushal and Ors. appeared for Intervener.

7. Learned Counsel for the Appellants challenging the Impugned Order contends that e-Auction Sale Notice under which payments were deposited in the e-Auction was issued on 23rd January, 2021 i.e. subsequent to the amendment of Schedule I, Clause 12 of the IBBI (Liquidation Process) Regulations, 2016 dated 25th July, 2019 hence the amended Regulations were fully applicable under which the auction purchasers were entitled to deposit the entire sale consideration within 90 days. The Statutory Regulations as amended by Notification dated 25th July, 2019 clearly provides 90 days time to deposit the balance sale consideration. The Circular of the Board dated 26th August, 2019 relied by the Adjudicating Authority has no application in the present case. The Circular dated 26th August, 2019 cannot whittle down the statutory provisions as amended by Notification dated 25th July, 2019. The Board has by Circular dated 26th August, 2019 tried to restrict the Application of Regulations which is impermissible in law. The issues raised in the present case are fully covered by Judgment of this

Hon'ble Tribunal in Company Appeal (AT) Ins. No. 398 of 2021 in the matter of 'Mr. Sundaresh Bhat, Liquidator of ABG Shipyard Limited' where this Tribunal has considered the Circular dated 26th August, 2019 and has taken the view that the Circular shall not take effect the statutory notification.

8. Liquidator appearing in person in his submissions, has supported the submissions of the Appellants and submitted that e-Auction conducted by the Liquidator on 26th February, 2019 was in accordance with law and the Liquidation Regulations as amended on 25th July, 2019 were fully applicable in the present case to which Appellant were entitled to deposit the entire sale consideration within 90 days.

9. Mr. Abhijeet Sinha, Advocate appearing for Interveners, shareholder and suspended director of the Corporate Debtor submits that Circular issued by the Board i.e. 26th August, 2019 was fully applicable in the present case since the Liquidation Process was initiated on 30th July, 2018 i.e. much before 25th July, 2019 by which notification Schedule I, Clause 12 got amended, the amended regulation dated 25th July, 2019 is not applicable. Appellants being only the Bidder, no right accrued in their favour by the payments with regard to the assets of the Corporate Debtor. It is submitted that the Circular dated 26th August, 2019 has been issued by the Board in exercise of the power under Section 196 of the Insolvency and Bankruptcy Code, 2016. Mr. Abhijeet Sinha further submits that the Circular dated 26th August, 2019 has been withdrawn by subsequent Circular dated 06th May, 2022 to clarify the provisions of Regulations 2A, 21A, 31A and 44 as inserted by Amendment dated 25th July, 2019.

10. We have considered the submissions of Learned Counsel for the Parties and perused the record.

11. In the present case, the Order for Liquidation was passed by the Adjudicating Authority on 30th July, 2018. e-Auction Notices were issued by Liquidator on 19th November, 2019, 11th December, 2019 and 21st December, 2020 i.e. subsequent to the amendment dated 25th July, 2019. The e-Auction in which the Appellants have been declared as Successful Bidders was issued on 23rd January, 2021 and e-Auction took place on 26th February, 2021 in which the Appellants were declared to be Successful Bidder for Lot No. 2 and Lot No. 1 respectively. After the e-Auction, Letter of Intent was issued by the Liquidator to both the Appellants. It is relevant to notice paragraph 3 of the Letter of Intent dated 3rd March, 2021. Paragraph 3 of the 'LoI' is as follows:

> *"3. **Payment of Sale consideration***
>
> *3.1. The Successful Bidder shall pay amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) being the difference of 10% of the Sale consideration and the EMD already deposited with the liquidator, on or before 11th March, 2021. The same to be deposited in the Bank Account of the Company operated by the Liquidator, held with HDFC bank detail already available with you.*
>
> *3.2. The Successful Bidder shall pay bid amount Rs. 41,25,00,000/- (Rupees Forty One Crore Twenty Five Lacs only) ('the Sale consideration) Less the EMD already paid and Rupees Fifty lakhs paid against demand mentioned under para 3.1., to the Bank account of the Company operated by the Liquidator*

within 90 of the demand. On payment of full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer the asset and the asset shall be delivered to him in the manner specified in the terms of sale.
The payments made after thirty days shall attract interest at the rate of 12% p.a.”

12. The Appellant-‘Jain International Trade Organisation’ deposited the entire sale consideration within the period of 90 days by last payment being made on 30th April, 2021 similarly the Appellant in Company Appeal (AT) Ins. No. 1096 of 2021 also deposited the entire sale consideration within the period of 90 days as provided by ‘Letter of Intent’ dated 3rd March, 2021.

13. The issue in the present case moves around the consequence and interpretation of IBBI (Liquidation Process), Regulations, Schedule I, Clause 12 as amended on 25th July, 2019. Schedule I of the IBBI (Liquidation Process), Regulations contains heading ‘Mode of Sale’ which is in reference to Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016. Regulation 33 is 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."

14. Schedule I, Clause 12 before 25th July, 2019 and after 25th July, 2019 is as follows:

Particulars	*Liquidation Regulations as at 01.04.2018.* *(Applicable to the present Corporate Applicant).* ***Before25th July, 2019***.	*Liquidation Regulation as at 04.03.2021. (Presently in force).* ***After 25th July, 2019.***
Schedule I, Point 12	*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***	*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*

	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.*	*made after thirty days shall attract interest at the rate of 12%* *Provided further that the sale shall be cancelled if the payment is not received within ninety days.*

15. A bare perusal of Schedule I, Clause 12 indicates that it contains a time period under which on the close of Auction, the highest bidder shall be invited to provide balance sale consideration. The applicability of Schedule I, Clause 12 arises only 'on the close of auction'.

16. In the present case, the Auction in which the Appellant were declared highest bidders were closed on 26th February, 2021 and e-Auction Notice was issued for the said Auction on 23rd January, 2021. Even the earlier e-Auction Notice which were issued by the Liquidator, for the first time on 19th November, 2019 i.e. subsequent to the amended Regulations dated 25th July, 2019. In the Schedule I, Clause 12, there is no indication that period of 15 days or 90 days which is provided by un-amended and amended regulation has any nexus with the date of the Order of the Liquidation Regulation 33 under which this Schedule is framed deals with 'Mode of Sale'. The Mode of Sale as provided in Regulation 33 triggers in after several steps taken by the Liquidator after the Order of the Liquidation is passed.

17. Now we come to the Circular dated 26th August, 2019 which is relied by Respondents. Circular dated 26th August, 2019 is 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 25th 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,
Sd/-
(I. Sreekara Rao)
Chief General Manager
Email: sreekararao@ibbi.gov.in"
(Emphasis Supplied)

18. The Circular provides that provisions of amended regulations are not applicable to the Liquidation Process, which had commenced before coming into force of the said amendment regulations and they are applicable only to liquidation process, which commenced on or after 25th July, 2019. By Amendment Regulations, 2019, amendments were made in Regulations 2A, Regulation 21A and Regulation 31A. The Circular dated 26th August, 2019 does not even make a reference to Schedule I, Clause 12 which is time period for deposit of Balance Sale Consideration by Successful Bidder. The Circular dated 26th August, 2019 has been subsequently withdrawn by another Circular dated 06th May, 2022. The Circular dated 06th May, 2022 withdrawing the earlier Circular is relevant which is to the following effect:

"Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

CIRCULAR

No. IBBI/LIQ/2/2022 *06th May, 2022*

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,

Subject: Withdrawal of Circular dated 26th August, 2019 regarding applicability of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 notified on 25th July, 2019.

The Board had issued a Circular dated 26th August 2019 clarifying that the provisions of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, *2019 (Amendment Regulations 2019) were applicable only to liquidation processes, which commenced on or after 25th July 2019.*

2. In order to bring more clarity, the Board has notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2022 to clarify that provisions of regulations 2A, 21A, 31A and 44 as amended / inserted by the Amendment Regulations 2019 apply only to the liquidation processes commencing on or after 25th July, 2019.

3. In view of above, the Circular dated 26th August 2019 is withdrawn with immediate effect.

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

Yours faithfully,
Sd/-
(Rajesh Tiwari)
General Manager
Tel: 011-2346 2864
Email: trajesh.74@ibbi.gov.in"

19. The Circular dated 06th May, 2022 refers to Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019. It is clear that by the said Amendment Regulation, explanations have been added in Regulations 2A, 21A, 31A and 44 by the Amendment Regulation, 2022 neither there is any explanation nor there is any indication with regard to Schedule I, Clause 12. Schedule I, Clause 12 was on a different subject with regard to which neither there is any indication in the Circular dated 26th August, 2019 nor there is any explanation in the Circular dated 06th May, 2022. There is no reference to Schedule I in the IBBI (Liquidation Process) (Amendment) Regulations, 2022 dated 28th April, 2022 also. When we look into the Circular dated 06th May, 2022 and IBBI (Liquidation Process) (Amendment) Regulations, 2022, it is clear that explanation has been added that in Regulations 2A, 21A, 31A and 44, the requirement of those regulations shall apply to the liquidation process commencing on or after the date of the commencement of the IBBI (Liquidation Process) (Amendment) Regulations, 2019. With regard to the amendments incorporated in Schedule I, Clause 12 of the Liquidation Regulations neither there is any explanation nor any clarification in Circular dated 06th May, 2022 as well as Amendment Regulations, 2022. From the above statutory schemes, it is clear that amendments made in Schedule I, Clause 12 were in no manner affected by Circular dated 26th August, 2019, Circular dated 06th May, 2022 and Amendment Regulations, 2022, the reason is obvious that provisions of Schedule I, Clause 12 is operated in different fields i.e. with regard to the 'mode of sale' and Clause 12 even prior to amendment and after amendment begin with the word 'on the close of the auction'. Thus applicability of Schedule I, Clause 12 was attracted 'on the close of Auction'. Thus statutory requirement under Clause 12, Schedule I had no concern and has no relation with the date of passing of the Liquidation Order under Section 33. The Board without considering the statutory scheme which has been brought into force by the Amendment in Schedule I, Clause 12, by the Circular dated 26th August, 2019 observed that amendment regulations are not applicable to the Liquidation Process which had commenced before coming into force of the Amendment Regulations. The said observation may be relevant with regard to the Regulations 2A, 21A, 31A and 44 which has been clarified by Amendment Regulations, 2022 dated 28th April, 2022. It has been noted above that the

Amendment Regulation 2022 dated 28th April, 2022 is clarificatory in nature which in no manner affect the amendments made in Schedule I, Clause 12 by Amendment dated 25th July, 2019. From the above, we are clear in our mind that Amended Regulation Schedule I, Clause 12 came into force with effect from 25th July, 2019 i.e. the date on which the amendment regulations was published in the Gazette. There is no doubt that Amendment Regulation dated 25th July, 2019 amending Schedule I, Clause 12 is only prospective and shall not have effect on Auctions which were held prior to the amendment. The Circular dated 26th August, 2019 issued by the Board had neither any indication nor it can be said to have no any application with regard to the amendments brought into the Schedule I, Clause 12 by Notification dated 25th July, 2019, hence the time period of 90 days which was introduced in the Amendment dated 25th July, 2019 can be availed by the Auction Purchasers which Auction took place subsequent to the amendment dated 25th July, 2019.

20. There is one more reason due to which the Circular dated 26th August, 2019 can be held not to affect the statutory amendments brought into Schedule I, Clause 12 by Notification dated 25th July, 2019. The Circular was issued by the board in exercise of its power of issuing guidelines under Section 196(p) whereas the Amendment Regulation dated 25th July, 2019 were issued in exercise of power of the Board to make a Regulations which have statutory force. It is well settled that Circular and Guidelines can have no effect when the statutory provisions are clear. No circulars can be read in any manner overriding the statutory effect of a statutory provision. In this context, we refer to Judgment of the Hon'ble Supreme Court of India in **(2008) 14 SCC 336, 'M/s. Sandur Micro Circuits Ltd. Vs. Commissioner of Central Excise, Belgaum'**. In the above case also, the question arose as to whether the Circular issued by Custom Excise and Service Tax Appellate Tribunal will have precedence over the notification issued. In paragraph 6 of the Judgment, following has been laid down:

> "*6. The issue relating to effectiveness of a circular contrary to a notification statutorily issued has been examined by this Court in several cases. A circular cannot take away the effect of notifications statutorily issued. In fact in certain cases it has been held that the circular cannot whittle down the exemption notification and restrict the scope of the exemption notification or hit it down. In other words, it was held that by issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot be imposed. The principle is applicable to the instant cases also, though the controversy is of different nature."*

21. Learned Counsel for the Appellant has also placed reliance on a Judgment of this Tribunal dated 20th September, 2021 in Company Appeal (AT) Ins. No. 398 of 2021 in the matter of Mr. Sundaresh Bhat, Liquidator of ABG Shipyard Limited where this Tribunal had occasion to consider amendments made in Clause 12 of Schedule I dated 25th July, 2019 as well as the Circular of the Board issued on 26th August, 2019. In paragraph 12 and 13, following has been laid down by this Tribunal:

"12. Having heard Counsel for Appellant and Amicus Curiae and considering the material placed by them, it does appear to us that the laudable object with which Clause 12 was substituted is defeated by issuing such Circular dated 26.08.2019. When in an auction somebody has given a higher bid, if instead of 15 days, the person gets a breathing time of 90 days to make a payment, no other person gets affected. We have seen the Discussion Paper referred to by the Learned Amicus Curiae which was alongwith the Draft Regulations dated 27.04.2019. The Discussion Paper discussed various issues that had been brought up by stakeholders relating to liquidation process under IBC. Reference was made to judgments where direction was given with regard to time during which process should be completed. Para 3.2 of the Discussion Paper referred to Regulation 32 and the option to explore sale of Corporate Debtor as a going concern along with the other available sale options and the need to provide complete framework to enable the Liquidator to exercise the option. The Discussion Paper tries to balance need to be within timeframe for maximisation of the value and the need to have sufficient time for steps to be taken. In such backdrop, Para 5.2.2 (referred supra) was included in the Discussion Paper with regard to difficulties found by Liquidators when time is of mere 15 days.

13. Perusing the Liquidation Regulations and Clause 12 of Schedule I as was subsequently introduced on 25.07.2019, the substituted Regulation which has been brought by way of amendment does not show that the Regulation is to be applied only prospectively. It is open *ended provision relating to procedural law which in no way states that it will not apply to pending liquidation processes on the date of substitution. In our view, the Circular dated 26.08.2019 could not interpret the Regulations in the manner it is done. Power of Board under Section 196(1) (p) or (t) to issue guidelines cannot be expanded to interpreting provisions made. That is job of Courts to interpret and apply law. Reading the Regulation as amended we find it must be held to be applicable to liquidation process which are pending, and the provision can be applied considering stage of the process, irrespective of the date whether the liquidation process started before 25.07.2019 or on or after 25.07.2019 when Clause 12 Schedule I of the Regulations was substituted. This is not to say that sales already cancelled before 25.07.2019 for default of payment under earlier existing clause 12 can be reopened. Liquidators can rely on the amendment at the time of issue of Auction Notice being issued, irrespective of date of liquidation order of Adjudicating Authority. The Circular dated 26.08.2019, we hold is not legally enforceable to interpret applicability. Such Circular cannot be in the nature of substituting existing Regulation in the name of guidelines. The guidelines which are inconsistent with the subordinate legislation would not be enforceable. If provision is clear, external aid, that too inconsistent, cannot be applied. The provision has to be enforced by Tribunal as it is."*

22. The above Judgement do support the submissions raised by the Learned Counsel for the Appellant. However, we do not rest our Judgment only on the above Judgement of this Tribunal rather we have further considered this statutory scheme which is further indicated by amendments brought by Amendment Regulation 2022 dated 28th April, 2022 clarifying the statutory scheme which was introduced by 2019 Amendment Regulation.

In view of the following discussions, we are of the view that Order of the Adjudicating Authority rejecting the I.A. No. 1012 of 2021 filed by the Liquidator seeking confirmation of the e-Auction Sale dated 26th February, 2021 is erroneous and unsustainable. In result, both the Appeals are allowed. The order dated 29th October, 2021 is set aside. I.A. No. 1012 of 2021 filed by the Liquidator is allowed. e-Auction Sale held on 26th February, 2021 is confirmed. Liquidator may take all consequential action in the above context. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

New Delhi
23rd May, 2022
Basant