

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 09.09.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	181,334,335/2019 in CP(IB) NO. 198/9/HDB/2017
NAME OF THE COMPANY	Nawa Engineers Consultants Pvt Ltd
NAME OF THE PETITIONER(S)	Bay-Forge Pvt Ltd
NAME OF THE RESPONDENT(S)	Nawa Engineers Consultants Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
TAPASWAL DEORA per IA: 181, 334, 335	PCS	9966299213	Tapas

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Mishra Bindu Phadkar for P. VIKRA	IA for	703241688	

ORDER

Orders pronounced in open court. IA's disposed of vide separate order.


MEMBER TECHNICAL


MEMBER JUDICIAL

AS

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.181, 334 & 335/2019
In CP (IB) No.198/9/HDB/2017

Applications filed U/s. 60(5) of the
Insolvency and Bankruptcy Code, 2016

**In the matter of "Nawa Engineers and Consultants Private
Limited".**

Between:

Keshan Trading Corporation
5-4-23/313 & 314, 3rd Floor,
Ispat Bhavan, Distillery Road,
Ranigunj, Secunderabad – 500 003,
Telangana.

...Applicant

And

Mr. Kari Venkateswarlu, Liquidator
M/s. Nawa Engineers and Consultants Private Limited,
Flat No.406, Everest Block, 7-1-618,
Maitrivanam, Hyderabad – 500 038.

...Respondent

Date of Order: 09.09.2019

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsel Present:

For the Applicant:

Mr. Tapsvilal Deora, PCS.

For the Respondent:

Mr. Kari Venkateswarlu, Liquidator.

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Per: K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. The present Applications bearing IA No. 181/2019, 334/2019 and 335/2019 are filed by M/s. Keshan Trading Corporation against the Liquidator on the same cause of action and seeking similar prayers. Therefore, this Adjudicating Authority deems it fit to dispose all the above said Applications by this common order.
2. The Application bearing IA No. 181/2019, is filed inter-alia praying for issuance of necessary directions to the Liquidator to issue letter of award in respect of e-auction conducted on 01.03.2019.
3. The Application bearing IA No. 334/2019 is filed, inter-alia praying to send audio clip of conversation between the Applicant and the Liquidator to truth labs or any other agencies for its verification.
4. The Application bearing IA No. 335/2019 is filed, inter-alia praying to appoint an agency to initiate enquiry/ investigation and forensic examination into the fabricated/ back dated letter filed by the Liquidator.
5. Brief facts of the present Applications are as under:
 - a. That the Applicant is the successful/ H1 bidder of the Lot No's 1 to 5 and 9 that were brought for e-auction on 01.03.2019 at 2:00 p.m but the Applicant herein was issued a letter of award dated 04.03.2018, only in respect of Lot No's 3,4,5 and 9 by the Liquidator.
 - b. That In respect of Lot No. 1 & 2, no LoA was issued, inspite of request made to the Liquidator.
 - c. That the Applicant visited the office of the Liquidator on 05.03.2019, to enquire the reason behind the delay in issuance of LoA in respect of Lots No. 1 & 2 and that to the utter shock of the


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Applicant, the Liquidator demanded and bargained unauthorized cash as bribe to the tune of Rs. 42,00,000/- with regard to lot No. 1 and that the liquidator stated that he would discuss for the amount of Lot No. 2 after completion of transaction for Lot No. 1.

- d. That to the email dated 05.03.2019, of the Applicant for issuance of LoA for Lots No. 1 & 2, the Liquidator replied vide his email dated 06.03.2019, stating that the bids for Lot No. 1 & 2 are 'not accepted'.
 - e. That on the advice of the Financial Creditor (SBI), the instant Application is filed praying for grant of relief as stated above.
6. Respondent/ Liquidator filed counter in IA No. 181/2019 and inter-alia stated as under:
- a. That as per the terms and conditions of the subject online auction, it was a post approval auction and that the seller may reject or accept the highest bid received without assigning any reason and the buyer shall not raise any claim or damages against the seller or iQuippo (online service provider) in case of rejection of highest bid.
 - b. That on 04.03.2019, Letter of award was issued in respect of Lot No. 3,4 & 9 and it was clearly mentioned that Lot No. 1 & 2 were yet to be decided and will be informed in due course.
 - c. That it is not mandatory or obligatory on the part of Liquidator to sell all the lots together to a single successful bidder and nowhere it was proposed by the Liquidator that all the lots would be sold together to a single successful bidder.
 - d. That neither the Applicant expressly conveyed at any point of time that it is interested to purchase only if all the lots are sold to it and that it is the prerogative of the Liquidator to decide and sell


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the lots in a manner which will maximize the sale value for the creditors.

- e. That the Liquidator denied that he demanded any bribe from the Applicant and that due to crucial logistical issues, the Liquidator could not immediately decide on the sale of unit 1 & 2 as there is about 300 tonnes of the steel of the Company which is yet to be sold and cleared.
 - f. The liquidator further averred that the very admission by the Applicant that the representative of the Applicant visited the office of the Applicant on his own and that there was a bargain between the liquidator and the Applicant clearly establishes that the representative of the Applicant induced the Liquidator with an offer of bribe and such act is an offence punishable under Law.
 - g. That the Liquidator vide his email dated 06.03.2019, conveyed that Lot No. 1 & 2 are not acceptable and there was no mala-fide intention in rejecting the offer.
 - h. The Liquidator further stated that, till date three rounds of Auction have been conducted in respect of Lots No. 1 & 2 and there are prospective buyers for the same at a better rate.
 - i. Reiterating above, the Liquidator prayed to dismiss the present Application as blatant abuse of judicial process.
7. Applicant filed Rejoinder in IA No. 181/2019 and inter-alia stated as under:
- a. That the terms and conditions stated in the Auction sale catalogue gives an absolute unobstructed veto right to the liquidator to accept or reject a bid without assigning any reason whatsoever, at any stage of the bid, such a right is *void ab intio* as the liquidator is bound by Provisions of IBC read with Rules and



Regulations thereunder. That such a clause has been specifically inserted and used by the Liquidator to harass and extract huge sum of money from prospective purchaser of property.

- b. That the liquidator has an option either to accept or reject the bid, however, the Liquidator has brought in a third category as in 'not accepted' for the reasons best known to him.
 - c. That the Applicant was forced to record the conversation which he had with the Liquidator to bring to the knowledge of regulators, the fact of bribe demanded and the Applicant is in the possession of un-tampered voice recording which will by itself stand complete and that a pen drive containing such voice recording and the voice transcript of the conversation is filed and the Applicant has also filed an Affidavit U/s 65(b) of the Indian Evidence Act, 1872, certifying such electronic evidence.
 - d. That the Liquidator has conducted three rounds of e-auction and now states that he is not in a position to allot/sale Lot No's 1 & 2 since there is material lying in the premises in which case, he should not have put these lots for auction.
 - e. That the private offer stated to be received from one M/s. Kamlesh Steels is far less than what was offered by Applicant herein.
8. Heard both the sides and perused the records including the pleadings filed in IA No. 334/2019 and 335/2019 which are similar to those of IA No. 181/2019.
 9. The point for consideration is whether the Liquidator is to be directed to issue letter of awards in respect of Lot No's 1 & 2 in favor of Applicant herein or not.
 10. Before proceeding to analyze the merits and demerits of the instant Applications, this Adjudicating Authority deems it fit to look into



Schedule I Mode of sale; Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which is reproduced below:

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SCHEDULE I

MODE OF SALE

*(Under Regulation 33 of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016)*

1. AUCTION

- (1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.
- (2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-
 - (a) Releasing advertisements;
 - (b) Preparing information sheets for the asset;
 - (c) Preparing a notice of sale; and
 - (d) Liaising with agents.
- (3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.
- (4) The reserve price shall be the value of the asset arrived at in accordance with Regulation such valuation shall not be more than six months old. However, in the event that an auction fails at such

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price, the liquidator may reduce the reserve price up to seventy-five per cent of such value to conduct subsequent auctions.

(5) The liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3);

Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction.

(6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.

(7) The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.

(8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.

(9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

(10) If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.

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(11) If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.

(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.”

11. On perusal of the provision 12 above, it is amply clear that on close of auction, the Liquidator has to necessarily call upon the highest bidder to pay the balance sale consideration. The language employed is “shall” in the provision 12 supra which is mandatory in nature and does not allow any role for the Liquidator to reject the highest offer for whatsoever reasons. In view of such provision, made under the IBBI Liquidation Process Regulations, this Adjudicating Authority finds that the condition inserted in the e-auction sale catalogue which authorizes the Liquidator to reject the highest bid without assigning any reason is *void ab initio*. The Liquidator appointed by this Adjudicating Authority being an officer of this court has to act in a highly responsible and transparent manner as he is dealing with the valuable Assets of the Corporate Debtor under Liquidation.
12. The contention of the Liquidator that there are some materials which are lying in the subject properties, thereby hampering delivery of Lot No. 1 & 2 does not match with his action of putting these lots for e-auction. If such was the case, Liquidator should not have brought



those lots for public auction. It is also observed that the private offer alleged to have been submitted by one M/s Kamlesh enterprises; is much less than what was offered by the Applicants in the e-auction sale. Hence, it appears that the liquidator has stalled the sale of Lot No. 1 & 2 on flimsy grounds.


13. In view of the above mandatory nature of Regulations referred to above, this Adjudicating Authority directs the Liquidator to issue letter of awards with regards to Lot No. 1 & 2 to the Applicant herein having been declared as highest bidder forthwith and upon receipt of the same, the Applicant is directed to complete his obligation with regard to the sale in terms of the conditions of the Auction sale. Further to that Liquidator is directed to execute a conveyance deed in respect of said Lot of items as contemplated under transfer of property Act, 1882, clearly indicating the nature of the properties being conveyed i.e., with lease hold rights only and specifying the number of years of lease left in case of lease hold rights.
14. With regard to the allegation of the demand of bribe by the Liquidator and counter allegation by the Liquidator that it is the Applicant who has induced the Liquidator to demand and discuss bribe, it is out of the purview of this Adjudicating Authority to probe further in this matter. If advised so, the Applicant may approach competent authorities/court of Law to proceed against the Liquidator for appropriate legal action.
15. However, looking at the seriousness of the allegations raised against the liquidator *vis-a-vis* the conduct of the Liquidator, this Adjudicating Authority directs the registry to send a copy of the Rejoinder of the Applicant in IA No. 181 of 2019 and the certificate filed by the Applicant under Section 65(b) of the Evidence Act together with the pen-drive submitted by the Applicant, to the IBBI



(Insolvency and Bankruptcy Board of India) for initiating appropriate enquiry/action in the matter, if warranted so.

16. Registry is further directed to obtain a copy of the pendrive containing un-tampered voice recording from the Applicant along with Affidavit of the party for the purpose of record and preserve the same in the registry.
17. Accordingly Applications bearing IA No. 181/2019, 334/2019 and 335/2019 stand disposed of. No order as to costs.


Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial