

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2130 of 2024

IN THE MATTER OF:

JSK Estate Pvt. Ltd.

...Appellant

Versus

Sundresh Bhat & Anr.

...Respondents

Present:

For Appellant : Mr. Arvind Varma, Sr. Advocate with Mr. Narendra M. Sharma, Ms. Shubhangi Tiwari, Mr. Pratham Mehrotra, Ms. Sahana, Advocates.

For Respondents : Mr. Ashish Verma, Mr. Saksham Thareja, Advocates for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Srivatsma Reddy Berrapalli, Mr. Saurabh B., Ms. Diksha Gupta, Advocates for R-2.

O R D E R
(Hybrid Mode)

10.12.2024: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This appeal has been filed against order dated 02.09.2024 passed by the NCLT, Court – 2, Mumbai Bench by which IA No.5330 of 2023 filed by the Appellant to recall and set aside order dated 09.09.2022 has been rejected.

2. The liquidation proceeding against the Corporate Debtor commenced by order dated 09.08.2021. The Liquidator made a public announcement and issued sale notice, however, first sale could not be completed. Public notice was again published on 08.03.2022 inviting bids for sale of assets of the Corporate Debtor. Only one bid was submitted by the Respondent No.2 herein and on 22.03.2022, the bid was given for sale consideration of

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Rs.166.70 Crores, which was more than the reserve price of Rs.166.60 Crores. Sale in favour of successful bidder (Respondent No.2 herein) was confirmed by the Liquidator and by order dated 09.09.2022 the Adjudicating Authority confirmed the sale of the Corporate Debtor and granted some reliefs and concessions. The Appellant filed an IA No.5330 of 2023 on 18.11.2023 praying for recall of order dated 09.09.2022 alleging irregularities and malafide. Reply was filed to the Application. The Adjudicating Authority heard the application and by the impugned order has rejected the application.

3. Shri Arvind Varma, learned senior counsel for the Appellant challenging the order contends that although the appellant has filed the application after more than a year but maximisation of the value of the assets of the Corporate Debtor is the principle which has to be followed and accepted by all concerned in IBC process. It is submitted that the Appellant has offered Rs.100 Crores more, hence, the Adjudicating Authority ought to have considered the application. It is further submitted that only one bid was received and there was no publication made in Jalgaon where the unit situate. It is further submitted that the auction which was fixed for 24.03.2022 was preponed to 22.03.2022 without there being any reason. It is further submitted that in light of present facts, the Adjudicating Authority ought not to have rejected the application filed by the Appellant.

4. Shri Arun Kathpalia, learned counsel appearing for Respondent No.2 – Successful Auction Purchaser opposed the submissions of learned counsel for the Appellant and submitted that the Liquidator has made publication in

all relevant newspapers at Jalgaon, Mumbai and Ahmedabad which has been noticed in Para 7(iv) of the Adjudicating Authority's order. It is submitted that the Respondent has submitted the only bid which was above the reserve price which was accepted and the auction sale was confirmed by the Adjudicating Authority. The Appellant who neither submitted any bid in the auction nor was stakeholder has filed application in November, 2023. It is submitted that no stakeholder of the Corporate Debtor has any grievance nor any application or objection was filed by any stakeholder with regard to the auction purchase, which was confirmed in favour of the Respondent. It is submitted that the management was transferred to the Respondent in October, 2022 itself and the corporate debtor is now being run by the Respondent. At this belated stage, there was no ground to recall order dated 09.09.2022 and the Adjudicating Authority has rightly rejected the application of the Appellant.

5. We have considered the submissions of the parties and perused the record.

6. There is no dispute that in the auction which was held in favour of the Respondent No.2, who submitted bid which was higher than the reserve price. Submission which was made by the Appellant is that there was no proper publication made, in Para 7(iv) and (v) of the order, the Adjudicating Authority has noted following:

iv. It is submitted that the Public Announcement dated 08 March 2022 was made available in public

domain as follows, in strict compliance of the applicable IBBI Liquidation Regulations, 2016:

- a) On the Website of IBBI;*
- b) On the website of the Corporate Debtor and;*
- c) In one English and one regional language newspaper se Free Press Journal and Navshakti Mumbai edition, The Financial Express English, Gujarati -Ahmedabad edition, Lokmat Marathi, Jalgaon edition.*

(v) The Respondent No.01 further submits that the Corporate Debtor was carrying on its material operations at Thane. The Jalgaon plant locations were shut since early 2019. Nonetheless, the Respondent No. 1/ Liquidator has published the advertisement for sale in both in Mumbai and Jalgaon editions of the newspapers, as stated in above mentioned responses. As mentioned above, the advertisement was issued for all 3 locations- Mumbai, Ahmedabad and Jalgaon.”

7. In Para 39 of the order the Adjudicating Authority has returned its findings, which are as follows:

“39. Primarily, a challenge has been raised by the Applicant against the auction process on the ground that the corporate debtor business properties and interest in Jalgaon, Thane and Vadodara whereas the liquidator did not get published any public announcement in any newspaper in Jalgaon or in Vadodara and Thane. It has also been pointed out that

after the second public announcement, a period of only 3 days was given for submission of EOI with the result that only one party could submitted its EOI. It has also been pointed out that though the last date for submission of EMD was 22.03.2022 and the auction was scheduled for 24.03.2022 but subsequently the dates were advanced to 21.03.2022 and 22.03.2022 respectively. According to the counsel for the Applicant, undue haste was shown by the liquidator, obviously to benefit the auction purchaser. However, perusal of the record reveals that auction notices dated 10.12.2021 was published in The Free Press Journal as well as Lokmat. Thereafter, the liquidator, in consultation with the stakeholders issued second e-auction notice in accordance with the Liquidation Regulation 12(3)(a) on 08.03.2022 in Free Press Journal, Navshakti, Financial Express English and Gujarati-Ahmedabad edition, Lokmat, Jalgaon edition. It, therefore, cannot be said that the publication of the auction notices was not proper or de hors Regulations. It has been rightly pointed out by the counsel for the Respondents that at the relevant time, there was no minimum time prescribed for the submission the EOI. Besides, the Applicant has failed to explain as to how it was prejudiced with regard to the time given for submission of EOL. Under the circumstances, it cannot be said that any prejudice was caused to the Applicant.”

8. The Appellant neither sent any communication nor any bid to the Liquidator during the process and after more than one year, filed the application for recall of order dated 09.09.2022, by which auction was

confirmed. The Respondent was declared as successful bidder in the auction process held by the Liquidator after due publication of notice. There has to be very strong reason to set aside the public auction on an application filed by a party who was not a stakeholder or bidder. The auction was confirmed by the Adjudicating Authority and more than one year thereafter application has been filed by the Appellant offering a higher amount. It is well settled that after completion of the auction it is not open for a third party to offer higher amount by challenging the auction. The Adjudicating Authority considered all aspects of the matter and rightly not entertained the application filed by the Appellant. We find no error in the order of the Adjudicating Authority rejecting application filed by the Appellant. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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