

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.943 of 2022

[Arising out of order dated 20.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court 1 in I.A. No. 238 of 2022 in C.P.(IB) No. 320 of 2018]

IN THE MATTER OF:

**Torrecid India Pvt. Ltd.
Having registered office at
Plot No. 29, 30 & 31, GIDC Savli,
Alindra Taluka, Savli,
District - Vadodara, Gujarat- 391775**

...Appellant

Vs.

**1. Arrhum Tradelink Private Limited
Having registered address at
56/ A, Sthanakvasi, Jain Society,
Usmanpura, Ahmedabad**

**2. Vineeta Maheshwari
Liquidator of Kaneria Granito Limited
Having address at
3rd Floor, Reegus Business Centre,
Above Mercedes Showroom I
New City, Light Road, Bharthana, Vesu,
Surat, Gujarat - 395007**

**3. Auction Tiger
B 704-705, Wall Street - II,
Opp. Orient Club, Nr. Gujarat College,
Ellis Bridge, Ahmedabad,
Gujarat - 380006**

...Respondents

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Karan Valecha, Mr. Jaimin R. Dave and Mr. Rajat Sinha, Advocates. , Advocates.

**For Respondents: Mr. Abhijeet Sinha, Mr. Ravi Pahwa, Ms. Nikita Garg, Advocates for R-1.
Mr. Ravi Raghunath, Advocates for R-2.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 20.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court No.1 allowing I.A No. 238/2022 filed by the Respondent No.1 seeking direction to declare the applicant as successful bidder and cancel the bid of Appellant which was accepted by the Liquidator. The Adjudicating Authority allowed I.A. No. 238/2022 and directed that amount deposited by the Appellant be refunded with interest as accrued within two weeks. Aggrieved by the order dated 20.06.2022, this appeal has been filed. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- i. On an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') by the Bank of India. Insolvency resolution process commenced against the Corporate Debtor - Kaneria Granito Limited by order dated 26.04.2019.
- ii. Liquidation proceedings were initiated by subsequent order dated 15.07.2020. The Liquidator issued e-auction sale notice on 09.02.2022 for sale of assets of Corporate Debtor in liquidation under four options. E-auction for Option 1 and 2 was to be conducted on 28.02.2022, simultaneously. Three bidders including Respondent No.1 and

Appellant participated in the e-auction process. E-auction Process Information Document clearly stipulated that prospective bidder are required to increase their bid by minimum incremental amount of Rs.5,00,000/-. Further, when bid was placed by one of the bidder in the last five minutes of the closing time of E-auction, the closing time of E-auction was to automatically extend for further five minutes, wherein bidder who is not the highest bidder can revise its bid by minimum incremental amount of Rs.5,00,000/-.

iii. Liquidator conducted e-auction on 28.02.2022. After several steps in the bidding process, the Appellant submitted a bid of Rs.38,40,00,000/- and in the bidding process Appellant's name has displayed as highest bidder. The Respondent No.1 subsequently also gave a bid of Rs.38,40,00,000/- after two minutes, which bid was rejected by the system. Appellant was declared highest bidder by the system. On 28.02.2022, the Respondent No.1 send an email objecting to the Appellant as highest bidder. On 01.03.2022, the Liquidator declared the appellant as highest bidder.

iv. Thereafter, Respondent No.1 filed I.A. No. 238/2022 challenging the declaration in favour of the Appellant with further direction that Respondent No.1 be declared as the highest bidder. Applicant pleaded that his bid being equal to the Appellant and applicant having submitted the same under Option 1 for sale of Corporate Debtor as going concern, he should be declared as the successful bidder. The

Appellant and the Liquidator filed reply opposing the I.A. No. 238/2022. The Adjudicating Authority after hearing the parties, allowed I.A. No. 238/2022 and issued following order:

"ORDER

I. The liquidator is directed to declare the Applicant as a successful bidder upon the Applicant's depositing with the liquidator a sum of Rs.38.40 crores within seven days from the date of this order failing which liquidator to issue sell certificate in favor of Respondent No. 3 i.e., M/s. Torrecid India Pvt. Ltd.

II. In case, the applicant deposits the amount as ordered above, the liquidator to refund the amount of the declared successful bidder with the interest as accrued on such amounts within two weeks therefrom."

v. The Respondent No.1 paid the entire amount of Rs.38.40 Crore on 24.06.2022 and has been running the Corporate Debtor as going concern for last eight months.

vi The Appellant aggrieved of the impugned order has come up in this Appeal.

2. We have heard Shri Krishnendu Datta, learned senior counsel for the Appellant, Shri Abhijeet Sinha, learned counsel appearing for Respondent No.1 and Shri Ravi Raghunath, learned counsel appeared for Respondent No.2 - Liquidator.

3. Shri Krishnendu Datta, learned counsel appearing for the Appellant submits that according to the E-auction Process Information Document, any qualified bidder can improve its offer in multiple of amount mentioned as Bid Incremental Value. Incremental value was minimum Rs.5,00,000/-. It is submitted that Appellant, Respondent No.1 as well as one another bidder namely 'H. R. Commercials Private Limited' participated in the e-auction. The auction was conducted by an entity namely 'Auction Tiger' and last valid bid was submitted by the Appellant with Rs.38,40,00,000/- on 28.02.2022 at 03:21 PM which was accepted by the system whereas on 03:23 PM, the Respondent No.1 submitted bid of Rs.38,40,00,000/- which was rejected by the system and the Appellant was declared as the highest bidder by the system. The Appellant has deposited the entire amount as required by the Liquidator and the Adjudicating Authority ought not to have interfered with the decision of highest bidder. It is submitted that in the event the Appellant was aware that the bid of Respondent No.1 which was rejected by system shall be considered, the Appellant was sure to increase his bid and since Respondent No.1's bid was rejected, the Appellant was the highest bidder in whose favour the declaration was issued by the Liquidator. The Adjudicating erred in interfering with the declaration made by the Liquidator.

4. Shri Abhijeet Sinha, learned counsel appearing for the Respondent No.1 submits that under the E-auction Process Information Document, it was clearly stipulated that in case highest bid under options I and 2 are equal, then bidder giving offer for sale of Corporate Debtor as a going concern shall be successful bidder. It is submitted that since the Respondent No.1 has

given the equal bid of Rs.38,40,00,000/- within two minutes of the bid submitted by the Appellant, by virtue of the E-auction Process Information Document, the Respondent No.1 was to be declared as Successful Bidder and the Liquidator committed error in declaring the Appellant as Successful Bidder. The Respondent No.1 on the same day i.e. 28.02.2022 sent an email objecting to the declaration. When the Respondent No.1 has objected to the declaration, the Liquidator was required to consider the provisions of the Information Document and make declaration accordingly. With no remedy left, the Respondent No.1 immediately filed an application before the Adjudicating Authority on the next day which has rightly been entertained and allowed by the Adjudicating Authority.

5. Shri Ravi Raghunath, learned counsel appearing for the Liquidator submitted that as per the system the bid of the Respondent No.1 was not accepted, there being no incremental increase of Rs.5 Lakhs, the Liquidator declared the Appellant as successful bidder. It is submitted that the Liquidator shall carry out and abide by any order passed by this Tribunal in this Appeal.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. In the E-auction Process Information Document fixed date of e-auction on 28.02.2022. It is useful to notice the four options which were given for e-auction, for which following part of the Information document is extracted:

"E-AUCTION PROCESS INFORMATION DOCUMENT

Sale of assets of M/s. Kaneria Granito Limited- In Liquidation ("Corporate Debtor") forming part of Liquidation Estate offered by the Liquidator appointed by the Hon'ble NCLT Bench Ahmedabad vide order dated 15.07.2020. The sale of assets will be carried by the liquidator through e-auction platform at the web portal of <https://ncltauction.auctiontiger.net>. Date of e-auction is on Monday, 28.02.2022 (Timing: 11:00 am to 05:00 pm) with unlimited extension of five minute."

	Description	Remarks
1	<i>Event Type</i>	<i>Auction under Liquidation Process</i>
2	<i>Property Details</i>	Option 1: <i>Sale of Corporate Debtor as going concern along with all its assets [including land and building, plant and machinery and financial assets (excluding Cash & Bank Balance)].</i> Option 2: <i>Sale of set of assets collectively [including land and building, plant and machinery and financial assets (excluding Cash & Bank Balance)].</i> Option 3: <i>Sale on Standalone basis of Plant and Machinery including securities and financial assets (excluding Cash & Bank Balance).</i>

		Option 4: Sale on Standalone Basis of Land & Building.
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8. Clause 10 of the E-auction Process Information Document mentions that the incremental value is Rs.5 Lakhs. On the same day Process Document for Submission of Expression of Interest for Participation was issued by the Liquidator which contains detailed information and instructions. Clause 2.5 under the heading 'Introduction' provides as follows:

"2.5 The E-Auction I bidding would be conducted exactly on the scheduled date & time as mentioned above by way of inter-se bidding amongst the Qualified Bidders. A Qualified Bidder may improve its offer in multiple of amount mentioned under the column "Bid Incremental Value". In case a bid is placed within the last 5 minutes of the closing time of the E-Auction, the closing time will be automatically extended for 5 minutes."

9. Clause 10 mentioned above with heading 'Assets to be Auctioned and Reserved Prices', is relevant to be noticed below:

"10. ASSETS TO BE AUCTIONED AND RESERVE PRICES

Date and Time of Auction : 28.02.2022 (Time 11.00 A.M to 1.00 P.M)				
Option	Details of Assets	Block	Reserve Price (Rs.)	Earnest Money Deposit (Rs.)
1	Sale of Corporate Debtor as going concern along with all its assets [including land and building, plant and machinery	Block 1	23,20,00,000	2,32,00,000

	<i>and financial assets (excluding Cash & Bank Balance)].</i>			
OR				
2	<i>Sale of set of assets collectively [including land and building, plant and machinery and financial assets (excluding Cash & Bank Balance)].</i>	<i>Block 2</i>	<i>23,20,00,000</i>	<i>2,32,00,000</i>

Auction under both option 1 and 2 will be carried out simultaneously and all bidders will be eligible to participate and bid simultaneously for both options. The bidder having highest bid (under options 1 or 2), shall be the successful bidder.

In case of highest bid under options 1 and 2 are equal, then bidder giving offer for 'sale of Corporate Debtor as a going concern' shall be successful bidder. "

10. The Appellant, Respondent No.1 and another bidder participated in the e-auction held on 28.02.2022. All the three participants agreed to the auction document. At page 139 of the paper book, the Appellant has annexed details of the domain and the options. The document at page 139 mentions that -

"The auction under option 1/ option 2 to be carried out simultaneously and the bidder giving the highest bid under either of the options will be allotted the sale under the option selected by them and as informed to

the liquidator. This is subject to terms and conditions as specified in the process document."

11. Reliance has been placed by the Appellant on the last three bids which have contained in the bidding document. It is useful to notice last seven entries i.e. entries on Sl. No. 172 to 178, which are to the following effect:

Sr. No.	Company Name	Bid amount	Bid date and time	IP address	Bid Status	Remarks
..
172	Torrecid India Private Limited (jayesh@torrecid.com)	38,15,00,000.00	28/02/2022 15:12:31.463	49.36.83. 248	Accepted	..
173	Arrhum Tradelink Pvt. Ltd. (infoalahoti@gmail.com)	38,20,00,000.00	28/02/2022 15:16:34.723	49.206.34 .146	Accepted	..
174	Torrecid India Private Limited (jayesh@torrecid.com)	38,25,00,000.00	28/02/2022 15:17:03.133	49.36.83. 248	Accepted	..
175	Arrhum Tradelink Pvt. Ltd. (infoalahoti@gmail.com)	38,25,00,000.00	28/02/2022 15:20:01:077	49.206.34 .146	Rejected by system	}”> Bid was not revised with respect to increment criteria.
176	Arrhum Tradelink Pvt. Ltd. (infoalahoti@gmail.com)	38,25,00,000.00	28/02/2022 15:21:25:483	49.206.34 .146	Rejected by system	}”> Bid was not revised with respect to increment criteria.
177	Torrecid India Private Limited (jayesh@torrecid.com)	38,40,00,000.00	28/02/2022 15:21:44:623	49.36.83. 248	Accepted	..
178	Arrhum Tradelink Pvt. Ltd. (infoalahoti@gmail.com)	38,40,00,000.00	28/02/2022 15:23:55:347	49.206.34 .146	Rejected by System	}”> Bid was not revised with respect to increment criteria.

12. The aforesaid entries indicate that the Appellant at 03:21 PM has gave bid of Rs.38,40,00,000/-, which was accepted by the system. After two minutes, the Respondent No.1 gave bid of Rs.38,40,00,000/- which was rejected by the system. As noticed above, the Liquidator declared the Appellant on 01.03.2022 as highest bidder, which declaration was immediately objected by the Respondent No.1 and an application was filed before the Adjudicating Authority. The Adjudicating Authority in Para 11 and 12 of the order made following observations:

"11. It is brought to our notice that during e-auction process, the Applicant had not raised the bid amount by Rs. 5 Lakhs intermittently which was mandated by the tender document and that point of time and that every point of time, the Applicant's bid was rejected by the system itself. Considering the material on record, we hold that during the entire e-auction process, if any party did not raise its offer by a certain sum of money that it is not sufficient to reject its bid unless and until its final offer is considered. Ultimately, the result of e-auction would depend on as to what amount is offered finally by the party taking part in the auction process. In this case, at end of e-auction both the Applicant and successful bidder have finally offered the same amount but the Applicant had offered the amount to purchase the Corporate Debtor as a going concern. It is true that the Applicant ought to have raised the amount of Rs. 5 Lakh but in our considered opinion, the liquidator ought to have taken into consideration of the broad object of Insolvency and Bankruptcy Code, 2016 to sell the Corporate

Debtor as a going concern and it was the pre-condition for e-auction set out by the liquidator herself. The liquidator put the clause in the tender document that in case the highest amount is offered by all the bidders and the bid amount is same then the bidder who wishes to purchase the Corporate Debtor as a going concern shall be declared to be the successful bidder. In this case, the Applicant had given the offer to purchase the Corporate Debtor as a going concern for the same amount as has been offered by the declared successful bidder i.e., Respondent No.3.

12. In our considered opinion since the liquidator allowed the system to run even after the successful bidder had offered the highest amount and exactly at that point of time within two minutes the Applicant offered the same price. The fact is that the Applicant had offered the same price to purchase the Corporate Debtor as a going concern, the liquidator ought to have considered this aspect. It is the object of the Insolvency and Bankruptcy Code, 2016 i.e., to maximize the value of the assets of the corporate person and to promote entrepreneurship etc. It is not the object of the Insolvency and Bankruptcy Code, 2016 only to clear the debts of the creditors of such a corporate person. It is the duty of the liquidator to protect the existence of the Corporate Debtor as far as possible and avoid its death by ultimately pushing the Corporate Debtor to be dissolved."

13. As noted above, the document clearly indicate that if bid under option 1 and 2 are equal, then bidder under option 1 as going concern shall

be declared as successful bidder. The system of bidding and various entries shows that bid of Appellant and Respondent No.1 were of equal amount, whereas the system of bidding as was applied by the bidding forum rejected the bid of Respondent No.1, which was required to be analysed by the Liquidator. It is on the record that the last bid given by the Appellant was of Rs.38,40,00,000/- and since there is no incremental increase by Respondent No.1, its bid of same amount was rejected by the system. The requirement in the Process Document that if the both the bids in option 1 and 2 are equal, bidder under option 1 for sale as going concern shall be successful bidder, there was no measure to apply said provision in the system. System proceeded on its own basis as per terms and conditions. The declaration of the highest bidder was function of the Liquidator and Liquidator while declaring the highest bidder of the said auction has to consider the above clause as extracted above. The Liquidator went on only by the bidding platform and declared the Appellant as highest bidder since the bid of Respondent No.1 was rejected by the system. The fact is that the Respondent No.1 has matched the bid given by the Appellant and the matching of bid which was relevant for purchase by a bidder under option 1 as a relevant consideration and by various increase of the bidding incremental amount several times, Respondent No.1 has matched the bid of Appellant and on several occasion it has given a higher bid also. The entry at Item no.124 shows that Appellant gave bid of Rs.38,25,00,000/- thereafter Respondent No.1 immediately gave same bid of Rs.38,25,00,000/-, which was rejected by the system, then the Appellant increased its bid from Rs.38,25,00,000/- to

Rs.38,40,00,000/- and again the Respondent No.1 matched the bid by giving same bid of Rs.38,40,00,000/-. There is no dispute that one of the participant i.e. Respondent No.1 has submitted bids under option 1 i.e. sale of Corporate Debtor as going concern and bid by the Appellant was under option 2 and preference to bid under option 1 has to be given since sale of Corporate Debtor as going concern is audible objection in an insolvency proceeding for revival of the Corporate Debtor. The bidding was closed after receiving aforesaid bid and it was duty of the Liquidator to apply the relevant conditions to find out who should be declared as the successful bidder. The Liquidator instead of looking into the relevant conditions, acted mechanically and followed the auction platform in declaring the Appellant as the highest bidder.

14. The submission of learned counsel for the Appellant that if the appellant had known that bid of Respondent No.1 will be considered, he would have further increased his bid, needs no consideration by us. The Adjudicating Authority has taken decision after considering all the relevant consideration and the Adjudicating Authority is right in its observation that it was duty of the Liquidator to protect existence of the Corporate Debtor as far as possible and avoid its death by ultimately pushing the Corporate Debtor to be dissolved. Respondent No.1 having submitted bid under option 1 for sale of Corporate Debtor as going concern, the Liquidator ought to have considered this aspect. The Liquidator went forward mechanically as per the Auction Platform without applying its mind. We are of the considered view that the Adjudicating Authority did not commit any error in declaring the Respondent No.1 as successful bidder.

15. Learned counsel for the Appellant has relied on the judgment of Hon'ble Supreme Court in "**(2016) 16 SCC 818, Afcons Infrastructure Ltd vs. Nagpur Metro Rail Corporation Ltd. & Anr**", where in Para 15 following has been laid down by the Hon'ble Supreme Court:

"15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given."

16. There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court. In view of the aforesaid para, the Liquidator is the best person, in facts of the present case, to appreciate the requirements and interpretation of the Information Document and E-auction Document issued by him. In the present case, the Liquidator has not given effect to the requirement in the Information Document that in event bid under option 1 and 2 are equal, the bidder under option 1 shall be declared as successful bidder.

17. Another judgment relied by the Appellant in "**(2022) 5 SCC 302, Agmatel India Pvt. Ltd. vs. Resoursys Telecom & Ors.**", where in Para 24 and 26 on the interpretation of tender document following has been laid down by the Hon'ble Supreme Court:

"24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the 3-Judge Bench decision of this Court in Galaxy Transport Agency (supra) wherein, among others, the said decision in Afcons Infrastructure Limited (supra) has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relation to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

x.....x.....x

26. The above-mentioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the

interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given."

18. The Hon'ble Supreme Court has clearly held that the author of the tender document is taken to be the best person to understand and appreciate its requirements. In the present case, Liquidator was the person who was the best person to understand and appreciate the E-auction Process Information Document, however, the Liquidator committed error in not declaring the Respondent No.1 as successful bidder as per Clause 10, which error has been corrected by the Adjudicating Authority.

19. The above two judgments relied by the Appellant also does not help the Appellant in any manner. Learned counsel for the Appellant has also place reliance on the judgment in "**(1985) 3 SCC 267, Ram and Shyam Company vs. State of Haryana & Ors.**". Learned counsel for the Appellant submits that Hon'ble Supreme Court in the said case has permitted the auction in the Court where higher offer was received. It is further submitted that this Tribunal may also permit both parties to bid.

20. The liquidation process has to be conducted as per the Liquidation Regulation and as per the Process Document issued by the Liquidator. When the process was completed, highest bidder was to be chosen as per the terms and conditions. Present is not a case where this Tribunal should allow the bidding process to again commence. The question before the Adjudicating Authority was as to whether in the facts and circumstances of the present

case, on an application, Respondent No.1 was required to be declared as successful bidder, which decision has been taken by the Adjudicating Authority after considering the relevant Process Document. This Tribunal in the case of **“Y. Shivram Prasad vs. S. Dhanpal & Ors., Company Appeal (AT) (Ins) No. 224 of 2018”** has held as under:-

"13. Therefore, it is clear that during the liquidation process, steps required to be taken for its revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from a death by liquidation. Thus, the steps which are required to be taken are as follows:-

- i. By compromise or arrangement with the creditors, or class of creditors or members or class of members in terms of Section 230 of the Companies Act, 2013.*
- ii. On failure, the liquidator is required to take step to sell the business of the 'Corporate Debtor' as going concern in its totality along with the employees.*

14. The last stage will be death of the 'Corporate Debtor' by liquidation, which should be avoided."

We see no reason to interfere with the impugned order.

21. The Adjudicating Authority has also permitted to refund the amount of deposited by the Appellant with the accrued interest as accrued. We are of the view that substantive justice has been done and the interests of

the Appellant are also protected. We, thus, are of the view that no grounds have been made to interfere with the impugned order. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

15th March, 2023

Archana