

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH, CHENNAI

Company Appeal (AT) (CH) (Ins) No.438/2022
(IA Nos. 1109/2022, 1110/2022 & 1111/2022)

(Arising out of the Order dated 10.08.2022 passed by the National Company Law Tribunal, Chennai Bench, in CP (IB) No. TCP/95/2017)

IN THE MATTER OF:

M/s Shri Karshni Alloys Private Limited

1st Floor, G Block

Connaught Circus

Connaught Place, G-36 Delhi

New Delhi – 110001.

...Appellant

Versus

Mr. Ramakrishnan Sadasivan

Liquidator of M/s Surana Industries Limited

Old No. 22, New No. 28

Menod Street, Purasawalkam

Chennai – 600007.

Email id: sadasivanr@gmail.com

...Respondents

Present

For Appellant:

Mr. Virender Ganda, Senior Advocate
For Mr. Vishal Ganda along with Ms. Akanksha
Mathur, Ms. Tanya Hasija and Mr. Anshit
Aggarwal.

For Respondents:

Mr. T.K. Bhaskar, Mr. Mayan H Jain and
Ms. Niveditha Narayanan, Advocates.

With

Comp. App. (AT) (CH) (Ins) No. 443 of 2022
(IA Nos. 1118/2022 & 1120/2022)

(Arising out of the Order dated 29.06.2022 passed by the National Company Law Tribunal, Chennai Bench in IA (IBC)/512 (CHE)/2022 in TCP/95/IB/2017)

IN THE MATTER OF:

M/s Shri Karshni Alloys Private Limited

1st Floor, G Block

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For Respondents:

Mr. T.K. Bhaskar, Mr. Mayan H Jain and
Ms. Niveditha Narayanan, Advocates.

J U D G E M E N T

(31.05.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. Two appeals have been filed by M/s Shri Karshni Alloys Private Limited (in short **Appellant**) in Company Appeal (AT) (Insolvency) No. 438 of 2022, where the Appellant assailed the Impugned Order dated 10.08.2022 passed by National Company Law Tribunal, Chennai Bench (in short '**Adjudicating**

Authority) under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') refusing to revise timeline for making balance payments and instead directed forfeiture of the amount already by the Appellant, in case of failure on the part of the Appellant to adhere the timelines.

Similarly, the Appellant, in Company Appeal (AT) (Insolvency) No. 443 of 2022 challenged the Impugned Order 29.06.2022, whereby the Adjudicating Authority directed to forfeiture the entire amount paid by the Appellant on any deviation from timeline set up by the Adjudicating Authority.

2. The Respondent in both the Appeals is Mr. Ramakrishnan Sadasivan, Liquidator of Surana Industries Limited (in short '**Corporate Debtor**').

3. The Appeals were heard by the Bench consisting of Hon'ble Mr. Justice M. Venugopal, Member (Judicial) and Hon'ble Ms. Shreesha Merla, Member (Technical) of this Appellate Tribunal. However, they have passed two different Impugned Orders dated 20.10.2023. Since, there was difference of opinion between the Member (Judicial) and Member (Technical), this matter was placed before the Hon'ble Chairperson for guidance, whereby the Hon'ble Chairperson directed to list this matter before under signed. In view of this, the appeals were heard de-novo.

Since, the subject matter of both the Appeals arising out of two different Impugned Orders of the Adjudicating Authority is the same and also noting that the Learned Member (Judicial) and Learned Member (Technical) gave the

combined judgment covering both the Appeals and also considering that both the appeals were pleaded jointly by the Appellant and the Respondent before this Bench, the under signed shall also deliver a combined judgment.

4. Although both the Learned Member (Judicial) and Learned Member (Technical) have given details of the case in their own respective judgments, however, since fresh hearing opportunity was given to the Appellant and the Respondent who pleaded the case, it will be desirable to capture the facts of both the Appeals in the present judgment.

5. Shorn of unnecessary details, it is suffice to note that ‘Surana Industries Limited’ (in short ‘**Corporate Debtor**’) was admitted into the Corporate Insolvency Resolution Process (in short ‘**CIRP**’) on 02.01.2018.

Subsequently, the Committee of Creditors (in short ‘**CoC**’), after finding no resolution of the Corporate Debtor, decided to initiate the liquidation process against the Corporate Debtor and the Respondent filed an application bearing MA/453/2018 under Section 33(1)(a) of the Code and the Adjudicating Authority passed order dated 12.10.2018 and permitted for initiation of liquidation proceedings against the Corporate Debtor and also appointed Mr. Ramakrishnan Sadasivan as the Liquidator.

6. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

7. It has been brought out that the Respondent has made several attempts to sale the assets of the Corporate Debtor in terms of Section 35(1)(f) of the Code and provisions contained in Insolvency and Bankruptcy Board of India (Liquidation Regulations), 2016 (in short '**Liquidation Regulation,2016**). The Respondent conducted six auctions between the 06.02.2019 to 02.02.2021 for disposing the assets at the plants of the Corporate Debtor at Gummidipoondi Plant and Raichur Plant. However, only Gummidipoondi Assets were sold. It has been further submitted that for Raichur Assets, the subject matter of the present Appeals, the Respondent conducted 13 auctions until 30.06.2021 and no acceptable bids were received and therefore, it was decided to sale the Raichur Assets at the scrap value of approximately Rs. 50 Crores and the same was communicated to the Creditors at Stakeholders Meeting held on 31.07.2021 .

8. It is the case of the Appellant that during this period, he came to know about the Raichur Assets and being interested in these assets, the Appellant made an offer of more than twice the amount of scrap value i.e., Rs. 105.21 Crores on 09.09.2021.

9. At this stage, we also note that the liquidation value of Raichur Assets based on valuation done in December, 2018 was Rs. 338.01 Crores which was reduced in the Second valuation done on August, 2019 to Rs. 227.31 Crores and finally the liquidation value was further downgraded in third valuation done in

August, 2020 to Rs. 117.23 Crores. As noted earlier, since no acceptable bids were received, the scrap value was determined as Rs. 50 Crores.

10. The Stakeholder's Consultation Committee (in short 'SCC') in its 9th Meeting dated 15.09.2021 agreed to sale the Corporate Debtor as a going concern to the Appellant for a sale consideration of Rs. 105.21 Crores.

11. The Appellant submitted that he was to invest Rs. 40 Crores by way of equity infusion and remaining Rs. 65.21 Crores through unsecured debts.

12. The Appellant submitted that he tied up the arrangement for secured debts with the hope that the Resolution Plan would be approved by the Adjudicating Authority in time and accordingly the Appellant deposited 10% of sale consideration amounting to Rs. 10.52 Crores as "Commitment Advance" to show his bona-fide to take over the Raichur Assets as a going concern.

13. It was submitted that the Respondent filed an application bearing I.A. 997/CHE/2021 in TCP/95/CHE/2017 on 22.09.2021 seeking confirmation of the bids for sale of the assets of the Corporate Debtor by the Appellant as a going concern in terms of Regulation 33(2)(d) of the Liquidation Regulation, 2016 and the Adjudicating Authority vide its order dated 22.03.2022 confirmed the sale of the assets of the Corporate Debtor to the Appellant as a going concern for total consideration of Rs. 105.21 Crores and directed the Appellant to pay the amount within 15 days from the date of receipt of the order.

14. Now we would like to note the relevant portion of the said I.A. 997/ CHE/ 2021 in TCP/95/CHE/2017 filed by the Appellant which reads as under :-

“3. Due to elapse of considerable time since the liquidation Commencement date, the decision was taken to sell the Raichur Assets at the scrap value of approximately Rs. 50 crores. The same was communicated to the creditors at the Stakeholders' Meeting held on 31.07.2021. While the position stood thus, the Liquidator received a bid dated 09.09.2021 for purchase of the Corporate Debtor as a going concern on, an "as is where is basis", "as is what is basis", "whatever there is basis", and "no recourse basis" for Rs. 105.21 crores. The bid was made by the Respondent herein and certain concessions and waivers have been sought in connection with the purchase of the Corporate Debtor as a going concern. A copy of the bid submitted by the Respondent is annexed herewith as ANNEXURE A7.

The Liquidator, after verifying that the proposal received from the Respondent is in compliance with the provisions of the IBC had circulated the proposal for the consideration of the Financial Creditors. Detailed deliberations on the proposal took place in the stakeholders meeting held on 15.09.2021 All the members present for the meeting had consented to the sale of the Corporate Debtor as a Going Concern to the Respondent for a sale consideration amounting to Rs. 105.21 Crores. A copy of the minutes of the 9th Meeting of the Stakeholders is annexed herewith as ANNEXURE A8.

16. The Respondent has also deposited an amount of 10% of the sale consideration amounting to Rs. 10.521 Crores as a Commitment Advance prior to the filing of this application and had agreed to remit the balance sale consideration within 15 days of approval of the proposal by this Hon'ble Tribunal. It was made clear to the Respondent that the receipt of the Commitment Advance was in no way a final acceptance of the proposal and it was received without prejudice to any terms or conditions as may be stipulated by this Hon'ble Tribunal. The Commitment Advance shall be forfeited if the applicant is found to be ineligible under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time). Further, the Commitment Advance shall also stand forfeited if the Respondent fails to complete the acquisition of the Corporate Debtor upon approval being afforded by this Hon'ble Tribunal or if the Respondent fails to pay the full sale consideration within 15 days from the date of approval by this Hon'ble Tribunal.

V. PRAYER

In light of the aforementioned facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to:

i. Approve the sale of the Corporate Debtor as a going concern by means of private sale to the Respondent in terms of the bid submitted by the Respondent on 09.09.2021.

- ii. Grant suitable declarations, concessions, waivers, and directions as sought by the Respondent in its bid dated 09.09.2021.*
- iii. Any other reliefs as the Hon'ble Bench may consider just and appropriate in the facts and circumstances of the case matter.*

(Emphasis Supplied)

15. The Appellant pleaded that since the order of the Adjudicating Authority dated 22.03.2022 confirming the sale to the Appellant was uploaded only on 30.03.2022, therefore, the Appellant had time till 15.04.2022 to make the balance payment.

16. The Appellant submitted that since more than six months passed between his original efforts for tying up for unsecured debts and passing of the order by the Adjudicating Authority approving his bids, it became difficult for him to immediately conclude fresh tie up with the investors since in the meanwhile the market conditions deteriorated due to Ukraine war.

17. It is informed that looking to the problem of the Appellant, 10th SCC Meeting was held on 13.04.2022, wherein the Stakeholders and the Respondent were apprised by the Appellant about his genuine difficulties. However, the Stakeholders advised the Appellant that they could not suo-moto extend the timelines without approval of the Adjudicating Authority.

18. At this stage, we would like to take into account the relevant portion highlighted both by the Appellant as well as the Respondent regarding relevant discussion on the subject in 10th SCC Meeting held on 13.04.2022 which reads as under :-

"After deliberations, Mr Drabesh Jha proposed a revised schedule for the payment proposal which is as follows-

**Note:*

- Since 15th April, 2022 being a non- working day for the banks, Mr. Drabesh Jha stated that the payment which fell due on 15th April, 2022 would be paid on 18th April, 2022.*
- Out of the amount of Rs. 15,78,15,000/- payable on 18th April, 2022, already an amount of Rs. 5,00,00,000/- was paid on 12th April, 2022.*
- The last installment of 50% shall be coupled with a grace period of 15 days extended till 30th May, 2022.*

Mr. Drabesh Jha expressed his sincere thanks to the members for the patient co-operation extended so far in the process and requested the members to place reliance on the buyer, since maximum efforts are being made to complete the Process before 30th April, 2022 Only as a measure of prudence, and factoring any unforeseen circumstances the maximum timeline is being extended till 30th May, 2022.

Interest on delayed payments:

The prospective buyer also agreed that all payments made post 15th April, 2022 shall be coupled with payment of interest charged at the rate of @ 12% P.A."

(Emphasis Supplied)

19. As per above, for the payment of entire money of Rs. 105.21 Crores, the Appellant submitted that the maximum time limit was to be extended upto 30.05.2022, keeping in view the unforeseen circumstances. Further it was decided to levy interest on delayed payment @12% per annum.

20. It has been brought out that based on the decision taken in the 10th SCC Meeting, the Appellant filed the application bearing I.A (IBC)/512 (CHE)/2022 before the Adjudicating Authority seeking revision in the timelines for payments, which was heard by the Adjudicating Authority on 29.06.2022.

21. We will also take into account the relevant part of the said I.A (IBC)/ 512 (CHE) / 2022, which is as under :-

“vi. The Liquidator had filed the application being I.A.No.997/CHE/2021 seeking approval of the sale of the Corporate Debtor as a going concern under Regulation 32(e). 33(2)(d) of IBBI (Liquidation Process) this Hon'ble Tribunal vide order dated 22.03.2022 and a copy of the said order is submitted herewith as Annexure - A3.

6. RELIEF(S) SOUGHT:

It is therefore, prayed that this Hon'ble Tribunal may be pleased to grant time till 31 May 2022 to the Applicant for making the balance payment and pass such other orders which are deemed fit and necessary in the nature and circumstance of the case and thus render justice.”

(Emphasis Supplied)

22. It is the claim of the Appellant that the extension of timeline was unanimous decision of all members of SCC. The Appellant assailed the conduct of the Adjudicating Authority who on his own imposed the clause regarding

forfeiture, as a consequences for delayed payment by the Appellant instead of penal interest, as decided between the Stakeholders and the Appellant.

23. The Appellant in Company Appeal (AT) (Insolvency) No. 438 of 2022 has assailed the Impugned Order dated 29.06.2022 whereby the Adjudicating Authority allegedly gone beyond the terms which was mutually agreed between the Stakeholders and the Appellant in 10th SCC Meeting. The Appellant submitted that vide the Impugned Order dated 29.06.2022, the Adjudicating Authority directed the Appellant to pay on or before 30.06.2022 the balance of 50% of the sale consideration i.e., Rs. 36.60 Crores with 12% interest from 15.04.2022 till date of payment and further directed that remaining sum of Rs. 34.60 Cores to be paid on or before 31.07.202 with 12% interest from 15.04.2022 till the date of payment.

24. At this stage, we would also record and reproduce the relevant portion of the Impugned Order dated 29.06.2022 which reads as under :-

“Order

- i. The Applicant is directed to pay on or before 30.06.2022 the balance 50% of the sale consideration i.e., 34.60 Crore with 12% interest from 15.04.2022 till the date of payment.*
- ii. The remaining sum of Rs. 34.60 Crore shall be paid on or before 31.07.2022 with 12% interest from 15.04.2022 till the date of payment.*
- iii. The Applicant is directed to strictly comply with the said timelines. Any deviation from the same would amount to forfeiture of the entire amount paid by the Applicant”*

(Emphasis Supplied)

25. The Appellant submitted that he filed separate appeal assailing the said order of the Adjudicating Authority dated 29.06.2022 which inter-alia provided for forfeiture of entire amount paid by the Appellant. In this connection, the Appellant pointed out that by this time he has already paid Rs. 36.8 Crores including an upfront payment of commitment advance of Rs. 10.52 Cores.

26. The Appellant pleaded that he was making all efforts to make the balance payment, however, he came to know that the Enforcement Directorate (in short 'ED') had contemplated action against the former Directors of the Corporate Debtor and were contemplating attaching some of the assets of the Corporate Debtor. The Appellant also came to know that the Directors of the Corporate Debtor were arrested for alleged fraud of Rs. 3986 Crores.

27. The Appellant stated that in view of these uncertainties, the Appellant filed an application bearing I.A. No. 826 of 2022 on 29.06.2022 before the Adjudicating Authority seeking immunity from the possible attachment by the ED w.r.t. the assets belonging to Corporate Debtor.

28. The relevant portion of I.A. No. 826 of 2022 is reproduced below for ready reference :-

*“2. Pending adjudication of this application, and grant the relief as enumerated in prayer (1) above -
i) Grant the Applicant an extension of time period for payment of the balance consideration, payable in pursuance of the bid submitted by the Applicant, dated September 9,*

2021, and approved by the Hon'ble Adjudicating Authority vide its order dated March 22, 2022 and June 29, 2022, beyond July 31, 2022 until the immunity as per clause (a) is granted; and
ii) Waive the payment of the interest at the rate of 12% per annum as directed to be paid by the Applicant vide order dated June 29, 2022, from a period of April 15, 2022 to the date of actual payment.”

(Emphasis Supplied)

29. The Appellant submitted that this application was listed before the Adjudicating Authority on 04.08.2022, however during the period between 29.07.2022 i.e., the date of filing the application by the Appellant and the date of hearing on 04.08.2022, several development took place including provisional order dated 01.08.2022 of the ED in respect of certain properties of the Corporate Debtor and 13th meeting convened by the SCC on 01.08.2022 which decided to forfeit the amount deposited by the Appellant in view of Adjudicating Authority earlier order dated 29.06.2022.

30. Hence, it will be necessary to go through the relevant portion of the 13th SCC Minutes, which reads as under :-

“Views of the stakeholders present:-

- *The member representing IDBI Bank stated that since a Court Order was passed by the Hon'ble NCLT Chennai with specific directions to the buyer to pay the entire sale consideration on or before 31st July 2022, it is beyond the scope of the stakeholders to accept any extension of timelines beyond 31st July, 2022.*

- *The member further stated that since the extension has been in discussion for a period of 3 months which is quite a long period, it would be difficult to place any proposal for further extension, before their legal department due to lack of sufficient justification and therefore the stakeholders may not accept or grant any extension except to adhering the NCLT Order directing the forfeiture of the amounts paid by the buyer in case of default in the specified timelines.*
- *All the other lenders present also concurred with the views of IDBI Bank.*
- *The lenders stated that time and again the buyer is coming up with a reason for extension of time and at the verge of completion of the extended period, a further extension is sought. This keeps on repeating and there is no certainty regarding the completion of the entire payment. There is no concrete proposal or timeline from the buyer's side which doubts the intention of fulfilling the payment obligations.*
- *Moreover the extended Liquidation Period is about to come to a closure on 2nd October, 2022 based on the NCLT Order dated 9th June, 2022. So hardly 2 months is left for completion of the sale process. Based on the pattern followed by the buyer in the recent past, there is no surety that they will honour their payment obligations even if an extension is provided.*
- *Thus members stated that in due adherence to the NCLT Order and based on the inactions/inabilities of the buyer expressed in the recent past it appears desirable to forfeit the*

entire amount paid by the RA and go for a fresh auction in a couple of days.

• *Having provided their contentions, the Stakeholders directed the Liquidator to proceed with a new auction sale.*

Further Course of Action:

• *After deliberations, the members concluded as follows:-*

♣ *The Liquidator shall issue a fresh auction notice and try to dispose the assets immediately.*

♣ *To forfeit the entire payment made by the buyer as per the Court Order.”*

(Emphasis Supplied)

31. The Appellant submitted that he was informed about the forfeiture of Rs. 36.8 Crores by the SCC vide letter dated 02.08.2022 which was received by the Appellant as attachment with e-mail dated 03.08.2022. The Appellant submitted that in view of these developments, he took the liberty from the Adjudicating Authority, of withdrawing his application dated 29.07.2022 in I.A. No. 826 of 2022 seeking further liberty to file amended application and assailing the Respondent's letter dated 02.08.2022 for forfeiture of Rs. 36.8 Crores.

32. The Appellant filed an application on 04.08.2022 bearing Diary No. 3305110801882022 in IA(IBC)/952 (CHE)/ 2022 in TCP/95/IB/2017. The Appellant summarised that he has sought few relief which reads as under :-

“i. Quash and set aside the letter dated August 2, 2022;

ii. Grant immunity to Corporate Debtor and its assets from any actions in relation of any offence committed prior to the commencement of the corporate insolvency resolution process;

iii. The Appellant pending adjudication of this application, sought the following reliefs-

- *Direct the Respondent to maintain status quo with respect to the assets of the Corporate Debtor;*
- *Grant an extension of time period for payment of the balance consideration; and*
- *Waive the payment of the interest at the rate of 12% per annum.”*

(Emphasis Supplied)

33. The Appellant mentioned that the above application was heard on 10.08.2022 and the Adjudicating Authority erred in passing the Impugned Order dated 10.08.2022 dismissing his application and as such aggrieved by the same, the Appellant has preferred the present appeal before this Appellate Tribunal.

34. We will go into details of relevant portion of the Impugned Order dated 10.08.2021, which is as under :-

“7. The Applicant/successful bidder therefore file Application viz. IA (IBC)/512(CHE)/2022 before this Tribunal on 28.04.2022 seeking extension of time for making the balance payment. The aforesaid IA, was heard and decided by this Tribunal and an order was passed on 29.06.2022 and the order is as follows:-

(i) *"The Applicant is directed to pay in or before 30.06.2022 the balance 50% of the sale consideration i.e. 34.60 Crore with 12% interest from 15.04.2022 till the date of payment.*

(ii) *The remaining sum of Rs.34.60 Crore shall be paid on or before 31.07.2022 with 12% interest from 15.04.2022 till the date of payment.*

(iii) *The Applicant is directed to strictly comply with the said timelines. Any deviation from the same would amount to forfeiture of the entire amount paid by the Applicant*

This order was accepted by applicant but did not follow the payments terms.

8. *It is reported that the Applicant/successful bidder has made a total payments of only Rs.37.80 Crores on different dates as under :-*

<i>SL. No.</i>	<i>DATE OF PAYMENT</i>	<i>AMT. (RS. IN CRORES)</i>
<i>1</i>	<i>Commitment Advance (Paid along with the submission of Proposal)</i>	<i>10.52</i>
<i>2</i>	<i>On 12th April 2022</i>	<i>5.00</i>
<i>3</i>	<i>On 15th April 2022</i>	<i>1.50</i>
<i>4</i>	<i>On 18th April 2022</i>	<i>9.28</i>
<i>5</i>	<i>On 20th May 2022</i>	<i>2.00</i>
<i>6</i>	<i>On 9th June 2022</i>	<i>1.50</i>
<i>7</i>	<i>On 14th June 2022</i>	<i>1.50</i>
<i>8</i>	<i>On 17th June 2022</i>	<i>5.00</i>
<i>9</i>	<i>On 13th July 2022</i>	<i>0.50</i>
<i>10</i>	<i>On 25th July 2022</i>	<i>1.00</i>

	<i>TOTAL</i>	<i>37.80</i>
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9. Thus, it could be seen that the Applicant / successful bidder has paid a sum of Rs.37.80 Crores only before the deadline i.e. 31.07.2022. In the meantime, the Applicant/successful bidder filed another IA/826/2022 before this Tribunal on 29.07.2022 and the same was withdrawn on 04.08.2022 with liberty to file a fresh application. The present application has been filed by the Applicant / successful bidder before this Tribunal on 04.08.2022 itself for various reliefs as above.

10. In the present application, while seeking various Reliefs as above, the Applicant / successful bidder relied upon two documents, namely Copy of Press Release of Enforcement Directorate (Annexure -2) at Page 37 & 38 issued by the Enforcement Directorate and the Letter of Liquidator dated 02.08.2022 (Annexure-3) at Page Nos.39 & 40. This was communicated to the Applicant on 03.08.2022. The Liquidator in his letter dated 02.08.2022 has mainly stated that he has received a sum of Rs.37.80 Crore from the Applicant/ successful bidder on several dates and still there is a balance outstanding in a sum of Rs.67.41 Crores which is required to be paid along with interest @ 12% per annum, as per the order of this Tribunal dated 29.06.2022 passed in IA (IBC)/512(CHE)/2022. The letter has also stated that it is issued in adherence to the order of this Tribunal dated 29.06.2022 and accordingly the amount of Rs.37.80 Crore which was paid by the Applicant was forfeited.

12. Further, the Learned Senior Counsel for the referred to the provision of Sec.32A(2) of IBC, 2016 and thereto, to say that in view of the Press Release dated 14.07.2022 issued by the Enforcement Directorate, the apprehensions of the applicant who has purchased the properties of the Corporate Debtor as a going concern, was that action may be taken by the Enforcement Director and this property also which is apparent from the Press Release. Therefore, the Learned Senior Counsel submitted that the time period should be extended to him, so that he will be able to make further payment and clear the issue.

14. At this juncture, we raised certain queries to the Senior Counsel Mr. Virender Ganda appearing for the Applicant / Buyer. The time for payment was 15.04.2022 for the balance payment of approx Rs.95 Crores as per Order dated 22.03.2022 passed by this Tribunal. As to why the Applicant paid meagre sums on various dates, as recorded by the Liquidator on page 40 and @ para 8 above to this there is no proper explanation from the Learned Senior Counsel except the Enforcement Directorate press note.

15. We also called upon the Learned Senior Counsel Mr. Virender Ganda to state whether in this Application, is there any documents placed on record to show the bonafide of this Applicant as to whether he is having the capability or capacity to pay the entire balance amount of approx Rs.95.00 Crores, which should have been paid on or before 15.04.2022 or during the time as extended vide order dated 29.06.2022.

To this the Learned Senior Counsel has stated that no such document is filed and if at all required, he is willing to file the same.

16. The further query raised by this Bench to the Senior Counsel Mr. Virender Ganda as to whether any proceeding have been initiated by the Enforcement Directorate to the best of applicant's knowledge that would affect the property under sale as on today, to which, he referred to some statements of the Liquidator made earlier to 04.08.2022.

17. In the above factual matrix at the instance of the Senior Counsel Mr. Virender Ganda appearing for the Applicant/Buyer, we called upon Mr. T.K. Bhaskar, the Learned Counsel appearing for the Liquidator, to state that if there is any attachment in respect of t of the property. He clarified that as per the provisional attachment order dated 01.08.2022, there is no reference to the property which is sold to the Applicant herein as a going concern. We recorded the statement of the Liquidator who is present along with Mr. T.K. Bhaskar, Ld. Counsel.

18. In this background, it is therefore clear that as on date, the question of granting immunity in terms of the prayer (b) does not arise because in respect of the subject property which was bought by the Applicant/ successful bidder, there appears to be no action initiated by the Enforcement Directorate as on date. The grant of immunity cannot be an issue in the present case because applicant has not shown any specific order passed by any authority for the purpose of

granting relief as prayed for in prayer (b). In any event there is no documents showing that action has been initiated against the subject property. A mere apprehension on the part of the Applicant will not suffice. This plea apparently is to gain time for payment on some pretext or the other. There is no proper explanation for the extended period of payment. The application conduct of paying in installment reveals that except making the EMD, there was no provision to pay the balance by 15.04.2022

19. Be that as may be, on the facts as discussed above, we are not inclined to invoke section 32A(2) of IBC, 2016 in the present case because the stage has not come for us to give an interpretation to that provision in the facts of the present case.

20. The question that arises for consideration in the present case is whether the letter dated 02.08.2022 issued by the Liquidator of Surana Industries Ltd., should be quashed as per prayer(a). To this, our clear- answer is NO, because the Liquidator issued the consequential letter based on the final order passed by this Tribunal on 29.06.2022, which has set out the time line for the payment and for forfeiture, if there is any deviation on the time line as extracted in para 7 of this order. If the applicant is aggrieved, he has to challenge the order of this Tribunal dated 29.06.2022, which he has not done. Merely challenging the Liquidator's letter dated 2nd August, 2022 will not suffice. The non-payment of the balance amount as directed by the Tribunal, forfeiture becomes

automatic. Liquidator has to only implement the Tribunal Order as a consequence. Hence, we find no merit in the plea to set aside the letter dated 02.08.2022. Prayer (a) is rejected.

21. The Applicant dithered in making payment because of certain news going around in the market that Enforcement Directorate has initiated action against the Corporate Debtor. The same is not a ground for non- payment because, it was private sale and at the time of sale, the Applicant purchased the property of the Corporate Debtor under liquidation with open eyes. He is responsible for due diligence. In any event he has been paying amounts in dribble and that clearly established applicants inability to pay as undertaken. Hence, no case has been made out for any relief main or interim.

22. Applicant has consciously sought extension of the time for payment. An order has been already passed by this Tribunal on 29.06.2022 on terms, it has become final. Therefore, no further relief of extension of time can be granted unless the order dated 29.06.2022 is set aside. The applicant accepted the order dated 29.06.2022 without demur. Applications filed again and again to extend time for payment will defeat the object of the sale and the proceedings under IBC.

23. The prayer for waiver of interest @ 12% per annum is not maintainable as the same is contained in order dated 29.06.2022 which remains unchallenged. Hence, such relief also cannot be granted. Therefore, we find no reason to

entertain this Application for the grant of any relief as sought for and are declined.

24. As far as the relief under section 32(A) of IBC, 2016 is concerned, the Senior Counsel Mr. Virender Ganda appearing for the Applicant/ successful bidder requested that some clarification should be given by this Tribunal. We are of the view that such prayer is premature and no clarification is required to be given on mere apprehension.

25. Hence for the aforestated reasons the present Application deserves to be dismissed and accordingly, diary No. 3305118016882022 stands dismissed.”

(Emphasis Supplied)

35. At this stage, we also observe that the Impugned Order has gone through the contention of the Appellant as well as the Respondent and recorded detailed reasoning for its order dated 10.08.2023.

36. The Appellant further submitted that subsequent to the Impugned Order dated 10.08.2022, the Respondent on 12.08.2022 published an e-auction sale notice of the assets of the Raichur Assets.

37. The Appellant submitted that since then the assets of the Corporate Debtor i.e., Raichur Assets have been sold at Rs. 145.38 Crores, therefore, there was no loss caused to the Financial Creditors because of the delay and submitted that he should have been returned his deposited amount of Rs. 37.8 Crores which is almost 30% of the total sale consideration of Rs. 105.21 Crores.

38. The Appellant submitted that the Adjudicating Authority has caused a grave injustice to the Appellant and has given undue and illegal enrichment to the Stakeholders of the Corporate Debtor, who were themselves responsible for leading the Corporate Debtor to liquidation.

39. The Appellant emphasised that the sale of the Corporate Debtor as a going concern to the Appellant is governed by Regulation 33(2)(c) r/w Schedule I, entry 2 of the IBBI (liquidation process) Regulations, 2016 and not under Regulation 33(2)(d) of the Liquidation Regulations, 2016.

40. The Appellant also submitted that sale of such assets stand completed in accordance with the 'Term of Sale' or 'Contract' as per entry 2(4) of Schedule 1 of Liquidation Regulations, 2016.

41. The Appellant attempted to present his case that in none of these documents or SCC Minutes, the word 'forfeiture' appeared except with reference to clause 9, proposal of the Appellant which provide for forfeiture of amount deposited as 'Commitment Advance' in case of failure of the Appellant to adhere the timelines.

42. The Appellant further submitted that on 13.04.2022. 10th SCC Meeting granted the extension of timelines for submitting the balance payment till 30.05.2022 and in the same meeting no discussion took place regarding forfeiture of the money paid by the Appellant and the Appellant subsequently filed an IA (IBC) 512 (CHE)/ 2022 before the Adjudicating Authority seeking extension of

time, however, no prayer was made regarding forfeiture but the Adjudicating Authority in its order dated 29.06.2022, disregarding commercial wisdom aspect of SCC, on its own, imposed the condition regarding forfeiture of the amount paid in the case of failure by the Appellant to comply with the timelines.

43. Thus, it is the case of the Appellant that the forfeiture was never contemplated between either of the parties i.e., Stakeholders or the Respondent and clearly the Adjudicating Authority exceeded its jurisdiction in imposing such unilateral conditions.

44. The Appellant pleaded that this is a case where the Adjudicating Authority should have been more reasonable and considerate taking into account several events including that all the Former Directors of the Corporate Debtor were arrested and some of properties of the Corporate Debtor were attached by the ED and changed financial marketing conditions due to Ukraine War which led to tightening of money market/ financial market, causing difficulty for the Appellant in raising funds for unsecured debts.

45. The Appellant reiterated that the Adjudicating Authority did not have any power to impose condition not proposed by the SCC or the Respondent i.e., forfeiture clause and cited the judgment of SCC in *Bachhaj Nahar v. Nilima Mandal & Anr.*, Civil Appeal No. 5798-5799 of 2008, where it was held that:-

“When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has

no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice.”

The Appellant also brought out that in the case of ***State of Orissa & Anr. v. Mamata Mohanty***, (2011) 3 SCC 436, it was held that :-

“It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted.”

46. The Appellant strongly argued that the present case is of private sale and in effect was a contract entered into between the Stakeholders and the Respondent and as such is to be covered by the terms agreed upon both the parties. Therefore, the Adjudicating Authority could not levy any condition beyond the contract entered into between the Appellant and the Respondent. The Appellant elaborated that the terms of conditions of private sale are covered under Indian Contract Act, 1872. The Appellant further stated that in terms of the Indian Contract Act, 1872, the “Liquidated Damages”, if any, could have been levied only in accordance with Section 74 of the Indian Contract Act, 1872.

47. In this connection, the Appellant cited judgment ***M/s R.K. Industries (Unit-II) LLP vs. M/s H.R. Commercial Private Limited and Other*** CA No. 7722 of 2021, where it was held that :-

“The jurisdiction bestowed upon the Adjudicating Authority [NCLT] and the Appellate Authority [NCLAT] are circumscribed by the provisions of the IBC and borrowing a

leaf from Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others, they cannot act as a Court of equity or exercise plenary powers to unilaterally reverse the decision of the Liquidator based on commercial wisdom supported by the stakeholders.”

(Emphasis Supplied)

48. The Appellant further pleaded that there is no provision of forfeiture in the Code during liquidation and the Impugned Order is therefore is against the principle of interpretation of a statute and cited the judgments of Hon’ble Supreme Court of India in the matter of ***Union of India & Anr. v. Hansoli Devi & Ors.***, (2002) 7 SCC 273, where following was held :-

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone so, in such case, best declare the intention of the lawgiver.”

The Appellant submitted that similarly, in the case of ***Raghunath Rai Bareja & Anr. v. Punjab National Bank & Ors.***, (2007) 2 SCC 230, it was held that :-

“The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.”

The Appellant also referred to the decision in the case of *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Anr.*, (2018) 9 SCC 1, where it was held that :-

“In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution 10 prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/ interpreted to include those, which were not intended by the legislature.”

49. It is the case of the Appellant that the Hon’ble Supreme Court of India and various other High Courts have also observed from time to time that the liquidated damages should be claimed based on that actual losses incurred into breach and not more than that.

50. The Appellant submitted that the Assets of the Corporate Debtor was subsequently sold at Rs. 145.38 Crores which is more than the amount offered by

the Appellant of Rs. 105.21 Crores therefore no amount including the commitment advance paid by the Appellant could have been affected by the Adjudicating Authority.

In this regard, the Appellant cited two judgments, namely, ***Bombay High Court - Sau. Jyoti v. Sau. Sindhubai Ramraoji Shende & Anr., 2017 SCC Online Bom 8181***, which reads as under :-

“Terms of the contract must be clear and explicit to justify forfeiture of the advance amount. Further, if the amount paid is towards part payment of consideration and not intended to be earnest money, then the forfeiture clause would not apply.”

and ***Suresh Kumar Wadhwa v. State of Madhya Pradesh & Ors., (2017) 16 SCC 757***

“A right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to stipulate a term in the contract in that behalf. A fortiori, if there is no stipulation in the contract of forfeiture, there is no such right available to the party to forfeit the sum.”

51. It is the case of the Appellant that he made the payment of Rs. 37.8 Crores which is more than 30% of the sale consideration as he was genuine purchaser and only due to unforeseen reasons he could not make the balance payments and in this regard certain payments were made by him on 13.07.2022 and 25.07.2022,

admittedly after the pronouncement of the Impugned Order dated 29.06.2022, on the good faith basis which was accepted by the Respondent without any reservation about the acceptance of the money and therefore the plea of his deemed acceptance of the Impugned Order dated 29.06.2022 cannot be accepted.

52. The Appellant submitted that the forfeiture made by the SCC, tantamount to unjustified enrichment which is not permitted in view of the several judgments of the Hon'ble Supreme Court of India and Hon'ble High Courts. The Appellant cited the case of *Kailash Nath Associates vs. Delhi Development Authority and Another*. (2015) 4 SCC 136 and the relevant portion of this judgment is reads as under :-

“DDA extended time atleast twice, therefore it is very difficult to say that there was a breach of any terms and conditions of the auction, as the period of three months which DDA could have insisted upon had specifically been waived.”

Similarly in the case of *Katta Sujatha Reddy & Anr. v. Siddamsetty Infra Projects & Ors.*, (2023) 1 SCC 355, it was held that :-

“Though there is a forfeiture clause in the agreement, this Court with a view of rendering complete justice between the parties, deems it appropriate to direct the vendors/appellants to repay the said amount with interest @7.5% p.a. from the date such payment was made by the purchase to the vendors, till the entire amount is paid back.”

The Appellant also gave ratio held in the case of ***Alisha Khan vs. Indian Bank (Allahabad Bank) & Ors, SLP (C) Nos. 15959-15960/2021***, where it was decided that :-

“The High Court ought to have allowed the refund of amount deposited being 25% of the auction sale consideration. Considering the fact that though initially the appellant deposited 25% of the auction sale consideration, subsequently, she could not submit balance 75%. Consequently, fresh auction has taken place and property has been sold. As no lesser amount is received, there is no loss caused to the Respondents.”

53. The Appellant refuted the charge of the Respondent that the Appellant concealed the information regarding his writ filed before the Hon’ble Madras High Court and pointed out that the writ proceedings have no bearing on the proceedings before this Appellate Tribunal and relied on the observation made by the Hon’ble Supreme Court in the case of ***S.J.S. Business Enterprises Pvt. Ltd. v. State of Bihar & Ors. (2004) 7 SCC 166:***

“The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed.”

54. Concluding his remarks, the Appellant pointed out that both the Impugned Orders deserves to be set aside and the Appeals be allowed.

55. Per-contra, the Respondent denied all the averments of the Appellant in both the Appeals, treating these as misleading, mischievous and without any merit.

56. The Respondent submitted that the Appeals have become infructuous since the sale of the Corporate Debtor has been confirmed in favour of Successful Bidder i.e., Texcon Steels Ltd. for Rs. 145.38 Crores, who has already paid the entire money on 28.11.2022 and subsequently sale certificate along with the tax invoice, delivery chalan have been issued to him on 30.11.2022.

57. The Respondent assailed the conduct of the Respondent who sought extension of timelines to make payment and the same was discussed in 10th SCC Meeting held on 13.04.2022 where SCC categorically stated that they were not able to consider the same as the sale itself has been approved by the Adjudicating Authority in terms of Section 32(2)(d) of the Liquidation Regulation, 2016.

58. The Respondent stated that the Appellant himself filed an I.A/512/2022 seeking extension of timelines for payment on 28.04.2022.

The Respondent submitted that the Adjudicating Authority passed the order wherein the Appellant was given suitable timelines up to 30.06.2022 along with 12% interest from the stipulated dates and imposed the condition regarding forfeiture in the event of the failure of the Appellant to remit the money in time.

59. The Respondent further submitted that another I.A. No. 826 of 2022 was filed by the for the extension of time on 29.07.2022. The Appellant stated that the Appellant accepted the Impugned Order dated 29.06.2022 and made the part payments by way of two instalments paid on 13.07.2022 and 25.07.2022 of Rs.1.5 Crores. The SCC considered conduct of the Appellant in 13th SCC Meeting and held that since timelines is already over and only Rs. 1.5 Crores paid by the Appellant, the SCC decided not to extend the timeline and passed the resolution for fresh auction. The Respondent emphasised that the Appellant's representative was present in the 13th SCC Meeting, however, did not make any statement nor did the challenge the minutes of the 13th which attained finality. Subsequently, on 02.08.2022 the Respondent issued forfeiture letter to the Appellant.

60. The Respondent also alleged that the Appellant has not come with clean hand as he has not disclosed the fact about Writ Petition before the Hon'ble before the Hon'ble Madras High Court. The Respondent stated that the Appellant filed Writ Petition No. 24262 of 2022 against the Impugned Order dated 29.06.2022 and managed to get stay on the distribution, however, after hearing of the case, the Hon'ble Madras High Court dismissed the said Writ Petition and stay was vacated and subsequently, forfeited amount was distributed amongst the Financial Creditors on 05.12.2022.

61. The Respondent submitted that the Appellant cannot make a virtue out of his own defaults and submitted that several opportunities were given to him in

accordance with law, however, the Appellant miserably failed to meet the stipulated timelines and therefore, there was no alternative for the stakeholders but to find an alternative way and thereafter they succeeded in selling the same to Texcon Steel Ltd. for Rs. 145.38 Crores.

62. The Respondent alleged that the Appellant is seeking approbation and reprobation simultaneously, since on one hand, the Appellant is making a case that Stakeholder made wrong enrichment due to forfeiture whereas on the other hand the Appellant alleged that the Respondent have not distributed forfeiture amount within Stipulated 90 days violating Regulation 42 of Liquidation Regulation, 2016.

63. The Respondent reiterated that the Appellant made payments of Rs 1.5 Cr as on 25.07.2023 pursuant to the Impugned Order dated 29.06.2022, thus accepting the order the Adjudicating Authority. The Appellant though filed an appeal challenging the order dated 29.06.2022 before this Appellant Authority on 13.08.2022, did not pursue to same until 24.01.2023 i.e. for around 6 months before this Appellate tribunal. Instead, the Appellant continued to file Application bearing IA 826 of 2022 (26.07.2022) and subsequently SR No. 3305118016882022 (04.08.2022) seeking extension of time before the Adjudicating Authority and suppressed the fact about filing the writ before the Hon'ble High Court of Madras on 05.09.2022, to avoid the forfeiture instead of

arranging payments for balance sale consideration. The Respondent alleged that the Appellant is trying to indulge in forum shopping.

64. The Respondent submitted that it is well settled law that the person cannot be permitted to take benefit of one part of the Impugned Order and dispute the other part of the same order. Elaborating this principle, the Respondent stated that the Appellant cannot be permitted to take benefit of the portion of the Impugned Order dated 29.06.2022, whereby the Appellant was permitted for extension of time, however, the other part of the Order regarding forfeiture clause has been challenged by the Appellant.

65. The Respondent defended the clause of forfeiture which has been imposed by the Adjudicating Authority in the Impugned Order dated 29.06.2022 and stated that the same is perfectly legal, in terms of Rule 15 of NCLT Rules, 2016 whereby the Adjudicating Authority gets the power to extend the time “upon such terms if any”. The Respondent stated that the Adjudicating Authority accepted the timelines submitted by the Appellant, however, to prevent the Appellant from seeking further such unwanted and non-serious request of extension of time and delaying payments, put the suitable condition of forfeiture.

66. The Respondent submitted that the operation of forfeiture clause came into force only when the Appellant failed to meet the timelines again and again and finally based on the Impugned Order, the amount was forfeited.

67. The Respondent submitted that such forfeiture is perfectly valid and has also been upheld by the Hon'ble Supreme Court of India in the case of ***Kridhan Infrastructure Pvt. Ltd. Vs. Venkatesan Sankaranarayan and Ors.*** - Civil Appeal No. 3299 of 2020.

68. The Respondent cited judgment in the case of ***Union of India (UOI) and Ors. Vs. N. Murugesan and Ors.***- Civil Appeal Nos. 2491-2492 and 2493-2494 of 2021 and ***State of Punjab and Ors. Vs. Dhanjit Singh Sandhu*** Civil Appeal Nos. 5698-5699 of 2009 in support of his case.

69. The Respondent strongly refuted that Indian Contract Act, 1872 has anything to do in the present appeals and stated that Section 73 and 74 of the Contract Act, 1872 are not applicable here in the facts of the present case.

70. The Respondent highlighted that the sale was made to the Appellant through a private sale which was required to be approved by the Adjudicating Authority in accordance with the Liquidation Rules, 2016 and this fact is unambiguous and clear.

71. The Respondent submitted that since, several concessions were sought by the Appellant, the Respondent had to approach the Adjudicating Authority to approve the sale as a going concern to the Appellant and therefore, although this was a private sale, it was a sale approved by the Adjudicating Authority and therefore, is not covered under Section 73 and 74 of the Indian Contract Act, 1872. The Respondent cited the judgment of this Appellate Tribunal where similar

position was upheld in the case of *Westcoast Infraprojects Private Limited Vs. Ram Chandra Dallaram Choudhary Company Appeal (AT) (Insolvency) No. 1258 of 2022.*

72. The Respondent, denied that there has been undue enrichment at the cost of the Appellant and stated that although finally assets of the were sold at Rs. 145.38 Crores, however, this is also much lower than their outstanding dues to the Corporate Debtor. The Respondent submitted that in fact the original liquidation value of December, 2018 Rs. 338.0 Crores which was more than the double then even offer received and sold now and as such the submission of the Appellant are out of context and not maintainable. The Respondent stated that mere fact that finally auction sale amount was more than the Appellant's bid does not hold that forfeiture is not permissible.

73. The Respondent cited the Judgement of Hon'ble Supreme Court of India *Authorised officer State Bank Of India Vs. C. Natarajan & Anr. Civil Appeal No. 2545/2023* where it was held that subsequent sale which is of greater value cannot be a ground to return the forfeited amount in case of default on account of the Appellant.

74. The Respondent elaborated that the cited judgement of the Appellant have got no links to the facts and circumstances in the present appeal and the Respondent gave reasoning to distinguish details such cited cases from the present appeal.

75. The Respondent also denied all the averments made by the Appellant regarding so-called attachment of properties of the Corporate Debtor by the ED which could have impacted the Appellant. The Respondent submitted that none of the Raichur Assets of the Corporate Debtor, which were sold to the Appellant, were part of the attachment order of the ED and the Appellant was only trying to make artificial grounds to avoid payments, especially keeping in fact that the original date of payment was long back on 31.05.2019 and even extended date provided by the Adjudicating Authority as 30.06.2022 was also almost getting over.

76. Concluding his pleadings, the Respondent submitted that both the Appeals deserves to be dismissed with exemplary costs.

77. After hearing, all above pleadings, following issues are required to be addressed to arrive at logical decision. Since all issues are inter connected and inter related, these issues shall be discussed in conjoint manner in the following paragraphs:-

Issues, inter-alia captured are :-

- (i) Whether, private sale was subject to Regulation 33(2)(c) or subject to Regulation 33(2)(d) of the liquidation regulation, 2016.
- (ii) Whether, the Indian Contract Act, 1872 in the present appeals, would be applicable for private sale or the private sale would be covered as per provisions of the Code r/w Liquidation Regulation, 2016.

- (iii) Whether Section 73 and 74 of the Indian Contract Act, 1872 are applicable in the present appeals.
- (iv) Whether, application was made before the Adjudicating Authority only for seeking exemptions in terms of Liquidation Regulation, 2016 or for confirmation of the private sale in favour of the Appellant.
- (v) Whether, the Adjudicating Authority has power to impose the conditions not recommend by SCC as contained the Impugned Order dated 29th June, 2022 w.r.t. forfeiture of the amount paid by the Appellant.
- (vi) Whether liquidated damages, if any, in the manner of forfeiture, could have been recovered from the Appellant.
- (vii) Whether, the minutes of the 10th SCC were unanimous decision or only recorded the submission made by the Appellants.
- (viii) Whether, the filing of the Writ Petition by the Appellant before the Hon'ble High Court of Madras and not disclosing before the Tribunal/ Appellate Tribunal was concealment of information by the Appellant.
- (ix) Whether, the Appellant could take benefit of approbation and reprobation particularly in following the order of the Adjudicating

Authority dated 29.06.2022 in I.A. No. 512 of 2022 in accepting the extension of time but refuting the forfeiture clause of the same order.

- (x) Whether the payment of two tranches of payments made by the Appellant on 13.07.2022 and 25.07.2022 after passing of the Impugned Order dated 24.06.2022 tantamount to acceptance of the Impugned Order dated 29.06.2022.

78. The controversy is regarding private sale as contained in Regulation 33 (1) and 33(2) of the Liquidation Regulations, 2016. Therefore, it is desirable to go into details of Regulation 33 which reads as under :-

“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.”*

(Emphasis Supplied)

- Regulation 33 is ‘*Mode of Sale*’ and in normal case, the assets of the Corporate Debtor to be sold through an auction in the manner specified in Schedule-I of these Regulations. However, the Liquidator is also allowed to sell the assets of the Corporate Debtor by means of private sale in the matter specified in Schedule – I of these Regulations when few conditions are met.
- The condition 33(2)(a) is applicable when assets is perishable and Regulation 33(2) (b) is applicable when asset is likely to deteriorate its value if not sold immediately. These two conditions are not applicable in the present appeals.
- It is the case of the Appellant that the private sale was done in terms of Regulation 33 (2) (c) i.e., when assets is sold at a price higher than the reserve price of a failed auction. On the other hand, the Respondent has

taken a strong plea that a private sale was made in terms of Regulation 33(2)(d) i.e., private sale subject to prior permission of the Adjudicating Authority is required to be obtained.

- It is a fact that there have been several attempts to auction the Raichur Assets which failed. It is also a fact that assets were sold at the price higher than the reserve price of a failed auction. However, we note that the Appellant sought several concessions and relief while giving his bid for Rs. 105.21 Crores. These reliefs were obviously not within the domain of liquidator or the Stakeholder Committee and were required to be approved by the Adjudicating Authority.
- We note that I.A. No. 997 of 2021 was filed by the Respondent under Regulation 33(2)(d) of the Liquidation Regulation, 2016 seeking approval of sale of the Corporate Debtor as a going concern as a means of private sale to the Appellant, in term of bids submitted by the Appellant on 09.09.221. In this connection, the heading of the I.A. No. 997 of 2021 reads as under :-

“Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 32(e) Read With Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016”

(Emphasis Supplied)

- Similarly, we also note that the Appellant wrote a letter dated 02.09.2021 to the Respondent for purchasing assets of the Corporate Debtor and the relevant para by which he requested the concessions to be approved by the Adjudicating Authority is reproduced as under :-

“The Applicant further submits that Tribunal is empowered to grant necessary reliefs in relation to the Corporate Debtor, sold as a "going concern under the provisions of the Liquidation Process Regulations, under Section 60(5)(c) of the Code. Therefore, the Applicant submits that the instant case is a fit case to grant the reliefs in favour of the Applicant. It is clarified by the applicant that, if the NCLT does not grant any reliefs / concessions / relaxations / permissions and directs the applicant to approach the concerned authority, then in such case the applicant shall approach the concerned authority for grant of the reliefs / concessions/relaxations /permissions and that the implementation of the Scheme shall remain unaffected in all such circumstances”.

(Emphasis Supplied)

- It is observed that the Appellant categorically stated that the Tribunal is empowered to grant such necessary reliefs to the Appellant under the provisions of the Liquidation Rules, 2016 and further mentioned that in case, the Adjudicating Authority does not give such relief, the Appellant shall pursue the same with the concerned authorities directly. Hence, the Appellant knew very well regarding legal position of the approval i.e., to

be obtained from the Adjudicating Authority which can be granted only under Regulation 33(2)(d) of Liquidation Regulation, 2016.

- We further note that 9th SCC Meeting held on 16.09.2021 that the sale was proposed under Regulation 33(2)(d) and the relevant portion of the minutes reads as under :-

List of the Proposal submitted by Shri Karshnt Alloys Private Limited:

S.No.	Description	
1.	<i>Amount of Sale Consideration</i>	<i>Rs. 105.21 Crores</i>
2.	<i>Amount of Commitment Advance (received)</i>	<i>Rs. 105.21 Crores (10% of the total sale consideration)</i>
3.	<i>Date of remittance of Balance Sale Consideration</i>	<i>Within 15 days from the date of approval of the sale by Hon'ble NCLT</i>
4.	<i>Regulation 32- Manner of sale</i>	<i>As per Regulation 32(e) - Sale of the corporate debtor as a going concern</i>
<u>5.</u>	<u>Regulation 33 - Mode of Sale</u>	<u>As per Regulation 33(2)(d) - Sale by means private sale</u>
6.	<i>Comfort Letter for the payment of Balance Sale Consideration</i>	<i>The Buyer has submitted a Letter of Comfort from M / s Kamal Renu Credit & Invest Private Limited stating their intention to provide Financial support to Shri Karshni Alloys Private Limited for acquisition and</i>

		<i>running operations of the Corporate Debtor</i>
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(Emphasis Supplied)

- We further take into consideration that IA filed by the Appellant bearing I.A No. 512 of 2022 in I.A. No. 997/CHE/2021 in TCP/95/CHE/2017 on 22.09.2021 before the Adjudicating Authority for seeking extension of time up to 31.05.2022 and in the same application while noting the brief facts of the case in Part 5 of the said I.A. No. 997/CHE/2021, the following was mentioned by the Appellant :-

“The Liquidator had filed the application being I.A. No. 997/CHE/2021 seeking approval of the sale of the Corporate Debtor as a going concern under Regulation 32(e). 33(2)(d) of IBBI (Liquidation Process).”

(Emphasis Supplied)

- In view of all above submissions and records of both the Appellant and the Respondent, it is clear that the approval of sale on private sale basis was subjected to Regulation 32(2)(d) and not 33(2)(c) as claimed by the Appellant.

79. Now we will examine whether, the Indian Contract Act, 1872 would be applicable for private sale or the private sale would be covered as per provisions of the Code r/w Liquidation Regulation, 2016.

- It is the case of the Appellant that the Appellant submitted that after persistent failure of the Respondent to sale the assets of the Corporate Debtor, the Appellant made a suo-moto offer which was accepted by the Respondent after the approval of the SCC and as such, it was pure contract between the parties and is to be covered by the Indian Contract Act, 1872.
- The Appellant further submitted that even the concession were sought by him, requiring approval of the Adjudicating Authority w.r.t., the private sale continues to be in the nature of the contract and not covered by the Code.
- On the other hand, the Respondent pleaded that the private sale was entirely subjected to Regulation 33(2)(d) and there was no occasion for applicability of Indian Contract Act, 1872

80. The allegation of the Appellant is that the Adjudicating Authority did not have any power to impose suo-moto conditions not asked for and thus exceeded its jurisdiction. In this regard, we have already noted that the Appellant filed an I.A. No. 512 of 2022 for seeking extension of time before the Adjudicating Authority. The Adjudicating Authority vide its order dated 29.06.2022 allowed the same, but also imposed the condition regarding forfeiture. The relevant portion of the Impugned Order dated 29.06.2022 reads as under:-

iii. The Applicant is directed to strictly comply with the said timelines. Any deviation from the same would

amount to forfeiture of the entire amount paid by the Applicant.”

(Emphasis Supplied)

- In this connection, we would also refer to the powers which permits the Adjudicating Authority to consider such request for extension of time. We note that the Adjudicating Authority has power to extend the time in terms of Rule 15 of NCLT Rules, 2016 which reads as under :-

“15. Power to extend time.- The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.”

(Emphasis Supplied)

This rule empowers the Tribunal to extend the time fixed by these rules or fixed by any other orders, upon such terms, if any, as the justice of the case may require.

- From the facts of the present case, it is noted that the sale of Raichur Assets has seen prolonged history and only after 13 consecutive failure of auction, the bid of the Appellant was accepted by the SCC in its 9th SCC Meeting. It is also noted that the Appellant later sought extension of time which is also considered in the 10th SCC Meeting. However, in the 10th SCC

Meeting, the Stakeholders were dissatisfied with the attitude of the Appellant regarding seeking extension of time and categorically stated that the same was not within their power.

- We observe that subsequently an application bearing I.A. No. 512 of 2022 was filed by the Appellant himself for seeking extension of time from the Adjudicating Authority.
- In this background, keeping in view the failure of the Appellant to adhere to the original timelines, the Adjudicating Authority while extending the timelines as sought by the Appellant, also imposed the condition of forfeiture in case of failure of payment by the Appellant within the stipulated time frame. It need to be appreciated that the Impugned Order was dated 29.06.2022 and forfeiture claims, if at all, was to be applicable only if the Appellant failed to made payment by 31.07.2022. Thus, additional 33 days period was granted by the Adjudicating Authority to the Appellant to make payment. This condition was not applicable, if the Appellant would have payment by further extended timelines of 31st July, 2022. Thus, the condition seems to be rational keeping in view the intent of the IBC to resolve the Corporate Debtor in time as well as keeping in view request of the Appellant for extension of time.
- We have noted that such stipulation was within the power of the Adjudicating Authority contained in Rule 15 of the NCLT Rules, 2016.

- The argument of the Appellant is that the Adjudicating Authority exceeded its jurisdiction in imposing the condition of forfeiture which was not prayed for or which was not discussed by the SCC, does not seem to be logical and is found as unsustainable.
- The another issue raised by the Appellant is regarding undue enrichment by the Stakeholders at the cost of the Appellant. We have noted that after failure to find resolution of the Corporate Debtor, it was decided by the SCC to liquidate the same which was approved by the Adjudicating Authority.
- We have also noted that liquidation value was assessed on three occasions which reads as under:-

<i>Date</i>	<i>Amount (in Crores)</i>
<i>December, 2018</i>	<i>338.01</i>
<i>August, 2019</i>	<i>227.31</i>
<i>August, 2020</i>	<i>117.23</i>

- It is a fact that the Appellant offered his bid of Rs. 105.21 Crores which was accepted by the SCC and approved by the Adjudicating Authority. However, the Appellant failed to make the payments in time even by extended timelines and the private sale was cancelled and the amount was forfeited by the SCC. The SCC further authorised the Respondent to

conduct a fresh auction and finally the assets of the Corporate Debtor were sold to Texcon Steel Ltd. for Rs. 145.38 Crores.

- Hence, the contention of the Appellant prima-facie seems attractive as the Respondent received more than Rs. 105.21 Crores. However, looking from other perspective, it is a fact that the Financial Creditors could not recover the outstanding dues and also could not sale the assets even finally at the first liquidation value of Rs. 338.01 Crores.
- Be that as it may, the Adjudicating Authority after examining of the merit did stipulate the condition regarding forfeiture of the money in the case of failure of the Appellant to pay in time of the amount already paid by the Appellant.
- It is a undisputed fact that the Appellant failed to make the payments in time and consequently the money was forfeited. In such circumstance, it is not really material whether finally the auction value was more than the amount proposed by the Appellant and in true sense they have not been any alleged undue enrichment by the Stakeholder at the cost of the Appellant. The basic fact is that the Appellant was to pay money as per his offer as accepted by the SCC, which he could not do. The Appellant approached the Adjudicating Authority for extension of time, which was also considered and approved by the Adjudicating Authority, however, the Adjudicating Authority found reasonable to impose the condition of

forfeiture in the Impugned Order dated 29.06.2022, only if the Appellant failed to make the payment even in the extended timelines. The same was accepted by the Appellant and paid two more instalments subsequent to the date of Impugned Order. Finally, the Appellant could not pay within the timeline and SCC, acting on the judicial order of the Adjudicating Authority forfeiting money.

- In this background, we do not find any merit in the argument of the Appellant regarding undue enrichment by the SCC at the cost of the Appellant.
- In this connection, we would like to refer to the Judgement of the Hon'ble Supreme Court of India in the matter of ***Kridhan Infrastructure Pvt. Ltd.*** (*Supra*) which has held the similar position.

*“para 11 ***Time is a crucial facet of the scheme under the IBC.8 To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However, a resolution applicant must be fair in its dealings as well. The Appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the Civil Appeal any further. The consequence envisaged under the order of this Court 6 shall accordingly ensue in terms of the forfeiture of the amount of Rs. 20 crores. As a consequence of this order, the management shall revert*

to the liquidator for taking steps in accordance with law. The Civil Appeal is accordingly dismissed”

(Emphasis Supplied)

- From above judgment Hon’ble Supreme Court of India upheld the order regarding forfeiture of the money overruling the objection of the Applicant that case. It is also pertinent to note that the Hon’ble Supreme Court has further intended that time is a crucial facet of a scheme under the IBC and allowing proceeding and indefinite delay cannot be allowed.
- We will also refer to the decision of the Hon’ble Supreme Court of India in the case of ***Authorised Officer, State of Bank of India vs. C. Natarajan & Anr.*** Civil Appeal no. 2545 of 2023, where Hon’ble Supreme Court of India held that :-

“24. The up-shot of the aforesaid discussion is that whenever a challenge is laid to an order of forfeiture made by an authorized officer under sub-rule (5) of rule 9 of the Rules by a bidder, who has failed to deposit the entire sale price within ninety days, the tribunals/courts ought to be extremely reluctant to interfere unless, of course, a very exceptional case for interference is set up. What would constitute a very exceptional case, however, must be determined by the tribunals/courts on the facts of each case and by recording cogent reasons for the conclusion reached. Insofar as challenge to an order of forfeiture that is made upon rejection of an application for extension of time prior to expiry of

*ninety days and within the stipulated period is concerned, the scrutiny could be a bit more intrusive for ascertaining whether any patent arbitrariness or unreasonableness in the decision making process has had the effect of vitiating the order under challenge. However, in course of such scrutiny, the tribunals/courts must be careful and cautious and direct their attention to examine each case in some depth to locate whether there is likelihood of any hidden interest of the bidder to stall the sale to benefit the defaulting borrower and must, as of necessity, weed out claims of bidders who instead of genuine interest to participate in the auctions do so to rig prices with an agenda to withdraw from the fray post conclusion of the bidding process. **In course of such determination, the tribunals/courts ought not to be swayed only by supervening events like a subsequent sale at a higher price or at the same price offered by the defaulting bidder or that the secured creditor has not in the bargain suffered any loss or by sentiments and should stay at a distance since extending sympathy, grace or compassion are outside the scope of the relevant legislation.** In any event, the underlying principle of least intervention by tribunals/courts and the overarching objective of the SARFAESI Act duly complimented by the Rules, which are geared towards efficient and speedy recovery of debts, together with the interpretation of the relevant laws by this Court should not be lost sight of. Losing sight thereof may not be in the larger interest of the nation and susceptible to interference.*

25. In the present case, undisputedly, payment of 25% of the sale price was made by the contesting respondent on 15th September, 2017; hence sub-rule (3) of rule 9 stood complied with. The contesting respondent was notified to deposit the balance 75% of the sale price by 29th September, 2017. Admittedly, he could not or did not so deposit till 27th September, 2017, whereupon he prayed for extension of time by 25 days by his request letter of even date, i.e., 27th September, 2017. The Authorized Officer responded favourably and extended the time for deposit by 25 days as prayed by the contesting respondent, i.e., till 23rd October, 2017. Extension of time till 23rd October, 2017, therefore, was by mutual agreement – a course of action permitted by sub-rule (4). On 20th October, 2017, the contesting respondent made a further request for extension of time by 15 days citing pendency of proceedings at the instance of Stallion before the DRT. This request came to be rejected by the Authorized Officer by his letter dated 21st October, 2017 referring to absence of any order of stay in operation and that the contesting respondent was free to deposit the balance amount of sale price and take possession of the auctioned immovable property. The contesting respondent not having deposited the balance amount of sale price by 23rd October, 2018, the mutual agreement for extension of time, thus, lapsed with effect from 24th October, 2017. This resulted in the order of forfeiture being passed by the Authorized Officer in terms of sub-rule (5).

*26. We do not see reason to hold that there has either been any manifest arbitrariness or unreasonableness, which warranted interdiction with the order of forfeiture. The contesting respondent in terms of the statutory ordainment was required to pay the balance amount of sale price on or before 15 days of confirmation of sale. Days prior to expiry of such period, he prayed for an extension of 25 days. Such prayer was granted. Further prayer for extension was made ten days after receipt of summons from the DRT. The exact date on which the contesting respondent applied before the DRT for extension of time as well as the exact terms of the order passed on such application, however, is not available on record. We shall proceed on the premise that the prayer for extension of time was not granted. The order of the Authorized Officer dated 24th October, 2017 forfeiting 25% of the sale price was also not challenged by the contesting respondent before the DRT in any independent proceeding; on the contrary, after the DRAT granted permission to the Authorized Officer to conduct sale afresh by its order dated 12th December, 2017 and pursuant whereto a fresh e-auction notice was issued on 18th December, 2017****

(Emphasis Supplied)

- From above Judgement of Hon'ble Supreme Court of India, it is clear that the Court/Tribunal should not be swayed by fact that subsequent auction was made at higher bid amount and should not normally interfere in such process including forfeiture.

- During final pleadings the Respondent brought to our notice, the latest judgement of Hon'ble Supreme Court of India in case of the ***The Authorised Officer, Central Bank of India vs. Shanmugavelu*** in Civil Appeal No(s). 235-236 of 2024 in support of his case on undue enrichment.

We have gone through the same and note the following relevant portion:-

“62. If the consequence of forfeiture was purely a matter of breach of contract, then there would have been no occasion for the legislature to specifically provide for forfeiture through the statutory provisions, and it would have simpliciter relegated the consequences of such breach to already existing general law under Section(s) 73 and 74 of the 1872 Act. [See C. Natarajan (supra) at Para 20]

64. If Section(s) 73 and 74 respectively of the 1872 Act are interpreted so as to be made applicable to a breach in payment of balance amount by the successful auction purchaser, it would lead to a chilling effect in the following

ways: -

(i) First, it would be quite preposterous to suggest that in an auction which is a process meant for recovery of debt due to default of the borrower, the balance amount if not paid by the successful auction purchaser, another recovery proceeding would have to be initiated by the secured creditor in terms of Section(s) 73 and 74 of the 1872 Act to recoup the loss and expenditure occasioned to it by the defaulting successful auction purchaser.

(ii) Secondly, such an interpretation would allow unscrupulous borrowers being hands-in-glove with the auction purchasers to use subversive methods to participate in an auction only to not pay the balance amount at the very end and escape relatively unscathed under the guise of Section(s) 73 and 74 of the 1872 Act, thereby gaming the entire auction process and leaving any possibility of recoveries under the SARFAESI Act at naught. [See; C. Natarajan (supra) at Para 19]

65. Thus, such an interpretation would completely defeat the very purpose and object of the SARFAESI Act and would reduce the measures provided under Section 13 of the SARFAESI Act to a farce and thereby undermine the country's economic interest.

90. We are conscious of the decision of this Court in Kailash Nath Associates v. Delhi Development Authority & Anr. reported in (2015) 4 SCC 136 wherein it was held that Section 74 of the 1872 Act will be applicable to cases of forfeiture of earnest-money deposit, however, where such forfeiture takes place under the terms and conditions of a public auction, Section 74 will have no application. The relevant observations are reproduced below: -

“43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court.

In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.

43.4. The Section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated

amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.”

91. Since, the forfeiture under Rule 9(5) of the SARFAESI Rules is also taking place pursuant to the terms & conditions of a public auction, we need not dwell any further on the decision of Kailash Nath (supra) and leave it at that. Suffice to say, in view of the above discussion, Section(s) 73 and 74 of the 1872 Act will have no application whatsoever, when it comes to forfeiture of the earnest-money deposit under Rule 9 sub-rule (5) of the SARFAESI Rules

105. The High Court whilst passing the impugned order thought fit to reduce the extent of amount forfeited in view of the subsequent sale of the Secured Asset by the appellant bank at much higher price than the previous auction. This in the High Court’s opinion meant that no loss had been caused to the appellant bank, as it had duly recovered more than its dues from the subsequent sale and as such was not entitled to forfeit the entire amount of deposit as doing so would amount to unjust enrichment, which is not permissible by the SARFAESI Act.

106. However, we are not in agreement with the aforesaid observations of the High Court. When an auction fails and a fresh auction is required to be conducted in respect of the

Secured Asset, there looms a degree of uncertainty as to the extent of bids that may be received in the future auction or whether the fresh auction would even be successful or not.

More often than not, with the efflux of time, the value of the Secured Asset erodes. In such a case it would be preposterous to tie or limit the forfeiture under Rule 9(5) of the SARFAESI Rules on an eventuality or a contingency of a subsequent sale of the secured asset if any.

107. As regards whether, the forfeiture of the entire amount of deposit even after having recovered the entire debt amounts to unjust enrichment or not? It would be apposite to understand what is meant by 'unjust enrichment'.

110. This Court in C. Natarajan (supra) had held that forfeiture of 25% of the deposit does not constitute as an unjust enrichment with the following relevant observations being reproduced below: -

“35. In the light of guidance provided by the above decisions, what needs to be ascertained first is whether the Bank received or derived any benefit or advantage by forfeiture of 25% of the sale price. We do not think that the Bank has been enriched, much less unjustly enriched, by reason of the impugned forfeiture. Receipt of 25% of the sale price by the Bank from the contesting respondent was not the outcome of any private negotiation or arrangement between them. It was pursuant to a public auction, involving a process of offer and acceptance, and it was in terms of statutory

provisions contained in the Rules, particularly rule 9(3), that money changed hands for a definite purpose. Receipt of 25% of the sale price does not constitute a benefit, a fortiori, retention thereof by forfeiture cannot be termed unjust or inequitable, so as to attract the doctrine of unjust enrichment. The Bank, as a secured creditor, is entitled in law to enforce the security interest and in the process to initiate all such steps and take all such measures for protection of public interest by recovering the public money, lent to a borrower and who has squandered it, in a manner authorized by law. The contesting respondent participated in the auction well and truly aware of the risk of having 25% of the sale price forfeited in case of any default or failure on his part to make payment of the balance amount of the sale price. Question of the Bank being enriched by a forfeiture, which is in the nature of a statutory penalty, does not and cannot therefore arise in the circumstances.”

113. Thus, the High Court erred in law by holding that forfeiture of the entire deposit under Rule 9 sub-rule (5) of the SARFAESI Rules by the appellant bank after having already recovered its dues from the subsequent sale amounts to unjust enrichment.”

(Emphasis supplied)

- We consciously note that although above judgment is w.r.t. SARFAESI Act, however, is equally applicable to present case as the basic issues of applicability of Section 73 and Section 74 of Indian Contract Act, 1872 in auctions as well as undue enrichment by banks have been covered. We are guided by the same and accordingly find the merits in the pleadings of the Respondent.
- Hence, the contention of the Appellant that since, the Stakeholders could manage to sale the Raichur Assets at much higher value of Rs. 145.38 Crores against his offered bid of Rs. 105.21 Crores and therefore the money paid by the Appellant, should not have been forfeited, is not sustainable.
- As regard another issue whether the minutes of the 10th SCC were unanimous endorsing extension of time as proposed by the Appellant herein or the Stakeholders did not agree to the same, we would like to refer to the relevant portion of the 10th SCC Meeting, which is seen as under :-

Annexure A5

SURANA INDUSTRIES LIMITED (in liquidation)

Minutes of the Tenth Meeting of the Stakeholders (Secured Financial Creditors) held on 13th April, 2022, Wednesday, 4.30 PM at Old no. 22, New no. 28, Menod Street, Purasawalkam, Chennai - 600 007.
(through video conferencing)

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1

Present:

All 15 Secured Financial Creditors, were present through Video Conferencing.

Mr. Drabesh Jha, Representative of the Prospective Buyer (M/s. Shri Karshni Alloys Private Limited) was present for the meeting.

The Liquidator was present.

On account of the "COVID 19" pandemic, all the Stakeholders had attended through Video Conferencing

The Video/Audio Conferencing was done through "Blue Jeans".

Chairperson:

The Liquidator acted as the Chairperson of the meeting of Stakeholders.

Subject discussed:

1. To discuss on the schedule of payment proposed by Shri Karshni Alloys Private Limited - Buyer of Surana Industries Limited as a going concern:

The Liquidator informed that the Hon'ble NCLT had vide its Order dated 22nd March, 2022 had allowed the application for Private sale of Surana Industries Limited as a Going concern to M/s. Shri Karshni Alloys Private Limited.

The Certified copy of the NCLT Order approving the sale of the Corporate Debtor as a Going concern was received on 31-03-2022. In adherence to the Order of the Hon'ble NCLT, the Prospective buyer shall pay the balance sale consideration of Rs. 94.689 Crores (i.e., Total Sale consideration of Rs. 105.21 Crores less 10% Commitment Advance of Rs. 10.521 Crores) on or before 15th April, 2022 (i.e., within 15 days from the date of receipt of this Certified Order Copy.)

However the buyer has now sought for extension of the timeline for payment of the balance sale consideration.

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*Comp. App. (AT) (CH) (Ins.) No. 438 of 2022
& Comp. App. (AT) (CH) (Ins.) No. 443 of 2022*

The Prospective buyer had proposed a revised schedule of payment as follows:-

Date of payment	% of payment	Amount (in Rs.)
Total amount to be paid		1,05,21,00,000
Amount already paid on 10-09-2021	10%	10,52,10,000
Balance to be paid		
15-04-2022	15%	15,78,15,000
15-05-2022	10%	10,52,10,000
30-05-2022	10%	10,52,10,000
15-06-2022	10%	10,52,10,000
28-06-2022	45%	47,34,45,000

Mr. Drabesh Jha, Authorised Representative of the Prospective Buyer expressed their inability to make the entire payment before 15th April, 2022. He stated that the Investors who were supposed to fund the proposal, had invested the funds elsewhere since a period of 6 Months had elapsed from the date of Filing of Application. Nevertheless efforts are being made to make ends meet through Personal resources and with other new investor for the project.

Having briefed on the current position, the views of the lenders were sought in this regard, who in turn stated as follows:-

- Since a Court Order on the approval of the Sale of the Corporate Debtor as a Going Concern was passed by the Hon'ble NCLT Chennai with specific directions to pay the Sale Consideration within 15 days from the receipt of Order, it was beyond their scope to accept any extended timeline beyond 15th April, 2022. It would be the jurisdiction of the NCLT to consider and allow the appropriate extensions to be sought by the buyer.
- The lenders also expressed their dissatisfaction for extension of timelines till 28th June 2022. They stated that since 3 months is quite a long period of extension, it would be difficult to place it before their higher authorities and in adverse scenario may even have an impact of cancellation of the proposal.

After deliberations, Mr. Drabesh Jha proposed a revised schedule for the payment proposal which is as follows:-

Date of payment	% of payment	Amount (in Rs.)
Total amount to be paid		1,05,21,00,000
Amount already paid on 10-09-2021	10%	10,52,10,000
Balance to be paid		
On or before 18-04-2022*	15%	15,78,15,000
Before 30-04-2022	25%	26,30,25,000
Before 15-05-2022*	50%	52,60,50,000
Total		1,05,21,00,000

*Comp. App. (AT) (CH) (Ins.) No. 438 of 2022
& Comp. App. (AT) (CH) (Ins.) No. 443 of 2022*

***Note:**

- Since 15th April, 2022 being a non-working day for the banks, Mr. Drabesh Jha stated that the payment which fell due on 15th April, 2022 would be paid on 18th April, 2022.
- Out of the amount of Rs. 15,78,15,000/- payable on 18th April, 2022, already an amount of Rs. 5,00,00,000/- was paid on 12th April, 2022.
- The last instalment of 50% shall be coupled with a grace period of 15 days extended till 30th May, 2022.

Mr. Drabesh Jha expressed his sincere thanks to the members for the patient co-operation extended so far in the process and requested the members to place realiance on the buyer, since maximum efforts are being made to complete the Process before 30th April, 2022. Only as a measure of prudence, and factoring any unforeseen circumstances the maximum timeline is being extended till 30th May, 2022.

Interest on delayed payments:

The Prospective buyer also agreed that all payments made post 15th April, 2022 shall be coupled with payment of interest charged at the rate of @ 12% P.A.

Further Course of Action:

In Conclusion, Mr. Drabesh Jha stated that M/s. Shri Karshini Alloys Private Limited shall file an application with the Hon'ble NCLT, Chennai seeking approval for the revision in the extended timelines of payment.

During the pendency of the application filed with NCLT, the instalments paid by the buyer shall not be distributed by the Liquidator and the same shall be distributed only on approval from the Hon'ble NCLT, Chennai.

The same was concurred by all the Lenders present for the Meeting.

There being no other issues, the meeting concluded with a vote of thanks.

R. Sadasivan

Ramakrishnan Sadasivan

Liquidator

Surana Industries Limited (in liquidation)

IBBI/IPA-001/IP-P00108/2017-18/10215.

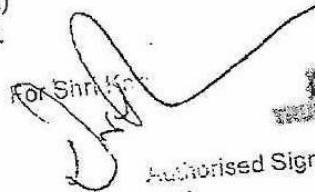
Old no: 22, New no. 28, Menod Street,

Purasawalkam, Chennai - 600 007

Mail ID: sadasivanr@gmail.com

Mobile: 94444 559824

Dated: 13th April, 2022, Place: Chennai.

FOR SIGNATURE

Authorised Signatory

TRUE COPY

- From above minutes, we note that the item No. 1 i.e., schedule of payment proposed by the Appellant was discussed in details and lenders gave their views that since court order on approval of sale was passed by the Adjudicating Authority with specific directions to pay the sale consideration within 15 days from the receipt of the order, it was beyond their scope to accept any extended timelines beyond the stipulated period. The minutes further recorded regarding jurisdiction of the Adjudicating Authority to consider and allow appropriate extensions as to be sought by the Appellant. The lenders also expressed in above minutes their dissatisfaction for seeking extension of timelines by the Appellant till 30.06.2022 since the period was found to be long period and also stated that the sale may itself result into cancellation.
- We note that last item discussed “further course of actions” and under this heading the Appellant stated that the Appellant shall file an application with the Adjudicating Authority seeking approval of extended timelines of payments and requested that during pendency of the application being filed by the Appellant before the Adjudicating Authority, the instalments paid by the Appellant should not be distributed by the Liquidator and should be distributed only on approval by the Adjudicating Authority and this limited request was concurred by the lenders present in the meeting.

- After perusal of the minutes it becomes quite obvious that lenders did not concur with the extension of timeline proposed by the Appellant for which the Appellant undertook to file suitable application before the Adjudicating Authority.
- Hence, we are not able to subscribe to the contention of the Appellant that the 10th SCC Meeting was unanimous in endorsing the extended timeline proposed by the Appellant.
- As regarding further point of approbation and reprobation and also regarding deemed acceptance of the Impugned Order dated 29.06.2022 due to payment of two instalments by the Appellant, we would like to revisit the order dated 29.06.2022 (which he had already noted earlier). It is a fact that the Appellant moved an I.A. No. 512 of 2022 for seeking extension of the timelines and based on the request of the Appellant the Adjudicating Authority vide its Impugned Order dated 29.06.2022 extended the timelines but also stipulated condition regarding forfeiture. We have already noted that in the earlier discussion that the clause of forfeiture was added by the Adjudicating Authority in terms of Rule 15 of the NCLT Rules, 2016. It is settled principle based on doctrine of approbation and reprobation that party can either accept benefit arising of the same order or can challenge the same but not both.

- In the present case vide the Impugned Order dated 29.06.2022, the Appellant got liberty and benefits from the Adjudicating Authority regarding extension of timelines. The Appellant was also subjected to condition that in case of his failure to make all payments within stipulated timelines, the money paid by him shall stand forfeited.
- We also note that this specific clause was not challenged at that stage and two installments regarding payment for purchase of Raichur Plants were made i.e., on 13.07.2022 and 25.07.2022 which is after passing of the Impugned Order dated 29.06.2022. Although in the present appeal, the Appellant challenged the stipulation of forfeiture conditions, however, while making the payment of these two tranches and on 13.07.2022 and 25.07.2022, the condition imposed by the Adjudicating Authority regarding forfeiture was not challenged.
- Thus, the Appellant gave his deemed acceptance to the Impugned Order dated 29.06.2022 by making their two payments. Hence, we find the force in the logic of the Respondent and the Appellant cannot be allowed such pleadings.

81. Based on above detailed discussion, the Appeals fail and stand dismissed.

No costs. Interlocutory Application(s), if any, are Closed

**[Mr. Naresh Salecha]
Member (Technical)**

Sim