



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No.100/CB/2021
IN
TP (IB) No.112/CTB/2019
[Earlier CP (IB) No. 300/KB/2017]

In the matter of:

An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016;

-And-

In the matter of:

Bindu Enterprises Pvt. Ltd., through its Director, Mr. Bimal Kumar Agarwal, situated at New Industrial Estate, Jagatpur, At- P.O/P.S Jagatpur, Cuttack- 754 021, Orissa;

... Applicant

-Versus-

1. Sonu Jain, Liquidator of Falcon Consultancy Pvt. Ltd., having residing at Poddar Court, Gate No. 2 18 Rabindra Sarini, Suite No. 327, 3rd Floor, Kolkata-700 007, West Bengal;

...Respondent/Liquidator

2. * M/s Glamour, represented by Proprietor Mr. Sanjan Kumar Agarwal (successful bidder is impleaded as party as per the order of this Adjudicating *Authority dated 01.08.2022);

...Respondent/Successful bidder

-And-

In the matter of:

44, Noida Infratech (TWO) Pvt. Ltd.

... Operational Creditor

-Versus-

Falcon Consultancy Pvt. Ltd. (In Liquidation)

... Corporate Debtor

Coram:

Mr. Mohan Raj
Mr. Satya Ranjan Prasad

Member (Judicial)
Member (Technical)



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TP(IB) No.112/CTB/2019

In re: Bindu Enterprises Pvt. Ltd Vs. Sonu Jain, Liquidator of Falcon Consultancy Pvt. Ltd.

Counsel on Record:

For Applicant: Mr. Umesh Chandra Sahoo, Advocate.
For Respondent/Liquidator: Mr. Ayushman Mahanta, Advocate.
For Respondent/Successful bidder: Mr. Satya Smruti Mohanty,
Mr. Swayamjit Rout, &
Mr. Goutam Raj, Advocates.

Order reserved on: 13.03.2023
Order Pronounced on: 21.03.2023

ORDER

Per: P. Mohan Raj, Member (Judicial)

1. This is an application filed under section 60(5) of IBC 2016 R/w Rule 11 of NCLT Rules 2016 by the unsuccessful bidder against the liquidator, challenging the auction proceedings pertaining to Lot No.3 mentioned in Tender document dated 25.03.2021 and to quash the auction proceeding held on 01.04.2021.

2. While hearing the application this Adjudicating Authority consider that the successful bidder is just and necessary party to arrive correct conclusion, hence on 01.08.2022 this Adjudicating Authority ordered to issue notice to successful bidder accordingly notice served upon the successful bidder and his reply also received.

3. The Liquidator effected publication for sale of four items of immovable properties of M/s Falcon Consultancy Private Limited dated 20.03.2021. The liquidator also issued the tender document with regard to E-Auction for sale of the immovable properties of the corporate debtor M/s Falcon Consultancy Private Limited dated 25.03.2021. As per the publication the last date fixed for submission



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of EMD amount was on 28.03.2021 before 06.00 P.M. It is learnt from the revised reply of the respondent/liquidator that the last date fixed for submission of EMD 28.03.2021 being Sunday and next date 29.03.2021 being Holi festival day and both days are non-Banking days, the liquidator addressed a letter to the auctioneer on 29.03.2021 to extend time till 30.03.2021 enabling the liquidator to deposit the EMD amount. The e-auction was conducted on 01.04.2021 the second respondent M/s Glamour a proprietary concern is declared as successful bidder.

4. The allegation of the applicant is that the liquidator extended the time for submission of EMD against the tender document in order to facilitate the successful bidder. Further the applicant alleged that the liquidator accepted the EMD amount of successful bidder on 30.03.2021 in violation of tender document dated 25.03.2021, for which the applicant relies upon the corporate debtor's Indian overseas Bank Transaction statement for the period from 21.03.2021 to 28.08.2021. The statement reveals that EMD amount of Rs.1,71,000/- in transaction id No.0000108615429525 paid by the successful bidder was credited on 30.03.2021. This allegation is refuted by the successful bidder and in his reply the successful bidder stated that he had deposited the EMD amount of Rs.1,71,000/- on 27.03.2021 through IMPS-02 vis transaction id-0000108615429525 one day prior to actual closing date mentioned in the publication and tender document. The successful bidder in this regard filed his Bank statement, HDFC Bank from 20.03.2021 to 01.04.2021. In the Bank statement of successful bidder, it reveals that amount of Rs.1,71,000/- was deposited on 27.03.2021 in transaction id 0000108615429525 apart from this the copy obtained from the Banker also filed. Even though the applicant levelled serious allegation against the liquidator and successful bidder, he has not proved the said allegation instead the successful bidder disproved the allegation of the applicant.

5. In these circumstances since the reckless allegation levelled by the applicant against the liquidator and successful bidder is disproved this application



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is **Dismissed** with cost of Rs.10,000/- (Rupees ten thousand only) payable by the applicant towards the liquidation cost to the liquidator.

6. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and taking necessary steps.

7. Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

8. File be cognised to record.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.21 14:29:47 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.03.21 15:41:46 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 21st day of March, 2023.

Kaushal P.S.