

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.301.- **IA/1339(AHM)2023** and
ITEM No. 302.- **IA/1367(AHM)2023** in
CP(IB) 25 of 2019

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/1339(AHM)2023

Pinakin Engineers and Contractors

.....Applicant

V/s

Shreyansh Jain Liquidator of DMB Paper Mills Pvt Ltd.

....Respondent

And

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/1367(AHM)2023

Pinakin Engineers and Contractors

.....Applicant

V/s

Shreyansh Jain Liquidator of DMB Paper Mills Pvt Ltd & Anr.

....Respondents

Order delivered on: 22/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD**

**IA/1339(AHM)2023 &
IA/1367(AHM)/2023 in
CP(IB)/25(AHM)/2019**

IA/1339(AHM)2023 in CP(IB) No.25(AHM)2019

*[An application filed under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016]*

PINAKIN ENGINEERS AND CONTRACTORS

Having office at:
Plot No. 249, 2nd Phase,
GIDC, Vapi, Valsad – 396195

....Applicant

Versus

SHREYANSH JAIN

Liquidator of DMB Paper Mills Private Limited
Having office at:
505 Silver Coin apartment,
Behind Aakashwani, Paota C Road,
Jodhpur – 342001

....Respondent

AND

IA/1367(AHM)/2023 in CP(IB)/25(AHM)/2019

*[An application filed under Section 60(5) of the IBC, 2016 r.w. Rule
11 of the NCLT Rules, 2016]*

PINAKIN ENGINEERS AND CONTRACTORS,

Having Office at:
Plot No. 249, 2nd Phase,
GIDC, Vapi, Valsad-396195

... Applicant

Versus

**1. SHREYANSH JAIN
LIQUIDATOR OF DMB PAPER MILLS PVT. LTD.**

Having Office at:
505 Silver Coin Apartment,
Behind Aakashwani,
Paota C Road,
Jodhpur- 342001

2. KRISHKAN INVESTMENT PVT. LTD.

Having Office at:
7/1A, Grant lane, 2nd Floor,
Chambers Room No. 2,
Kolkata-700012

3. SARVESHWARI PAPER MILL LLP

Having Office at:
Shop No. 14, Plot No. 195,
GIDC Pandesara, Surat- 394221

... Respondents

In the matter of

CP(IB)/25(AHM)/2019

DMB Paper Mills Private Limited

....Corporate Applicant

Versus

Union Bank of India

....Respondent

Order Pronounced On: 22.01.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Applicant(s) : Mr. Monaal Davawala, Ld. Adv.
For Respondent : Mr. Jaimin Dave, Ld. Adv. for R-2
: Mr. Aditya Gupta, Ld. Adv. for R-1
For Auction Purchaser : Mr. Saumitra Chaturvedi, Ld. Adv. for
R-3

ORDER
[Per: Bench]

IA/1339(AHM)2023

1. This application has been filed by the Applicant herein seeking the following prayers:-
 - a) *allow the present application; and/or*
 - b) *grant extension of 7 days or any other period it may deem fit so as to enable the applicant to take part in the e-auction; and/or*
 - c) *pending the admission and final hearing of this application, direct the Respondent not to declare the highest bidder pursuant to the e-auction dated 15.11.2023; and/or*
 - d) *hold that in case the highest bidder of the proposed e-auction is declared by the Respondent, the same shall be subject to the outcome of the present application; and/or*
 - e) *grant any other relief or relief as may deem fit in the interest of justice.*

2. It is stated that the Applicant herein is intending auction bidder for purchasing the Corporate Debtor as a going concern in the e-auction to be held on 15.11.2023.

3. The Applicant has filed another application bearing IA No. 1293 of 2023 which came to be ordered vide order dated 07.11.2023 with the following directions:-

“This is an application filed by the intending auction bidder seeking the following prayers:-

- i. Your Lordship may be pleased to allow the present application;*
- ii. Your Lordship may be pleased to quash the advertisement dated 19.10.2023 published in Gujarat Guardian News Paper and Financial Express News Paper, Surat edition with regards to auction to be held on 15.11.2023 for property of DMB Paper Mills Private Limited and be further pleased to direct that the liquidator for fresh advertisement be published in news-papers having wide circulation and with proper description, rescheduling the auction.*
- iii. Pending hearing admission and final disposal of this petition, Your Lordship may be pleased to stay the auction which is to be held on 15.11.2023 of property DMB Paper Mills Private Limited.*
- iv. Your Lordship may be pleased to grant any other/ further relief(s) as may be deemed fit in the interest of justice.*

The matter was heard in the first round when the nobody was present for the liquidator and in the second round learned liquidator along with Mr. Hiten Parikh appeared.

Both counsel for liquidator state that still the auction has not happened and is schedule for 15.11.2023, though the time for depositing the EMD has elapsed.

It was further stated by the learned liquidator that he is ready to give one chance provided this Tribunal directs the Applicant herein to deposit the EMD and to participate in the auction process.

At this stage counsel for the Applicant states that he is ready to deposit the EMD latest by 09.11.2023, provided copies of the information be given by the learned liquidator.

In view of the above, position explained by both the parties. We direct the Applicant to approach the learned liquidator through a valid

expression of interest on the E-mail as provided in the auction notice latest by 08.11.2023 by 12 hours and EMD be deposited latest by 5 P.M. on 09.11.2023.

Learned Counsel for the Applicant states during the hearing today that if the above remedies are made available to him, he is not pressing for the prayers as per the application.

In view of this above directions, the present application is dismissed with liberty to re-agitate the matter, if orders are not complied by any of the sides.

*Accordingly, **IA/1293(AHM)2023** is disposed of in above terms.”*

4. It is stated that the Applicant herein could not comply with the orders given on 07.11.2023 due to the intervening festivities on account of Diwali, the Earnest Money Deposit (“**EMD**”) and Expression of Interest (“**EOI**”) couldn’t be filed in the stipulated time. The applicant further submitted that the delay is neither intentional nor wilful and it is unfortunate that the e-auction is sought to be held during the course of festive period especially in Gujarat where the assets are located and the importance of Diwali in the state.
5. It is stated that EoI was submitted by the Applicant to the Respondent only on 15.11.2023 which was rejected by the respondent in view of the order dated 07.11.2023 which allowed submission of EoI latest by 08.11.2023.

6. It is stated that Applicant is offering Rs.25 Crores for the Corporate Debtor and is further ready and willing to raise the offer in case of competitive bidding.
7. Since the EoI was rejected, the Applicant has approached this Tribunal and the present application was filed on 20.11.2023 which was affirmed on 15.11.2023 (date of auction).
8. From the application, it is seen that the Applicant herein is one Mr. Hasmukh Patel. The Applicant has attached the e-auction notice at Annexure-A. The rejection e-mail of the liquidator is attached on Page No. 17.
9. Order dated 24.11.2023, records that PCA Mr. Hiren Parikh appeared on behalf of the Liquidator and it was stated that the auction was since been concluded and the successful auction purchaser has already deposited the entire amount with the Liquidator.

IA No.1367 of 2023

10. This is an application filed by the Applicant seeking the following prayers:

- a) *Allow the present application and set aside the alleged sale undertaken by the Respondent No.1 and declared such sale as non- est and bad in law by upholding the object of the IBC.*
- b) *Pending the admission and final hearing of this application, direct the Respondents not to create any vested right in favour of the alleged auction purchaser and the Hon'ble Tribunal would be pleased not to accept and approve any progress report confirming alleged sale in the overall interest of justice.*
- c) *The Hon'ble Adjudicating Authority would be pleased to direct the transparent re-auction of the properties of the CD through public auction or in the alternatively permit the applicant to bid to ensure maximum price is fetched.*
- d) *To grant any other relief or relief as may deem fit in the interest of justice.*

11. The brief facts of the IA are as under:-

- i. This Tribunal was pleased to initiate liquidation proceedings of the Corporate Debtor vide order dated 29.8.2023 and appointed the Respondent No.1 as the Liquidator of the Corporate Debtor. In accordance with the Liquidation Regulations under the Code, the Liquidator being duty bound to put the Corporate Debtor up for sale as a going concern within a period of 90 days, the Respondent No.1 issued e- auction sale notice dated 19.10.2023 for the sale of the assets of the Corporate Debtor as a going concern. Copy of the e-auction sale notice dated 19.10.2023 as published by the Respondent No.1 is attached as "Annexure - A" to application.

- ii. The Applicant submits that it had approached this Tribunal vide Interlocutory Application No. 1293 of 2023 which is captured above.
- iii. It is stated by the Applicant that while its contentions against Respondent No.1 with regards to the irregularities and infirmities in following the Liquidation Regulations to the letter for the e-auction sale notice remained and still continue to remain, the applicant readily agreed to take part in the auction. Hence the Applicant has kept its right reserved to agitate against the conduct of auction. The applicant submitted in the subsequent IA, that however, due to the intervening festivities on account of Diwali, the EMD and EoI couldn't be filed in the stipulated time. The applicant humbly submits that the delay is neither intentional nor wilful and it is unfortunate that the e-auction is sought to be held during the course of the festive period especially in Gujarat where the assets are located and the importance of Diwali in the state.
- iv. It is submitted by the Applicant that in the subsequent IA, it was able to submit the EMD and EoI to the Respondent only on 15.11.2023 i.e. after the Diwali festivities which was duly rejected only on the ground that the order dated 7.11.2023 allowed time period for submission only upto 8.11.2023 and 09.11.2023. Copy of the email of the applicant and the

response of the Respondent is annexed hereto and marked as " Annexure - C" to this application.

- v. It is submitted by the applicant that in such circumstances and in furtherance of the order dated 07.11.2023, the applicant has no option but to approach this Tribunal seeking of extension of time to enable it to take part in the e-auction.
- vi. The Applicant has offered Rs.25 crores for the Corporate Debtor and the applicant has categorically made statement that the Applicant is further ready and willing to raise the offer in case of competitive bidding with the ultimate object of the Code being maximization of value of assets of the Corporate Debtor. There being only one Financial Creditor, Krishkan Investment Private Limited - the assignee of Union Bank of India, it would be in its interest as well if more money is recovered by way of the e-auction.
- vii. It is submitted by the Applicant that this Tribunal be pleased to direct the Respondent to grant extension of 7 days or any other period it may deem fit so as to enable the applicant to take part in the e-auction. The applicant submitted if the prayers as prayed for hereunder are not granted, the applicant will suffer irreparable loss and injury which cannot be compensated in terms of money. In view thereof, the applicant is constrained to prefer the present application before this Tribunal and accordingly the

reliefs came to be sought seeking extension of 7 days or any other period it may deem fit to enable the applicant to take part in the e- auction.

viii. It is submitted that this Adjudicating Authority reserved the order on the said subsequent IA filed by the Applicant.

ix. It is submitted by the Application that the present application is filed seeking declaration of alleged auction conducted surreptitiously by the Respondent No.1 and in connivance with Respondent No.2 (a sole stakeholder member) in favour of their known person who was earlier failed in getting the property through resolution plan as bad in law and *non-est* and in defiance of the mandate of the IBC. There are intentional mandatory lapses in conducting such auction viz.

a) The advertisement for sale was given in newspapers Gujarat Guardian Gujarati Daily and Free Press English Daily which do not have wide circulation which is a mandate of the liquidation regulation and the applicant came to know from the trade circle and hence the purpose and object of publishing in such newspaper not having adequate and wide circulation is only to deprive prospective bidders. The publication of e-auction notice in local newspapers which are admittedly not widely newspapers in GIDC, Vapi, where the registered

- office of the Corporate Debtor (“**CD**”) is situated and hence it is against the laid down procedures and amount to oblige known parties of the Respondents.
- b) Interestingly to be noted that sheer irregularities found in the e-auction notice dated 19.10.2023 i.e. the receipt of bid papers and receipt of EMD shown in same day i.e. before 3.00 pm of 3.11.2023 which smell rat out of it and demonstrates collusion as only person close to Respondent No.1 can participate. The important aspect cannot be lose sight that, the Respondent No.2 has purchased by paying consideration at time of assignment to the sole financial secured creditor and got into helm of the entire CD's properties and hence the Respondent No.2 wanted to ensure that, the assets in question remains with it or its associate as they already earlier filed Resolution Plan for total consideration of Rs.18.50 crore which got failed. Hence to ensure the known or very same party of such NBFC-R- 2 the present eye washing auction process is undertaken by smartly deviating from the regulations by the R-1. The R-1 acting in concert of the R-2 which is evident.
- c) It is submitted that purposefully an incorrect statement made by counsels of liquidator on 7.11.2023 that still the auction has not happened and schedule for 15.11.2023 though the time for

depositing the EMD has elapsed. In fact, the last date for payment of EMD was 13.11.2023 and hence due to such statement the Adjudicating Authority gave time to the applicant.

- d) It is found that the Respondent No.1 in connivance with the Respondent No.2 high high-handedly permitted the alleged highest bidder to start cleaning the factory and the photographs as taken on 26.11.2023 are produced herewith as Annexure-"D" to the present application.
- e) It is submitted that mere acceptance of entire consideration in haste does not amount to completion of sale and reference to the internal page 20 of the liquidation process document is relied upon. Further the Applicant filed online application on 16.11.2023 and in order dated 7.11.2023 the Tribunal allowed either party to re-agitate and in such circumstances the Respondent No.1 should not have in haste concluded the sale when admittedly in the payment terms in the process document it is shown as 90 days and payment beyond 30 days will carry interest at the rate of 12% per annum hence the actions of the Respondent No.1 is prejudicial on the said count also. A copy of the liquidation process document is marked as Annexure-"E" to the application.

- f) The Respondent No.1 cannot permit the alleged intending bidder whose bid is surreptitiously accepted to enter the factory premises and effectively hand over the possession as the premises in question is not only getting sold but it is getting sold on going concern basis and in such eventuality till the existing equity shares are extinguished and new shares are getting allotted the management of going concern with premises cannot be handed over and hence unless new management is inducted / introduced i.e. new board of directors till then no such alleged rights could be said to have been created and by permitting such new alleged purchaser to enter into the premises and eventually vesting the property demonstrates that there is a sheer connivance amongst Respondents and such new purchaser who is an ally of Respondent No.2. The permission granted to enter the premises would make it loud to the public at large that, the premises of DMB Paper Mills Pvt Ltd is already sold of which is nothing but a sheer act of arbitrariness and such conduct is unlawful and fraud committed on the entire liquidation proceedings under IBC.
- x. It is submitted that mere declaration of person as highest bidder doesn't amount to completion of auction sale. The Highest bidder does not get a vested or acquired right in law. The Regulation 33(3) is not

an exhaustive provision applicable only in the specific circumstances stated therein, further clause 1(11) of schedule - 1 authorise a Liquidator to conduct multiple round of auctions to maximise the realization from the sale of assets and promote the creditors best interest. Hence the auction bidder had not vested right to claim in the auction in its favour in a liquidation sale.

- xi. It is submitted that the present mode of auctioning is akin to the private sale and to bypass the said procedure the Respondents in connivance undertook the auction allegedly as public auction but effectively by pre-determined way of confirming the sale in favour of their known person is nothing more than a private sale.

The Adjudication Authority shall not confirm or admit and accept the progress report for sale of Respondent No.1 as its a systematic fraud getting committed on the Hon'ble Tribunal itself.

- xii. It is stated that the Applicant came to know that, the Respondent No.2 along with associate viz. Raghav Gupta, Raman Gupta, Narayan Sultania and Rishabh Narang gave resolution plan when the CD was in CIRP. In the said Resolution Plan it was declared that, Raghav Gupta and Raman Gupta and Narayan Sultania are a partners in Maruti Paper Mills LLP Navsari and Raghav Gupta worked with Sachin Paper

Mills Pvt Ltd. Likewise it was declared in the resolution plan that Rishabh Narang currently working as director in K.C.A. Textiles Pvt Ltd since 2009 Siv Sharnam Handloom Pvt Ltd since 2013 and Mukesh Furnishings Pvt. Ltd. since 2017 while the Raman Gupta also worked with Vatsalya Paper Industries LLP. It is found that, the alleged purchaser is either Maruti Paper Mills LLP or known person of Respondent No.2 who are out- rightly favoured to the detriment to the right of the intending prospective buyer as going concern. The said resolution plan was submitted for total cost of resolution plan was Rs.18.50 crores. The said resolution plan could not go through and by any how the Respondent No.2 and its associate were keen to take over the CD got successfully got assigned the debt with underlying security from the original sole secured financial creditor Union Bank of India who got assigned to the Respondent No.2 and thereafter upon the CD going into liquidation and with connivance with the Respondent No.1 liquidator the systematic bypassing of the mandatory procedure undertaken and to the known person the sale is awarded. The purpose and object is to deprive the prospective buyers from bidding to ensure that, valuable properties on-going basis is acquired by the Respondent No.2 through its known entity. With profound respect its hijacking of

the entire auction proceedings which is defying the purpose and object of the IBC.

- xiii. It is stated that the Applicant has filed belatedly the expression of interest on 15.11.2023 which was returned by the Respondent No.1 as the order dated 07.11.2023 in IA No. 1293/(AHM)/2023 directed to send expression of interest by 08.11.2023 and EMD to be paid by 09.11.2023 and as the same was not complied the Respondent No.1 rejected by email and hence the subsequent IA No. 1339 of 2023 came to be filed before this Tribunal seeking extension of 7 days. This Tribunal upon hearing reserved the order. The earlier application IA No. 1293/2023 when came to be disposed of on 07.11.2023 the applicant was made aware of the said fact about the directions on 09.11.2023 by that time the directions as far as giving EOI by 08.11.2023 got lapsed. The application i.e. subsequent application IA No. 1339 of 2023 came to be filed seeking simply extension of time as the applicant missed out of the date. The EOI was submitted on 15.11.2023 but as it was late and hence application came to be filed for limited purpose seeking extension. It is respectfully submitted that, the present application is filed seeking challenging the auction proceedings itself which is in sheer violation of the mandatory procedure and hence any sale pursuant to the mandatory procedure lapse and more

importantly such sale is in collusion than in such eventuality of organised systematic corporate fraud such sale is required to be set aside and declared to be *non-est* and invalid and illegal.

12. IA No. 1367 of 2023 was heard on 01.12.2023 and following directions were given:-

“...After hearing both sides, we find that this matter requires consideration. Hence, we issue notice to Respondent Nos. 1 and 2 to file a reply in the matter, within seven days from today to which the Respondent No. 1 and 2 waive notice. Meanwhile, the liquidator is directed not to take further steps and maintain the status quo as regards the auctioned property in question till the next date of hearing.”

13. The reply filed by Respondent No. 1 (“**R-1**”) was received under Diary No. D5135 dated 13.12.2023 and further an additional affidavit was filed by R-1 under Diary No. D137 dated 05.01.2024. In reply, R-1 submits as under:-

(A) The notice in the newspaper was published on 19.10.2023 wherein the last date for submission of EoI as well as EMD was kept at 3.00 p.m on 03.11.2023. Certain changes were made on 19.10.2023 and in the ‘Process Document’ the last date of EMD was mentioned as 13.11.2023. These documents were uploaded on the website of IBBI on

23.10.2023 with the correct date of submission of EMD as 13.11.2023.

- (B) The Liquidator has attached the notice uploaded on the IBBI portal as Annexure-C.
- (C) It is the contention of R-1 that having failed to comply with the directions given by this Tribunal on 07.11.2023 the Applicant is out to sabotage the entire process of liquidation and is even hand-in-glove with the erstwhile promoters.
- (D) The liquidator has drawn attention to Para 5.1 at page 20 of the Process Document which is reproduced below:-

“The Liquidator may extend/modify the timelines as set out in this Dt. 044-2024 Clause at any time without giving reasons by way of a public announcement and/or uploading on the website and/or by email, without incurring any obligation or the need to provide any reasons.

In any case, it is assumed that each Bidder takes cognizance of any such extension. The Liquidator is also entitled to postpone the Auction Date and such revised Auction Date will be notified to the Bidders.”

- (E) It is the contention of the Liquidator that he had every right to modify the timelines.
- (F) The auction was duly conducted and the Successful Bidder has since paid the entire consideration, and the sale certificate has since been issued.

- (G) The Applicant has not sent the EoI before 03.11.2023. However, the Applicant has filed IA on 02.11.2023 without serving a copy to the Liquidator and that the directions given by this Tribunal on 07.11.2023 were not complied with by the Applicant.
- (H) It is contention of R-1 that subsequently another IA being IA No. 1339 of 2023 was filed on 15.11.2023 and no objections as are stated in IA No. 1367 of 2023 were taken in the IA No. 1339 of 2023. The IA No. 1367 of 2023 is an afterthought and is only filed to scuttle the process of liquidation.
- (I) R-1 –Liquidator has received 10 Prospective Bidders in the process and that no other bidder has objected the validity of auction process.
- (J) Thereafter, the Liquidator has cited the following judgments:-
- i. Eva Agro Feeds Pvt. Ltd. V. Punjab National Bank and Anr.*
 - ii. State Bank of India V. Maithan Alloys Limited*
 - iii. Majit Commercial LLP V. SPM Auto Pvt. Ltd.*
- (K) It is the contention of R-1 that the Applicant never contacted the Liquidator and has filed multiple IAs and that the Liquidator is not bound to declare the successfully conducted auction void just because some prospective bidder could not even submit EMD on time, wants to participate the auction process.

(L) Upon directions issued by this Tribunal vide order dated 01.12.2023, along with the reply R-1 has filed the following documents in compliance of the said order:-

1. *A statement of bank showing the sale consideration received by the Liquidator from the auction purchaser is enclosed as Annexure-'H'.*
2. *Entire auction documents from the e-auction site contain details regarding the EMD, the auction process and the bids received are enclosed as Annexure-'E'.*
3. *The bid documents are enclosed as Annexure-'I'.*
4. *The auction notice is enclosed as Annexure-'B'.*
5. *The bidding process note is enclosed as Annexure 'I'.*

(M) The respondent seeks dismissal of IA No. 1367 of 2023.

(N) This Tribunal vide order dated 14.12.2023 directed the Liquidator to file certain additional documents. In response to which, the Liquidator has filed the following documents:-

- a) Valuation reports
- b) Minutes of Meeting of SCC held on 16.10.2023
- c) Copy of the filings done relating to auction notice on the IBBI website.
- d) Copy of proof for the presence of the Liquidator in the city of Ahmedabad on 13.12.2023.

14. Respondent No. 2 (“**R-2**”) in the matter is Sole Financial Creditor which has obtained assignment from the earlier Financial Creditor. In brief, the reply of the Financial Creditor is summarised as below:-

- A. The Applicant herein has failed to submit a valid EoI and also had failed to submit EMD.
- B. The limited point in IA 1339 of 2023 filed by the Applicant was seeking an extension of time and no grounds as are being taken in IA 1367 of 2023 were stated in IA No. 1339 of 2023.
- C. It is the contention of R-2 that the sole object of the Application is to derail the e-auction process which has since been successfully completed.
- D. The Applicant has not challenged the assignment of debt by Union Bank of India in favour of R-2 and, therefore, the Applicant cannot be heard to give such submission regarding the allegations as are levelled under Para 2 of the application.
- E. Present application is barred by constructive res-judicata.
- F. Reasons given in IA 1339 of 2023 for not being able to submit the EoI & EMD on time are flimsy and frivolous.
- G. The offer of Rs.25 crores by the Applicant herein for the Corporate Debtor is not backed by funds

and that this Tribunal must call upon the Applicant to deposit said amount either with the Registry of this Tribunal or before the Liquidator to test the genuineness of the Applicant.

- H. The newspaper where the advertisements were given are having wide circulation and sufficient publicity was given to the auction by the Liquidator.
- I. Ten persons have shown interests in the present auction process though only one person participated in the auction.
- J. The successful bidder deposited the entire bid amount on 23.11.2023 and certificate of sale was issued on 24.11.2023 and as such the auction process is complete.
- K. It is the contention of R-2 that the Applicant in the IA is colluding with the erstwhile promoters and the only purpose of filing the present application is to derail the auction process.

15. Respondent No.3 (**“R-3”**) is the Successful Auction Purchaser. Upon notice, the Successful Auction Purchaser has filed reply under Diary No. 5442 dated 28.12.2023. This reply is affirmed by Mr. Raghav Gupta, who is partner of successful bidder. The reply of R-3, in brief, is summarised as below:-

- A. The application has been affirmed by one Mr. Hasmukh Patel and was filed without any power of attorney or authority letter or resolution or partnership deed. Thus, the application is defective.
- B. R-3 questions the maintainability of the present application stating that the Applicant - Pinakin Engineers and Contractors is a Partnership Firm has ceased to exist in as much as one Private Limited Company viz. "Pinakin Engineers Private Limited" was incorporated on 20.11.2023, having its registered office at the address of the Applicant mentioned in the cause title and the affidavit attached with the captioned application.
- C. The present application filed by the Applicant was affirmed on 28.11.2023 i.e., after the incorporation of the company on 20.11.2023. The R-3 thereof has attached the Master Data of the said Pinakin Engineers Private Limited as Annexure-R1.
- D. R-3, thereafter, briefly discussed IA No. 1293 of 2023, the orders passed therein, IA No. 1339 of 2023 etc. and states that the Applicant be estopped from seeking identical relief by way of this application.
- E. R-3 further states that the Applicant does not hold any vested right in its favour to maintain the captioned application whereas by virtue of Clause

13 of Schedule I to the Liquidation Regulations, 2016, right has accrued in favour of R-3 which cannot be extinguished by filing the captioned application on behalf of the present who has defied the judicial order passed by this Tribunal.

- F. R-3 thereafter states that he has submitted valid EoI and deposited the EMD on time and has participated in the auction process and also deposited the entire sale consideration and certificate was issued by the Liquidator subsequent to which the Successful Auction Purchaser has taken over the possession of the factory and all the above actions were as per law.
- G. Only purpose of the Applicant herein is to derail the process of liquidation.
- H. R-3 seeks dismissal of the present application.

16. Rejoinder under Inward Diary No. 416 dated 16.01.2024 was filed by the Applicant herein.

17. In affidavit in rejoinder, it is seen that:-

- A. The Applicant in IA No. 1367 of 2023 has *suo motu* without obtaining any orders from this Tribunal has modified the cause title as under:-

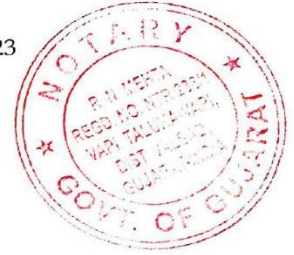
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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

INTERLOCUTORY APPLICATION No. 1367 of 2023

IN

COMPANY PETITION (IB) No. 25 of 2019



PINAKIN ENGINEERS AND CONTRACTORS

(now PINAKIN ENGINEERS PRIVATE LIMITED)

...Applicant

versus

①

16 JAN 2024

D416

1. SHREYANS JAIN, LIQUIDATOR OF DMB PAPER MILLS PVT. LTD.

2. KRISHKAN INVESTMENT PRIVATE LIMITED

3. SARVESHWARI PAPER MILL LLP

...Respondents



- B. It is also seen that one Mr. Hasmukh Patel has affirmed the affidavit in his capacity as partner (now director) of the Applicant.
- C. Under para 3 of the affidavit in rejoinder, it is stated that the legal status of the Applicant has changed from a partnership firm into a private limited company by operation of law in accordance with Section 366 to 374 of the Companies Act, 2013. The Applicant has, thereafter, attached the Article of Association, PAN and Certificate of Incorporation at Annexure-R1 of this rejoinder.
- D. It is stated that due to extreme urgency and inadvertence, the present application came to be filed in the name of the original entity.

- E. It is stated that R-3 is a recently incorporated entity which is one day prior to publication of the auction notice. The partners of LLP are the same persons who have earlier submitted the Resolution Plan during the CIRP. The Applicant, thereafter, huge collusion and round tripping of funds.
- F. The Applicant, thereafter, states that the Liquidator has circumvented Regulation 35 of the Liquidation Process Regulation. The Applicant further states that due to false statements made at the Bar incorrect orders were passed by this Tribunal.
- G. In para 11 of the rejoinder, the applicant has stated as under:-

“11. In furtherance of the submissions made by all the Respondents, again in unison, during the course of hearing on 14.12.2023 and the resultant pointed queries of this Hon’ble Tribunal, the applicant unequivocally offers Rs.25.5 crore for purchasing the property which may be confirmed by the Hon’ble Tribunal.”

18. We have heard the various counsels and have perused the records. Based upon the pleadings and the arguments advanced during the hearing held on 17.01.2024, we frame the following issues in the matter:-

- i. Whether the auction notice was defective?
- ii. Whether the reserve price was fixed correctly?
- iii. What order?

Issue No. (i)

19. A perusal of the auction notice as published in newspaper reveals that the last date for submission of EMD & EoI was 03.11.2023. The Process Document which was uploaded on IBBI site reveals that the last date of submitting EoI was 03.11.2023 and the last date for submitting EMD was 13.11.2023.
20. It is the case of the Applicant that he could not give EoI & EMD in time and approached this Tribunal through IA No. 1293 of 2023 which was ordered on 07.11.2023 and direction were given. It is further stated that counsel for the Liquidator misrepresented during hearing on 07.11.2023.
21. Having gone through the newspaper advertisement and the process note, we hold that there was an error committed by the Liquidator in the auction notice published in two newspapers. This error came to be noticed by the Liquidator, however, no corrigendum was published in the same newspaper by the Liquidator. Accordingly, issue (i) is answered.

Issue No. (ii)

22. As regards fixation of reserve price, we have called the minutes of SCC meeting and the valuation reports which were filed by the Liquidator through additional affidavit dated 15.01.2024.
23. A perusal of the valuation reports indicates that 2 sets of valuers were appointed during the CIRP process and the Liquidator has stated in Additional Affidavit that same valuation reports were adopted during the Liquidation Process. A perusal of the valuation reports reveals that Valuer-1 has given liquidation value of entire assets as Rs.21.21 crores. The second set of valuers comprises of 3 valuers, who valued different categories of assets of the Corporate Debtor. The aggregate value given by second set of valuers is Rs.22.81 crore. The average of the two valuations is Rs.22.01 crore.
24. The Liquidator has attached the minutes of the SCC meeting held on 16.10.2023 from page nos. 164 to 169 of additional affidavit. Agenda Item No. 9 relates to the fixation of reserve price for the sale of assets as a going

concern of the Corporate Debtor. The said minutes records as under:

“Considering the valuation and other factors, SCC approved to fix the Reserve Price of Rs.23.75 Crores and same was accepted by the Liquidator”.

25. Having seen the average liquidation value which is Rs.22.01 crores and having gone through the SCC minutes, we are of the view that there was no infirmity in fixation of the Reserve Price in the matter. Accordingly, Issue No. (ii) is answered.

Issue No. (iii)

26. As regards issue no. (iii), after in-depth analysis of the matter and having gone through the details of the Bank account of the company under liquidation which was filed by the learned Liquidator through its reply and is at page no. 94, it is seen that R-3 has deposited the EMD on 09.11.2023. The remaining consideration was received in full by 23.11.2023 as such the entire consideration of Rs.23.75 crore has since been deposited. The Liquidator has already issued the Sale Certificate which is attached at page no. 82-83 of the reply. As such, we are unable to

attribute any fault on behalf of R-3 who is the Successful Auction Purchaser so as to deposit of amount as EMD and balance consideration.

27. During the entire process, the conduct of the advocates of the Applicant and the Liquidator and the Liquidator per se leaves a lot of to be desired. The Applicant first approaches this Tribunal through application, bearing IA No. 1293 of 2023 which came to be ordered on 07.11.2023, never complies with the directions. Thereafter, Applicant files another application bearing IA No. 1339 of 2023 which is affirmed on the date of auction never deposits the EMD but filed another application which was heard and reserved for orders and was re-opened when application - IA No.1367 of 2023 was first heard i.e., on 01.12.2023 and upon submissions of the counsel for the Applicant, IA No. 1339 of 2023 was released from the pronouncement and was de-reserved. It is also seen that the Applicant's constitution has undergone the change. Post receipt of reply from R-3 who raised objection on constitution of the Applicant, the Applicant has *suo motu* changed the cause title in rejoinder without obtaining leave from this Tribunal

to do so and without even modifying the cause title in the main application.

28. It is also correct that save and except bald pleadings of giving an offer which as per the rejoinder is for a sum of Rs.25.5 Crore. No proof of funds has been placed on record by the Applicant herein.
29. On the other hand, the learned Liquidator has also erred by not publishing any corrigendum upon noticing the defect in the auction notice as was published in two newspapers on 19.10.2023. The defence taken by the Liquidator that correct auction notices were published on the IBBI website does not help the Liquidator. In our considered view, corrigendum ought to have been published in the same newspapers informing the public at large.
30. It is seen that in this matter some advocates who appeared for R-1 & R-2 have switched sides which is recorded in the order dated 14.12.2023. It is also seen that except for the Applicant 10 other persons have given EOI/inquiries, however, the only aggrieved person before us is the Applicant.

31. The Hon'ble Supreme Court in Civil Appeal No. 6731 of 2008 has clearly stated in para 9 that “**all the rules of procedure are the handmaids of justice**”. Considering the same, we ignore the various shortcomings as have been pointed out by different counsels for the parties.
32. During the hearing on 17.01.2024, learned counsel appearing on behalf of Applicant, upon a question from the Bench regarding proof of funds, stated that “upon instruction from the clients he says that the client is ready and willing to deposit the entire amount of Rs.25.5 Crore”. Counsel for R-3 stated that an opportunity may be given to his clients to match the offer of the Applicant, if any.
33. Taking the above statements made across the Bar and in order to maximise the value of assets of the Corporate Debtor and with a view to put an end to the controversy surrounding this auction, we order as under:-
- (A) The Applicant herein shall give an unconditional bid to the Liquidator within a period of **three working days** from the date of pronouncement of this order.

(B) The entire bid amount should be deposited by the Applicant herein in the liquidation account of the Corporate Debtor which is under the control of the Liquidator within a period of **seven working days** from the date of this order. The details of liquidation account are as under:-

“DMB Paper Mills Private Limited Liquidation Account

Account No. : 923020051338691
Name of Bank : Axis Bank, Mumbai
Branch : Vile Parle Branch
IFSC Code : UTIB0000064”

(C) In case, the Applicant fails to adhere to the directions given in (A) and (B) above, this Tribunal will assume that the Applicant is not interested to pursue the matter and the Liquidator will be free to take further steps in pursuance of the Sale Certificate already issued by him in favour of R-3.

(D) In case the Applicant is able to satisfy (A) and (B) above, R-3 – the Successful Resolution Bidder will have an option to match the bid of the Applicant herein of course subject to payment of balance

consideration within **seven working days** from the date of submission of the revised bid.

- (E) It is made clear that in no circumstances this Tribunal will accede to any requests of either of the parties for seeking extension of time as specified in this order.
- (F) The Liquidator is permitted to issue fresh sale certificate and to cancel already issued sale certificate to comply with the directions given under this order.
- (G) The liquidator is directed to strictly adhere to the above directions and file an additional affidavit giving the subsequent development on record within two weeks from the date of this order.
- (H) List the matter for compliance on **12.02.2024**.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev Kr. Sen/P.S.