

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA (IB) NO.154/ALD/2022
in
CP (IB)No.45/ALD/2019**

In the matter of

An application under Section 60(5) IBC, 2016 read with Rule 11 of NCLT Rules, 2016

In the matter of:

Nitin Jain & others

...

Financial Creditor

Versus

Ratandeep Infrastructure Private Limited ...

Corporate Debtor

And

In the matter of:

BANKEY BIHARI INFRAHOMES PRIVATE LIMITED

Registered office at

Chamber No.11, Vindhyanchal Apartment,
Kaushambi, Ghaziabad, U.P. 201010 ...

Applicant

Versus

ALOK KUMAR KUCHHAL

Liquidator, Ratandeep Infrastructure Private Limited
C-154 Sector 51, Noida 201301 ...

Respondents

Order reserved on: 31.05.2022

Order pronounced on: 01.06.2022

Coram:

Mr. Rajasekhar V.K.

: Member (Judicial)

Mr. Virendra Kumar Gupta

: Member (Technical)

Appearances (via video conference):

For Applicant

: Ms. Babita Jain, Adv.

For Respondent/Liquidator

: Ms. Snehal Sharda, Adv
Mr Alok Kumar Kuchchal, Liquidator
(in person)

ORDER

Virendra Kumar Gupta, Member (Technical)

1. The applicant *herein* is seeking a direction from this Adjudicating Authority to the Liquidator to consider the scheme proposed by the applicant. In the interim,

it is prayed that the auction notice dated 19.05.2022 may be stayed till the scheme proposed by the applicant is considered by the creditors.

2. The Ld. Counsel appearing on behalf of the applicant after narrating the basic facts submitted that the order of initiation of liquidation of the corporate debtor was passed by this Adjudicating Authority on 31.01.2022. The Respondent no.1, Mr. Alok Kumar Kuchhal was appointed as the Liquidator.
3. It is stated that the applicant has submitted Expression of Interest with the Liquidator as regard to its proposal to submit the Scheme of Compromise and Arrangement in terms of Regulation 2B of Liquidation Process Regulations, 2016 read with section 230 of Companies Act, 2013. However, the Liquidator unilaterally decided to auction the assets and dissolve the corporate debtor in spite of the fact that the corporate debtor was a going concern.
4. It is further submitted that an IA No.115 of 2022, in this regard, was filed which was disposed of by this Adjudicating Authority vide order dated 13.04.2022, whereby the Liquidator was directed to act in accordance with the Liquidation Process Regulations, 2016 and a direction was also given that the proposed scheme be taken within a period of three weeks from the date of the order. It is the grievance of the applicant that necessary information was not provided by the applicant to enable the applicant to prepare the scheme, and on 20.04.2022 the applicant sought information from respondent no.1 for this purpose. The confidentiality undertaking was provided to the Liquidator on 23.04.2022. The Liquidator delayed its response and provided the information on 29.04.2022, however, for want of information regarding claims/ stakeholders, the scheme could not be prepared, due to which two critical weeks were lost.
5. It is also claimed that the list of stakeholders provided by the Liquidator is incorrect. It is also alleged that the Liquidator on 24.05.2021 attributed the reasons for delay on the part of the applicant. The applicant came to know that the auction notice on 19.05.2022 had been published and in spite of that this

fact was not brought to the notice of the applicant in its email dated 24.05.2022. It is also claimed that the list of creditors has not been uploaded on the IBBI website. It is further claimed that the applicant had been approached by one set of homebuyers and submitted its proposal which is almost twice the reserve price. It is also claimed that all the actions of the Liquidator are in gross violation of the provisions of law. Hence, liable to be quashed.

6. The Ld. Counsel appearing on behalf of the Liquidator submitted that the applicant *herein* has not submitted the proposal in terms of the directions given by this Adjudicating Authority. Hence, after the expiry of the period, the Liquidator published the auction notice. It is further claimed that all the allegations made by the applicant *herein* are baseless.
7. We have considered the submissions made by both the sides and material on record.
8. It is noted that this Adjudicating Authority vide its order dated 13.04.2022 in IA No.115 of 2022 directed the Liquidator to consider the scheme within a period of three weeks from the date of such order. It is further noted that there are correspondences between the applicant and Liquidator as regard to providing of details/ information for proposing the scheme. It is further noted that on 19.05.2022 an auction notice has been published which has set 02.06.2022 as the auction date.
9. During the course of hearing, the applicant was asked that why they did not approach this Adjudicating Authority for further directions as regard to providing of information which was required from the Liquidator to propose the scheme, no satisfactory reply was given to this query. It is also noted that the auction is going to take place on 02.06.2022, hence, the applicant *herein* can very well participate in that process and offer the maximum value for the assets of the corporate debtor.

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10. Considering this fact, we do not find any merit to intervene as of now as the object of maximization of value of assets can be achieved during the liquidation process also. We also make it clear that the Liquidator shall act with a view to maximize the value of the corporate debtor and in case the value offer is found to be below the value offered made by the applicant *herein*, the auction process may be reinitiated.
11. With these directions, this application stands disposed of in terms indicated above.
12. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**Virendra
Kumar
Gupta**

Digitally signed by Virendra Kumar Gupta
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**Virendra Kumar Gupta
Member (Technical)**

**Rajasekha
r V K**

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**Rajasekhar V.K.
Member (Judicial)**

Typed by :
Kavya Prakash Srivastava
(Stenographer)