

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

I.A. No. 830/KB/2021
I.A.No. 848 /KB/ 2021
I.A. No.962/KB /2021
I.A. No. 963/KB/ 2021
I.A.No. 969/KB/ 2021
IN
C.P (IB) No.1542/KB/2018

In the matter of

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rule, 2016

And

I.A. No. 830/KB/2021

In the matter of

Balaji Metals

... Operational Creditor

Versus

Gontermann – Peipers India Limited

...Corporate Debtor

And

In the matter of:

Chinar Steel Segment Centre Pvt. Ltd., having its Registered office at 301, Centre Point, 21, Hemanta Basu Sarani Kolkata-700001 and also at 2/A/7/A/C, Nirmaitrha Road, Mahavir Complex, Baidyabati, District- Hooghly, 712222.

...Applicant/Interested Bidder

Versus

1. Raj Singhania, Liquidator of Gontermann-Peipers (India)Limited (In Liquidation) having its office at Central Plaza, 41 B B Ganguly Street, 5th Floor, Room No.5A, Kolkata-700012.

2. Snaefell Heights LLP, having its office at 36/1A Elgin Road, Kolkata 700020.

... Respondents

I.A.No. 848 /KB/ 2021

In the matter of

Balaji Metals

... Operational Creditor

Versus

Gontermann – Peipers India Limited

...Corporate Debtor

And

In the matter of

HR COMMERCIALS PRIVATE LIMITED, having its office at A Wing, 802 D, Pinnacle Corporate Park, near Trade Centre, Bandra Kurla Complex, Bandra East, Mumbai- 400051,CIN No. U45400DL2015PTC287318.

... Applicant

Versus

1. Raj Singhania, Liquidator of Gontermann-Peipers (India)Limited (In Liquidation) having its office at Central Plaza, 41 B B Ganguly Street, 5th Floor, Room No.5A, Kolkata-700012.

2. Snaefell Heights LLP, having its office at 36/1A Elgin Road, Kolkata 700020.

... Respondents

I.A. No. 962/KB/ 2021

In the matter of

Balaji Metals

... Operational Creditor

Versus

Gontermann – Peipers India Limited

...Corporate Debtor

And

In the matter of

JSW Steel Limited, a company incorporated on 15th March, 1994 under the Companies Act, 1956 with CIN L27102MH1994PLC152925 and having its registered office at Bandra Kurla Complex, Kolvey Village, MMRDA Area, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051.

..... Applicant

Versus

1. Raj Singhania, Liquidator of Gontermann-Peipers (India)Limited (In Liquidation) having its office at Central Plaza, 41 B B Ganguly Street, 5th Floor, Room No.5A, Kolkata-700012.

2. Snaefell Heights LLP, having its office at 36/1A Elgin Road, Kolkata 700020.

... Respondents

I.A. No.963/KB /2021

In the matter of

Balaji Metals

... Operational Creditor

Versus

Gontermann – Peipers India Limited

...Corporate Debtor

And

In the matter of

Rahul Roy Chowdhury, residing at S/o Shri Ranatosh Roy Chowdhury, residing at C/11,Barabagan, Vidyasagar Sarani, East Barisha, Kolkata-700063;

... Applicant

Versus

Raj Singhania, Liquidator of Gontermann-Peipers (India)Limited (In Liquidation) having its office at Central Plaza, 41 B B Ganguly Street, 5th Floor, Room No.5A, Kolkata-700012.

... Respondent

I.A. No. 969/KB/ 2021**In the matter of**

Balaji Metals

... *Operational Creditor*

Versus

Gontermann – Peipers India Limited

...*Corporate Debtor*

And

In the matter of

DTC Projects Private Limited, CIN U51909WB1995PTC067230, having its registered office at 1, Netaji Subhas Road Kolkata-700001, West Bengal.

... Applicant

Versus

Raj Singhania, Liquidator of Gontermann-Peipers (India)Limited (In Liquidation) having its office at Central Plaza, 41 B B Ganguly Street, 5th Floor, Room No.5A, Kolkata-700012.

... Respondent

Date of hearing : 24/11/2021

Order Pronounced on : 02 /03/2022

Coram:

Mr. Rohit Kappor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

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|--------------------------------------|--------------------------------|
| 1. Mr. Chayan Gupta, Advocate |] For applicant in IA/848/2021 |
| 2. Ms. Sweta Gandhi Murgai, Advocate |] |

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| 1. Mr. Madhu Sudan Sarkar, Advocate |] For WBSEDCL |
| 2. Mr. D. Datta, Advocate |] |

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| 1. Mr. Shaunak Mitra, Advocate |] For UCO Bank |
| 2. Mr. Arjun Mookherjee, Advocate |] |

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|---------------------------------------|-------------------------|
| 1. Mr. Ratnanko Banerji, Sr. Advocate |] For Successful Bidder |
| 2. Mr. R. N. Ghose, Advocate |] |
| 3. Ms. Urmila Chakraborty, Advocate |] |
| 4. Ms. Pritha Ghose, Advocate |] |

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|-----------------------------------|-------------------------|
| 1. Mr. Joy Saha, Sr. Advocate |] For JSW Steel Limited |
| 2. Mr. Rishav Banerjee, Advocate |] |
| 3. Mr. Ritoban Sarkar, Advocate |] |
| 4. Ms. Madhuja Barman, Advocate |] |
| 5. Ms. Tanvi Luhariwala, Advocate |] |
| 6. Ms. Sandhya Iyer, Advocate |] |
| 7. Mr. Rishabh Chandra, Advocate |] |

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| 1. Mr. Kumarjit Banerjee, Advocate |] For Liquidator |
| 2. Mr. Raj Singhanian, PCA |] |

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| 1. Mr. Anirudh Wadhwa, Advocate |] For applicant in IA/969/2021 |
| 2. Mr. Rohit Sharma, PCS |] |
| 3. Mr. Bhargava Thali, Advocate |] |

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| 1. Mr. Mainak Bose, Advocate |] For Chinar Steel |
| 2. Mr. Rahul Auddy, Advocate |] |

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| 1. Dr. Priya Ranjan P. Singh, Advocate |] For applicant in IA/971/2021 |
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ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court is convened by video conference today.
2. Corporate Debtor Gontermann-Peipers (India) Limited is under liquidation vide order dated April 30, 2021 passed by this Adjudicating Authority and Mr. Raj Singhania, was appointed as Liquidator. Applicants in these IAs filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rule, 2016, seek setting aside of the e-auction held on September 13,2021 by the liquidator.
3. Before we proceed further, the brief facts and contentions of applicants as contained in each these IAs are summarised as under,

I.A. 830 of 2021

This is an Interlocutory Application filed by Chinar Steel Segment Centre Private Limited (***'Applicant'***) against Raj Singhania, Liquidator of Gontermann-Peipers (India) Limited (***'Liquidator'***) and Snaefell Heights LLP (***'Snaefell Heights'***) praying for as follows:

- A. The e-auction process for the sale of the assets of the corporate debtor be set aside,
- B. Stay of all further proceeding of sale of the assets of the corporate debtor till the disposal of the application.

- i. Injunction restraining the liquidator and Respondent No.1 to take any further action and giving further effect to e auction held on 13-09-2021.
- ii. Alternatively, Respondent No. 1 be directed to hold Re-auction. It has been stated, applicant was an interested bidder and participated in the bid, submits that on enquiry about the e-auction process, the applicant came to know that by a corrigendum published on September 08, 2021, the last date for submission of the EMD was extended till September 11, 2021 and the e-auction was scheduled for September 13, 2021 from 2pm to 4 pm.
- iii. As an interested bidder, the applicant deposited the EMD amount of Rs. 8.60 cr. and participated in the e-auction held on September 13, 2021.
- iv. The bidding process started from Rs. 86.00 cr. In the course of bidding, the applicant made four bids in excess of other bidder. The last registered bid of the applicant was standing at Rs.87.75 but at this point the applicant faced the connectivity issue and the applicant was unable to proceed further in the bidding process and there were interruptions and buffering.
- v. Applicant has further stated the last registered bid of Rs.87.75 crores made by the applicant and the Snaefell Heights made a bid of Rs.88 crores which in excess by Rs.25 lakh to the bid given by the applicant. As a counter to

the bid of the, the applicant wanted to make a bid for Rs.88.25 crores but because of some connectivity issue the applicant was unable to register the increased bid of Rs. 88.25 crores.

- vi. The issue relating to the network connectivity of the applicant during the bidding process was brought to the notice of the liquidator at 4pm by an email and upon consideration the liquidator decided to reschedule the bidding process. However, the connectivity issue persisted and in spite of best efforts the applicant was unable to register as the highest bidder.
- vii. This application was filed on 17-09-2021.
- viii. LOI was issued to Respondent No.1 on 02-11-2021.

I.A. 848 of 2021

This is an Interlocutory Application filed by HR Commercials Private Limited (*'Applicant'*) against Raj Singhanian, Liquidator of Gontermann-Peipers (India) Limited (*'Liquidator'*) and Snaefell Heights LLP (*'Snaefell Heights'*) praying for as follows;

- A. The E-Auction process for the sale of the Assets of the Corporate Debtor be set aside/quashed,
- B. Re-auction of assets,
- C. Allow it to participate in auction process,
 - i. In this IA it is stated that the Applicant on September 10, 2021 came to learn that pursuant to the liquidation order dated April 30, 2020 the liquidator on August 24, 2021 has

published an e-auction sale notice, and September 07, 2021 was the last date to submit EMD.

- ii. The Applicant is based in Mumbai and belatedly came to know about the advertisement published by the Liquidator. Under these circumstances, the Applicant was unable to apply and submit the documents and EMD within the specified period.
- iii. The Applicant is an interested party for purchasing the assets of the Corporate Debtor.
- iv. Later, on September 13, 2021 the Applicant came to know that the e-auction was not held on September 09, 2021 but rather on September 13, 2021 and the bidders who deposited the EMD on September 13, 2021, were also permitted to participate in the e-auction.
- v. All along the Applicant was interested to participate in the bidding process of the Corporate Debtor. Further, the auction process of the Corporate Debtor was vitiated by Procedural Irregularities, inasmuch as, the liquidator could not have accepted the EMD after September 11, 2021 and proceeded with the sale.
- vi. He did not have sufficient time to furnish the bid.

I.A. 962 of 2021

This is an Interlocutory Application filed by JSW Steel Limited (***‘Applicant’***) against Raj Singhania, Liquidator of Gontermann-Peipers (India) Limited (***‘Liquidator’***) and Snaefell Heights LLP (***‘Snaefell Heights’***) praying for as follows:

- A. Order seeking intervention and impleadment as party,

- B. Direction for cancellation and setting aside of the E-auction Information Process Document dated August 24, 2021 and E-auction dated September 13, 2021.
- C. Cancellation and setting aside of entire E auction dated 13-09-2021 and the LOI issued by the Liquidator to Snaefell Heights.
- D. Direction on the liquidator to conduct a fresh bidding for the sale of the Corporate Debtor as a going concern.
- E. Interim Order directing the liquidator and Snaefell Heights to maintain status Quo as regard to the assets of the Corporate Debtor.
 - i. The Applicant claims to be part of O.P. Jindal Group and one of the India's leading business houses. The Applicant is in business in sectors such as energy, infrastructure, cement, paints, sports and venture capital.
 - ii. Balaji Metals (*'Operational Creditor'*) had initiated insolvency proceedings against the Corporate Debtor being CP (IB) No.1542/KB/2018 under Section 9 of the Code. The Corporate Debtor was admitted to the CIRP *vide* order dated December 11, 2019.
 - iii. Pursuant to the order of admission, the IRP took over the management of the Corporate Debtor.
 - iv. In 15th COC meeting held on April 3, 2021, the CoC decided to request this Adjudicating Authority for an order of liquidation of the Corporate Debtor. Subsequently, on April 30, 2021 the order of liquidation was passed by this Adjudicating Authority and Mr. Raj Singhania was appointed as the liquidator.

- v. On August 24, 2021 the liquidator issued an E-Auction Process Information Document towards the sale of the Corporate Debtor and the E-Auction was conducted on September 13, 2021 and the LOI was issued to the highest bidder i.e. Snaefell Heights.
- vi. The Applicant further submits that in order for the Corporate Debtor to go as a going concern, it is necessary that the liquidator should have restricted bidders only to steel industry. The liquidator failed to appreciate that selling of the Corporate Debtor to a real estate company will defeat the very object of the Code.
- vii. The Applicant is the only participant who had submitted the compliant resolution plan. The Applicant was always interested in acquiring the Corporate Debtor as a going concern and reviving its steel business but could not participate in the E-Auction process.
- viii. The successful bidder is an LLP incorporated in the year 2019 with a turnover for the Financial Year ending on March 31, 2019, March 31, 2020 and March 31, 2021 as NIL.
- ix. The liquidator has failed to do a proper due-diligence and to verify as to how an LLP with Rupees One Lakh as the Capital will be able to continue the Corporate Debtor as a going concern.
- x. There are also two prospective bidders who could not submit their bid and have filed an intervention application. The Applicant also submits that there are approx. 500 workmen and employees on the muster roll of the Corporate Debtor on the insolvency commencement date and the workmen and

the employees are keen for the steel operation of the Corporate Debtor be revised instead of the real estate.

- xi. The Applicant is willing to offer 90 Cr in the event this Adjudicating Tribunal allows for the re-bidding of the Corporate Debtor. It is settled law that the Liquidator is the custodian of the interest of the Corporate Debtor and has to exercise its power in bona-fide. The purpose of the auction is to get the most remunerative price.

I.A. 963 of 2021

This is an Interlocutory Application filed by Rahul Roy Chowdhury, Applicant, claiming to be the Employee, representative /authorised Signatory of Employees/Workers Union of Gontermann-Pipers (India) Limited, against Raj Singhania, Liquidator of Gontermann-Peipers (India) Limited (*'Liquidator'*) praying for as follows:

- A. Liquidator be directed to Re-auction,
- B. Liquidator not to declare Successful Bidder or to issue LOI to the H1 bidder till disposal of this IA.

- i. Applicants states that as per the e-auction, Snaefell Heights was the highest bidder with the bid of Rs. 88 Crores. However due to some technical issue M/s Chinar Steel could not put his bid of Rs.88.25 Cr and the same was communicated to the liquidator.
- ii. The Applicant approached the liquidator praying that the Corporate Debtor be sold as a going concern because of 500 workmen and employees.
- iii. In the meantime, one of the bidders, M/s. Chinar Steel, who participated in the e-auction process, mentioned the matter before the Hon'ble NCLT, Kolkata Bench on 16.09.2021,

wherein the Liquidator was also present. On the queries raised by the Hon'ble Bench, the Liquidator apprised them about the entire process. The Liquidator said that he has received one e-mail for extension of time which he allowed, but is not in a position to confirm if at all there was any technical issue later on during the process. The Hon'ble Bench then enquired from the Liquidator whether 'he has any objection if a re-auction is conducted, to which the Liquidator replied that if the said re-auction starts at a value higher than the highest bid given, inasmuch as the same would maximize proceeds from auction of Corporate Debtor as a going concern, and take care of the interest of all the stakeholders, he would not have any objection if an Order to such effect is passed by the Hon'ble Bench.

- iv. The Hon'ble Bench directed the Liquidator to file an application for conducting re-auction giving reasons and justification for the same and not to declare Successful Bidder or issue LOI to H1 bidder till such application is disposed of.
- v. The representative of workers and employees present in the meeting also requested that in the interest of the workers and employees the Liquidator should go for re-auction and there is a possibility that some engineering concern will participate in the process and if successful, they can run the corporate debtor's undertaking as a going concern and saving the livelihood around 500 workers / employees.

- vi. The applicants state that JSW is a leading steel manufacturing company in the country. The applicants have come to know that JSW is interested to take over the corporate debtor and run the factory by employing those 500 workers/employees who became jobless due to liquidation. In this regard the applicants had fruitful discussions with JSW and have appreciated their bonafide intention.
- vii. Hence, this application praying for re-auction of the bidding process of the Corporate Debtor.

I.A. 969 of 2021

This is an Interlocutory Application filed by DTC Projects Private Limited (*'Applicant/Prospective Bidder'*) praying for as follows:

- A. Cancel the previous E auction conducted by Liquidator on 09-09-2021 and 13-09-2021;
- B. Liquidator be directed to reconvene/re-conduct the auction sale last held on 13.09.2021
- C. Allow the prospective Bidder to participate in the reconvened re-auction;
 - i. It has been stated in this application, the last date for applying in the e-auction sale and submission of documents along with the Earnest Money Deposit (EMD) was 07.09.2021 before 18:00 hours. The date of e-auction sale was scheduled to be held on 09.09.2021 from 15:00 hours to 17:00 hours. However, on the date of e-auction bids by only one bidder could be submitted and a prospective bidder, namely Nortech could not submit its bid despite its intent.
 - ii. Consequentially, in an application listed as IA 720/2021, the Hon'ble Tribunal extended the outer time limit for sale of the

Corporate Debtor as a 'going concern' till 13.09.2021 and the e-auction which was originally scheduled to be held on 09.09.2021, came to be held on 13.09.2021. Pertinently, the prospective bidder, namely Nortech, along with all intending prospective bidders were permitted to participate in the E-auction.

- iii. Notably, this was done so as to ensure maximization of the value of the Corporate Debtor. However, the Applicant herein, who is a prospective bidder, had no notice or knowledge of the said extension of time for participation in the e-auction till 13.09.2021 and was, as such, unable to submit the EMD and consequently participate in the e-auction process. The Applicant/ Prospective Bidder became aware of the said extension recently.
- iv. Upon becoming aware of the same, the Applicant wrote an email to the Liquidator and UCO Bank and Indian Bank (erstwhile Allahabad Bank), being the members of the Stakeholders Committee of the Corporate Debtor, requesting to conduct the auction again and allow it to participate in the said auction. However, no response to the same has been received. Therefore, the Applicant is constrained to file the present Application.

4. During the course of argument, Ld. Counsel appearing for the applicants submitted that the Applicant/s challenge the auction proceedings held by the Liquidator of Gontermann Peipers India Limited for sale of its assets and properties. The Applicants were interested bidders.

5. In one IA, it had participated in the auction by submitting an EMD of Rs.8.60 Cores. In course of the e-auction, as a participating bidder, the Applicant faced connectivity issues and accordingly, by an email to Respondent No.1 Liquidator, made a request for consideration. Considering the request, though the auction time expired at 16.00 hrs. the time period was extended and during the extended period, a bid of Respondent No.2 of Rs.88.00 Crores was received on the portal which was in excess of the Applicant's last bid of Rs.87.75 Crores. The Applicant wanted to give a higher incremental bid of Rs.88.25 Crores but despite best efforts, due to lack of connectivity and network issues, the Applicant was unable to register the incremental bid of Rs.88.25 Crores. As such, the last bid made by the Respondent No.2 at Rs. 88.00 Crores was not registered by the e-auction portal as the highest bid.
6. It is submitted that an email, written on behalf of the Applicant in IA 962/2021, seeking refund of the EMD, immediately after the auction, has been relied upon to suggest that the Applicant had accepted the fate of the auction. What needs to be referred to is the subsequent email by which the Applicant specifically informed the Liquidator that the previous mail seeking refund was sent inadvertently by a staff of the Applicant without consultation with the management. Immediately upon coming to know of such fact, such letter was withdrawn and the Liquidator was directed not to consider such request.
7. It is further submitted that though much has been said on the said email but the fact remains that the auction process, immediately upon its completion was brought to the notice of the Tribunal by the applicant and the fact that the same was entertained in the presence of the Liquidator.

8. It is further submitted by the Ld. Counsel for the applicant in I.A. No. 830/2021 that since the petitioner was prevented by sufficient cause from suitably making its offer during the auction process, the matter was immediately mentioned before this Adjudicating Authority upon notice to the Liquidator on 16th September, 2021. The Liquidator in his Affidavit has unequivocally admitted the said fact at paragraph 'm' at page 7.
9. It is stated that it has also been admitted that based on the oral directions of this Adjudicating Authority, the Liquidator was directed to consider re-auction and was further directed not to declare the successful bidder or issue any LoI to the H/1 bidder in the meantime till such time the proposed application of the Applicant was listed for consideration.
10. It is submitted that the application was filed on 17th September, 2021, and the Respondents were duly served.
11. It is submitted that on 28th September, 2021, the application was considered, admitted and the Respondents were directed to file their Affidavit. From the Liquidator's Rely Affidavit to the application. It is apparent that no steps had been taken by the Liquidator between the period from 13.09.2021 to 31.10.2021. However, a purported LoI appears to have been issued by R1 in favour of R 2 on 02.11.2021.
12. It is argued that in the facts of the present case and as a participating bidder whose Earnest Money of Rs.8.60 Crores still remains deposited, it is respectfully stated that in the interest of justice and towards maximization of the value of the assets of the Corporate Debtor and also in the interest of all stakeholders, the Applicant's higher bid of Rs.93

Crores be accepted and the Sale be confirmed in its favour. Alternatively, the assets of the Corporate Debtor, now in liquidation, be reopened and the Applicant and the Respondent No.2 be directed to make their offers as participating bidders to make sure the maximization of value and the assets be sold to the person.

13. It is further evident that the Applicant was a bona fide bidder who has participated in the auction process, but for reasons beyond its control could not lodge a higher bid. It has also been unequivocally admitted what transpired on participated in the auction process, but for reasons beyond its control could not lodge a higher bid. It has also been unequivocally admitted what transpired on 16.09.2021 before this Adjudicating Authority and the oral directions (paragraph (m) at page 7 of his reply affidavit). Strangely enough, the reply affidavit is silent as to why, despite the applicant having offered to give a higher bid which is not only in the interest of the stakeholders of the Corporate Debtor but towards the object of the IBC Code, qua, maximization of value, the Liquidator after 1 and ½ months changed his stand and purportedly issued the LoI. It is also evident that between 13.09.2021 and 31.10.2021 no steps have been taken by the Liquidator. However, surprisingly, stakeholders, meeting appears to have been conducted, though there are no documents in support thereof, where the H/1 bidder's offer was allegedly agreed to be accepted. It is stated that the consultation with stakeholders was uncalled for and in any event, it is preposterous to suggest that the stakeholders would agree to accept a lower bid when the Applicant for offering a higher bid had already made an application which was pending adjudication.

14. It is submitted that based on the principle of maximization of value, which is the object of the Code, there are overwhelming reasons in the facts of the present case that an opportunity is required to be given to the Applicant to make a higher bid. The Applicant wishes to make a bid of Rs.93 crores to purchase the assets and properties of the Company in Liquidation and further undertakes to improve its offer, if required.
15. It is further submitted that though much has been said on the said email but the fact remains that the auction process, immediately upon its completion was brought to the notice of the Tribunal by the applicant and the fact that the same was entertained in the presence of the Liquidator.
16. It is submitted that in the present applications, the Applicant seeks to set aside the sale held on 13th September, 2021, reconsider of its higher bid and alternatively, re-auction of the assets of the Company in Liquidation.

Reply of Liquidator:

17. In rebuttal to arguments of applicants, it has been argued forcefully by Ld. Counsel for Liquidator, after the public auction is held and the highest bid is received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it.
18. On notice being issued, Respondent No.1 filed reply affidavits and submitted that the IAs are nothing but a trumped- up effort in hindsight

to reopen a concluded auction process with the sole mala fide intent to put a spanner in the liquidation process of the Corporate Debtor by an unsuccessful bidders or persons who never put the bid and as such, deserves to be dismissed in limine with exemplary costs.

19. It is submitted by the Liquidator that the Liquidator published a notice of sale of the Corporate Debtor as a going concern in the Business Standard, all India Edition and AajKal, a vernacular Bengali Newspaper on 24.08.2021 and also unloaded the e-Auction Process Information Document at the e-auction portal and the website of the Corporate Debtor. Under the terms of the sale notice dated 24.08.2021, the reserve price for the proposed e-auction process was fixed at Rs. 86 crore with EMD of Rs.8.6 crore. The last date of submission of EMD was initially fixed on 07.09.2021 and the e-auction was schedule to be held on 09.09.2021. Although number of intended buyers did show their interest in the proposed auction sale of the Corporate Debtor as a going concern, till the last date of submission of EMD i.e., 07.09.2021, the Liquidator did not receive any EMD from interested buyers. In view of the same, the Liquidator decided to extend the date of e-auction and accordingly he published an addendum (corrigendum) to the earlier e-auction sale notice on 08.09.2021 in the same newspapers and extended the date of e-auction from 09.09.2021 to 13.09.2021. As per addendum dated 08.09.2021, the last date of submission of EMD was 11.09.2021 and the date of e-auction was 13.09.2021. As on the last date of submission of EBD on 11.09.2021, the Liquidator received EMD from only one interested bidder but did not receive any bid documents from them. It is further submitted that on the next day, i.e. on 12.09.2021, Liquidator received advance copy of an application being filed with NCLT, Kolkata

Bench by M/s Nortech Property Private Limited wherein they sought extension of e-auction process for participating in the same.

20. It is further submitted that on the next date i.e. 13.09.2021, the applicant M/s Nortech Properties Private Limited mentioned their application before this Adjudicating Authority wherein the Liquidator was also present. After hearing the prayers of the Applicant, this Adjudicating Authority was pleased to issue oral directions to the Liquidator in open court wherein this Adjudicating Authority allowed the applicant as well as any other participant who submits EMD before 1.30 p.m. (earlier 12.00 Noon) can participate in the e-auction process of the Corporate Debtor.
21. It is submitted that as the time left for verification of documents and eligibility was very less in the hands of the Liquidator, the Liquidator proceeded to issue the User ID and password for participation in the e-auction process to both M/s Snaefell Heights LLP and M/s Chinar Steel Segment Centre Pvt. Ltd. based upon the EMDs received from them. The e-auction process commenced at 2.00 p.m. and both the bidders had submitted at least one bid till 4.00 p.m. Subsequently, the Liquidator received an e-mail from the applicant that they are having network issues and sought an extension of 45 minutes on such ground. The Liquidator granted an extension of 30 minutes and again both the bidders submitted further bids. The e-auction process was concluded with the last bid being placed at 4.49 p.m. by Sanefell Heights LLP for an amount of Rs.88 Crores.
22. It is further submitted that subsequently upon receipt of the abovementioned e-mails, the Liquidator immediately proceeded to issue notice for conducting meeting of the Stakeholders' Consultation

Committee ('SCC' and/or 'Committee') on 15.09.2021 for a meeting to be held on 16.09.2021 through virtual mode for apprising the committee about the developments and suggestion on future course of action.

23. It is further submitted that in the meantime, one of the applicants, who participated in the e-auction process mentioned the matter before this Adjudicating Authority on 16.09.2021, wherein the Liquidator was also present. On the queries, raised by this Adjudicating Authority, the Liquidator apprised them about the entire process and the free and fair manner in which the entire e-auction process was carried out. On the issue of applicant's contention regarding technical glitches, the Liquidator apprised this Adjudicating Authority that he has received one e-mail for extension of time which he allowed but was not in a position to confirm if at all there was any technical issue later on during the process. Upon hearing the parties, this Adjudicating Authority proceeded to orally direct, inter alia, the following to the Liquidator:-

i. Consider if the Liquidator would want to file an application for conducting re-auction upon citing reasons and justification for the same.

ii. Not to declare Successful Bidder or issue LOI to H1 bidder in the meantime till proposed application (s) impugning the auction process are listed before the bench for consideration.

(However, there is nothing on record before this Adjudicating Authority as such).

24. It is further submitted that the Liquidator subsequently received copies of applications being filed by two different parties under section 60(5) of the Code with the Adjudicating Authority seeking setting aside the e-

auction already conducted and concluded by the Liquidator on 13.09.2021 and asking the Liquidator to conduct a fresh auction thereby enabling these parties to participate in the e-auction process afresh. One of the two applications was filed by the applicant herein, who had participated in the e-auction process after depositing EMD and another party is M/s H R Commercial Private Limited, who has neither participated in the concluded e-auction process nor deposited any EMD. The matters were again mentioned by both the above parties before this Adjudicating Authority on 23.09.2021 for urgent hearing of their applications. This Adjudicating Authority allowed both the applications being IA 830/KB/2021 and IA No. 848/KB/2021 directing the Liquidator to consider the claim of operational Creditor afresh based on documents available and on its merits. However, with regard to the other applications being IA No. 830/KB/2021 and IA 848/KB/2021, this Adjudicating Authority directed the matter to be returnable on 12.11.2021 with directions upon parties to file their replies in the meantime. It is pertinent to note that specific prayer for injunction and /or stay on issuance of LoI and/or further process for conclusion of the liquidation process was rejected. It is worthwhile to mention here that M/s Snaefell Heights LLP, the highest bidder in the concluded e-auction process was also arrayed as a party to both the applications.

25. It is further submitted that in the meantime, due to festive season and holidays of this Adjudicating Authority and further due to reconstitution of the Benches at Kolkata NCLT, the order dated 28.09.2021 was uploaded on the website of the NCLT on 28.10.2021. It is further submitted that as per the said order, the only direction given to the Liquidator in respect of IAs 830 and 848/KB/2021 was to file reply

within three weeks and no stay or injunction of whatsoever nature was granted.

26. It is submitted that in the meantime, with a view to verify the allegation of technical glitch preventing the applicant from placing its last bid, the Liquidator also obtained a Log report from Linkstar Infosys Pvt. Ltd., the e- Auction service provider. The e-auction service provider furnished the log report of the participants in the e-auction process held on 13.09.2021 and a confirmation to the effect that there was no technical glitch on the part of the e-auction portal during the entire e-auction process. Subsequent upon issuance of the order dt. 28.10.2021, the Liquidator proceeded to convene a meeting of the SCC on 30.10.2021. In course of the said meeting, the Liquidator apprised the stakeholders of the various developments, as mentioned hereinabove.
27. It is submitted that in the said 3rd meeting of the SCC, the representatives of the financial creditors once again unanimously expressed their satisfaction with the H1 bid amount of Rs.88 Crores received by the Liquidator and suggested that the Liquidator should immediately declare the H1 bidder as Successful Bidder and proceed to issue the LoI. They also mentioned the fact that although the applications for cancellation of e-auction process held on 13.09.2021 and seeking re-auction is filed before this Adjudicating Authority, there has been no stay or injunction upon the Liquidator to hold the Liquidation process. They stated that as per the Order dated 28.09.2021 which was uploaded on 28.10.2021, the only direction was for filing of reply by the respondents. Furthermore, despite specific prayer to that effect by the applicant, the order does not grant any stay and/or injunction of the liquidation process, and as such, the same must be deemed to have been refused. Accordingly, there was

no embargo against completion of the liquidation process upon issuance of the LoI.

28. In view of the above, the representatives of secured lenders who were present in the meeting unanimously suggested to the Liquidator the following:

i. The Liquidator should immediately declare the H1 bidder, M/s Snaefell Heights LLP, as the successful bidder and issue LoI to them.

ii. They were satisfied with the H1 bid amount since the same is higher than the Fair Market Value (FMV) of the Corporate Debtor as determined by the Liquidator.

iii. Even though there are some persons who have elicited superficial interest in the CD and may consider a higher pay out in the event of a re-auction, at present the same may best be considered as speculative with no concrete commitments. Consequently, a re-auction may delay the entire process with no certainty on the higher bid amount. This will not be in the interest of the stakeholders.

iv. Rather, the Liquidator should try to complete the process immediately and as the successful bidder is willing to pay the money even before 30 days' timeline, he should accept it and distribute the same among the stakeholders under the waterfall mechanism as per law.

29. It is further submitted that the representative of workers and employees present in the meeting requested the Liquidator that he should not issue the LoI at the moment and should wait at least till 12.11.2021 so that if any engineering concern show their willingness to participate and take

over the Corporate Debtor to run its factory as a going concern thereby saving the livelihood of around 500 workers/employees. On this the Liquidator, stated that based upon the same suggestion from them earlier also, he waited hoping for any such party to show interest in running the factory of the company, but unfortunately he did not receive any communication/expression of interest in that regard, despite postponement thereof. As such, withholding the liquidation process on such conjecture and surmise is neither prudent nor keeping with the object and scheme of the Code. If the process is delayed, it is the workers and employees who will be hit most as they have not received a single Rupee since last five years.

30. It is submitted that the Liquidator is a creature of the statute and is bound by the Code and /or Regulations framed thereunder. The Liquidation is a time bound process and more particularly if the Corporate Debtor is to be sold as a going concern as per Regulation 32(e), the time limit at his disposal is very limited.
31. It is submitted that pursuant to the suggestion of the majority of the stakeholder' consultation committee members, and particularly on the unanimous recommendation of the secured creditors of the Corporate Debtor to confirm the H1 Bidder as the successful auction purchaser, the Liquidator issued the letter of intent (LoI) to the highest bidder, viz. M/s Snaefell Heights LLP, in the successfully conducted e-auction process for sale of the Corporate Debtor as a going concern on 02.11.2021.
32. It is submitted that as would be evident from the perusal of the log report obtained by the Liquidator upon enquiry into the alleged technical glitch preventing the petitioner from enhancing its bid by the incremental bid amount despite extension of time by 45 minutes by the Liquidator, that

there was no technical infirmity and/or irregularity whatsoever in the e-auction portal at the relevant time and as such the entire e-auction process was free from any glitch and /or infirmity whatsoever. Furthermore, the e-auction process document categorically clarified and stipulated that the intending bidder along shall be responsible for fidelity of their technical systems in participating in the bid process and the Liquidator and /or the e-auction service provider shall not be responsible and /or liable in any manner whatsoever for any technical infirmity at the end of the intending bidder. As such, the entire e-auction process and the e-auction portal being free from any technical infirmity whatsoever at the Liquidator's end, there could be no justification whatsoever for allowing the petitioner to seek a re-auction and /or reopen the auction process for the alleged technical glitch at its end.

33. The Liquidator further submits that when it was by the applicant vide its email dated 15.09.2021, the Liquidator duly conducted an enquiry with the e-auction service provider, like Linkstar Infosys Pvt. Ltd. The said e-auction service provider by its email dated 29.10.2021 confirmed that there were no technical issues with the e-auction portal during the e-auction process and furnished complete log report of the e-auction process which unequivocally evidences complete fidelity of system and network. The Liquidator further submitted in reply to the contention of the applicant that in course of the e-auction process, scheduled to be concluded at 4.00 p.m. on 13.09.2021 sought an extension of 45 minutes on the purported ground that it is facing network issues in placing its incremental bid. Pursuant to the said request, the Liquidator had duly extended the period of auction by 30 minutes i.e. till 4.30 p.m. It is argued that it is evident from the Log Report, that the applicant had duly placed its bid at 4.28 p.m., thereby irrefutably evidencing that it was not

facing any technical issue post 4 p.m. It is submitted that the applicant never informed the Liquidator about any technical glitches thereafter.

34. It is submitted that in any event, without prejudice to what has been stated hereinabove, there is no evidence whatsoever furnished by the petitioner substantiating its allegation of any technical glitch and/or veracity of its allegation pertaining to technical glitch and/or connectivity issues faced by it in placing its incremental bid in the e-auction process. As such, the allegations and/or averments made in the petition to this effect should be disregarded in limine.

35. It is further submitted that the petitioner has no locus standi to challenge the instant auction process in any manner whatsoever insofar as it has failed to participate and submit its incremental bid despite extension of time by 30 minutes beyond the stipulated bid period between 2 to 4 PM already extended by the Liquidator in good faith.

36. To I.A. No. 962/KB/2021, it is submitted that the petition is nothing but a desperate ploy to reopen the entire e-auction process and render it litigated by a disgruntled failed bidder who is now seeking to enhance the bid in hindsight. The aforementioned conduct of the intending bidder would also be evident from the fact that the petitioner had waived and relinquished its rights in respect of the auction process by voluntarily waiving its participation from the said e-auction process and seeking refund of the EMD immediately upon conclusion of the e-auction process on 13.09.2021 by seeking refund of its EMD upon conceding that they are not successful bidder.

37. It is submitted that the aforementioned email would unequivocally establish and evidence that the petitioner had waived and relinquished its

rights and claims in relation to the e-auction process and has conceded that they were never the successful bidder and is now seeking to prevaricate from its stand in hindsight to render the auction process litigated. The said conduct of the applicant also evidences the mala fide and vexatious nature of the allegation of technical glitch preventing them from placing incremental bid, and the deliberate misstatements made in connection therewith. Accordingly, the petition of the applicant is mala fide, vexatious and an attempt in hindsight to put a spanner in the liquidation process in hindsight.

38. It is submitted that Liquidator in his reply affidavit has alleged that the present application is nothing but a trumped up effort to reopen a concluded auction process. It has been further alleged that it is a teeth of overreaching an expeditious liquidation process of the Corporate Debtor to preserve maximization of value of its assets.
39. It is further argued that at the outset that the stand of the Liquidator in the reply affidavit is inconsistent with what was submitted before this Adjudicating Authority on 16.09.2021 and the same would be apparent from paragraph 'm' at page 7 of the Reply affidavit of the R1.
40. In reply to the arguments of the applicant, the Liquidator (Respondent No.1) submitted that the principal contention of the applicant Chinar Steel Segment Pvt.Ltd. (hereinafter referred to as 'Chinar'), one of the participant bidders in the e-auction sale process of the Corporate Debtor is that the said applicant despite participating in the e-auction process in 13.09.2021 was allegedly prevented by "connectivity issues" in placing its intended incremental bid of Rs. 88.25 Crores, which was Rs. 25 Crores more than the H1 bidder, the Respondent No.2 herein. It is submitted that the excuse of the applicant seeking to justify its failure to place the

highest bid in course of e-auction process is malafide incorrect and ex facie contrary to matters of record and is replied with erroneous and factually incorrect statements. It is submitted that the applicant is seeking to aprobate and reprobate in its conscious and deliberate stand that it is the unsuccessful bidder without any dispute or demur.

41. The Liquidator further argued that a perusal of the log report would further show that both applicant and Respondent No.2, the H 1 bidder continued to place incremental bids till 4.49 p.m. within 5 minutes of the last incremental bid, in accordance with swiss bid mechanism without any technical issue. Ld. Counsel further submitted that after facing of the H1 bid of Rs.88 crores by Respondent No.2 at 4.49 p.m, the applicant although still logged into the system, never placed an incremental bid despite being logged into the e-auction portal. Thereafter, the applicant logged off at 4.56 p.m. without placing any incremental bid above H 1 bid of the respondent no.2.

42. It is submitted that this course of event would categorically establish that the applicant was logged into the portal without any technical network issues, till 4.56 p.m., and had adequate to place its incremental bid, but deliberately chose to not do so. It is submitted that any excuse of network issue/ technical issue is ex facie malafide, and completely erroneous and contrary to the technical records obtained from the e-auction service provider. F.

43. It is further argued by the Ld. Counsel for the Liquidator that the applicant had addressed an email dated 13.09.2021 at 7.31 p.m., post conclusion of the e-auction process seeking refund of its EMD on the ground that **“it was not successful bidder”**. This would clearly evidence that the applicant was cognizant of what actually transpired during the e-

auction process and knowledge of the fact that it was not the H1 bidder, completely contrary to its assertion of it having been prevented by “network issues” from participating/placing of final bid.

44.Ld. Counsel submitted that the said e-mail also evinces the conscious and deliberate acknowledgement and admission on the part of the applicant in IA 962/2021 that it was an unsuccessful bidder. It is submitted that only after addressing its purported email to the Liquidator claiming network issue allegedly prevented it from placing an incremental bid, it sought to resile from the stand taken in the above email, again sought to retract the same in hindsight by its email dated 15.09.2021 stating that the email dated 13.09-2021 was sent erroneously by some staff is an afterthought and does not deserve any cognizance because it was from the same email ID and contained complete bank details of the applicant wherein the refund was sought. Any person who is not authorized by the applicant cannot write an email seeking a refund of Rs. 8.60 Crores.

45.Ld. Counsel for the Liquidator submits that without prejudice, the e-auction process document categorically clarified and stipulated that the intending bidder alone shall be responsible for fidelity of their technical systems in participating in the bid process and the Liquidator and/or the e-auction service provider shall not be responsible or liable in any manner whatsoever for any technical lapses/glitch at the end of the intending bidder. It is argued that there was no stay or injunction on continuation or conclusion of the auction process vide order dated 28.09.2021 contrary to the assertion of the applicant. Ld. Counsel for the Liquidator submitted that the assertion and contention of the applicant are without any merit and be dismissed with costs.

46.Ld. Sr. Counsel and other counsel appearing for the parties have made detailed submissions on variety of grounds, as pleaded in their respective IAs, summarised hereinabove with a view to show that the entire E auction by Liquidator is grossly flawed and the same is liable to be set aside followed by holding of a fresh auction in order to maximize the value of assets. A number of judgments of Hon'ble Supreme court and Hon'ble NCLAT have been cited and compilation given to us.

47. Similarly detailed arguments have been advanced on behalf of Liquidator to rebut the contentions of applicants and to show that the liquidator has acted in accordance with law, in best of its wisdom under circumstances, and achieved maximum value of assets put on auction by him strictly according to IBC 2016 and regulations made thereunder as applicable to the process of Liquidation. According to Ld. Counsel for the Liquidator and as per the affidavits filed by him, entire auction has been conducted in a transparent manner and after giving due public notice as required under applicable regulation on the day. According to the Liquidator, all the IAs are frivolous and attempt to thwart the entire E auction process for some ulterior motives.

After perusal of the pleadings of the parties, hearing their arguments and also going through the various judgments cited by them at the bar, we find the following significant facts/ contentions to decide the question of granting the prayer of applicants or refusing it. From the record the following position that emerges is summarized as under;

WEDNESDAY, 24 AUGUST 2021
 Page 1 of 1
 05:43:22
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 NEWS 8377 943828 362
 WE MARKETS ON MONDAY

Business Standard

E-AUCTION SALE NOTICE
GONTERMANN-PEIPERS (INDIA) LIMITED (IN LIQUIDATION)
 CIN: L27106WB1966PLC101410
 Registered Office of the Corporate Debtor: Diamond Harbour Road,
 P.O. Pailan, 24 Parganas (South), Kolkata-743512, West Bengal

3

Notice is hereby given to the public in general under The Insolvency and Bankruptcy Code, 2016 ("Code") and Regulations thereunder, that the process of Sale of Gontermann-Peipers (India) Limited (In liquidation) ("Corporate Debtor") as a GOING CONCERN is being offered as per Regulation 32(e) read with regulation 32A and 33(1) of the Insolvency and Bankruptcy Code of India (Liquidation Process) Regulations, 2016 by the Liquidator appointed by the Hon'ble NCLT, Kolkata Bench vide order IA No. 432/KB/2021 in CP (IB) No. 1542/KB/2018 dated April 30, 2021 under The Insolvency and Bankruptcy Code, 2016 ("Code").
 The bidding shall take place through online e-auction service provider Linkstar Infosys Private Limited at <https://eauctions.co.in/>

SL NO.	PARTICULARS	DETAILS
1	Date and Time of E-Auction	09.09.2021 from 3.00 p.m. to 5.00 p.m.
2	Last Date to apply and submission of Documents and EMD	07.09.2021 before 6.00 p.m.
3	Inspection Date and Time	On or before 07.09.2021 from 10:00 a.m. to 5:00 p.m.

Basic Description of Assets and Properties for sale:

Asset / Location	Reserve Price	Earnest Money Deposit	Incremental Bid
Sale of Corporate Debtor as going concern along with its assets including Land and Building, Plant & Machinery, Inventory, Stores and spares etc.	₹ 86,00,00,000/-	₹ 8,60,00,000/-	₹ 25,00,000/-

IMPORTANT NOTES:

- E-Auction will be held for sale of the Corporate Debtor as a "GOING CONCERN" on "AS IS WHERE IS BASIS", "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS" without any representation, warranty or indemnity and will be conducted "online".
- Interested applicants may refer and adhere to the Complete E-Auction Information Process document containing details of terms and conditions of the E-Auction and other details of the properties which are uploaded at the website i.e. <https://eauctions.co.in/> and <http://www.gontermann-peipers.com/liquidation.php> or shall be available on sending request at admin@eauctions.co.in or gpil.cirp@gmail.com.
- All interested applicants must submit the Earnest Money Deposit (EMD) as stated above and fulfil the eligibility criteria to participate in the e-auction process.
- The Liquidator has right to cancel or extend or modify any terms of E-auction at any time. The Liquidator has the right to reject any bid without assigning any reasons.
- Contact person on behalf of E-Auction Agency (Linkstar): Mr. Dixit Prajapati, E-mail Id: admin@eauctions.co.in, Mobile No.: +91 7874138237,
- Contact details of the Liquidator: CA. Raj Singhanian, Email Id: gpil.cirp@gmail.com

Sd/
Raj Singhanian
 Liquidator - Gontermann-Peipers (India) Limited
 IBB Reg. No: IBB/1PA-001/IP-P00188/2017-18/10367
 Regd. Address: 41, B.B. Ganguly Street, 5th Floor,
 Room No. 5A, Kolkata-700012
 Regd. e-mail id: rajsinghanian_ca@yahoo.co.in

Date : 24.08.2021
 Place : Kolkata

48. As is evident from, auction notice was issued for the Sale of Gontermann-Peipers (India) Limited (in liquidation) ("Corporate Debtor") as a GOING CONCERN. As per Regulation 32(e) read with regulation 32A

and 33(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 by the Liquidator appointed by the NCLT, Kolkata Bench vide order passed in IA No. 432/KB/2021 in CP (IB) No. 1542/KB/2018 dated April 30, 2021 under The Insolvency and Bankruptcy Code, 2016 (“Code”).

49. It is further evident from this notice which was published on 24th of August, 2021 and the date of e-auction was fixed as 9th of September, 2021 from 3:00 P.M. to 5:00 P.M. The last date for submission of document and EMD was fixed on 7th of September, 2021 before 6:00 P.M. Inspection of site and time was fixed on or before 7th of September, 2021 from 10:00 A.M. to 5:00 P.M.

50. Assets as shown in the auction notice are mentioned as Land and Building, Plant & Machinery, Inventory, Stores and spares etc. As is evident from the record this factory is situated at Kolkata. It is admitted position that the liquidator decided to postpone the e-auction from 9th of September, 2021 to 13th of September, 2021 and fixed the submission of EMD and other documents in Calcutta for 11th of September, 2021.

51. In IA/962/KB/2021, the applicant has placed on record e-auction process information document at Page-46.

At Page-47 of this document issued by the liquidator, it is mentioned and same is reproduced hereinafter:

5.“It is to be noted that no information being provided in this e-auction Process Document is claimed to be comprehensive. Independent due diligence of the intended user of this document or the bidder is highly recommended”.

14. “ It may be noticed that the assumptions, assessments, statements and information contained in the e-Auction Process Document may not be complete, accurate, adequate or correct and the liquidator shall not be responsible and/or liable for the veracity thereof. Each bidder should therefore, conduct its own due diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this E-Auction Process Information Document and may get independent advice from appropriate sources. The decision to participate in this E-Auction Process shall be strictly at the bidders risk and cost.”

52. Overview of the assets and properties of CD is contained at Page-56 of the bidding document. The details of document required to be submitted by the bidder start from Page-61. There is a provision for physical verification and the site visit at Page 62 and also there is a provision for conducting due diligence. The particulars of assets are mentioned at Page-63 of this IA and internal Page-21 of the bidding document. It is further mentioned at Page-72 ,The Intending Bidder (s)) should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/affecting the assets and should conduct their own due diligence prior to submitting their bid. The bidding document was accompanied by format of an affidavit to be sworn by the intending bidder, bid application form, declaration to be given by the bidder.

53. Description of assets to be sold starts at Page-42 and continues till Page-59 of this document. The description of assets contain land, building details including particulars and type of constructions, plant and

machinery, electrical installations which comprises of 537 items. Then it also gives the details of inventory and motor vehicles with description and total weight (unit of measurement) which was in tonnes.

54. It has been pleaded in IA 969/KB/2021, in the event of extension of time fair and equal opportunity to participate in the process was imperative by the Liquidator. Inspection for the assets of the company by the intending bidders was fixed on or before 7th of September, 2021 thus thereby giving a time of around 12 days. However, when the liquidator did not get even a single bid on or before the schedule fixed by him in his notice dated 24th of August, 2021, he extended the time by issuing the corrigendum dated 8th of September, 2021 thereby extending the date of submission of EMD till 11th of September, 2021 and date of e-auction on 13th of September, 2021. The corrigendum published in the Newspaper is as under:

Business Standard

www.business-standard.com

PUBLISHED SIMULTANEOUSLY FROM AHMEDABAD, BENGALURU, BHUBANESWAR, CHANDIGARH, CHENNAI, HYDERABAD, KOCHI, KOLKATA, LUCKNOW, MUMBAI (ALSO PRINTED IN BHOPAL), NEW DELHI AND PUNE

NEW DELHI WEDNESDAY, 8 SEPTEMBER 2021

CORRIGENDUM	
GONTERMANN PEIPERS (INDIA) LIMITED (IN LIQUIDATION)	
With reference to the E-Auction Sale Notice published in this newspaper on 24.08.2021, I, Raj Singhania, Liquidator hereby informs that the last date for submission of EMD and other documents has been extended till 11.09.2021 upto 6 p.m. and E-Auction will be held on 13.09.2021 from 2 p.m. to 4 p.m. All other Terms and Conditions of Sale Notice shall remain same.	
Date : 08.09.2021	Raj Singhania,
Place : Kolkata	Liquidator
E-mail: gpil.cirp@gmail.com	

55. It has been pointed out by the Ld. Counsel that this corrigendum was issued taking away an essential requirement of an intending bidder to physically inspect the above referred assets so as to estimate the amount of bid. It is further argued earlier, that 12 days were given for the purpose and while extending the time of auction, no time at all was given for

inspection of the site or conducting any due diligence as provided in the earlier bid notice referred to above. It is further argued by the Id. Counsel that in the absence of providing the opportunity to the intending bidder, how could one bid for! For bidding for such high value assets, as was mentioned in the original bid notice, intending bidder was required to conduct physical inspection and due diligence, even as per the liquidator. There were so many assets and one wonders how one could bid for it without seeing the things physically and conducting due diligence and its valuation. Thus, the extension notice has deprived the intending bidders including the applicant to participate in the bidding process and the bidding process is liable to be set aside the same being conducted in unfair manner. The extension of auction notice and sale conducted in pursuance to it was done in a slipshod manner by the liquidator.

56. It is apparent from the facts on record, the time of completion of the liquidation process was till April, 2022 (without extension) and why there was so hurry with the liquidator to extend the time only for three days when he was having not even a single bidder in response to its first notice and at the same time inviting bids afresh without affording anyone the opportunity of conducting physical inspection of the huge and high value assets of the company and conducting due diligence and mentioned in earlier notice inviting bids, per se speaks of failure on the part of Liquidator to conduct the sale in fair and in the manner to get the maximum value of the assets. According to the Ld. Senior Counsel, this in itself speaks volumes of arbitrariness on behalf of the liquidator and has caused serious doubts regarding his effort, as claimed by him, to have the best value of these assets under liquidation. According to the applicants, reasonable time should have been granted to conduct the site

inspection and due diligence when the liquidator was extending the time for want of even a single bidder.

57. Our attention has also been drawn to the fact that the corrigendum dated 8th of September, 2021 of bidding was intended to invite bidders from whole of the country and thus a reasonable opportunity ought to have been given for inspection for physical inspection and due diligence of the assets to the applicant and other intending bidders with a view not only to maximise the value of the assets but also to conduct a fair auction giving everyone a level plain field.

58. Ld. Sr. Counsel Mr. Joy Saha argued the Applicant (In IA 962) that successful bidder is an LLP incorporated in the year 2019 with a turnover for the Financial Year ending on March 31, 2019, March 31, 2020 and March 31, 2021 as NIL. Thus, the liquidator has failed to do a proper due-diligence and to verify as to how an LLP with Rupees One Lakh as the capital will be able to continue the Corporate Debtor as a going concern and pay to its 500 employees.

59. Our attention has also been drawn to Schedule-1 (under Regulation 33 of Insolvency and Bankruptcy Board of India (liquidation Process) 2016,) schedule-1 which provides *“if required the liquidator may conduct multiple rounds of auction to maximize the realization from the sale of the assets and to promote the best interest of the creditors.”*

60. What is a reasonable opportunity? While considering at this aspect of the matter, it is significant to refer to Indian Contract and Specific Reliefs Act by Pollock and Mulla, 16th edition (Reprint 2021). While dealing with reasonable opportunity it has been stated by the author in this text book **reasonable opportunity;**

A tender of goods does not mean a delivery of offer of packages containing them, but an offer of those packages under such circumstances that the person who is to pay for the goods shall have the opportunity afforded to him, before he is called on to part with his money, of seeing that those presented for his acceptance are really those packages for which he has bargained. Reliance for this proposition has been placed on a judgment tilted *Isherweod vs. WhitMore, (1843) 11 M & W 347 : 63 RR 634*. A tender made at such a late or of the appointed date that the buyer has no time to inspect them is not good. Reliance is placed on a judgment *Startup v Macdonald, (1843) 6 Man & G 593 : 64 RR 810*. “ Reasonable opportunity of inspection is all that the Act requires. It is the receiving parties business to verify, not the delivery party’s supply that the further goods are according to contract.

61. Tested on settled proposition of law by Hon’ble Supreme Court, whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached',

And as held by Hon’ble Supreme Court in **Manoj I Naik & Associates vs Official Liquidator on 28 October, 2014 in SLP Nos 34782-34783 OF 2012**,

“There can be no speck of doubt that the properties of a company under liquidation when sold, there has to be a proper auction, a fair one. It must fetch the maximum price. It takes care of statutory dues, dues of the workmen and the creditors. It has its own public character”

And law laid down in “**Bank of India v. Enfield Apparels Limited and Ors. (MANU/NC/5994/2020), Pgs. 240 to 246 of Compilation, para 9,**

“The sanctity of auction process has to be maintained i.e., once it is closed, normally it should not be reopened as generally understood. As stated earlier, generally the same can be done only on two grounds i.e., fraud or material irregularity occurred in the process of auction. However, another ground is added by IBC, 2016 i.e., maximization of value of assets of corporate debtor. Thus, when a situation of challenge to auction process arises on the ground of assets not being sold at the maximum possible value, then, also in our considered view, auction process can be enquired into and such process can be set aside on this ground also”.

The argument, successful applicant is an LLP incorporated in the year 2019 with a turnover for the Financial Year ending on March 31, 2019, March 31 2020 and March 31, 2021 as NIL and liquidator has failed to do a proper due-diligence and to verify as to how an LLP with Rupees One Lakh as the Capital will be able to continue the Corporate Debtor as a going concern and pay to its 500 employees, has a force.

“ Relying on *Wednesbury principle of unreasonableness in the facts of this case*, we may refer to Judgement of Hon’ble Supreme court in the case of [Rameshwar Prasad \(VI\) vs. Union of India](#), 2006 (2) SCC 1. In para 242, their Lordships have issued the guidelines for correct understanding of Wednesbury Principles and the same reads as under:-

"242. The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it."

62. The facts as noticed above when tested on the basis of above reproduced position in law we of the view:

A. By omitting the opportunity to the Intending Bidders, in corrigendum impugned dated 08-09-2021, to conduct physical

inspection and due diligence as provided in initial bid document, as discussed hereinabove, it is apparent that the liquidator has not acted rationally, reasonably and failed to conduct the auction in a fair manner as pointed hereinabove.

- B. The successful bidder is an LLP incorporated in the year 2019 with a turnover for the Financial Year ending on March 31, 2019, March 31, 2020 and March 31, 2021 as NIL, this aspect when seen in the context of law laid down, '*the decision is such that no responsible authority acting reasonably could have reached*', the liquidator could not have ignored this facet of auction, which apparently can have far reaching consequences for CD to continue as a going concern along with its 500 employees and incurring other costs. There is a complete silence on this by liquidator or Stakeholder's Committee except for taking technical plea/s to oppose it.

We find that there is force in the argument of Ld. Sr. Counsel, that the liquidator did not enter upon due-diligence to verify as to how an LLP with Rupees One Lakh as the Capital will be able to continue the Corporate Debtor as a going concern and pay to its 500 employees. Having authorization to conduct multiple auctions and while having time in his hand and with a view to get best possible offer, when he did not receive even a single bid initially, it was imperative on the part of the liquidator to have extended the auction by *reasonable time* to enable the intending bidders to participate in the process and place their bids in accordance with terms of original notice inviting bid;

- C. Upon the basis of above-mentioned material irregularities/flaws have no option except to auction set aside the entire process, in pursuance to the e- auction notice dated 27th of August, 2021

followed by the corrigendum dated 8th of September, 2021 and the LOI issued by the liquidator to M/s Snaefell Heights LLP and the auction process impugned is hereby set aside.

D. We also direct the liquidator to initiate the fresh bidding process for the sale of the assets of the Corporate Debtor, for which, he was appointed by this Adjudicating Authority, and complete the entire process within three weeks from today, after inviting fresh bids and giving fair & reasonable opportunity to the intending bidders.

63. All these IAs are disposed of accordingly in terms of the directions contained hereinabove.

64. List **I.A.(IB)/458/KB/2020 and I.A.(IB)/971/KB/2021 along with C.P(IB)/1542/KB/2018 on 06/04/2022.**

65. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 2nd day of March, 2022

PJ