# NATIONAL COMPANY LAW APPELLATE TRIBUNAL
# PRINCIPAL BENCH, NEW DELHI

**Company Appeal (AT) (Insolvency) No. 658 of 2025**

[Arising out of Order dated 28.03.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Court Room No. 1, Mumbai Bench), in I.A./5114/2024 in C.P. (IB)/3714(MB) 2019]

**IN THE MATTER OF:**

**Xylocopa Builders & Developers Pvt. Ltd.** **...Appellant**

**Versus**

**Namrata Amol Randeri**
**Liquidator of Turning Point Estates Pvt. Ltd.** **...Respondent**

**Present:**

| | | |
|---|---|---|
| **For Appellant** | : | **Mr. Abhijeet Sinha, Sr. Advocate with Ms. Neha Agarwal, Mr. Vinod Nagula, Ms. Samita Nangre and Mr. Saikat Sarkar, Advocates.** |
| **For Respondent** | : | **Mr. Chitranshul A. Sinha, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Archie Garg and Ms. Esha Sharma, Advocates.** |

## J U D G M E N T

**ASHOK BHUSHAN, J.**

This appeal has been filed challenging the order dated 28.03.2025 passed by the adjudicating authority (National Company Law Tribunal, Court Room No. 1, Mumbai Bench) rejecting I.A. No.5114/2024 filed by the appellant. Aggrieved by the order rejecting I.A. No.5114/2024 this appeal has been filed.

**2.** Brief background facts of the case giving rise to this appeal are:

i. The corporate debtor, Turning Point Estates Pvt. Ltd. was admitted to Corporate Insolvency Resolution Process (CIRP) on 10.01.2020.

ii. Adjudicating authority vide order dated 09.02.2023 ordered the corporate debtor to be liquidated. The liquidator issued sale notice for sale of the property dated 18.03.2024. E-Auction Process Memorandum was also issued on 16.04.2024 for 9th e-Auction on 19.04.2024.

iii. The reserve price was Rs.81 crore and Earnest Money Deposit (EMD) of 5% being Rs.4.05 crore was provided for. The appellant deposited EMD of Rs. 4.05 crore in the auction held on 09.04.2024, appellant was declared as Successful Auction Purchaser. Letter of Intent (LoI) was issued in favour of the appellant.

iv. On 09.05.2024, balance amount toward 25% was deposited i.e., Rs.16.2 crore totalling to Rs.20.25 crore. Appellant has applied to Union Bank of India for grant of financial assistance for payment of the balance amount.

v. It was observed by the appellant in June 2024 that there is a charge/encumbrance of the Department of Excise on the assets. Bank also informed the appellant of the charge/encumbrance of the Department of Excise.

vi. On 17.07.2024, extension for deposit of balance 75% was sought by the appellant, which was granted till 21.08.2024. I.A. No. 5831/2024 was filed by the appellant seeking removal of the charge of Department of Excise.

vii. On 14.09.2024 an email was sent by liquidator cancelling the 9th Auction conducted on 19.04.2024 and forfeiting the amount deposited by the appellant. On 26.09.2024 another letter was sent by liquidator informing that 25% amount deposited by the appellant has been forfeited. On 17.10.2024, liquidator issued fresh notice of sale and an I.A. No.5114/2024 was filed by the appellant to restrain respondent from taking steps in terms of the email dated 14.09.2024.

viii. On 25.10.2024, interim stay was granted in favour of the appellant. On 23.01.2025, adjudicating authority directed for deletion of the lien mark in favour of the Excise Department. On 06.02.2025, adjudicating authority directed the appellant to submit confirmation from the Bank about disbursement within three days after removal of lien. On 04.03.2025, interim order was vacated by the adjudicating authority and Comp. App. (AT) (Ins.) No.445/2025 filed by the appellant which was disposed of on 18.03.2025, giving liberty to the appellant to press for any interim relief in the pending matter. The order was reserved on I.A. No. 5114/2024. Fresh e-Auction notice was issued on 02.04.2025 for e-Auction on 02.05.2025.

ix. Adjudicating authority by the impugned order dated 28.03.2025, rejected the I.A.5114/2024. The e-Auction in pursuance of the notice 02.04.2025 took place and assets have been sold for the amount of Rs.81 crore, in pursuance of 11th e-Auction notice. The auction of the assets was conducted by the liquidator with the object for maximisation realisation of the assets. Aggrieved by the order dated 28.03.2025, this appeal has been filed.

**3.** We have heard learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant as well as learned counsel Mr. Chitranshul A. Sinha appearing for the liquidator.

**4.** Learned counsel for the appellant in support of the appeal submits that deposit of balance amount of Rs.75 crore could not be made by the appellant because of Union Bank of India having refused to disburse the loan due to charge created in favour of the Excise Department on the assets. Appellant was always ready and willing to deposit the full amount and has applied loan from the Union Bank of India for payment of 75%. Bank has also sanctioned the loan which letter was produced before the adjudicating authority. Adjudicating authority being aware of the encumbrance created in favour of Excise Department has passed an order on 23.01.2025 directing for removal of the lien, whereas, liquidator on 14.09.2024 had already issued communication cancelling the auction in favour of the appellant and forfeiting the amount deposited. Adjudicating authority had also granted interim relief in the application of the appellant to protect the interest of the appellant, looking to the facts and circumstances of the case that there is encumbrance. It is submitted that the adjudicating authority has also directed the appellant to obtain confirmation of the Bank that Bank shall disburse the amount within three working days form the date of intimation about deletion of the lien, which order was passed on 06.02.2025. The ad-interim relief was vacated on 04.03.2025 leading to the liquidator in issuance of fresh auction notice dated 02.04.2025. On 04.03.2025, show cause notice was issued to Tehsildar, Mohali as to why proceeding under Contempt of Court be not initiated for disobedience of the order dated 23.01.2025. 30 days' time was given for reply. It is submitted that above order of adjudicating authority itself contemplated that Court has taken steps for deletion of encumbrance and prior to deletion of encumbrances, appellant was not expected to make a balance payment. The order dated 06.02.2025 passed by the adjudicating authority also clearly granted liberty to the appellant to obtain a confirmation from the Bank that Bank shall disburse the amount of loan within three working days form the date of intimation about deletion of the lien.

**5.** The sequence of the event clearly indicate that appellant cannot be held responsible for not able to pay the balance amount of 75%, since the Bank did not disburse the amount due to encumbrance on the assets. It is submitted that the liquidator could not have forfeited the amount in the above facts and background. The liquidator having sold the same asset for an amount of Rs.81 crore on 02.05.2025, it cannot be allowed to unduly enrich by forfeiting amount of 25%.

**6.** Learned counsel for the respondent refuting the submissions of the counsel for the appellant submits that the e-Auction Process Document clearly contemplated that EMD shall liable to be forfeited, in event the successful bidder failed to pay the sale consideration in accordance with the prescribed schedule. The Letter of Intent (LoI) was unconditionally accepted by the appellant, who was required to deposit the entire balance amount within 90 days and payment beyond 30 days with interest @ 12% per annum.

Appellant sent an email on 17.06.2024 to the liquidator seeking clarification regarding charge/encumbrance on the assets. On the request of the appellant, extension to deposit the balance amount was granted by Committee of Stakeholders. Appellant having failed to deposit the amount, liquidator has issued the email on 14.09.2024 cancelling the sale and forfeiting the amount at per the e-Auction Process Document. The I.A. 5114/2024 filed by the appellant has rightly been rejected. It was responsibility of the appellant to obtain and deposit the balance amount form its sources and non-deposit of the balance amount within the prescribed time has led to cancellation of the auction sale and forfeiture of the amount. There was no compliance made by the appellant to the order dated 05.02.2025, hence the adjudicating authority has vacated the interim protection on 04.03.2025. No submission was advanced by the appellant to demonstrate the availability of funds, there being no availability of funds with the appellant auction has rightly been cancelled by the liquidator forfeiting the amount. Process Memorandum itself contemplated due diligence by all bidders and bidders cannot be heard that they were not aware of the encumbrance on the asset, hence are unable to pay the balance amount. Encumbrance or charge cannot be ground to refuse the payment of balance amount. In 11$^{th}$ e-Auction held on 02.05.2025, the assets have been sold for Rs.81 crore and the property has been awarded to the highest bidder.

**7.** We have considered the submissions of the counsel for the parties and perused the records.

**8.** Learned counsel for both the parties have placed reliance on the various judgments of the Hon'ble Supreme Court and this Tribunal in support of their submissions, which we shall consider hereinafter.

**9.** Before we proceed, we need to notice certain clauses of e-Auction Process Memorandum dated 18.03.2024. Process Memorandum clearly contemplated that bidders should conduct their own investigation and analysis and should check the accuracy/correctness of the statement and information contained in the Process Memorandum. Clause 3.4 is as follows:

> *"3.4 This Process Memorandum is neither an agreement nor an offer by the Liquidator to the prospective Bidders/Applicants / or any other person. The purpose of this Process Memorandum is to provide interested parties with information that may be useful to them in making their bids pursuant to this Process Memorandum. The assumptions, assessments, statements and information contained in the Process Memorandum may not be complete, accurate, adequate or correct. Each Applicant/ Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Process Memorandum and obtain independent advice from appropriate sources, as considered necessary."*

**10.** Clause 8 of the e-Auction Process Memorandum dealt with site visit and discussion meetings. Clause 9 dealt with due diligence and clarification. Clause 9.3 provided as follows:

> *"9.3 Kindly note that as informed there are a few litigations ongoing before different forums like DRT Jabalpur- RC 402/2016 (OA 228 of 2013), DRT III Chandigarh- OA 1146/2017 (OA 724 of 2015), DRT III Chandigarh- SA 325/2017 (Old SA No. 355/2013), High Court of Punjab- CR 2065/2022, District and Sessions Court SAS Nagar, Mohali CS 21/2016 (CS*

*577/2015), District Judge, SAS Nagar, Mohali- CIS No. CM-475-2022 (Civil Appeal). The details of litigation as shared is to the best of our knowledge. However, qualified bidder shall do their own legal due diligence for the suits / legal proceedings, liquidator shall not accept any responsibility or liability whatsoever, in respect of any statements or omissions contained in the shared data or otherwise"*

**11.** Clause 11 dealt with EMD under the heading **'Forfeiture of Earnest Money Deposit".** Following is stated in Clause 11:

> - ***"Forfeiture of Earnest Money***
>
> *The Earnest Money furnished can be forfeited at any time, upon the occurrence of any of the following events:*
>
> > *a) if any of the conditions under this Process Memorandum are breached by the auction process applicant or in case the auction process applicant is found to have made any misrepresentation; or*
> >
> > *b) if the auction process applicant is found to be ineligible to submit the bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or*
> >
> > *c) if the auction process applicant is identified as the Successful bidder and it fails to pay the consideration amount as per schedule or does not accept the Letter of Intent issued by the Liquidator."*

**12.** Further under the heading **"Schedule to LoI – Time and Manner of Payment"** under Clause 11 is captured in following manner:

> - ***"SCHEDULE TO LOI - TIME AND MANNER OF PAYMENT***
>
> *The successful bidder shall deposit:*
>
> - *25% of the bid value (including EMD) to be remitted within 20 (twenty) days from the date of auction*

- *The Balance 75% of the Sale / Bid Price is payable on or before the 30th day from the date of E-auction, but not exceeding 90 days from the date of E-auction where interest would be applicable on the payments made after 30 days from the date of E-auction, as per applicable law.*
- *Taxes to be payable as per applicable laws."*

**13.** There is no dispute of the facts between the parties that appellant was declared Successful Auction Purchaser in the auction held on 19.04.2024 for an amount of Rs.81 crore. Appellant has deposited the EMD of Rs.4.05 core and further amount totalling to 25% i.e., Rs.20.25 crore. On 09.05.2024, the appellant communicated to the liquidator asking clarification regarding the encumbrances of the Excise Department on the assets. It is an admitted fact that there was charge of the Excise Department on the assets of the corporate debtor. The appellant has applied loan to the Union Bank of India for making payment of 75% of balance sale consideration, during title search, the encumbrance of Excise Department was noticed and communicated by the Bank. On 14.09.2024, the liquidator has issued the email to the appellant for cancellation of sale and forfeiture of the amount deposited by successful bidder on account of default in making payment. The email provided as follows:

> *"XYLOCOPA BUILDERS AND DEVELOPERS PRIVATE LIMITED xylocopabuilders@gmail.com*
>
> ***Cancellation of sale and Forfeiture of amount deposited by the successful bidder on account of default in making payment of balance sale consideration within the stipulated timeline in the matter of Turning Point Estates Pvt Ltd (under liquidation)***
>
> ***NAMRATA RANDERI*** *tumingpoint.bko@gmust.com*
>
> *14 September 2014 at 10:38*

*To: XYLOCOPA BUILDERS AND DEVELOPERS PRIVATE LIMITED xylocopabuilders@gmail.com*

*Cc. Namrata Randed ranatarandeni@gmail.com*

*To,*

*Xylocopa Builders && Devolopers Pvt Ltd*

*Basenwnt Akash Enclave, 134 Devi Chiranjivi Cofony Surya Nagar, Gopalpura Bypass Jaipur 302015*

*Dear Sir,*

***Subject: Cancellation of sale and Forfeiture of amount deposited by the successful bidder un account of default in making payment of balance sale consideration within the stipulated timeline in the matter of Turning Point Estates Pvt. Ltd (under liquidation)***

*This is with reference to the 9th e-auction conducted on 19.04.2024 wherein you were declared as the successful bidder with a sale consideration of 81 crore. Subsequently, undersigned issued Letter of Intent (LOI) on 19.04.2024 and the same was unconditionally accepted by you. The process memorandum clearly communicated the terms of payment which specified that 25% of the bid value was in be paid within 20 days, and the remaining 75% was to be paid on or before the 30th day from the auction date, not exceeding 90 days, additionally, an interest of 12% was applicable on payments made beyond 30 days, in line with the applicable laws. The successful bidder has paid 25% of the reserve price i.e. 5% of the reserve rese price towards EMD and 20% amount was paid before 20 days from the auction date whereas balance 75% was payable within the 30 days from the auction date, not exceeding 90 days, additionally, an interest of 12% was applicable on payments made beyond 30 days. The successful bidder was under obligation to deposit the total consideration amount within 90 days which was already expired on 18.07.2024. However, as the successful bidder has only deposited 25% of the bid amount till date and failed to pay the remaining 75% amount of the hid in due time.*

*It is relevant to note that an extension was also granted to you by SCC in its 11th meeting held on 22.07.2024 in view of the Regulation 31A(h) of the 1BB1 (Liquidation Process) Regulations, 2016 but even* *after the expiry of extended period, the successful bidder has failed to deposit the remaining amount*

*Further to earlier communications exchanged and in accordance with the terms and conditions of Sale as per Insolvency and Bankruptcy Code 2016 (IBC 2016) and regulations framed thereunder including Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (IBBI (Liquidation Process) Regulations 2016), E-auction Sale Process Memorandum, declarations, undertakings, Bid Application Form and other documents submitted by you including the Letter of Intent (LOI) unconditionally accepted by you, the undersigned would like to apprise you that on account of default in making the balance sale consideration despite additional time being allowed as per your request, the Sale of property under the 9th E-auction conducted on 19/04 2034 is hereby cancelled, and the amount deposited by you have been forfeited*

*As per terms and conditions of sale agreed by you, the property may be re-sold/re-auctioned or may be disposed off in any other manner, and you shall have no claim/right in respect of the Properties/assets of*

*the Company/amount.*

*With Regards,*

*From the Team of appointed Liquidator*

*IP Namrata Randeri. Liquidator in the matter of*

*TURNING POINT ESTATES PRIVATE LIMITED (under liquidation vide Order of Hon'ble NCLT, Mumbai in IA 2503/MB/C-1/2020 IN CP (IB) 3714/MB/C-1/2019 dated 9th February, 2023)*

*IBBI Registration No. IBBI/IPA-001/IP-P01585/2019-2020/12495*

*AFA Valid Till-19.11.2024*

*Process specific email ID- turningpoint.bkc@gmail.com (Mob No. 9820937573)"*

**14.** It was after receiving the email 14.09.2024, the appellant has filed the I.A.5114/2024 praying for various reliefs as has been noticed by the adjudicating authority in paragraph 2 of the order, which is as follows:

*"i. That this Tribunal be pleased to set aside the Impugned Email dated 14.09.2024 and Impugned Letter dated 26.09.2024 issued by the Respondent;*

*ii. That this Hon'ble Tribunal be pleased to set aside Notice of Sale dated 17.10.2024 issued by the Respondent for auction of the said Property on 20.11.2024;*

*iii. This Tribunal during the pendency of the present application, be pleased to restrain the Respondent and for its agents, representatives and/or any person acting through the Respondent from taking any coercive steps in furtherance of the Impugned Email and Impugned Letter;*

*iv. That this Tribunal during the pendency of the present application, be pleased to restrain the Respondent and for its agents, representatives and/or any person acting through the Respondent from taking any coercive steps in furtherance of the Notice of Sale dated 17.10.2024;*

*v. That this Tribunal during the pendency of the present application, be pleased to stay the operation of the Impugned Email, Impugned Letter and the Notice of Sale dated 17.10.2024;*

*vi. For interim and ad-interim reliefs in terms of prayer clause (c) to (e); and*

*vii. For such other and further reliefs, as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the present case."*

**15.** Appellant has filed another application I.A.5917/2024 seeking a direction for deletion of the lien mark in favour of the Department of Excise & Taxation Commissioner, Mohali, which application was entertained and on 23.01.2025, which application prayed for following reliefs:

***"IA 5917/2024–***

*1. The present Interlocutory Application is filed by the Liquidator seeking following reliefs; .*

*i. Direct the Respondents herein to remove the charge created by them on the assets of the corporate debtor situated at Village Badmajra, Hadbast No. 25, Tehsil*

*& district SAS Nagar, Mohali as specified in Para] 11 hereinabove; and*

*ii. Direct the Respondents to not create any hindrance at the time of registration and execution of documents pertaining to sale of assets of corporate debtor; or*

*iii. Pass any other order which the Hon'ble tribunal deem fit in the light af justice, equity and good concise in favor of the Applicant."*

**16.** Application was heard by the adjudicating authority and order was passed and application I.A.5917/2024 was allowed on 23.01.2025 by issuing following directions in paragraph 14:

*"14. In view of this, we consider it appropriate to direct the concerned revenue authorities to delete the lien marded in favor of the department of Excise and Taxation Commissioner, Mohali in their revenue records in relation to assets of the corporate debtor situated. at Village Badmajra, Hadbast No. 25, Tehsil & district SAS Nagar, Mohali."*

**17.** On 06.02.2025, when I.A.5114/2024 came for consideration, liquidator informed that liquidator has already informed the Excise of the order 23.01.2025. Adjudicating authority in paragraphs 2 to 4 directed as follows:

*"2) Learned Counsel appearing for the Liquidator informs that they have already taken steps and informed the Excise Department about vacation of their lien in the revenue records in terms of the order dated 23.01.2025 passed by this Bench. Further, they shall take up with the Revenue Authority also for deletion of the lien in their records. In view thereof, we consider it appropriate to direct the successful buyers to submit a copy of the order dated 23.01.2025 to the bank and obtain a confirmation of the bank that they shall be releasing the amount of loan within three working · days from· the date of intimation about deletion of lien in revenue records by the Liquidator. The successful buyers ·shall provide the contact details of the concerned bank officer to the Liquidator within two days.*

> *4) The successful buyer shall extend necessary co-operation in case required by the Liquidator in having the charge deleted from the revenue records."*

**18.** On 04.03.2025, adjudicating authority vacated the interim relief and has issued show cause notice to Tehsildar, Mohali to show cause as to why proceeding under Contempt of Court be not initiated for disobedience of the order dated 23.01.2025. The application I.A.5114/2024 came to be rejected on 28.03.2025.

**19.** From submission of counsel for the parties and facts as noticed above, following questions arise for consideration:

I. Whether action of the liquidator in cancelling the 9$^{th}$ e-Auction by email dated 14.09.2024 is in accordance with law and has rightly been upheld in accordance with the e-Auction Process Memorandum?

II. Whether in facts of the present case, forfeiture of 25% amount deposited by the appellant in pursuance of the auction held on 19.04.2024 is justified?

III. What is the consequence and effect of auction sale property in favour of another Successful Auction Purchaser for same amount of Rs.81 crore held on 02.05.2025?

**<u>Question No. (I)</u>**

**20.** We have already noticed relevant clauses of Process Memorandum as per the LoI issued to the appellant, entire payment was to be made by the appellant within 90 days and after 30 days payment also was to be made along with 12% interest. Auction was held on 19.04.2024 and for participating in the auction EMD of Rs. 4.05 crore was also deposited. Total balance 25% was deposited by the appellant on 09.05.2024 as per LoI.

**21.** Learned counsel for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in ***'V.S. Palanivel' Vs. 'Sri. Lakshmi Hotels (P) Sriram, CS, Liquidator & Ors.'*** reported in **[(2025) 1 SCC 559].** The Hon'ble Supreme Court in paragraphs 66 & 67 of the said judgment laid down following:

> ***"66.*** *The words "may" and "shall" used in different provisions of Schedule I of the 2016 IBBI Regulations go to show that the legislature intended to ascribe different meanings to the said words depending on the steps required to be taken by the Liquidator for the sale of the assets of a corporate debtor. A perusal of the Rules under Schedule I demonstrate that a play in the joints has been given to the Liquidator only in particular circumstances relating to the sale of an asset through auction. Wherever the underlying intention is to maximise realisation from the sale of assets, discretion has been vested in the Liquidator to sell the asset through auction in the best interest of the creditors, but not otherwise. For the rest of the steps towards sale of an asset, the mandate of the statute is in the affirmative. In other words, a particular step if prescribed, is necessarily required to be taken by the Liquidator in the manner prescribed in the Rules under Schedule I. He is not left with any discretion to condone the delay.*
>
> ***67.*** *When broken down, Rule 12 states that : (a) the highest bidder in an auction shall be called upon to provide the balance sale consideration within 90 days from the date of such a demand; (b) any payments made after 30 days from such a demand shall attract interest @ 12%; (c) if the payment is not received within the period of 90 days, the sale shall be cancelled. The word "shall" has been used thrice in Rule 12. Coming next to Rule 13, the same states that : (a) the sale shall stand completed on the payment of the full amount; (b) the Liquidator shall execute a sale certificate/sale deed to transfer such an asset(s); (c) the asset(s) shall*

*be delivered in the manner prescribed in terms of the sale. The word "shall" has again been used thrice in Rule 13. It is noticed that except for Rules 4-A, 4-B, 8 and Rule 11-A where the word "may" has been used and it vests a discretion in the Liquidator to reduce the reserve price more than once and conduct multiple rounds of auctions with the purpose of maximising realisation from the sale of assets in the best interest of the creditors, in the remaining Rules, the word "shall" features prominently and without an exception. But that is not to say that wherever the word "shall" has been used in the Rules under Schedule I, it attains a mandatory nature. The Rule could still be construed as purely procedural if its infraction does not entail any serious or prejudicial consequence. Much will depend on the connotation and the textual context of the Rule."*

**22.** The above judgment of the Hon'ble Supreme Court fully supports the submission of the respondent that after appellant having participated in the bidding process cannot be heard in saying that the payment of balance sale consideration was linked with lifting of the attachment order. In the present case, it is an admitted fact that payments of balance sale consideration was not made by the appellant within 90 days or even the extended period thereafter.

**23.** Liquidation process as per the IBBI Liquation Process Regulations, 2016 is a time bound process and in event Successful Auction Purchaser has not complied the payment terms. Liquidator was fully competent to cancel the e-Auction in favour of the appellant and proceed for fresh auction of the process. The proceedings which were taken before the adjudicating authority by the appellant by filing application I.A.5114/2024 and application I.A.5917/2024 were the steps taken by granting indulgence to the appellant to arrange for to make the payment of balance sale consideration. The prayer of the appellant in I.A.5917/2024 was also allowed directing for deletion of the charge, however the result is that balance sale consideration was not paid and fresh e-Auction notice was also issued by liquidator. Adjudicating authority although initially granted interim relief to the appellant asking liquidator not to proceed with the sale notice which interim order was rightly vacated on 04.03.2025.

**24.** We thus are of the view that cancellation of the sale by the liquidator and e-Auction of the assets is in accordance with law. No error has been committed by the adjudicating authority in rejecting the I.A.5114/2024, insofar as appellant has made a prayer for setting aside the email of 14.09.2024 cancelling the auction sale in favour of the appellant.

**25.** The question No. (I) is answered as following:

I. The action of the liquidator in cancelling the 9th e-Auction by email 14.09.2024 is in accordance with e-Auction Process Memorandum and has rightly been upheld.

**<u>Question Nos. (II) & (III)</u>**

**26.** Question Nos. (II) & (III) being interconnected are being taken together.

**27.** The relevant clauses of Process Memorandum have already been noticed by us in preceding paragraph of this judgment with respect to payment of EMD, Clause 11 clearly provides that if the auction process applicant is identified as the successful bidder and fails to pay the consideration balance amount as per schedule, the EMD shall be forfeited. EMD of Rs.4.05 crore was deposited by the appellant, no exception can be taken to the email of the liquidator forfeiting the EMD. Only related question to be considered in the present case is as to whether present was a case where forfeiture of the balance amount towards 25% was also required to be forfeited.

**28.** The present is the case where adjudicating authority after coming to know about the encumbrances of Excise Department has entertained the application filed by the appellant being I.A.5917/2024 and allowed the said I.A. on 23.01.2025 as noted above. Even on 06.02.2024, adjudicating authority passed an order, where direction was issued to the successful buyer i.e., appellant to submit copy of the order 23.01.2025 to the Bank and after confirmation of the Bank that they shall be releasing the amount within three working days from the date of intimating deletion of lien in revenue records. Adjudicating authority has thus till that time had granted opportunity to the appellant to ensure that balance amount is paid. Learned counsel for the appellant submitted that appellant had filed the sanction letter from the Bank sanctioning loan for payment of 75%, however, no intimation of deletion having been issued to the Bank and Bank never released the amount. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***'Delhi Development Authority' Vs. 'Corporation Bank & Ors.'*** reported in **[2025 SCC OnLine SC 2071].** In paragraph 30 & 31 of the judgment, Hon'ble Supreme Court laid down following:

> ***"30.*** *We now address the position of the Auction Purchaser. In Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.[3], it was held that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of or some benefit derived from another*

*which it is against conscience that he should keep. Such remedies in English law are generally different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution. The aforesaid legal proposition was referred to with approval by a Two Judge Bench of this Court in Nagpur Golden Transport Company v. Nath Traders[4] The restitution therefore becomes not merely a legal device but a moral imperative. The principle of restitution flows from the very heart of justice that no one shall unjustly enrich himself at the instance of another and that those who suffered without fault should, so far as money can achieve, be restored to the position they once occupied. The jurisdiction to make restitution is inherent in every court and will be exercised wherever the justice of the case demands.*

***31.*** *In the facts of the present case, the Auction Purchaser has been caught in the undertow of circumstances, not of its making. Among all the actors in this legal drama, it alone stands innocent. The Auction Purchaser entered the auction in good faith, placed its bid and deposited its hard-earned money in the belief that the law clothed the auction with legitimacy. The Auction Purchaser neither breached the covenant nor failed in diligence and did not seek to profit from the illegality. The restitution therefore becomes not merely a legal device but a moral imperative. It is this principle which in the facts of the case must guide the relief to the Auction Purchaser. The Bank having advanced the money of an illegal mortgage and having chosen to auction what it never lawfully possessed, bears the responsibility for the consequences."*

**29.** Another judgment relied by the appellant is judgment of the Hon'ble Supreme Court in ***'Viney Kumar Sharma' Vs. 'The Improvement Trust & Anr.'*** reported in **[Civil Appeal No. ..... of 2026 arising out of SLP 24811 of 2025].** In the above case, when the auction by the Improvement Trust was held pendency of litigation was not disclosed before the parties who offered their bid. In the above context, Hon'ble Supreme Court relying on the judgment in ***'Delhi Development Authority' (supra)*** directed the trust to refund the amount, has made following observations in paragraphs 6, 9 & 12:

> *"6. It was the legal duty on the part of the Trust to have made it clear in the auction notice itself that the subject plot is a subject matter of litigation. Authorities (such as banks, recovery officers, or state bodies) conducting public auctions are legally required to disclose all known encumbrances and litigation relating to the property, as failure to do so invalidates the sale. Suppressing such material facts renders the auction fraudulent or vitiated by material irregularity.*
>
> *9. Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities and their officers who should act fairly and objectively. Their actions should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental legitimate interest of the stakeholders.*
>
> *12. We direct the Trust to refund the amount of Rs.1,57,04,580/- (Rs. One crore fifty seven lakh four thousand five hundred eighty only) with interest at the rate of 9% per annum from the date of the deposit i.e. 19.07.2021."*

**30.** The auction in the present case is being conducted under the IBBI Liquidation Process Regulations, 2016 and as per the Process Document, we are fully satisfied that insofar as forfeiture of the EMD that cannot be faulted, however in the facts of the present case, the amount of Rs.16.20 crore which was deposited on 09.05.2023 could be permitted to be refunded to the appellant, due to the reason that in the subsequent 11th e-Auction held on 02.05.2025 assets have been sold by the liquidator for the same amount of Rs.81 crore and liquidator has already realised the amount of Rs.81 crore, permitting the amount of Rs.16.20 crore to remain with liquidator shall clearly be unjust enrichment in the hands of the liquidator.

**31.** We thus answer Question Nos. (II) & (III) in following manner:

II. The forfeiture of EMD amount of Rs.4.05 crore is upheld whereas forfeiture of balance amount of 25% is Rs.16.20 crore is held not sustainable.

III. In consequence of subsequent e-Auction held on 02.05.2025 for the same amount of Rs. 81 crore, the amount of Rs.16.20 crore paid by appellant deserve to be refunded.

We thus uphold the decision of the liquidator as well as adjudicating authority insofar as it forfeits up to the extent of forfeiture of EMD amount of Rs.4.05 crore. We, however in the special facts and circumstances of the present case are inclined to set aside the letter of the liquidator dated 14.09.2024 and 26.09.2024 insofar as it forfeits the amount of Rs.16.20 crore deposited on 09.05.2024.

**32.** In result the appeal is partly allowed in following manner:

i. The impugned order of the adjudicating authority dated 28.03.2025 insofar it upholds the decision of liquidator dated 14.09.2024 cancelling the 9th e-Auction in favour of the appellant is upheld. Cancellation of e-Auction in favour of the appellant having been upheld, subsequent e-Auction held by the liquidator was rightly conducted.

ii. The letter of the liquidator dated 14.09.2024 and 26.09.2024 and the order of the adjudicating authority 28.03.2025 insofar as it forfeits the EMD of Rs.4.05 crore is upheld.

iii. The letter of the liquidator dated 14.09.2024 and 26.09.2024 and the order of the adjudicating authority 28.03.2025 forfeiting the amount of Rs.16.20 crore paid on 09.05.2024 by the appellant is set aside. The amount of Rs.16.20 crore be refunded to the appellant within 30 days from today. The refund of the amount shall carry 9% interest per annum after expiry of 30 days period from today.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]**
**Chairperson**

**[Barun Mitra]**
**Member (Technical)**

**NEW DELHI**

***20th March, 2026***

*himanshu*