

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

**Company Appeal (AT) (Insolvency) No. 673 of 2022**

**IN THE MATTER OF:**

**Kunwer Sachdev**

S/o K.L. Sachdev

R/o 1625, 25<sup>th</sup> Floor,

The Magnolias, DLF Gold Links,

DLF City Phasse-V

Gurugram- 122002

**...Appellant**

**Versus**

**1. Su-Kam Power Systems Ltd.**

Through Sh. Raj Kumar Ralhan(Liquidator),

Flat No. 801, Tower 01,

Kalypso Court, Sector128,

Jaypee Greens Wish Town,

Noida, Gautam Budh Nagar,

Uttar Pradesh

**2. Sh. Raj Kumar Ralhan**

**Liquidator,**

Flat No. 801, Tower 01,

Kalypso Court, Sector128,

Jaypee Greens Wish Town,

Noida, Gautam Budh Nagar,

Uttar Pradesh

**3. Pricewaterhouse Coopers Private Limited**

Building 10 Tower C,

17<sup>th</sup> and 18<sup>th</sup> Floor,

DLF Cyber City,

Gurgaon 122002

**4. PRICE WATERHOUSE COOPER**

**SERVICES LLP**

Building 10 Tower C,  
17<sup>th</sup> and 18<sup>th</sup> Floor,  
DLF Cyber City,  
Gurgaon 122002

**5. Mr. Navraj Mittal**

R/o House No. 1331,  
Sector-4, Panchkula, Haryana

**6. Mr. Vishnu Prakash**

R/o House No. 63,  
Sector-6, Panchkula, Haryana

**7. Mr. Ashok Kumar Gupta**

R/o House No. 1331,  
Sector-21, Panchkula, Haryana

**8. Mr. Yajan Bansal**

R/o House No. 78,  
Sector-21, Panchkula, Haryana

**...Respondents**

**For Appellant:** Mr. Ravi Gupta, Sr. Advocate with Ms. Anuradha Salhotra, Mr. Sumit Wadhwa, Ms. Saloni Chowdhry, Mr. Aysuh Samaddar, Mr. Dhruv Gupta, Mr. Sachin Jain, Advocates

Mr. Gaurav Mitra, Advocate for Intervenor

**For Respondent:** Mr. Abhinav Vashisht, Sr. Advocate with Mr. Siddhant Kant, Mr. Krishan Singhal, Advocates for R-2

Mr. Krishnendu Datta, Sr. Advocate with Ms. Bani Brar, Mr. Rajat Sinha, Advocates for Respondent No. 1 & 5-8.

Mr. T. Srinivasa Murthy, Ms. Shanelle Umarwadia, Ms. Trushita Shrivastava, Advocates for R-3 and R-4

## **J U D G M E N T**

### **ASHOK BHUSHAN, J:**

1. This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the Order dated 11<sup>th</sup> May, 2022 passed by the National Company Law Tribunal, New Delhi, Principal Bench by which I.A. No. 233/PB/2021 filed by the Liquidator for approving the acquisition plan submitted by the Respondent Nos. 5 to 8 has been approved and I.A. No. 672/PB/2021 filed by the Appellant for appointment of Independent Forensic Auditor has been rejected.

2. Brief facts of the case necessary for deciding this Appeal are:-

- (i) Corporate Insolvency Resolution Process (CIRP in short) was initiated by Order dated 05<sup>th</sup> April, 2018 passed by the Adjudicating Authority on an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC in short) by the State Bank of India. On 04<sup>th</sup> June, 2018, an Advertisement was issued by the Resolution Professional inviting expression of interest (EOI in short), Appellant filed a Resolution Plan in consortium with M/s. Phoenix ARC Limited, the Appellant was declared ineligible under Section 29A (h) of the IBC by the Committee of Creditors (CoC in short). In absence of any Resolution Plan, Resolution Professional filed an Application for an Order of Liquidation of the Corporate Debtor.
- (ii) The Adjudicating Authority by Order dated 03<sup>rd</sup> April, 2019 appointed Mr. Raj Kumar Ralhan-Respondent No. 2 herein as the Liquidator.

- (iii)** An Appeal was filed by some of the employees challenging the Order of Liquidation which Appeal was disposed of by this Tribunal on 29<sup>th</sup> April, 2019 upholding the Order of the Liquidation with direction to Liquidator to make an attempt towards seeking a scheme of compromise/arrangement in terms of Section 230 of the Companies Act, 2013 and on failure, the Liquidator was required to take steps to sell the business of the Corporate Debtor as a going concern.
- (iv)** On 02<sup>nd</sup> August, 2019, Liquidator issued EOI inviting interested persons to submit their EOI for scheme of Compromise/Arrangement in terms of Section 230 of the Companies Act, 2013. The Liquidator vide Email dated 19/09/2019 informed that the Appellant is ineligible for submission of scheme of compromise/arrangement in terms of Section 230 of the Companies Act, 2013.
- (v)** An Application was preferred by the Appellant before the Adjudicating Authority seeking to participate in the Compromise/Arrangement proceedings under Section 230 and 232 of the Companies Act, 2013. The Adjudication Authority vide Order dated 31<sup>st</sup> October, 2019 held the appellant ineligible to submit a Resolution Plan in terms of Section 29A(h) cannot make an Application for Compromise/Arrangement in terms of Section 230-232 of the Companies Act, 2013. The Order dated 31<sup>st</sup> October, 2019 was challenged by the Appellant by filing an Appeal which Appeal was dismissed by this Tribunal vide Order dated 19<sup>th</sup>

December, 2019. The decision of this Appellate Tribunal was challenged before the Hon'ble Supreme Court by filing a Civil Appeal No. 2719 of 2020 which came to be dismissed by the Hon'ble Supreme Court by Order dated 27<sup>th</sup> October, 2020.

- (vi)** The Liquidator made public announcement inviting EOI for acquisition of the corporate debtor as a going concern under Regulation 32 and 33 read with Schedule I of the 'Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016' (hereinafter referred to as "Liquidation Regulations") on 27<sup>th</sup> December, 2019. On failure of First Auction, another public announcement was made by the Liquidator on 04.05.2020 inviting bidders for acquisition of the corporate debtor as a going concern. On 31<sup>st</sup> August, 2020, Liquidator in consultation with the Stakeholders' Consultation Committee issued a process document giving details for sale of the corporate debtor as a going concern.
- (vii)** On 03/09/2020, Liquidator made an amendment to the public announcement by amending the announcement made on 04/05/2020. By amendment, other tangible assets including intellectual property rights, including Brand (Su-Kam) was also added. Auction of the Corporate Debtor was conducted on 12.10.2020 and 14.10.2020 for a reserve price of Rs. 40 Crores. A bid of Rs. 49.95 Crores given by Respondent Nos. 5 to 8 was declared to be the highest bid. The Highest Bidder remitted 10 % of the bid amount by way of RTGS towards performance security and

bank guarantee for 15% of the bid amount on 19<sup>th</sup> and 20<sup>th</sup> October, 2020.

- (viii)** On 14/12/2020, the Liquidator filed an I.A. No. 233/PB/2021 before the Adjudicating Authority seeking approval to the highest bid received in the Liquidation Proceedings. On 10.02.2021, I.A. No. 672/PB/2021 was filed before the Adjudicating Authority by the Appellant seeking an Order for appointment of an 'Independent Forensic Auditor' for conducting forensic audit to analyze the reduction of value of the assets of the Corporate Debtor from the date of the commencement of the insolvency till the date of filing of the said application. Application also prayed for stay on the application moved by the liquidator for approval of the acquisition of the assets of the corporate debtor.
- (ix)** On 26<sup>th</sup> May, 2021, a consortium led by Gurpreet Singh Vohra offered settlement value of Rs. 62 Crores which was not accepted by Liquidator. An application was also filed by the Gurpreet Singh Vohra before the Adjudicating Authority seeking direction to acquire the corporate debtor as a going concern.
- (x)** The Adjudicating Authority vide Order dated 11<sup>th</sup> May, 2022 allowed the I.A. No. 233/PB/2021 filed by the Liquidator approving the acquisition plan of the Corporate Debtor and dismissed the Application filed by the Appellant seeking appointment of 'Independent Forensic Auditor'.
- (xi)** Aggrieved by the above Order, this Appeal has been filed by the Appellant.

3. We have heard Mr. Ravi Gupta, Sr. Advocate for the Appellant, Mr. Abhinav Vashisht, Sr. Advocate appearing for the Liquidator and Mr. Krishnendu Datta, Sr. Advocate appearing for Respondent No. 1 and 5 to 8.

4. Mr. Ravi Gupta, Learned Sr. Counsel for the Appellant contended that Successful Bidder having not deposited the bid amount within ninety days from the date when they were declared as highest bidder, the auction sale deserved to be rejected. It is submitted that in auction sale held by the Liquidator as a going concern, there was no requirement for obtaining any prior approval of the Adjudicating Authority, the Liquidator filed the Application seeking prior approval of the Adjudicating Authority to give undue benefit to the Respondent Nos. 5 to 8 and to give a long time to them to deposit the bid amount. It is submitted that the Adjudicating Authority has also committed error in observing that the Appellant Ex-Promoter has no *locus standi* to participate or agitate in the proceeding or submission of settlement proposal at that stage. Appellant being the promoter/ex-management of the Corporate Debtor had every right and locus to challenge the approval of auction sale which was not in accordance with the provisions of Liquidation Regulations. It is submitted that the role of ex-management is to assist the Liquidator for maximization of the value of the assets of the Corporate Debtor. It is further submitted that Liquidator has undervalued the assets of the Corporate Debtor. It is submitted that intellectual property of the Corporate Debtor having trademark (Su-Kam) had substantial value which although was added by amendment in the auction notice by the Liquidator but value of the assets of the corporate debtor was not increased. It is submitted that the First Public Notice dated 27.12.2019, the assets of

the corporate debtor were valued at the reserve price of Rs. 51 Crores which was reduced in second public notice to 40 crores. Reserve Price was still kept at 40 crores even though by amendment on 03.09.2020 in tangible assets and intellectual property rights including the brand name (Su-Kam) was added. On 03<sup>rd</sup> April, 2022, Appellant proposed a settlement under Section 12-A of the IBC with upfront payment of Rs. 5 Crore and further payment of Rs. 45 Crores. The Liquidator has included the brand name trademark that is Su-Kam of which the Appellant has the proprietor right and Appeal before the Division Bench of the Delhi High Court is still pending. There have been materials breaches committed by the Liquidator in the procedure followed by the Liquidator, there was no provision for the Liquidator to seek approval of the bid/acquisition plan of successful bid in a public auction from the Adjudicating Authority. LOI having been issued by the Liquidator on 16.10.2020, the successful bidder was obliged to deposit the entire amount within 90 days thereafter. The auction sale held on 14.10.2020 deserved to be set aside since the payment as per statutory provision was not made within 30 days. Mr. Gurpreet Singh Vohra has given an offer to take the corporate debtor for a minimum amount of Rs. 62 Crores which was at least 1.25 times more than accepted bid of Respondent No. 5 to 8 however the same was not accepted by the Liquidator.

**5.** Learned Sr. Counsel for the Liquidator refuting the submission of Learned Sr. Counsel for the Appellant submits that Appellant ex-promoter had made every possible attempts to take control of the Corporate Debtor in which he failed. The Appellant was held ineligible to submit any Resolution Plan or any scheme of compromise/arrangement which order was affirmed

upto the Hon'ble Supreme Court. The Liquidator has complied all the relevant provisions of the Code and the Liquidation Regulations under the process document dated 31<sup>st</sup> August, 2020. The Liquidator was entitled to file an Application before the Adjudicating Authority for approval of the auction sale. Clauses 1.10.6 and 1.16.1 of the process document authorized the Liquidator to make suitable application to the Adjudicating Authority for the purpose of obtaining approval of the auction sale. Once the approval is granted by the Adjudicating Authority, Successful Bidder is obliged to deposit the entire amount within 90 days. In the present case, after approval of the Adjudicating Authority by Order dated 11.05.2022, on 21<sup>st</sup> May, 2022, the Auction Purchaser remitted balance consideration of Rs. 44,95,50,000/- and on 23<sup>rd</sup> May, 2022, the Liquidator distributed the proceeds of the sale as a going concern to the various creditors. On 31<sup>st</sup> May, 2022, the Liquidator issued certificate of sale as a going concern to the auction purchaser. The liquidation of the corporate debtor has come to an end and Company now vests exclusively with auction purchaser. The liquidator received a letter dated 31<sup>st</sup> March, 2021 from the Appellant informing that they have formed consortium to submit bid and it was after the aforesaid letter at the instance of the Appellant Mr. Gurpreet Singh Vohra made an application on 26<sup>th</sup> May, 2021 seeking to acquire the corporate debtor as a going concern which was rejected.

**6.** Mr. Krishnendu Datta, Learned Sr. Counsel appearing for Respondent No. 1 and Successful Bidders supported the submissions made on behalf of the Learned Counsel for the Liquidator and contends that Respondent Nos. 5 to 8 being successful bidder has made entire deposit within 90 days as per

the Liquidation Regulations. The submissions of Learned Sr. Counsel for the Appellant that there was no requirement of filing an application for approval is incorrect. Process Document clearly contemplated obtaining prior approval of the Adjudicating Authority for sale of the Corporate Debtor as a going concern. Respondent No. 5 to 8 after acquiring the Corporate Debtor are running the Corporate Debtor as a going concern. Mr. Gurpreet Singh Vohra has now claimed to have given an offer for taking over the corporate debtor who was a member of consortium who had given earlier EOI on 18<sup>th</sup> March, 2019, there was no occasion to accept any request made by Mr. Vohra who did not participate in the auction.

**7.** We have considered the submissions of Learned Counsel for the parties and have perused the record.

**8.** Before we proceed to enter into the respective submissions of Learned Counsel for the parties, it is relevant to notice certain clauses of process document dated 31<sup>st</sup> August, 2020 which was issued by the Liquidator containing the terms and conditions for participation in the Bid. The process document gives in detail all earlier proceedings. Clause 1.10.6 deals with approval of the adjudicating authority which is to the following effect:

*“1.10.6 Approval of the Adjudicating Authority*

*In the event that any sale under this Process Document requires approval of the Adjudicating Authority, based on the legal advice received by the Liquidator, the Liquidator shall make suitable application(s) to the Adjudicating Authority for approval of the said sale. In such an event, notwithstanding anything contained in this Process*

*Document, such sale shall be subject to the approval of the Adjudicating Authority.”*

9. Clauses 1.16.6 and 1.16.7 deal with approval of the bid by the Adjudicating Authority which is to the following effect:

*“1.16.6 Step VI – Approval of the Bid by the Adjudicating Authority*

*Upon acceptance of Letter of Intent by the Successful Bidder(s) and upon submission of Performance Security by the Successful Bidder(s) within the timelines defined above, the Liquidator may, if required, make an application to the Adjudicating Authority for approval of the Bid. Upon approval of the Bid(s) by the Adjudicating Authority, such Bid(s) would be implemented in terms of Step VII below.*

*1.16.7 Step VII: Transfer of the Company as a going concern or the Assets*

*With respect to the acquisition of the Assets, the Successful Bidder (s) shall ensure that the Transfer Date occurs within 90 days of the issuance of the Letter of Intent to the Successful Bidder(s). The Liquidator shall issue Certificate of Sale (countersigned by the Liquidator or any authorized Representative of the Liquidator) to the Successful Bidder(s) for the relevant Asset. It is hereby clarified that upon the issuance of Certificate of Sale, the risk and title to the Asset shall stand transferred to the Successful Bidder(s). It shall be the responsibility of the Successful Bidder(s) to take the delivery of the Assets. The delivery of the Assets by the Liquidator to the Successful Bidder(s) shall be evidence by a*

*delivery receipt signed by the Liquidator or any authorized Representative of the Liquidator and acknowledged by the Successful Bidder(s).*

*With respect of acquisition of the Company as a going concern, the Successful Bidder shall ensure that the Transfer Date occurs within 90 days of the approval by the Adjudicating Authority of the Bid of the Successful Bidder.*

*Without prejudice to the above mentioned timeline, the Company and the Successful Bidder shall enter into suitable definitive documents to the satisfaction of the Liquidator to give effect to the acquisition of the Company as a going concern or the Assets, as the case may be. The successful Bidder shall make payment of the balance consideration within 30 days of the demand raised by the Liquidator and any amount received after the said period will attract interest @ 12 % p.a.”*

**10.** The principal challenge which was laid by the Learned Sr. Counsel for the Appellant is non-compliance of the provision of Liquidation Regulations by the Respondent Nos. 5 to 8 in not making the payment of bid amount within 90 days from the date of Letter of Intent was issued that is 90 days with effect from 16.10.2020. We need to notice the relevant provisions of Liquidation Regulations, 2016. Regulation 33 deals with “Mode of Sale”. Regulation 33 is as follows:

**“33. Mode of sale.** (1) *The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.*

*(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-*

*(a) the asset is perishable;*

*(b) the asset is likely to deteriorate in value significantly if not sold immediately;*

*(c) the asset is sold at a price higher than the reserve price of a failed auction; or*

*(d) the prior permission of the Adjudicating Authority has been obtained for such sale:*

*Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-*

*(a) a related party of the corporate debtor;*

*(b) his related party; or*

*(c) any professional appointed by him.*

*(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties."*

**11.** Schedule 1 of the Liquidation Regulations deals with Mode of Sale. Reliance has been placed on Paragraph 12 of Schedule 1 as has been inserted with effect from 25<sup>th</sup> July, 2019. Para 12 is as follows:

*“[(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:]*

*Provided that payments made after thirty days shall attract interest at the rate of 12%:*

*Provided further that the sale shall be cancelled if the payment is not received within ninety days.”*

**12.** The submission of Learned Sr. Counsel for the Appellant is that Schedule I requires that on the close of the auction, the highest bidder shall be invited to provide balance sale consideration within 90 days of the date of such demand. It is submitted that when on 16.10.2020, the Respondent Nos. 5 to 8 were declared as highest bidder, they ought to have made the entire payment within a period of 90 days and they have not made the payment within 90 days, the sale is liable to be cancelled. Further submission of Learned Counsel for the Appellant is that there was no requirement of obtaining any approval to the auction sale by the Liquidator from the Adjudicating Authority. An application filed by the Liquidator seeking approval of the Adjudicating Authority for approval of sale was not in accordance with the Liquidation Regulations and can not give any benefit to Respondent No. 5 to 8.

**13.** Schedule 1 Paragraph 3 empowers the Liquidator to prepare terms and conditions of sale. Paragraph 3 of the Schedule 1 is as follows:

*“The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.*

*[Provided that the liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process:*

*Provided further that the earnest money deposit shall not exceed ten percent of the reserve price.]”*

**14.** The process document dated 31<sup>st</sup> August, 2020 can be said to be terms and conditions of sale prepared by the Liquidator. We have already noticed the clauses of process document which provides for approval of the bid by the adjudicating authority. The application filed by the Liquidator after conducting of sale is in accordance with the process document and the submission of Learned Counsel for the Appellant that there was no requirement of liquidator in making an application for obtaining approval of the adjudicating authority cannot be accepted.

**15.** Learned Counsel for the Appellant sought to contend that wherever the prior approval of the adjudicating authority is required for a sale, the same is provided in Schedule I, he has referred to Regulation 33 sub-regulation 2(d). He submits that Schedule I does not require any prior approval of the Adjudicating Authority for auction sale. It is true that public auction by the liquidator does not require any approval in the regulations

but when Schedule I paragraph 3 is read with process document, the prior approval of the auction sale by the Adjudicating Authority cannot be ruled out. This tribunal had occasion to consider a similar issue in Company Appeal (AT) Ins. No. 1212-1213 of 2022 **“Rimjhim Ispat Ltd. & Anr. Vs. Jindal Stainless Limited & Ors.”**. In the above case, the Liquidator made an Application to the Adjudicating Authority seeking approval of the sale of the corporate debtor as a going concern. Contention was raised that no approval of the adjudicating authority was required. In the above case also the process document contemplated approval of the adjudicating authority. In paragraph 19-21, following was observed:

*“19. After noticing the relevant statutory provisions and process document containing terms and conditions of the sale and also certain conditions contained in the LOI issued by the Appellant, it is clear that the process documents itself contemplated about the approval of the NCLT. We have noticed above under heading G-Terms and Conditions of Limited eAuction which specifically noted that payment shall be done in three instalments (i) 10% of reserve price amount as EMD amount before participation in the E-Auction Process, (ii) 33% to be paid after the approval order from the Hon’ble NCLT within 60 days and (iii) balance amount shall be paid within one year from the date approval by the AA with interest at MCLR. We further noticed that in the Letter of Intent also there are specific conditions which contemplated **“the sale of the Corporate Debtor as a going concern to the Successful Bidder is subject to approval by the Hon’ble NCLT, Principal Bench, New Delhi.”***

20. Now the submissions which has been pressed by Learned Counsel for the Appellant is that prior permission for sale with regard to the private sale as contemplated under Regulation 33 is only with regard to three circumstances mentioned in the proviso and for no other private sale, any prior permission of the Adjudicating Authority is required. The proviso to Regulation 33(2) as noted above is clear that the sale as contemplated in (a), (b) and (c) shall not be done without prior permission of the adjudicating authority. Thus the sale with regard to a related party of the Corporate Debtor, his related party or any professional appointed by the liquidator requires prior permission. Present is not a case where proviso to Regulation 33 (2) is attracted since present sale is not covered by any of the contingency mentioned in proviso hence present is a case where no prior permission of the adjudicating authority was required. Thus Learned Counsel for the Appellant is right in her submissions that present is not a case where prior permission of the sale was required by the Adjudicating Authority.

21. We have noticed above that in the Process Information Document as well as conditions of the Letter of Intent, there is specific contemplation of approval of the sale by the Adjudicating Authority and issue of sale certificate subsequent to making entire payment. Learned Counsel for the Appellant has referred to clause 2 under Heading A. "2. The information provided in the instant Auction Document should be read together with the provisions of the

*Code and the Liquidation Process Regulations. In the event of any conflict between the instant Auction Document and the Code or the Liquidation Process Regulations, the provisions of the Code or the Liquidation Process Regulations, as the case may be shall always prevail.”*

**16.** This Tribunal also held that the process document required approval of the Adjudicating Authority are not in conflict with any provisions of Liquidation Regulations. In paragraph 23 of the above judgement, this Tribunal held that there is no conflict between the terms of the sale requiring approval of the NCLT under the Regulation 33 or Schedule I of Liquidation Regulations.

**17.** We thus are of the view that Liquidator did not commit any error in making an application to the Adjudicating Authority for approval of the sale and after approval of the sale, inviting the Successful Bidder to deposit the balance bid amount. The sale was approved by the Adjudicating Authority on 11<sup>th</sup> May, 2022 and within 10 days, Successful Bidder had deposited the entire balance amount. Thus, there is no breach of any provision of Liquidation Regulations, 2016 especially cause 12 of Schedule I.

**18.** The submission of Learned Counsel for the Appellant that payment was not made within 90 days hence thus cannot be accepted. We thus are of the view that Successful Bidder has deposited the amount within the time as prescribed in Clause 12 of Schedule I of Liquidation Regulations.

**19.** Learned Counsel for the Appellant has also raised issue regarding the reserve price on which auction sale was conducted in pursuance of second auction notice. Admittedly in First Auction Notice, the reserve price was Rs.

51 Crores after auction failed, liquidator in accordance with the provisions of Schedule I has reduced the reserve price as per Schedule I hence reserve reduced price of second auction was Rs. 40 Crores.

**20.** The Successful Bidder has been sold the Corporate Debtor for Rs. 49.95 Crores that is much above the reserve price. Liquidator is entitled to fix the auction price as per the liquidation valuation and the provisions of Liquidation Regulations, 2016. It is not the case of any of the parties that fixing the reserve price on Rs. 51 Crores in the First Auction, there was any challenge to the reserve price. The submission of Learned Counsel for the Appellant that reserve price is less, cannot be accepted.

**21.** The Appellant in his appeal by Annexure A-18 has brought on record the Settlement Proposal dated 03<sup>rd</sup> April, 2022 which proposal is submitted by the Appellant where he had proposed upfront payment of Rs. 5 Crore with conversion of Rs. 45 Crores into zero interest term loan, balance debt of secured creditor will be converted into equity of the company. It does not lie in the mouth of the Appellant to contend that reserve price fixed by the second auction is not in accordance with law.

**22.** Learned Counsel for the Appellant has referred to the intellectual property right that is the trademark of Su-Kam which was included by the amendment to the auction sale notice by the liquidator. Liquidator in his Reply has relied on the order of the Learned Single Judge of the Delhi High Court where Learned Single Judge of Delhi High Court on 30<sup>th</sup> October, 2019 passed an order in CS (COMM) No. 1155/2018 which was filed by the Corporate Debtor through Resolution Professional seeking injunction against the Appellant with respect to the trademark where Learned Single Judge has

granted decree in the suit filed by the Corporate Debtor through Resolution Professional and it was according to the judgement of the Delhi High Court that by amendment in the sale of the Corporate Debtor as a going concern, intellectual property rights were also included.

**23.** Learned Counsel for the Appellant has also contended that there being higher offer before the Liquidator that is offer made by Gurpreet Singh Vohra of minimum Rs. 62 Crore, same ought to have been accepted and considered by the Liquidator. It is to be noted that offer made by Mr. Vohra was subsequent to auction held for sale of the corporate debtor as a going concern. Learned Counsel for the Liquidator has during his submissions referred to Letter dated 15<sup>th</sup> March, 2021 which has been filed along with the Reply of the Liquidator written by the Appellant to the Liquidator informing that Appellant has formed a consortium and group of person to submit a bid. Submission of Learned Counsel for the Liquidator is that letter written on behalf of Gurpreet Singh Vohra is nothing but letter at the instance of the Appellant which is another attempt to create hurdles in sale of corporate debtor as a going concern. Mr. Gaurav Mitra, Learned Counsel appearing sought to intervene and contend that Mr. Vohra is still ready to offer higher amount. Such request of Mr. Vohra cannot be entertained at this stage.

**24.** In view of what has been said above, we are of the view that Adjudicating Authority did not commit any error in passing the Order dated 11<sup>th</sup> May, 2022 approving the Auction of Corporate Debtor as a going concern in favour of Respondent Nos. 5 to 8. The Adjudicating Authority also did not commit any error in rejecting the Application filed by the Appellant praying for appointment of 'Independent Forensic Auditor' for conducting a

forensic audit. The said application has rightly been rejected by the Adjudicating Authority. Valuation having already been done and auction sale notice have been issued and auction sale conducted identifying the Successful Auction Bidder, there was no occasion for directing any appointment of forensic auditor at the instance of the appellant.

**25.** We thus are of the view that no grounds have been made to interfere with the impugned order dated 11<sup>th</sup> May, 2022 in this Appeal. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

**03<sup>rd</sup> February, 2023**

New Delhi

Basant