



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-IV**

IA/1009/2025

IN

C.P. (IB)/631(MB)2021

*[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National
Company Law Tribunal Rules, 2016]*

**Mr. Mr. Vikram Sharma
Sharma Bungalow, Behind Lake Castle
Building, Hiranandani Complex, Powai,
Mumbai- 400076**

...Applicant

V/s.

**Mr. Lalit Kumar Dangi
104, MK Bhavan, 300, Shahid Bhagat Singh
Road Fort Mumbai 400001**

... Respondent/ Liquidator

In the matter of

State Bank of India

... Financial Creditor

V/s.

Gopinath Dairy Products Pvt Ltd

... Corporate Debtor

Pronounced: 06.10.2025

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

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Appearances (Hybrid) :

For Applicant: Adv. Rohan Agrawal a/w Adv. Meghnesh Birwalkar
i/b Adv. Preeti Shukla

For Liquidator: Adv. Akshay Puthran a/w Adv. Ankur Singhi a/w
Adv. Chandresh Rao i/b S.K. Singhi & Partners
LLP Adv. Lalit Dangi

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This is an Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code), read with Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) seeking the following reliefs: -
 - a) *That this Hon'ble Tribunal be pleased to quash and set aside the email dated 6 January 2025 issued by the Respondent thereby cancelling the e-auction dated 7th October 2024 and forfeiting the amount of Rs.1,57,78,711/- paid by the Applicant towards Earnest Money Deposit;*
 - b) *That this Hon'ble Tribunal be pleased to quash and set aside the e-auction notice dated 9 January 2025 for the sale of the Corporate Debtor as a going concern, issued by the Respondent;*
 - c) *That this Hon'ble Tribunal be pleased to grant extension of time of a period of 45 days to the Applicant to make payment of the balance sale consideration of Rs.10,71,08,403/-;*
 - d) *Pending the hearing and final disposal of the present Application, the Respondent be restrained from conducting a fresh e-auction for sale of*

*the Corporate Debtor as a going concern as contemplated in his e-auction
notice dated 9% January 2025;*

2. Facts of the Case

- 2.1. This Tribunal, by an order dated 09.02.2023, initiated Corporate Insolvency Resolution Process (CIRP) of Gopinath Dairy Products Pvt. Ltd. (Corporate Debtor). Subsequently, by order dated 25.06.2024, Liquidation Process of the Corporate Debtor was initiated and Mr. Lalit Kumar Dangi was appointed as the Liquidator.
- 2.2. On 09.08.2024, the Respondent/Liquidator published e-auction notice for sale of the Corporate Debtor as a going concern in two newspapers. In response thereto, the Applicant submitted an Expression of Interest (EOI) along with the requisite documents *via* e-mail dated 23.08.2024 to participate in the e-bidding process in the Liquidation Process of the Corporate Debtor.
- 2.3. The Respondent once again published e-auction notice for the sale of the Corporate Debtor as a going concern on 12.09.2024 in two newspapers. The Applicant again submitted an EOI along with requisite documents *vide* e-mail dated 27.09.2024. After verification of the eligibility of the Applicant under Section 29A of the Code, the Applicant made a payment of earnest money deposit amounting to Rs. 1,57,78,711/- to comply with the pre-conditions for participating in the e-auction process.
- 2.4. Accordingly, the Applicant participated in the e-auction conducted on 07.10.2024 and was declared as the successful bidder with the bid of Rs.

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15,78,87,114/- . On the same day, the Respondent issued a letter of intent (LOI) to the Applicant. As per the LOI, the Applicant was required to make the entire balance payment of Rs. 14,21,08,403/- on or before 05.11.2024. Thus, the Applicant was granted a total period of 90 days, to make the entire balance payment together with interest at the rate of 12% per annum, which expired on 05.01.2025.

- 2.5. The Applicant failed to deposit the balance of the sale consideration within the timeframe stipulated in the LOI. As a result, the e-auction was terminated and the earnest money of Rs. 1,57,78,711/- was forfeited.
- 2.6. In this background, the Applicant has filed the present Application.

3. Submissions of the Applicant

- 3.1. The Applicant submits that *vide* e-mail dated 30.12.2024, he requested the Liquidator/Respondent to grant an extension of 60 days from 05.01.2025 to fulfil the entire financial obligation and agreed to pay any applicable interest on the outstanding amount during the requested extension. He further undertook that upon receiving confirmation, he would remit an amount of Rs. 3.50 crore to the designated account as an initial payment. Further, Rs. 5.36 crore plus interest by 31.01.2025 and settle the remaining balance amount of Rs. 5.36 crore along with applicable interest by 28.02.2025.
- 3.2. In response, the Respondent sent an e-mail dated 30.12.2024 informing the Applicant that the Stakeholders Consultation Committee (SCC) meeting was scheduled to be held on 31.12.2024 at 10:15 am to discuss the request made

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by the Applicant for extension of time to make the payment. The Applicant attended this meeting, wherein he explained to the SCC Members the difficulties faced by him and reiterated the request for additional time to make the balance payment.

3.3. Pursuant to the discussions, the Applicant addressed an e-mail dated 31.12.2024, which recorded the following: -

“After deliberation on my request in the meeting with the committee members, I understand that the following position has been considered and agreed upon;

1. A sum of Rs 3.5 Crores shall be paid to the account of the liquidator of Gopinath Dairy on confirmation of the revised payment schedule.

2. Further an amount of Rs. 7.5 Crore will be paid on or before 31st January 2025.

3. The remaining balance amount of Rs. 3.21 Crore, along with interest calculated from 5th November 2024 to the final payment date as specified in the Letter of Intent (LOI), shall be paid along with this installment.

In the event of a default on the payment due by 31st January 2025, the following conditions will apply:

a) The Rs. 3.5 Crore paid immediately, as well as the previously paid Earnest Money Deposit (EMD) of Rs. 1.58 Crore, will be forfeited.

b) I also undertake to withdraw the Interim Application filed in the NCLT court, which sought approval for the promoter to take over the Gopinath Dairy Products Pvt. Ltd. through the promoter's company. This

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schedule and procedure were discussed and agreed upon in the committee and will serve as the framework for proceeding.

Thank you for your understanding and cooperation.

Yours sincerely,

Mr. Vikram Sharma”

- 3.4. The Applicant submits that he was awaiting a confirmation of the revised timelines for payment of the balance sale consideration from the Respondent. However, the Respondent terminated/cancelled the e-auction and forfeited the amount of Rs. 1,57,78,711/- on the ground of delay.
- 3.5. Later, considering the request made by the Applicant, both the Respondent and the SCC agreed to grant an extension of time to the Applicant. However, the Respondent failed to issue any confirmation regarding the revised payment schedule, even though he was ready and willing to deposit an amount of Rs. 3.5 crore immediately upon confirmation of the revised timelines.
- 3.6. The Applicant asserts that he is still ready to deposit the entire balance sale consideration within a period of 45 days (in three equal fortnightly instalments) from the date of passing of an order in the present Application.

4. Submissions of Respondent/Liquidator

- 4.1 The Respondent/Liquidator filed his reply affidavit on 27.02.2025. In this affidavit, the Respondent states that an e-auction of the Corporate Debtor as a going concern was held on 07.10.2024, and the Applicant was declared as the

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successful bidder. The LOI was also issued on the same day. As per the terms of the LOI, the balance sale consideration was required to be paid on or before 05.11.2024 without interest. Payments made after this date, but on or before 05.01.2025 would attract interest at 12% per annum.

- 4.1. The Respondent sent various reminder e-mails to the Applicant for payment of balance consideration, i.e., on 31.10.2024; 05.11.2024; 12.12.2024; 18.12.2024' and 27.12.2024.
- 4.2. On 31.12.2024, the Applicant *vide* e-mail requested the Respondent to grant an extension of 60 days for the payment of the balance sale consideration. In response, the Applicant was invited to attend the SCC meeting scheduled on 31.12.2024 at 10:15 am.
- 4.3. The Applicant was personally present at the SCC meeting held on 31.12.2024. At the aforementioned meeting, the Applicant proposed the following payment schedule and requested extension of the timeline; a sum of Rs. 3.5 crore shall be paid to the account of the Liquidator of the Corporate Debtor on 31.12.2024 by 12 pm; and further, an amount of Rs. 7.5 crore would be paid on or before 31.01.2025. The remaining amount of Rs. 3.21 crore, along with interest, calculated from 05.11.2024 to the final payment date as specified in the LOI, shall be paid along with this instalment on or before 10.02.2025.
- 4.4. The revised proposal made by the Applicant was accepted by the SCC in the meeting, subject to the following conditions: Rs. 3.5 crore shall be paid

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immediately on 31.12.2024 by 12 pm. Further, if Rs. 7.5 crore is not paid by 31.01.2025, then, Rs. 3.5 crore as well as the previously paid Earnest Money Deposit (EMD) of Rs. 1.58 crore, would be forfeited. Mr. Vikram Sharma was also to withdraw the Application filed before the NCLT for the replacement of the bidder.

4.5. Though the Applicant was required to deposit Rs. 3.5 crore by 12:00 pm on 31.12.2024, the Applicant failed to deposit the same. Consequently, as per the decision of the SCC dated 31.12.2024, the proposal for extension of time made by the Applicant was cancelled. The Respondent also intimated the Applicant *vide* e-mail dated 31.12.2024 at 16:35 pm stating that, since the payment and e-mail were not received before 12:00 pm, the extension for payment discussed in the SCC meeting stood cancelled.

4.6. The Respondent further submits that Rule 12 of Schedule 1 of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) is mandatory, and the Liquidator does not have the authority to extend the timeline. Therefore, the Respondent seeks dismissal of the Application.

5. Analysis and Findings

5.1. We have heard the Ld. Counsel for the parties and perused the documents on record.

5.2. From the facts as noted above, it is clear that the Respondent sought to auction the Corporate Debtor as a going concern. The Applicant participated in the e-

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auction held on 07.10.2024, and was declared the successful bidder for a sale consideration of Rs. 15,78,87,114/-. As per the LOI, the Applicant was to deposit the sale consideration less the EMD amount of Rs. 1,57,78,711/- on or before 05.11.2024. If the amount was not paid within the above period, it would attract interest at the rate of 12% per annum, provided the payment was made within 90 days from the date of the LOI. In the event of a default in making the aforesaid payment within 90 days from the LOI, the EMD would be forfeited and the assets would be sold again. There is no dispute between the parties that the Applicant failed to deposit the sale consideration within the time frame stipulated in the LOI.

- 5.3. The contention of the Applicant is that he approached the Respondent before expiry of the timeframe stipulated in the LOI, *vide* his e-mail dated 31.12.2024, and sought an extension of 60 days from 05.01.2025 due to unforeseen challenges to make the entire sale consideration together with applicable interest. In response to the request made on 30.12.2024, the Applicant was invited to attend the SCC meeting held the very next day, wherein the Applicant proposed making the payment of Rs. 3.5 crore on confirmation of the revised payment schedule. Further, the amount of Rs. 7.5 crore would be paid on or before 31.01.2025, and the remaining balance amount of Rs. 3.21 crore, along with interest. While there is no dispute regarding the proposal for extension of time, the Respondent contends that the SCC agreed to consider the extension of time subject to the deposit of Rs. 3.5 crore immediately on 31.12.2024 by

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12:00 pm. However, the Applicant contended that the amount of Rs. 3.5 crore was to be deposited only on confirmation of the revised payment schedule.

5.4. Although there were communications exchanged between the parties regarding the extension of time for making balance amounts, there is no record indicating that either the Respondent or SCC had extended the time period for making the payment. The Applicant's case is also that there was no confirmation regarding the extension of time. In the circumstances, no relief can be granted on the assumption that the Respondent or SCC accepted the request of the Applicant seeking an extension.

5.5. Even otherwise, the question falling for our consideration is whether the SCC or the liquidator has the authority to extend the time frame for depositing the sale consideration.

5.6. Before we delve deeper into the question as to whether SCC or the liquidator can grant an extension for the deposit of sale consideration, it is necessary to notice the provisions of Rule 12 of Schedule 1 of the Liquidation Process Regulations. This Rule is reproduced below for ready reference:

“(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days or such period as mentioned in the auction notice under clause 3, of the date of such demand:

Provided that payments made after thirty days shall attract interest at the rate of twelve percent.:

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Provided further that the sale shall be cancelled if the payment is not received within the period provided under this clause."

5.7. When broken down, Rule 12 states that 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; any payments made after 30 days from such a demand shall attract interest at the rate of 12%; if the payment is not received within the period of 90 days the sale shall be cancelled. There is no discretion granted to the Liquidator or SCC to extend the time period for making the sale consideration. The Liquidator is also not vested with any inherent powers to extend the time for depositing the balance sale consideration. It is also pertinent to observe that the Applicant has not approached the Adjudicating Authority to exercise its inherent powers under Rule 11 of the NCLT Rules for extending the time to deposit the balance sale consideration. Therefore, the Applicant has erred in seeking an extension of time from the Respondent/SCC, as they could not have granted such an indulgence.

5.8. As far as the prayer in the Application to grant extension of time period of 45 days to the Applicant to make payment of the balance sale consideration, we notice that Rule 12 of Schedule 1 of the Liquidation Process Regulations states that the highest bidder shall be invited to deposit the balance sale consideration within ninety days or such period as mentioned in the auction notice. In the present case, the Respondent undisputedly provided 90 days to the Applicant to make the balance sale consideration in accordance with the auction notice.

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5.9. The words 'may' and 'shall' used in different provisions of the Code and allied Rules and Regulations came up for consideration in several cases. The Hon'ble Supreme Court in *V.S. Palanivel v. Sri. Lakshmi Hotels (P) Ltd., P. Sriram, CS, Liquidator and Others* [(2025) 1 SCC 559], observed as under: -

66. The words "may" and "shall" used in different provisions of Schedule I of the IBBI Regulations, 2016 go 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 maximize 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.

5.10. It can be discerned from the aforesaid discussions that the requirement to deposit the sale consideration within the time stipulated in the auction notice is mandatory in character, and the Rules prescribe consequences for failure to

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comply with the mandatory requirements laid down. It is a settled position of law that when the law mandates a certain act must be done in a particular manner, it must be done as prescribed. The inherent powers of the Adjudicating Authority cannot be used to override the natural consequence of cancellation of the auction specified by law. Therefore, it is not justified for this Tribunal to exercise its inherent powers to grant additional time to the Applicant to deposit the balance sale consideration. In the circumstances, we are of the view that the Liquidator has rightly cancelled the sale and forfeited the EMD as per the terms and conditions of the auction sale.

5.11. For the reasons stated above, we find that there is no merit in the Application to set aside the forfeiture of the earnest money deposit paid by the Applicant, nor to grant further time to the Applicant to deposit the balance of the sale consideration. Consequently, we **dismiss** the Application with no order as to costs.

**Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**