

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

Company Appeal (AT) (Insolvency) No. 532 of 2022

IN THE MATTER OF:

Potens Transmissions & Power Pvt. Ltd

...Appellant

Versus

Gian Chand Narang

...Respondents

Present:

For Appellant: Mr. Amit George, Mr. Manan Batra, Mr. Raaydurgam
Bharat, Advocates

For Respondent: Mr. Abhishek Anand, Mr. Tarun Gulati, Mr. Karan
Kohli, Mr. Sahil Bhatia, Mr. Pathik Choudhury,
Advocates for Liquidator.

Gian Chand Narang, Liquidator in person

ORDER
(Virtual Mode)

12.05.2022: Heard Learned Counsel for the Appellant and Respondent.

2. This Appeal has been filed against the Order dated 25th April, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) in I.A. No. 3153 of 2021, I.A. No. 5255 of 2021 and I.A. No. 4317 of 2021. The Appellant is the Auction Purchaser whose bid was accepted on 03rd June, 2021 in E-Auction. The earnest money of 7.3 crores was deposited on 31st May, 2021 and Bid of 73.01 Crores was submitted and he was declared to be Successful Bidder. Liquidator asked the Appellant to deposit the sale consideration by 10th June, 2021 and further balance by 3rd July, 2021.

Appellant deposited Rs. 10,95,25,000/- on 10th and 11th June, 2021. The term sheet was executed between the parties for sale of Corporate Debtor as a going concern on 15th June, 2021 in which 3rd July, 2021 date was fixed as timeline for payment of balance amount of Rs. 54,75,75,000/- whereas after 3rd July, 2021 payment of the balance amount of Rs. 54,75,75,000/- with interest at the rate of 12% on or before 1st September, 2021. Appellant did not deposit the balance amount and I.A. No. 3153 of 2021 was filed by the Appellant wherein prayers contained 'a' to 'z'. It shall be sufficient to notice only prayer 'a' out of 'a' to 'z' which is as follows:

“(a) allow the Applicant to pay/adjust the Sale consideration in the following matter (i) INR 50 Crore/- by way of investment into the equity shares of the Corporate Debtor; and (ii) the balance amount of INR 23 Crore/- in the form of Optionally Convertible Debentures;”

3. The Appellant having not made the payment by 1st September, 2021, which was the timeline when 90 days was expiring, the Liquidator filed an Application I.A. No. 5255 of 2021 wherein making following prayers:

“a). Allow the present application and permit the Liquidator i.e. the Applicant to cancel the sale of Corporate Debtor as a going concern in view of the failure of Respondent to make payment in terms of 2nd proviso to Clause 1(12) under Schedule I of the Liquidation Process Regulations, 2016; and

b). Consequentially, grant further time to the Applicant to conduct a fresh E-Auction in the matter of

the Corporate Debtor as a going concern, which is in the interest of the Stakeholders and for maximization of value of assets of the Corporate Debtor under Regulation 32A of the Liquidation Process Regulations, 2016;

c). Pass any other or such further order(s) as may be deemed fit and necessary in the facts and circumstances of the case;”

4. The Adjudicating Authority heard the parties and after considering the submissions, noticing the entire facts and circumstances in paragraphs 2 and 3 of the Judgment and also noticed that on failure of payment by the Appellant, emails were sent by the Liquidator. I.A. No. 3153 of 2021 was filed on 21st July, 2021 and subsequently I.A. No. 5255 of 2021 was filed by the Liquidator. The Adjudicating Authority has allowed the I.A. filed by the Liquidator and observed that Adjudicating Authority is left with no option but to allow the Application of Liquidator cancelling the sale of the Corporate Debtor in favour of the Auction Purchaser, in view of the failure of Auction Purchaser to make payment in terms of 2nd proviso to Clause 1(12) under Schedule I of the Liquidation Process Regulations, 2016.

5. Learned Counsel for the Appellant submits that I.A. No. 3153 of 2021 was pending and the Adjudicating Authority could have rejected the Application but the said application was kept pending. He further submits that prayers which were made in I.A. No. 3153 of 2021 some of the prayers were granted by the Adjudicating Authority in other cases. Learned Counsel for the Appellant lastly

submits that he should be given some time to make deposit as the Appellant has already deposited substantial amount.

6. Learned Counsel for the Liquidator refuting the submissions of the Learned Counsel for the Appellant contends that the Adjudicating Authority has granted sufficient latitude to the Appellant and granted extension of time but the Appellant having failed to deposit the amount within time, there was no option except to allow the Application filed by the Liquidator.

7. 2nd proviso to Clause 1(12) under Schedule I of the Liquidation Process Regulations, 2016 is as follows:

“1 Auction.

(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.”

8. When we look into the above regulation, it is clear that 90 days' period provided for making the deposit is the maximum period under which the Auction Purchaser had to make the deposit. 2nd Proviso of the Item 12 of the Schedule I provided that sale shall be cancelled if the payment is not received within 90 days. When the Consequence of non-compliance of the provision is provided in the statute itself, the provision is necessary to be held to be mandatory. Item 12

provides that payment is to be made within 90 days and with interest after 30 days at the rate of 12 percent. Non-compliance of 2nd Proviso, sale shall be cancelled if the payment is not received within 90 days. The Adjudicating Authority has rightly observed that in view of the Appellant having not made payment in 90 days, Adjudicating Authority has no option except to allow the Application filed by the Liquidator for cancellation of the sale. The action taken by the Adjudicating Authority is in accordance with the statutory provisions. We do not find any merit in the submissions of Learned Counsel for the Appellant as noticed above. Prayer 'a' in the Application which was filed through I.A. No. 3153 of 2021, itself is indicative that Appellant was never interesting in making the payment and he by different prayers wanted to prolong the proceedings.

9. We thus are of the view that no error has been committed by the Adjudicating Authority in passing the Impugned Order by allowing the Application filed by the Liquidator and closing the Applications filed by the Appellant. We do not find any merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

Basant/nn