

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

IA (IB) No.32/KB/2022

IN

C.P. (IB)No.1376/KB/2018

In the matter of

An application under Rule 11 of the National Company Law Tribunal Rules, 2016,

In the matter of:

Dewesh Auto Creative Services Private Limited

... Financial Creditor

Versus

A.K.Power Industries Private Limited

...Corporate Debtor

And

In the matter of

Ayan Mallick , Suspended Board of Director, of A K Power Industries Pvt. Ltd. (Now under liquidation) and Mortgagor Guarantor, a Pvt. Company having its registered office at Shrutineer 23/2/1/1 Bhawan Chatterjee Lane, Howrah – 711 101.

... Appellant

Versus

1. Liquidator, Re.: A K Power Industries Private Limited- In Liquidation having its office at CK-104, Sector 2, Salt Lake City , Kolkata- 700091.
2. State Bank of India, having its office at Nagaland House, 8th Floor, 11 & 13 Shakespeare Sarani, Kolkata 700 071 commonly known as its Stressed
3. Indian Bank, having its office at SAM Branch, 7 Red Cross Lane, Kolkata- 700001.

... Respondents

Date of hearing: 14/01/2022

Order Pronounced on :01/02/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

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| 1. Mr. Ratnanko Banerji, Sr.Adv. | } For Applicant in IA/32/2022 |
| 2. Ms. Aparajita Rao, Adv. | |
| 3. Mr. Shaunak Mitra, Adv. | |
| 4. Mr. Sanwal Tibrewal, Adv. | |
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| 1. Mr.Jishnu Chowdhury ,Adv. | } For the Respondent/Liquidator |
| 2. Mr.Pratim Bayal, Liq.in person | |
| | |
| 1. Mr. Debasish Chakrabarti, Adv. | } For Indian Bank & State Bank of India |

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court is convened by video conference today.
2. The instant application has been filed challenging sale notice through e-auction dated 16th December, 2021 issued by Liquidator.
3. The applicant states that the properties of the Guarantor mentioned in the impugned auction notice are not part of Liquidation Estate and thus could not be combined with the sale of Corporate Debtor.
4. It has also been stated on behalf of the applicant that the Liquidator has acted without jurisdiction, particularly there is no application filed or pending against the liquidator under section 95 of the IBC.
5. It has further been argued on behalf of the applicant that section 36 defines what is included in liquidation estate and it states that the assets owned by 3rd party are not included in liquidation estate.

6. He has also referred to the reserved price mentioned in the e-auction sale notice which according to the Ld. Senior Counsel does not mentioned different reserved price for individual assets and no distinction has been made between the assets of Corporate Debtor and the assets of the Guarantor which are not part of liquidation estate. The composite reserved price of Rs.16.15 crore of all the assets has been fixed by the Liquidator which is not proper and it would be impossible for the liquidator to split/ divide the reserved price for a successful bidder between Corporate Debtor assets, sale consideration and guarantor assets. He has further stated that the right of redemption to personal guarantor as available under SARFAESI Act would be lost if such a joint sale is permitted.
7. He has further argued that in proceedings under IBC, assets of 3rd party / guarantor cannot be dealt with even under resolution plan.
8. For the above reasons, the applicant has sought setting aside the order of the impugned e-auction notice.
9. The Ld. Counsel appearing for the Liquidator has rebutted the contentions of the applicant.
10. Ld. Counsel appearing for the applicant has submitted that part of land /factory of Corporate Debtor is situated is owned by the Guarantor to the Bank in respect of these secured assets the banks have taken assets under SARFAESI Act whereby the bank has taken symbolic possession of this land of Guarantor, which is integral part of the plant of the Corporate Debtor. The Banks are, therefore, entitled to sell the property of the Guarantor under SARFAESI Act. Copy of the notice under section 13(2) dated 27th February, 2017 and possession notice issued under section 8(1) dated 16th June 2017 have been annexed as Annexure- A &

B.

11. It is further stated that the stakeholders banks namely Indian Ban and State Bank of India has proceeded for sale under SARFAESI Act, 2002 by assessing the reserved price of said land at Rs.3.65 crore. This has been fixed by the competent authority of State Bank of India through its resolution dated 2nd November,2021. Simultaneously the liquidator has also assessed the reserved price of Corporate Debtor through valuation and stakeholder's discussion at stakeholder consultations committee at Rs.12.50 crore. These two reserved prices have been combined to create reserved price under the sale and the auction price received over and above reserved price would be pro rata disbursed among the Corporate Debtor and the Guarantor's property.
12. It is further stated that there is no violation of any of the provision of IBC or any other law as alleged by the applicant.
13. It is contended on behalf of the applicant as is evident from the notice of sale itself, it has been issued by Liquidator and its combined notice under IBC, 2016 and SARFAESI Act, 2002. The Liquidator has the authority to issue the combined notice for the sale of these two assets. Further combined sale would fetch a higher price as if the land and plant are put to sale together, otherwise nobody would buy factory without factory land. The combined sale initiated by the liquidator for the purpose of maximization of the assets value.
14. Applicant has not shown as to how it is even remotely prejudiced with notice impugned. It is settled law 'such action taken thereof cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice being caused on account of the procedural lapse as prescribed under the

Act or the rules framed thereunder....(2020) 10 SCC Page 659.

15. After hearing Ld. Counsel for the parties and perusal of the record as mentioned above, we are of the view that there may be a procedural lapse in conducting combined auction but we feel, as contended by Liquidator, selling it together can maximize the value of the assets. In any case, if there is maximization of the assets, selling it as a combined should not prejudice the applicant in any manner as it is going to get a better value for the corporate guarantor. We are also of the view that there should not be any unnecessary delay which would adversely affect the liquidation process.
16. In view of the above facts, *IA(IB) No.32/KB/2022* is dismissed, interim order stands vacated.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

[Harish Chander Suri]
Member [Technical]

[Rohit Kapoor]
Member [Judicial]

Order signed on 01/02/2022

PJ,
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