

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SINGLE BENCH
COURT - I

ITEM No.301

IA/1135(AHM)2023 in CP(IB) 207 of 2017

Order under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Hanumanta Tradecom

.....Applicant

V/s

Amit Gupta Liquidator of Forever Precious Jewellery & Diamond
Ltd

.....Respondent

Order delivered on 29/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

-Sd-

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I
AHMEDABAD**

IA/1135(AHM)2023 in CP (IB) No.207 of 2017

[filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Hanumanta Tradecom

Through its Authorized Signatory

Having address at:

Plot No. 72, Anjaneya Niwas,
Hindustan Colony, Nagpur - 440015

....Applicant

Versus

Mr. Amit Gupta

Liquidator of Forever Precious Jewellery And Diamonds Limited

Having office At:

702, Janki Centre, Dattaji Salvi Road,
Off Veera Desai Road, Andheri
West, Mumbai - 400053

....Respondent

In the matter of :-

M/s. Ramesh T. Mehta (HUF)

...Operational Creditor

Versus

Forever Precious Jewellery And Diamonds Limited

...Corporate Debtor

Order pronounced on: 29.01.2024

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)

Appearance:

For the Applicant :Mr. Arpit Singhvi, Ld. Adv.
For the Liquidator :Mr. Rakesh Gupta, Ld. Adv.

ORDER

1. This application has been filed by the Applicant herein seeking the following prayers:-
 - a) *It is humbly prayed that this Hon'ble Tribunal may be pleased to allow the captioned application and grant additional time of 30 days to make payments of balance sale consideration of Rs.1,62,14,000/- towards Box No.2;*
 - b) *It is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Respondent to restore the status of the Applicant as the successful bidder for Box No. 2;*
 - c) *It is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Respondent not to forfeit the EMD of Rs. 10,50,000/- submitted by the Applicant towards Box No. 2;*
 - d) *During the pendency of the petition, it is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Respondent not to conduct re-auction of Diamond Box No. 2;*
 - e) *During the pendency of the petition, it is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Respondent not to forfeit the EMD of Rs.10,50,000/- submitted by the Applicant towards Box No. 2;*

f) *That this Hon'ble Tribunal may be pleased to pass such other order/orders direction/directions as may be deemed just and proper.*

2. The contentions of the Applicant are briefly stated as under:

- i) The Corporate Debtor/Forever Precious Jewellery and Diamonds Limited was ordered for liquidation vide order dated 01.09.2020 and the Respondent was appointed as the Liquidator of the Corporate Debtor.
- ii) On 19.04.2023, the Respondent has published the E-Auction notice for sale of assets of the Corporate Debtor. The E-Auction was scheduled on 19.05.2023.
- iii) The Applicant, thereafter, has submitted an Expression of Interest and deposited requisite EMD amount of Rs.90,95,000/- and, thereafter, participated in the auction process and was declared the successful bidder with respect to the following assets of the Corporate Debtor:

Sr. No.	Asset	Weight (In Carats)	Bid Value (Rs.)
1.	Diamond Box - 1	2234	1,41,44,000
2.	Diamond Box - 2	1677.58	1,72,64,000
3.	Diamond Box - 4	1859.73	2,09,09,000
4.	Diamond Box - 14	1277.29	1,19,83,000
Total			6,43,00,00

These assets of the Corporate Debtor were located at Module 26 & 27, SDF – III, MEPZ SEZ, Tambaram, Chennai, Chengalpattu, Tamil Nadu – 600045.

- iv) Vide E-mail dated 21.05.2023, the Respondent issued Letter of Intent to the Applicant and called upon the Applicant to pay the balance sale consideration of Rs.5,52,05,000/- within a period of 90 days, i.e. 21.08.2023.
- v) It is stated that the Applicant was not aware regarding the process for clearance of goods from the customs department and, thereafter, sought help of the Respondent. Subsequent to visit of both to SEZ and post the payment with respect to Diamond Box No. 1, 4 and 14, the Applicant has taken possession and paid the sale consideration and after payment of the customs duty has taken possession of the three boxes of diamonds. However, the Applicant could not pay the balance sale consideration with respect to Diamond Box No. 2 amounting to Rs.1,62,14,000/-. The sole reasons stated in Para-16 of the Application for such delay in payment, is some injury to one of the partners of the firm Mr. Neeraj Agrawal and that in his absence the other partners could not garner the sufficient funds.

vi) Meanwhile, the Respondent vide E-mail dated 22.08.2023, wrote to the Applicant as below:

“Since you have filed to deposit the balance consideration within 90 days of the auction i.e. on or before 19.08.2023 (including 2 days of grace period) for the Diamond Box No. 2 stands forfeited.”

vii) Representations were made by the Applicant vide E-mail dated 23.08.2023 promising to make payment within 30 to 60 days and requesting the Liquidator not be forfeited EMD.

viii) Thereafter, the Applicant has given two citations i.e. ***Standard Surfa Chem India Pvt. Ltd. Vs. Mr. Kishore Gopal Somani, reported in 2022 SCC OnLine NCLAT 305 (NCLAT, Principal Bench and Mr. V. S. Palanivel vs. Mr. P. Shriram, CS, Liquidator, M/s Sri Lakshmi Hotels Pvt. Ltd. Company Appeal (AT)(CH)(Ins) No. 336 of 2021 by its order dated 16.09.2022.*** Hence, the applicant has filed the present application.

3. Reply was filed by the Respondent vide Inward Diary No. 4780 dated 06.12.2023.

i) From the reply it appears that the Applicant herein was declared successful bidder to the respect to the four boxes of diamonds. It is stated that as per the Process

Memorandum and the LOI, all applicable taxes including but not limited to GST, Customs dues, Registration and Stamp Duty charges were to be borne by the Successful Bidder and it was responsibility of the Applicant for clearing the Diamonds Boxes from the MEPZ SEZ.

- ii) It is stated that the Respondent has denied in the past the requests of the Applicant seeking extension of time and that the Respondent had offer all the helps possible to the Applicant in clearance of the goods from MEPZ SEZ.
- iii) It is further stated that the Applicant has paid the balance sale consideration w.r.t. Diamond Boxes No. 1, 2 & 14 with delay, but with interest before the last date. However, the applicant has failed to deposit the balance sale consideration w.r.t. Diamond Box No. 2. As a consequence of failure of the Applicant to deposit the balance sale consideration the Respondent vide E-mail dated 22.08.2023 duly cancelled the sale of the Diamond Box No. 2 and forfeited the EMD Amount of Rs.10,50,000/- as submitted by the Applicant.
- iv) It is stated that the subsequent of the failure of the said auction for Diamond Box No.2 the Respondent received an email from one of the prospective bidders for purchase of Box No. 2 (failed due to non-payment) through Private Sale. The Respondent, thereafter,

apprised the SCC Members that the price offered by the one Shree Gurukripa Jewellers is higher than the last failed reserve price as well as the price bid for Box No. 2. The offer price by Shree Gurukripa Jewellers was Rs. 1,95,00,000/- is higher than the last bid price of Rs.1,72,64,000/- by the Applicant. The SCC Members directed the Respondent for sale of remaining Diamond Boxes of the Corporate Debtor including Diamonds Box No.2 through Private Sale to the said Shree Gurukripa Jewellers.

- v) It is stated that the Respondent has since issued Letter of Intent for the Diamond Box No. 2 to Shree Gurukripa Jewellers on 04.09.2023. A necessary Gate Pass has been issued on 21.09.2023 which is annexed with the Annexure-7 of the reply.
- vi) It is stated that the Respondent has acted as per the procedure has been done under IBC. The Respondent seeks dismissal of the present application.

4. We have heard the learned counsel, Mr. Arpit Singhvi for the Applicant and learned counsel, Mr. Rakesh Gupta for the Liquidator and perused the documents. It is an admitted position by the Applicant that he could not pay the balance sale consideration in the respect to Box No. 2 in full by the last date of receipt of the balance sale consideration i.e. by 19.08.2023.

5. It is seen that total four boxes were put to auction for which the Applicant was declared as a Successful Bidder. Out of the four boxes the Applicant could pay only for three boxes belatedly, however, within the stipulated period of 90 days from the issue of LoI.
6. Invoking the provisions of IBC, 2016 and the Liquidation Process Regulations the Respondent has forfeited the EMD deposited by the Applicant amounting to Rs. 10,50,000/-.
7. It is seen that the Diamond Box No. 2 has been sold by the Respondent through a Private Sale at a price higher than what was offered by the Applicant herein. The Respondent has already taken permission for SCC before entering into the private sale arrangement with Shree Gurukripa Jewellers.
8. The applicant has cited two citations in his application. In our considered view both the citations are not of any help to the Applicant herein i.e. ***Standard Surfa Chem India Pvt. Ltd. Vs. Mr. Kishore Gopal Somani, reported in 2022 SCC OnLine NCLAT 305 (NCLAT, Principal Bench and Mr. V. S. Palanivel vs. Mr. P. Shriram, CS, Liquidator, M/s Sri Lakshmi Hotels Pvt. Ltd. Company Appeal (AT)(CH)(Ins) No. 336 of 2021 by its order dated 16.09.2022.*** The first citation pertains to the Model Timeline which has no application in the present matter. As regards in the second citation being Company Appeal (AT)(CH)(Ins) No. 336 of 2021 the same pertains to delay

during the Covid period and introduction of Regulation 47A in the Liquidation Process Regulations, 2016. The present case is not a case in which extension can be given on Covid related issues.

9. In our considered view the Liquidator (Respondent) has acted in bona fide and correct manner by forfeiting the EMD of Rs.10,50,000/- and the order passed by the learned Liquidator dated 22.08.2023 doesn't calls for any interference by this Tribunal.

10. Accordingly, the present **IA/1135(AHM)2023** is dismissed.

11. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Note: This order of the Bench consisting of Member Judicial & Member Technical is pronounced in open court on behalf of the Bench Under Rule 151 of NCLT, Rules, 2016.

-Sd-

The Court Master

Swetambary/Steno