

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**  
**Company Appeal (AT)(Insolvency) No. 1114 of 2020**

**IN THE MATTER OF:**

**Mandip Singh**  
**(Suspended Director,**  
**M/s.Satnam Agri Products Ltd)**  
**Nirmal Cold Store,**  
**Nakodar Road, Jalandhar,**  
**Punjab - 144003** .. **Appellant**

**Versus**

**Mahesh Bansal,**  
**Liquidator of**  
**Satnam Agri Products Ltd. (Corporate Debtor)**  
**C/o SCF 24, 1<sup>st</sup> Floor,**  
**Bhadaur House,**  
**Ludhiana - 141008** .. **Respondent**

**Present:**

**For Appellant:** Ms. Jyoti Sareen and Mr. Nahush Jain, Advocates  
**For Respondents:** Mr. Abhishek Anand and Mr. Pathik Choudhury for  
Liquidator. Mr. Mahesh Bansal (Liquidator, in-  
person)  
Mr. Pulkit Deora, Adv. for R-2 in IA 188/2022.

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

**DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The appeal has been filed by the Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') against the

impugned order dated 09.12.2020 passed by the National Company Law Tribunal, Chandigarh Bench (Adjudicating Authority) in I.A No. 389 of 2020 in CP(IB) No.124/Chd/PB/2018. The Appellant vide above IA has sought for setting e-auction sale noticed 24.08.2020 and process memorandum issued by the Liquidator, fixing the sale of assets of CD on single day by three modes at highly inadequate reserve price and seeking direction to the Liquidator to sale the CD as a going concern only at first instance and for further direction to provide the Appellant the copy of valuation report submitted by two valuers appointed by Liquidator etc.

2. The Appellant has filed the present appeal on being aggrieved with the order of the Adjudicating Authority and has prayed for setting aside and quashing the impugned order dated 09.12.2020 passed by the Adjudicating Authority as also setting aside the mode and manner of sale, through which, the Liquidator had issued, the E-Auction Sale notice and Process Memorandum dated 24.08.2020 etc.
3. The brief background of the case is given hereunder:
  - a. The Insolvency Petition was filed by the Corporate Debtor (CD) under Section 10 of the Code and the Petition was admitted vide order dated 05.10.2018 and Shri Y.P.Singhal was appointed as Interim Resolution Professional (IRP).

- b. The CoC in its meeting held on 12.11.2018, proposed to replace the IRP with the Respondent i.e. Mr. Mahesh Bansal as Resolution Professional (RP) and vide order dated 28.11.2018, the Respondent was appointed as RP by the Adjudicating Authority.
  - c. No resolution Plan was received by the RP, during the CIRP, the Adjudicating Authority vide order dated 01.11.2019, passed the order under Section 33(1)(a) of the Code, for liquidator of the CD and Mahesh Bansal, Respondent was appointed as a Liquidator in connection with the Liquidation Process of the CD.
4. The Ld Counsel for the Appellant has submitted the followings:
- a. Sale notice dated 24.08.2020 (Annexure A-14) and dated 16.12.2020 (Annexure A-25) fixing the sale of assets of CD by three different modes on single day is violative of Regulation 32 and 32(A)(1) of LP Regulations
  - b. Non-disclosure of valuation reports to the appellant being Stakeholders' Consultation Committee (SCC) member and other members of SCC is violative of Regulation 31-A(1) and 31-A(5) of LP Regulations.
  - c. The reserve price fixed of the assets of the CD is highly inadequate.

- d. Reserve price of the assets of the CD fixed in violation of LP Regulations.
- e. It was also stated by the Appellant that the Adjudicating Authority erred an error in rejecting the said IA filed by the Appellant on the ground that CIRP was initiated on 05.10.2018 and object of maximization of value of CD will be defeated if liquidation of CD is delayed. The Adjudicating Authority failed to appreciate that the Liquidation order of the CD was passed on 01.11.2018 and since March, 2020 there was lockdown due to Covid-19 pandemic and IBBI has already excluded the period of lockdown.
- f. The Appellant further went to say that the value of the assets of the CD has been depreciated by the conduct of the Respondent/RP himself who failed to adopt proper procedure laid under Liquidation Process Regulation 2016 and has acted in utter violation of Regulation 32, Regulation 32-A(1), Regulation 31-A(5) and Regulation 33-(1) read with Schedule I Clause (4) of LP Regulations, 2016.
- g. It was also stated by the Appellant that matter has not become infructuous by non-receiving of bids in pursuance of sale notice dated 16.12.2020 as the case involves challenge to mode and manner of sale and fixing of inadequate Reserve price by

Liquidator in violation of statutory IBBI (Liquidation Process) Regulations.

- h. During the course of hearing, the Appellant has further stated that the issue of locus standi of the Appellant cannot be challenged by the Liquidator at this stage as the Appellant is the Ex-Director of the CD and the Liquidator has not challenged his locus standi at this stage of Adjudicating Authority in IA No. 389 of 2020 filed by the Appellant. If the Liquidator has not challenged the same at the Adjudicating Authority level, then naturally it cannot be challenged at the Appellate Level.
- i. The Appellant has stated that he has filed an IA No. 389 of 2020 before the Adjudicating Authority under Section 60(5) of the Code being Ex-Director/Shareholder and guarantor of the CD and Member of SCC.
- j. They have also raised the issue that the process memorandum dated 24.08.2020 has included machinery worth Rs. 75 lakhs given in the list of the missing assets (Annexure A-9 page 153 of the Convenience Compilation) but the reserve price of the collective sale of assets remained the same at Rs. 10.25 Crore which cast a shadow of doubt on the Authority of valuation report and support the arguments raised by the Appellant that the valuers have not done physical verification that assets of the CD

before submitting valuation report in utter violation of Regulation 35(3) of Liquidation Process Regulation. It was also stated by the Appellant that the Liquidator was supposed to get fresh valuation done after physical verification of plant and machinery for the best interest of the CD. The challenge is that the Liquidator has conducted the Liquidation Process in utter violation of Liquidation Process Regulation resulting in Sale of plant and machinery of CD at highly inadequate reserve price which is in strict violation of Liquidation Process Regulation. Publishing the sale notice giving three modes of sale disclosing three reserve prices in single sale notice, the Liquidator has in fact made mocking of Liquidation Process Regulation and has ensured that nobody bids for first lot for which reserve price is highest, as nobody in his right business sense would purchase assets at a higher value as a going concern at 10a.m, if option in the same sale notice is given to the bidder to purchase the same assets in parcels at a lower value at 1p.m onwards.

5. The Adjudicating Authority, while passing the impugned order dated 09.12.2020 has observed at para 3, 4, 8, 9 & 10:

*Para 3 ..... The said IA was disposed of by this Adjudicating Authority vide order dated 22.07.2020*

*and the operative portion of the said order reads as under:-*

*“3. In the circumstances and in view of the fact that no bids have been received by the Liquidator in response to the impugned sale notice dated 02.07.2020, no further orders are required to be passed in the instant application. We permit the applicant to make an appropriate representation to the Liquidator indicating his objections within one week and the Liquidator may consider the same while issuing fresh sale notice in respect of the Corporate Debtor. However, it is made clear that the Liquidator is free to act in accordance with the Code, Regulations and applicable laws. IA No. 258/2020 stands disposed of accordingly.”*

*4. Thereafter, the Liquidator issued the impugned Annexure A11 e-auction sale notice. Challenging the same, the instant IA has been filed. On 04.09.2020, this Adjudicating Authority stayed the impugned e-auction sale notice (Annexure A-11) dated 09.09.2020 and the said order is subsisting till date.*

*8. The learned counsel further submitted that the applicant’s reliance on Regulation 35 of the IBBI (IRP*

*for Corporate Persons) Regulations, 2016 is misconceived as the Regulation applicable to the facts of the case is Regulation 35(2) and (3) of the IBBI (Liquidation Process) Regulations, 2016. No identical clause of providing/sharing information with the COC is available under Regulation 35 of the Liquidation Process Regulations. The learned counsel submits that on this ground also the contention of the applicant that the fixation of reserve price is not correct, cannot be accepted.*

*9. It is seen that the CIRP was admitted against the corporate debtor way back on 05.10.2018. Time is the essence of the IBC. The Object of maximization of the value of the assets of the corporate debtor will be defeated, if the resolution/liquidation of the corporate debtor is delayed. This has already been proved in the instant case also. The applicant having participated in the Stakeholders' Consultation Committee meeting cannot question the fixation of the reserve price, subsequently. The applicant is simply trying to delay the process of liquidation, without any valid ground.*

10. Hence, in these circumstances and for the aforesaid reasons, we do not find any merit in the instant IA and accordingly, the same is dismissed. The interim order granted on 04.09.2020 is vacated.”

6. The Respondent/Liquidator has raised multiple objections and the same are enumerated here under:

a. The Appellant has no *locus standi* to challenge the reserve Price fixed for the sale of assets of the Corporate Debtor or seek a copy of the Valuation Reports. That the grounds raised by the Appellant in the Appeal assailing the impugned order dated 09.12.2020 passed by the Adjudicating Authority, Chandigarh Bench on the grounds that the Respondent has not fixed the reserve price for the Corporate Debtor and its assets in accordance with Regulations 35 of the IBBI (Liquidation Process) Regulations, 2016 are misconceived, misleading and frivolous with the sole intention to delay and cause hindrance in the Liquidation Process of the Corporate Debtor. Further, the Appellant herein has no *locus standi* to challenge the decision of the Liquidator to fix the reserve price for the sale of assets or seek a copy of the valuation reports conducted by the registered valuers appointed by the Respondent. That the Appeal

filed by the Appellant herein deserves to be dismissed with exemplary costs for reasons specified herein below:

Firstly, it is relevant to refer to the Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional shall provide the fair and liquidation value computed by the registered valuers to only members of the Committee of Creditors i.e. the Financial Creditors, only on receiving an undertaking to maintain confidentiality of the fair value and the Liquidation value of the Corporate Debtor. The provisions of Regulation 35 of CIRP Regulations is reproduced *herein under for reference:*

*“35. Fair value and Liquidation value.*

*(1) Fair value and liquidation value shall be determined in the following manner:-*

*(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*

*(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he*

*may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and*

*(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.*

*(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:*

*(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.”*

Thus, from the aforesaid, it is evident that during the Corporate Insolvency Resolution Process, as per Regulation 35(2) of the CIRP Regulations, 2016 after receipt of resolution plans in accordance with the Code and these regulations, the resolution professional

shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section(2) of section 29. Furthermore, Regulation 35(3) casts a duty upon the resolution professional and registered valuers to maintain confidentiality of the fair value and the liquidation value.

b. Now coming to the similar Regulation provided under the Liquidation Process Regulations, 2016 it is relevant to refer to Regulation 35 of the Liquidation Process Regulations, 2016 which is reproduced below:

*“35. Valuation of assets intended to be sold.*

*(1)Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator*

*shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.*

*(2) [In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:*

*Provided that the following persons shall not be appointed as registered valuers, namely: -*

*(a) a relative of the liquidator;*

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

*(c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or*

*(d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.*

*(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the*

*liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.*

*(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses”*

- c. The Respondent has submitted that in accordance with Regulation 35(2) of the Liquidation Process Regulations appointed two registered valuers to determine the realizable value of the assets or business of the Corporate Debtor under clauses (a) to (1) of Regulation 32.
- d. Regulation 34(2)(a) & (b) of the Liquidation Process Regulations, 2016 mandates that the asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale, which includes (a) value of the asset, valued in accordance with Regulation 35 and (bb) value of the assets or business(es) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses. Regulation 34 is reproduced herein under for ease of reference:

*“34. Asset memorandum.*

*(1) On forming the liquidation estate under section 36, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date.*

*(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale*

*(a) value of the asset, valued in accordance with Regulation 35;*

*(b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;]*

*(c) intended manner of sale in accordance with Regulation 32, and reasons for the same;*

*(d) the intended mode of sale and reasons for the same in accordance with Regulation 33;*

*(e) expected amount of realization from sale; and*

*(f) any other information that may be relevant for the sale of the asset.*

*(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-*

*(a) value of the asset;*

*(b) intended manner and mode of realization, and reasons for the same;*

*(c) expected amount of realization; and*

*(d) any other information that may be relevant for the realization of the asset.*

*(4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.*

*(5) The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.”*

Regulation 34(5) of the Liquidation Process Regulations, 2016 clearly prohibits that the asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

- e. Purpose of valuation reports is not *res integra* and have been settled by the Hon’ble Supreme Court. It is also pertinent to mention here that the Appellant has further no *Locus Standi*

to challenge the valuation carried out under Regulation 35 of the Liquidation Process Regulations, 2016. In this regard, it is worthwhile to refer to the judgment passed by the Hon'ble Supreme Court in the matter of *Maharashtra Seamless Limited vs Padmanabhan Venkatesh & Ors* on 22.01.2020 wherein it was held as under:

*“26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.*

*27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section*

*31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.*

*28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has*

*to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.”*

- f. That above mentioned judgement was affirmed by the Hon'ble Supreme Court in the matter of *State Bank of India v. Accord Life Spec Private Limited through director & ors.* vide judgement dated 28.02.2020, wherein it was held as under:

“The impugned judgment dated 13.11.2019 has remitted the matter to the Adjudicating Authority after a finding that under Section 30(2) of the Insolvency and Bankruptcy Code together with the

principle of maximization of assets of the corporate debtor, a resolution plan which is lesser than liquidation value cannot be accepted.”

As a matter of law, this judgment has to be set aside in view of our recent judgment dated 22.01.2020 in Civil Appeal No. 4242 of 2019 entitled Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. in which this Court has categorically held as under:

*“26. No provision in the Code or Regulations has been brought to our notice under which the bid of arry Resolution Appellant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point 2 has been dealt with in the case of Essar Steel (supra).”*

- g. It is settled position of law that question of valuation carried out by two independent Registered Valuers duly registered with IBBI cannot be challenged by the Appellant as the same being a question of fact is normally not interfered by Courts. It is relevant to refer to judgment dated 03.12.1999 passed by the Hon'ble Supreme Court in the matter *Duncans Industries Limited v. State of U.P. &Ors (AIR 2000 SC 355)* wherein it was held as under:

*“The question of valuation is basically a question of fact and this Court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record. The main objection of the appellant in regard to the valuation arrived at by the authorities is that the Collector originally constituted an Enquiry Committee consisting of the Assistant Inspector General (Registration), General Manager, District Industries Centre, Sub-Registrar and the Tehsildar. After the report was submitted by the Sub-Committee for the reasons of its own, the Collector reconstituted the said Enquiry Committee by substituting Additional City Magistrate in place of Sub-Registrar. This substitution of the Enquiry Committee, according to the appellant, is without authority of law. We are unable to accept this contention. Constitution of an Enquiry Committee by the Collector is for the purpose of finding out the true market value of the property conveyed under the Deed. In this process, the Collector has every authority in law to take assistance from such source as is available, even if it amounts to constituting or*

*reconstituting more than one Committee. That apart, the appellant has not been able to establish any prejudice that is caused to it by reconstitution of the Expert/Enquiry Committee. We have perused that part of the report of the Collector in which he has discussed in extenso the various materials that were available before the Committee and also the report of the valuers appointed for the purpose of finding out the value of the plant and machinery. These valuers are technical persons who have while valuing the plant and machinery taken into consideration all aspects of valuation including the life of the plant and machinery. The valuations made both by the Enquiry Committee as well as the valuers are mostly based on the documents produced by the appellant itself. Hence, we cannot accept the argument that the valuation accepted by the Collector and confirmed by the revisional authority is either not based on any material or a finding arrived at arbitrarily. Once we are convinced that the method adopted by the authorities for the purpose of valuation is based on relevant materials then this Court will not interfere*

*with such a finding of fact. That apart, as observed above, even the counsel for the appellant before the High Court did not seriously challenge the valuation and as emphasised by the High Court, rightly so. Therefore, we do not find any force in the last contention of the appellant also.”*

- h. The Appellant through its Appeal has raised objections with regard to the reserve price of the Corporate Debtor being below the valuations conducted by the State Bank of India on 08.02.2016 being 32 months before the CIRP Commencement date has no relevance as in terms of the provisions of the Code as the Resolution Professional and Liquidator are required to conduct valuation from the valuers registered with IBBI. It is relevant to note that in the first SCC meeting it was State Bank of India only that recommended the reserve price be fixed as Rs. 10.25 crores. The Appellant is further relying on the book value of the plant and machinery of the Corporate Debtor as per the audited financial statements for the year 2017-18. It is submitted that the book value of the asset of the Corporate Debtor has no bearing in the Liquidation Process, as in terms of Regulation 35 of the Liquidation Process Regulations, the valuation is conducted by qualified

professionals registered with IBBI to determine the 'realisable value of the assets of the Corporate Debtor. As per the Appellant the Reserve Price of Rs. 10.25 crores for the collective sale of assets of the Corporate Debtor is less and should be higher. However, it must be noted that admittedly there were no bids submitted by any interested bidder at the reserve price of Rs. 10.25 crores for collective sale of assets of the Corporate debtor in pursuance to the 2nd sale notice. This fact was duly recorded by this Adjudicating Authority as well in its order dated 22.07.2020. It is further submitted there was no prospective bidder willing to participate in the e-auction in terms of sale notice dated 16.12.2020 issued by the Respondent at the same Reserve Price of Rs. 10.25 crores. The Respondent hereby prays to this Adjudicating Authority to direct the appellant to state on an affidavit as to how the Appellant was able to obtain the confidential valuation reports in respect of the valuation which the State Bank of India had got *conducted*.

*(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.*

*(10) The advice of the consultation committee shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing*

### *32. Sale of Assets, etc*

*The liquidator may sell-*

*(a) an asset on a standalone basis;*

*(b) the assets in a slump sale;*

*(c) a set of assets collectively;*

*(d) the assets in parcels;*

*(e) the corporate debtor as a going concern; or*

*(f) the business(s) of the corporate debtor as a going concern:*

*Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate*

#### *[32A. Sale as a going concern.*

*(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32*

*shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.*

*(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*

*(3) Where the committee of creditors has not identified the assets and liabilities under subregulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*

*(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.”*

- i. It is pertinent to mention here that there was a delay on part of the secured financial creditors in relinquishing their security interest to the Liquidation Estate and to enable the Respondent to form the Liquidation Estate as per Section 36 of the Code. Due to the delay, the Respondent was unable to sell the Corporate Debtor as a going concern within a period of 90 days from the Liquidation Commencement Date in terms of 32A(4) of the Liquidation Process Regulations. That the proviso for Regulation 21 stipulates that where an asset is subject to security interest, it shall not be sold under any clauses (a) to (1) unless security interest has been relinquished to the liquidation estate. That in terms of Regulation 32A(4), if the Liquidator is unable to sell Corporate Debtor as a going concern within 90 days then the Liquidator may endeavor to sell the assets as per Regulation 32(a) to (d).
- j. The Respondent at the First meeting of Stakeholders Consultation Committee convened on 25.02.2020 discussed the delay on part of the Secured Financial Creditors in relinquishing their security interest and consequent delay to form Liquidation Estate in terms of Section 36 of the Code. That the Respondent discussed the way forward in the SCC meeting wherein upon discussions and deliberations, the members of the SCC

decided to sell the assets of the Corporate Debtor collectively at the Reserve Price of Rs. 10.25 crores. It is further pertinent to mention that the Appellant was duly present in the First SCC meeting wherein the Reserve price of Rs. 10.25 crores were recommended by the State Bank of India. Further, the Respondent shared the first and second minutes of the SCC meeting with the Appellant and there were no objections raised by the Appellant in the first meeting or the minutes of second meeting of the SCC. Accordingly, the Respondent issued the first sale notice dated 08.05.2020 to sell the assets of the Corporate Debtor collectively at a reserve price of Rs. 10.25 crores in accordance with valuation conducted as per Regulation 35 and decision of the Stakeholders Consultation Committee, which was withdrawn due to the objections raised by the Appellant and due to the restrictions in view of the pandemic of Covid – 19.

- k. Thereafter, the Respondent issued the second sale notice dated 02.07.2020 which was issued in accordance with valuation conducted as per Regulation 35 and the decision of the SCC to sell the assets of the Corporate Debtor collectively at a reserve price of Rs. 10.25 crores. That the Appellant filed an application challenging the reserve price which was disposed off as infructuous vide order dated 22.07.2020 without going into

the merits of the Application since no bids were received at the reserve price of Rs. 10.25 crores. That it is pertinent to mention that the Appellant has raised the objections with regard to value of the reserve price for sale of assets of the corporate debtor collectively at a belated stage only when the Respondent issued sale notice. This shows the intention of the Appellant to delay and derail the Liquidation Process of the Corporate Debtor. It is further pertinent to mention that the Appellant was duly present in the First SCC meeting wherein the Reserve price of Rs. 10.25 crores was recommended by the State Bank of India. Further, the Respondent shared the first and second minutes of the SCC meeting with the Appellant and there were no objections raised by the Appellant in the first meeting or to the minutes of second meeting of the SCC. That at the third meeting of the Stakeholders Consultation Committee convened on 14.08.2020, where the objections raised by the Appellant regarding sale of Corporate Debtor as a going concern was discussed. Upon discussions and deliberations, it was decided in Consultation with all the SCC members that the sale of assets shall be conducted in the following manner;

*“1. Firstly, the sale of CD as a going concern as per Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016.*

*2. If no bids are received for sale of CD as a going concern then the sale of Land & Building, Plant and Machinery and Miscellaneous Fixed Assets on a collective basis as per Regulation 32(c) of IBBI (Liquidation Process) Regulations, 2016.*

*3. If no bids are received for sale of CD as going concern and for collective sale of Land and Building, Plant and Machinery and Miscellaneous Fixed Assets then sale of:*

*i. Plant and Machinery and Miscellaneous Fixed Assets separately on parcel basis under Regulation 32(d) of IBBI (Liquidation Process) Regulations, 2016.*

*ii. Land and Building separately on parcel basis under Regulation 32(d) of IBBI (Liquidation Process) Regulations, 2016.*

*Note:*

- In case no bids are received in respect of sale of CD as a going concern, collective sale of land and*

*building, plant and machinery and miscellaneous fixed assets and sale of plant and machinery and Misc Fixed Assets on parcel basis then the sale shall be carried in respect of land and building on parcel basis and payment in respect of it shall also be received within 30 days of the auction closing date. However, the possession of the Land and Building shall not be transferred handed over to the bidder till the time the plant and Machinery and Misc Fixed Assets are sold auctioned and removed from the factory site*

- *The Reserve Price of assets to be sold auctioned should be atleast Liquidation value”.*

- i. It is pertinent to mention that there is no bar under the Code, and in the Liquidation Process Regulations, on the Liquidator of the Corporate Debtor on selling assets of the Corporate Debtor in Lots. Thus, it is a general practice carried on by most of the Liquidators to sell the assets of the Corporate Debtor in lots in order to facilitate the Liquidation Process and complete the process within the prescribed period of one year. The sale of assets of the Corporate Debtor in lots is as per the provisions under the Code and underlying Regulations and also with

decision of the members of the Stakeholders Consultation Committee. That the different reserve price charged under each lot is being charged in accordance with provisions of the Code. Further, as per e-auction sale notice, the Corporate Debtor will be sold as a going concern in Lot No. 1 at reserve price of Rs. 13.78 crores, that only if no bids are received in Lot no. 1 then the assets of the Corporate Debtor will be sold collectively in Lot no. 2 at reserve price of Rs. 10.25 crores. That the difference in reserve price fixed under lot no. 1 and lot no. 2 is because under lot no. 1 there will be transfer of Corporate Debtor as a going concern under lot no. 1 which not only includes the Fixed assets of the Corporate Debtor but also current and financial assets, receivables etc. and also saving on accounts of transfer of assets taxes like GST and stamp charges etc. Further, the sale of assets of the Corporate Debtor collectively will be conducted only if bid under lot no. 1 fails. Thereafter, only if no bids are received in Lot No. 1 and Lot No. 2 then the plant and Machinery and miscellaneous Fixed assets of the corporate debtor will be sold separately in Lot no. 3 and Land and Building will be sold separately in Lot no. 4. It is to mention here that the Sale notice dated 16.12.2020 have become infructuous on the auction scheduled on 01.01.2021 no bids were received for any Lots for

the Company (in liquidation) and therefore, the Sale notice dated 16.12.2020 has become infructuous and thereby, the present appeal has also become infructuous. The present Appeal has been filed by the Appellant assailing the impugned order dated 09.12.2020 on the solitary ground that the impugned order is a non-speaking order. However, a bare perusal of the impugned order shows that the Adjudicating Authority after considering the material on record and the respective submissions of the parties have passed the impugned order and thus, there is no infirmity in the impugned order.

7. The Id counsel for the Respondent No.2 (Auction Purchaser) has stated that Multiple auctions have been conducted by the Liquidator in respect of the Corporate Debtor and its assets, at least on the following occasions: 29.05.2020, 22.07.2020, and 01.01.2021, all of which failed to attract any bidders. The challenge brought by the Appellants, here, is in respect of the Auction conducted *vide*. an auction notice dated 1st January 2021, which also failed to garner any bidders, and therefore failed on such account. This Appellate Tribunal, thereafter, gave leave to the Liquidator to conduct further auctions, in accordance with law, *vide*. orders dated 23rd December, 2020 and 27th August, 2021. The Liquidator, therefore, notified an auction, dated 21st December 2021,

which was limited to auction of the plant and Machinery & miscellaneous fixed assets – as LOT No. 1 – of the Corporate Debtor, in accordance with Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016. Further, the Liquidator made it clear within the said notice that the present auction was being conducted pursuant to the orders of this Appellate Tribunal, and that its result shall be subject to confirmation by this Appellate Tribunal. The Respondent No. 2, herein, viz. Pargo Frozen Foods Pvt Ltd, duly participated at the said auction, and was declared as the highest/successful bidder for the aforesaid Lot comprising of plant and machinery & miscellaneous fixed assets of Corporate Debtor, with the highest bid of Rs. 5,30,55,000/- plus applicable GST and other taxes (Sale consideration), on 22.12.2021. Further, the Liquidator issued a confirmation to the Respondent No. 2, dated 22nd December, 2021 of its status as the highest bidder at the said auction, and further stated that the confirmation of sale shall be issued subject to confirmation by this Appellate Tribunal. The Respondent No. 2 has made a deposit of Earnest Money of Rs 53,05,500/-, in accordance with the auction process memorandum prescribed by the Liquidator, on 17.12.2021, which is presently lying with the Liquidator. The Appellants herein have not brought any challenge as to the legality of the auction conducted *vide* auction notice, dated

27th November, 2021 where the Respondent No. 2 participated and was declared as the Highest Bidder by the Liquidator. Therefore, the present appeal, in so far as it seeks to challenge the legality of an auction conducted *vide* a notice of January 2021, which eventually failed, has become infructuous.

8. The challenge brought by the Appellants as to the valuation of the Plant and machinery of the CD is misconceived. It is submitted that there is no better test of valuation of any asset than an auction itself, which enables the seller/auctioneer to attract the highest bids for the assets and estimate the price of such assets. Therefore, the question of reserve price raised by the appellants is vague, erroneous and without merit. The lot of Plant and Machinery & Miscellaneous Fixed Assets deteriorates/ depreciates at a rate faster than that of other asset classes, is well known and undisputable. The subject property also requires removal and transport. Hence, putting it to another auction would only result into further loss to creditors. Further, whereas, plant& machinery would usually be disposed at a price lower than the book value, in the present case, the auction price being paid/ offered by Respondent no. 2 is much higher than the book value of said assets as on the date of auction. It is submitted that the offer for the Lot of Plant and Machinery & Miscellaneous Fixed Assets of Corporate Debtor was

made by made by Respondent No. 2 after considering the reserve price at the public e-auction advertised by the Liquidator and conducted as per the Process Memorandum (Invitation for bids for auction of Satnam Agri Products Limited). It is pertinent to note that the present appeal is merely an academic exercise, and should be dismissed on this account alone, for it is clear for the circumstances that the Appellants have themselves not participated in the insolvency resolution of the Corporate Debtor – the present successful auction or any of the failed auctions – despite that the insolvency resolution process was brought at their own instance by way of a petition under section 10 of the Code.

9. Without prejudice to the foregoing submissions, the R2 being a mere participant at auction craves the indulgence of this Appellate Tribunal to protect its interests should the appeal be confirmed;

Whereas the Respondent No. 2 is now ready to deposit the full amount upon issuance of sale confirmation letter and take possession of property, the Respondent No. 2 apprehends that, in the event that the present Appeal proceedings are dismissed and the Liquidator is permitted to issue sale confirmation, that the Appellants, herein, may prefer a further statutory appeal, in exercise of the remedy available under section 62 of the Code, and the transfer of property to the Respondent No.2 in terms of the

auction, may once again suffer a stall. The Respondent No. 2, therefore, humbly prays for the indulgence of this Appellate Tribunal to protect its interest in the matter in the event that the Liquidator is permitted to confirm the subject sale – permit the Respondent to place the balance consideration in escrow to be released to the Liquidator upon transfer of possession of the subject matter of the E-auction to the Respondent, or directions to the Liquidator to not distribute the entire sale consideration until such time as possession of the subject matter of the E-Auction is given to the Respondent No. 2, or until such time as the matter achieves finality, whichever is later, or any other relief as this Appellate Tribunal deems fit in the present circumstances.

10. We have carefully gone through the pleadings of the parties and extant provisions of the Code and the submissions made by the ld counsel for the parties including their written submissions and we are having the following observations:

- i. This is a case where CD/Corporate Applicant has itself initiated petition for CIRP under Section 10 of the Code which was admitted by Adjudicating Authority/NCLT, Chandigarh on 05.10.2018.

- ii. The CoC in its meeting held on 12.11.2018 proposed to replace the IRP with the Respondent Mr. Mahesh Bansal as RP (Liquidator presently).
- iii. The Respondent was appointed as RP by 'Adjudicating Authority' vide its order dated 28.11.2018.
- iv. On 01.11.2019, the 'Adjudicating Authority' passed the order under Section 33 of the Code for 'Liquidation of the CD' and Mahesh Bansal- RP was appointed as 'Liquidator'.
- v. It is also further clarified that in the first meeting of the SCC on 25.02.2020, the Liquidator has apprised the members of the SCC that the Liquidator has appointed registered valuers in accordance with Regulations 35(2) of the IBBI (Liquidation Process) Regulations, 2016. The Liquidator has also made 'Stakeholders Consultation Committee' (SCC) aware that in spite of a lapse of more than 90 days, the secured Financial Creditor has failed to relinquish their security interest in favour of the Liquidation Estate of the CD and has done the same on the 94<sup>th</sup> day i.e. on 03.02.2020. The Liquidator also apprised the SCC Members that the CoC prior to liquidation order had authorized the sale of CD as a going

concern in terms of Regulations 32(e) of IBBI (Liquidation Process) Regulations, 2016. If the Liquidator is unable to sale the CD as a going concern then he shall proceed to sale the assets of the CD under Regulation 32(a) to (d) of the IBBI (Liquidation Process) Regulations, 2016.

- vi. On the three occasions i.e. 29.05.2020, 22.07.2020 & 01.01.2021, multiple auctions have been conducted by the Liquidator in respect of the CD and its assets and all of which failed to attract any bidders.
- vii. As far as fixing the value of reserve price is concerned, SCC members were apprised by Liquidator that it is the State Bank of India which recommended the reserve price around Rs. 10 - 10.25 Crore during deliberation in SCC and should be above the liquidation value.
- viii. In the second meeting of SCC held on 19.03.2020, the liquidator has apprised the members of the SCC that the figure recommended by State Bank of India needs to be deliberated amongst and accordingly, the Indian Overseas Bank and NABARD decided to go in line with the lead Bank (State Bank of India) and recommended reserve price of Rs. 10.25 Crores for sale of assets

collectively and accordingly Rs. 10.25 crore was fixed by the Liquidator.

- ix. First sale notice dated 08.05.2020 issued by the Liquidator in respect of e-auction dated 29.05.2020 for sale of assets of the CD collectively under Regulations 32(c) of the IBBI (Liquidation Process) Regulations, 2016 published in Financial Express (English) Rozana Spokes Person (Punjabi). However, the said sale notice was subsequently withdrawn considering the objection raised by suspended Board of Director and the Appellant herein the main Appeal – CA(AT)(Ins) No. 1114 of 2020.
- x. The Liquidator published second sale notice dated 02.07.2020 for e-auction dated 22.07.2020 for sale of assets of CD collectively in accordance with the above stated Regulations and in the same newspaper on 02.07.2020. Again, the suspended Board of Director filed IA No. 258 /2020 challenging the said sale notice before the Adjudicating Authority but as no bids were receive in respect of the said sale notice, the Adjudicating Authority vide order dated 22.07.2020 was pleased to dismissed the application as infructuous. In the 3<sup>rd</sup> Meeting of SCC held on 14.08.2020, the Liquidator apprised the SCC

that no bids were received for collective sale of the assets of CD at the reserve price of Rs. 10.25 Crore, the Liquidator decided in consultation with all SCC Members that the sale of assets shall be conducted in the following manner:

*“1. Firstly, the sale of CD as a going concern as per Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016.*

*2. If no bids are received for sale of CD as a going concern then the sale of Land & Building, Plant and Machinery and Miscellaneous Fixed Assets on a collective basis as per Regulation 32(c) of IBBI (Liquidation Process) Regulations, 2016.*

*3. if no bids are received for sale of CD as going concern and for collective sale of Land and Building, Plant and Machinery and Miscellaneous Fixed Assets then sale of:*

*i. Plant and Machinery and Miscellaneous Fixed Assets separately on parcel basis under Regulation 32(d) of IBBI (liquidation process) Regulations, 2016*

*ii. Land and Building separately on parcel basis under Regulation 32(d) of IBBI (Liquidation*

*Process) Regulations 2016.”*

- xi. During the course of the hearing, it was brought on board that why OTS proposal of Rs. 18 crore made by the CD/ Suspended Director, were not accepted by the banks whereas the banks are agreeable for a reserve price of Rs.

10.25 Crore? It was clarified that OTS proposal/ the amount offered was not only towards release of charge of Banks on the assets of the CD but was also towards the release of collateral securities as well which includes one of the prominent collateral securities i.e Nirmal Cold Storage valuing Rs. 12 to 15 Crore alongwith other collateral Securities. Hence, the reserve price as suggested by State bank of India of Rs. 10.25 Crore seems to be justified.

- xii. It is also observed that the suspended board of Director filed an application bearing IA No. 389 of 2020 seeking set aside of sale notice dated 24.08.2020 issued by the Liquidator before the Adjudicating Authority which was listed on 04.09.2020 and the Adjudicating Authority after hearing the parties stayed the e-auction sale notice dated 24.08.2020 till next date of hearing. The Adjudicating Authority also allowed the Liquidator's IA No. 450 of 2020 for exclusion of Lockdown period from 25.03.2020 to 31.07.2020 from the Liquidation period of the CD. After the considering the period of exclusion, the liquidator period of the CD was due to expire on 09.03.2021. The

Adjudicating Authority dismissed the IA No. 389 of 2020 vide its order dated 09.12.2020.

- xiii. It was also pointed out by this Tribunal on 23.12.2020 that this Tribunal is not staying e-auction proceedings but the result would be subject to the decision of this Appeal. Then this Tribunal on 27.08.2021 again observed that this Tribunal has never stayed e-auction and if earlier e-auction has failed, we have not restrained the Liquidator from proceedings in term of law.
- xiv. The Liquidator issued e-auction notice dated 27.11.2021 and the bid process memorandum for e-auction for the sale of lot of plant and machinery and fixed of the CD wherein the E-auction fixed for 21.12.2021 between 11:00AM to 1:00PM on the specified platform for a reserve price of Rs.5,30,55,000/-. The said e-auction for sale of lot of plant and machinery and fixed assets of the CD as conducted on 21.12.2021 resulted into Respondent No.2 herein M/s. Pagro Frozen Foods Pvt. Ltd was declared as Successful Bidder for a price of Rs. 5,30,55,000/- plus applicable GST and other taxes and the said firm has deposited earnest money deposit of Rs.

53,05,500/- and the said bidder was declared successful bidder also by the Liquidator.

- xv. In any case, the challenge to the order of the Adjudicating Authority is in respect of IA No. 389 of 2020 in CP(IB) No. 124/Chd/PB/2018 vide which the Adjudicating Authority has dismissed the IA of the Appellant and the Appellant is seeking setting aside and quashing the impugned order dated 09.12.2020 in the above IA. Since, this IA has already become infructuous, in view of the further e-auction notified on 21.12.2021.
- xvi. All this suggests that the Applicant in main Company Appeal i.e CA(AT) (Ins) No 1114 of 2020 is only interested in delaying and causing hindrance even in Liquidation proceedings of the CD by filing multiple IAs. The deliberation in SCC wherein the Applicant has also participated has elaborately covers related issues and the Liquidator in some form and other has revealed its actions and has taken SCC into confidence at every stage. The Liquidator has also deliberated the mode of sale of assets in the SCC and, thereafter, has gone ahead for multiple mode in the e-auction dated 24.08.2020. Although, going ahead with such multiple mode in one

auction is not a healthy trend. In any case, no bid was received against the said auction and hence, the main appeal – CA(AT) (Ins) No.1114 of 2020 is prima facie infructuous. This is also not a healthy trend that the CD who himself has initiated CIRP under Section 10 of the Code obstruct and create hindrance at every stage even in Liquidation. All this has resulted, a petition filed on 05.10.2018 for revival of CD or maximization of value of CD has miserably failed as even after four years, the matter has not come to a closing stage resulting into either revival of CD or maximization of value of asset of CD which is depleting in course of lapse of time. Hence, we are dismissing the Appeal - CA(AT) (Ins) No.1114 of 2020.

xvii. As far as IA No. 188 of 2022 is concerned, which has been filed by the Liquidator seeking permission to confirm sale of lot of plant and machinery and fixed assets of the CD whereby M/s. Pagro Frozen Food Pvt. Ltd- R2 has been declared as successful bidder pursuant to e-auction conducted on 21.12.2021 requires consideration by this Tribunal. From the analysis and observations as stated supra this merits consideration on multiple counts. Multiple auctions conducted by Liquidator from May,

2020 to January, 2021 has failed to attract any bidders and the current e-auction has resulted into a bid which is not lower than reserve price and the successful bidder has deposited the earnest money with the bid and may be directed to deposit the balance amount within a period of one month which the liquidator is to keep in a separate account till all the assets are realized in accordance with the provisions of the Code.

With these observations, IA No. 188 of 2022 is allowed.

Accordingly, we are disposing of CA(AT) (Ins) No.1114 of 2020 and IA No. 188 of 2022 with above observations and directions.

Interim order, if any, passed by this Tribunal stands vacated.

Pending application, if any, stands disposed of.

No order as to costs.

**(Justice M. Venugopal)**  
**Member(Judicial)**

**(Dr. Ashok Kumar Mishra)**  
**Member(Technical)**

**14<sup>th</sup> July, 2022**  
**New Delhi**

*Raushan.K*