

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

**Company Appeal (AT) (Insolvency) No.702 of 2024**  
**& I.A. No. 2504 of 2024**

(Arising out of Order dated 12.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division bench (Court No.-II), Kolkata in I.A.(IBC)/334/(KB)/2023 in C.P.(IB)/1634(KB)/2018)

**IN THE MATTER OF:**

1. Rajiv Dhamija,  
son of Late Mr. Chaman Lal Dhamija,  
Resident of 172, Block G,  
New Alipore, Kolkata 700053
2. Gurmeet Singh, son of Late Sardar Paramjit Singh,  
Resident of 1/1B,  
Ramani Chatterjee Road, Kolkata 700029 ... Appellants

Versus

1. Mr. Kuldeep Verma,  
Liquidator of Manthan Broadband Services Pvt. Ltd.,  
working at 46 B.B. Ganguly Street,  
Unit No. 501, Kolkata 700012.
2. Kalyankari TexFab Pvt. Ltd.,  
Represented by its Director, Pritem Ghosh,  
10, Kiran Shankar Roy Road,  
2<sup>nd</sup> Floor (Mezzanine), Room No. 34M,  
Kolkata 700001, West Bengal ... Respondents

**Present:**

**For Appellant : Mr. Chinmoy Pradip Sharma Sr. Advocate with  
Mr. Dhruv Surana, Mr. Shakya Singha Sen, Mr.  
Rajeev Ahuja, Mr. Arya Hardik, Mr. Krishnajyoti  
Deka, Advocates.**

**For Respondent : Mr. Vivek Sibal, Sr. Advocate with Mr. Rahul  
Auddy, Advocates for Liquidator.**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Aritro  
Basu and Mr. Nirnimesh Dubey, Mr. Varun**

**Kanwal, Mr. Saikat Sarkar, Advocates for intervenor.**

**With**  
**Company Appeal (AT) (Insolvency) No.703 of 2024**  
**& I.A. No. 2507 of 2024**

(Arising out of Order dated 12.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division bench (Court No.-II), Kolkata in I.A.(IBC)/497/(KB)/2023 in C.P.(IB)/1634(KB)/2018)

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having its registered office  
at 10, Kiran Shankar Roy Road,  
2<sup>nd</sup> Floor (Mezzanine), Room No. 34M,  
Kolkata 700001
- ... Respondents

**Present:**

- For Appellant : Mr. Chinmoy Pradip Sharma Sr. Advocate with Mr. Dhruv Surana, Mr. Shakya Singha Sen, Mr. Rajeev Ahuja, Mr. Arya Hardik, Mr. Krishnajyoti Deka, Advocates.**
- For Respondent : Mr. Vivek Sibal, Sr. Advocate with Mr. Rahul Auddy, Advocates for Liquidator.**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Aritro Basu and Mr. Nirnimesh Dubey, Mr. Varun Kanwal, Mr. Saikat Sarkar, Advocates for intervenor.**

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

**ASHOK BHUSHAN, J.**

**Interlocutory Application Nos.2504 and 2507 of 2024**

These IAs have been filed for condoning the delay of 03 days and 14 days respectively, in filing of the present Appeal(s). Sufficient cause being shown, the delay of 03 days and 14 days in filing of the present Appeal(s) are hereby condoned.

**Company Appeal (AT) (Insolvency) Nos.702 and 703 of 2024**

These two Appeal(s) have been filed against common order dated 12.01.2024 passed by National Company Law Tribunal, Division Bench (Court No.-II), Kolkata in IA No.334(KB) 2023 and IA No.497(KB) 2023 respectively. The Adjudicating Authority by the impugned order dated 12.01.2024 rejected IA No.334 of 2023 filed by the Appellant. Aggrieved by which order Company Appeal (AT) (Insolvency) Nos.702 of 2024 has been filed. The Adjudicating Authority vide order dated 12.01.2024 allowed IA No.497 of 2023 filed by the Liquidator. Aggrieved by which order, Company Appeal (AT) (Insolvency) Nos.703 of 2024 has been filed.

2. Brief facts of the case necessary to be noticed for deciding these two Appeal(s) are:

- (i) The Appellant is Suspended Director of the Corporate Debtor – Manthan Broadband Services Pvt. Ltd. On an Application filed by Alliance Broadband Services Pvt. Ltd., Corporate Insolvency Resolution Process (“**CIRP**”) commenced against the Corporate Debtor vide order dated 18.09.2019.
- (ii) The Corporate Debtor owned 77,500 equity shares of the Financial Creditor. The Financial Creditor issued right issue on 30.09.2019 @ Rs.1100/- per share, which right issue, came to be challenged by the Appellant by filing CA No.1365/KB/2019, which Application came to be rejected by the Adjudicating Authority vide order dated 17.10.2019 as not maintainable.
- (iii) The Financial Creditor issued second right issue on 07.09.2021 @ Rs.1155/- per share, which also was sought to be challenged by the Appellant by filing IA No.847 of 2021. However, in the said IA no interim order was passed by the Adjudicating Authority. The Appellant filed Company Petition under Section 241 and 242 of the Companies Act, 2013 against the Alliance Broadband Services Pvt. Ltd. on June 8, 2022.
- (iv) On 06.04.2022, the Adjudicating Authority directed liquidation of the Corporate Debtor. An appeal was filed by the Appellant

challenging the order of liquidation, which Appeal was dismissed by this Tribunal vide order dated 20.09.2022 in Company Appeal (AT) (Ins.) No.682 of 2022. Against the order dated 20.09.2022 passed by this Tribunal a Civil Appeal Diary No.35263 of 2022 was filed by the Appellant, which came to be dismissed by the Hon'ble Supreme Court on 03.02.2023.

(v) After dismissal of the Civil Appeal by the Hon'ble Supreme Court, the Appellant filed IA No.334(KB) 2023, in which Application, following prayers were made:

- “i) The Respondent be restrained by an order of injunction either by itself and/or by its men, agents, assigns and/or representatives from taking any steps or further steps and giving any effect or further effect to the E-Auction to be held on 14.02.2023 in pursuance of the Public Notice dated 11.01.2023 till the Company Petition No.15 of 2022 and IA Nos.380 and 386 of 2021 are finally adjudicated;
- j) The Respondent be restrained by an order of injunction from proceeding any further with the liquidation exercise till the Company Petition No.15 of 2022 and IA Nos.380 and 386 of 2021 are finally adjudicated;
- k) Declaration that the Public Notice of Auction dated 11.01.2023 and all consequential actions on the basis of the same are illegal, null and void;
- l) Declaration that E-auction proposed to be held on 14.02.2023 is illegal, null and void ab initio;

- m) The Respondent be directed to take steps to protect the interest of the corporate debtor which is under liquidation and to protect the interest of the corporate debtor particularly in the light of the pendency of the Company Petition No.15 of 2022 titled Rajiv Dhamija & Anr. v. Alliance Broadband Solutions Pvt. Ltd. & Ors;
  - n) Ad-interim ex-parte orders in terms of prayers above;
  - o) costs of and/or incidental to this application be paid by the respondent;
  - p) Such further order or orders, direction or directions be passed as to this Hon'ble Tribunal may deem fit and proper.”
- (vi) After the order of liquidation passed by the Adjudicating Authority, Liquidator issued e-auction sale notice on 06.12.2022. No EMD was received in pursuance to the e-auction notice. Second sale notice was issued on 11.01.2023 for sale of assets of the Corporate Debtor Block wise. Block 'A' included 77,500 equity shares of Alliance Broadband on reserve price of Rs.9.21 crores. The second sale notice was challenged by the Appellant in IA No.334 of 2023.
- (vii) The Adjudicating Authority on 14.02.2023 passed an order in IA No.334 of 2023 refusing to stay the e-auction. The Adjudicating Authority directed the e-auction as proposed on 14.02.2023 to be conducted, which shall however, abide by the result of the application. E-auction was held on 14.02.2023, in which one M/s

Kalyankari Texfab Pvt. Ltd. has become the highest bidder, offering an amount of Rs.9.61 crores for sale of 77,500 equity shares of Alliance Broadband.

- (viii) Against the order dated 14.02.2023, the Appellant again filed an Appeal under Section 61 before this Tribunal being Company Appeal (AT) (Ins.) No.396 of 2023, which was not entertained by this Tribunal by order dated 27.02.2023.
- (ix) The Liquidator on 06.02.2023 filed an application being IA No.497 (KB) 2023 seeking to place on record the Report filed in connection with the auction held on 14.02.2023 and also sought relief to declare the H1 bidder as Successful Bidder and for issuance of Sale Certificate. The Successful Auction Purchase also filed an Intervention Petition in the proceedings.
- (x) The Adjudicating Authority heard IA No.334 of 2023 as well as IA No.497 of 2023 and by the impugned order, dismissed IA No.334 of 2023 filed by the Appellant and allowed IA No.497 of 2023. Aggrieved by which order these Appeal(s) have been filed.

3. We have heard Shri Chinmoy Pradip Sharma, learned Senior Counsel appearing for the Appellant(s); Shri Vivek Sibal, learned Senior Counsel appearing for the Liquidator and Shri Abhijeet Sinha, learned Senior Counsel appearing for Successful Auction Purchaser.

4. Shri Chinmoy Pradip Sharma, learned Senior Counsel appearing for the Appellant(s) submits that 77,500 equity shares held by the Corporate Debtor in Alliance Broadband were 48.14% of total shareholding of the Alliance Broadband. By issuance of two rights issue by Alliance Broadband on 30.09.2019 and 07.09.2021 shareholding of the Corporate Debtor has been reduced. The right issue, issued by the Alliance on 07.09.2021 is already under challenge in IA No.847 of 2021 filed by the Appellant, which is pending consideration before the Adjudicating Authority. It is submitted that shares of the Corporate Debtor have been sold in the auction held on 14.02.2023 as undervalued shares. No appropriate valuation of the shares have been conducted by the Liquidator. By the undervalued sale of shares, the Appellant(s) are prejudicially affected, since in event the shares were sold at appropriate value, the liability of the Appellant as Personal Guarantor would also be affected. It is further submitted that Liquidator could not have sold the shares, since the shares were not in physical possession of the Liquidator and without obtaining the possession of shares, the Liquidator could not have sold the shares. It is further submitted that in balance sheet of the Financial Creditor for 2021-22 has shown the turnover of the Financial Creditor. It is submitted that if the company petition is allowed, 77,500 shares will revert back to 48.18% in the Financial Creditor, which shall amount to at least Rs.20 crores. It is submitted that e-auction of the shares deserve to be set aside and

Adjudicating Authority committed error in rejecting the IA filed by the Appellant.

5. The learned Counsel for the Liquidator refuting the submissions of the Appellant submits that the Appellant at every stage has tried to stop the process. Against the order of liquidation, an Appeal was filed in this Tribunal and before the Hon'ble Supreme Court, which came to be dismissed. Sale notice dated 06.12.2022 was never challenged by the Appellant and they have filed IA No.334 of 2023, challenging the sale notice of 11.01.2023. The sale notice clearly provided that sale was "*as is where is basis, as is what is basis, whatever there is basis and no resource basis*" and the purchasers being well aware of all the facts, have submitted their bids. All relevant information were included in the sale notice. The shares of Alliance Broadband are the part of liquidation estate of the Corporate Debtor. The Appellant, who is Suspended Director of the Corporate Debtor has no right to challenge the sale of the shares of Corporate Debtor. It is further stated that the reserve price of Rs.9.21 crores was fixed for the shares on the basis of Report of IBBI Registered Valuer. It is submitted that book value of 77,500 shares were only Rs.54.85 lakhs. The average fair value as per IBBI Registered Valuers being Rs.9.21 crores and average liquidation value being Rs.4.61 crores, the shares have been put to auction for Rs.9.21 crores as reserve price. It is submitted that sale has been made for an amount of Rs.9.61 crores, i.e., higher than the reserve value. The submission of the Appellant that shares are undervalued

is wholly incorrect. Shares were valued by the Registered Valuers and which valuation is on the record. It is submitted that the question of right issue, raised by the Appellant is wholly irrelevant. Insofar as first right issue on 30.09.2019 is concerned, the Appellant filed an application, which came to be dismissed and with regard to second right issue, issued on 07.09.2021, application filed by the Appellant is pending. Sale of shares being 'as is where is basis', the decision of rights issue is of no relevance with regard to auction sale. It is submitted that in pursuance of order of the Adjudicating Authority, the Alliance Broadband has handed over the physical shares to the Liquidator and successful auction purchase has deposited the entire sale consideration and shares have already been handed over to the Successful Auction Purchaser.

6. Learned Counsel for the Successful Auction Purchaser refuting the submission of the Appellant submits that the Appellant has no right to challenge the auction of shares. The 77,500 shares admittedly belong to the Corporate Debtor. The Corporate Debtor being in liquidation, which liquidation order was unsuccessfully challenged by the Appellant, the Appellant cannot be heard in challenging the sale auction notice. It is submitted that auction sale has been in favour of the Successful Auction Purchaser on 'as is where is basis', which auction has already been confirmed on 12.01.2024. The Successful Auction Purchaser has deposited the entire consideration and has received the physical Share Certificate on 13.04.2024.

The Appellant at every stage of proceeding has filed applications, to make hurdles in the process. The Adjudicating Authority did not commit any error in rejecting IA No.334 of 2023 and allowing IA No.497 of 2023 filed by the Liquidator.

7. We have considered the submissions of the parties and have perused the records.

8. Before we proceed further, we need to first notice the sale notice dated 11.01.2023, which e-auction notice provides as follows:

**“E-AUCTION PROCESS INFORMATION DOCUMENT**

Invitation for Bids for sale of assets of the Manthan Broadband Services Private Limited (Under Liquidation) under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") by an Order of the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT") dated 06<sup>th</sup> April 2022 under IBBI (Liquidation Process) Regulation 2016 on

**AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER IT IS",  
"WHATEVER THERE IS" and "WITHOUT RECOURSE BASIS"**

**Date of Public Announcement**

**11.01.2023**

**Date of E-Auction**

**14.02.2023**

**Issued by:**

Kuldeep Verma Liquidator”

9. The dispute between the parties only relates to auction sale of 77,500 equity shares held by the Corporate Debtor in Alliance Broadband. The

dispute in the present Appeal only confined to the auction sale of the shares. IA No.334 of 2023 was filed by the Appellant on the next date, after dismissal of its Civil Appeal in the Hon'ble Supreme Court on 05.02.2023 praying to stay the e-auction, which was scheduled for 14.02.2023. The Adjudicating Authority heard the IA No.334 of 2023 and while hearing the Application on 14.02.2023, the Adjudicating Authority made following observations in paragraph 23, which are as follows:

**“23.** A considerable time has lapsed since Liquidation of Manthan was ordered, and presumably it is the Directors of the suspended Board who had pushed Manthan into Liquidation. At this juncture, allowing the Directors of the suspended board to intervene or restrain the liquidator from proceeding with the auction would not be fair. Accordingly, we allow E auction as proposed on 14th February, 2023 to be conducted, which shall however, abide by the result of this application. Consequential action in regard to auction shall be conducted only with the liberty of this Tribunal and a report to that effect shall be submitted by the liquidator on the next date of hearing.”

10. The submission which has been much pressed by the learned Counsel for the Appellant is that shares, which have been sold, have been sold undervalued, without proper valuation by the Liquidator and the shares have been sold only on the book value of the shares, whereas value of shares were much more. The Adjudicating Authority noted the facts pertaining to value of the shares. The Adjudicating Authority has also noticed the report of the IBBI Registered Valuer, which was Rs.9.21 crores and liquidation value as Rs.4.61

crores respectively. The Adjudicating Authority has also noticed the book value of the share as Rs.54.85 lakhs only. In this reference, we may notice paragraph 8 of the impugned order of the Adjudicating Authority, where facts have been noticed, which is as follows:

“8. The concern of the applicants that the shares can be sold for around Rs. 45-50 crores whereas the Liquidator is putting up the shares at 9 crores which is the book value is not sustained. The book value of the 77500 shares are Rs. 54.85 lakhs. The average fair value as per IBBI Registered Valuers is Rs. 9.21 Crores and average liquidation value is Rs. 4.61 Crores. The shares have been put up for auction Rs. 9.21 Crores i.e., at the average fair value, hence valuation of shares and quoting of price cannot be faulted.”

11. When IBBI Registered Valuer had valued the shares and average fair value is Rs.9.21 crores, the Liquidator did not commit any error in fixing reserve price for the auction of the shares as Rs.9.21 crores. The submission of the learned Counsel for the Appellant that shares were sold on the book value, is also not correct, since the Liquidator has mentioned that book value of the shares was only Rs.54.85 lakhs.

12. The learned Counsel for the Appellant has referred to two right issues, issued by Alliance Broadband. In the right issues, which was issued by Alliance Broadband on 30.09.2019, the value of per share was Rs.1100/- per share and in the second right issue, issued on 07.09.2021, the value of share was Rs.1155/- per share. The Liquidator has submitted that sale of shares

at Rs.9.61 crores is @ Rs.1240/- per share. When right issue floated by Alliance Broadband on 07.09.2021 itself mentions the share value of Rs.1155/- per share, the auction sale of the shares @ Rs.1240/- per share, we do not find any substance in the submission of the Appellant that shares were undervalued in the auction.

13. As noted above, the auction of the shares was on 'as is where is basis', which was clearly mentioned in the sale auction notice dated 11.01.2023. The learned Counsel for the Appellant has submitted that right issue, which was issued by the Alliance Broadband has already under challenge in IA No.847 of 2021, which was filed by the Appellant and which is pending consideration. Challenge to right issue, issued by the Alliance Broadband is pending before the Adjudicating Authority, we are of the view that challenge to right issue can have no effect on the auction sale of the shares, which shares were sold on 'as is where is basis'. The submission of the Appellant that physical shares were not in possession of the Liquidator, hence, Liquidator ought not to have put the shares for auction. The Liquidator has also filed an Application seeking a direction to the Alliance Broadband to handover physical shares. The shares have become part of the liquidation estate as per operation of law. It is relevant to notice that Adjudicating Authority has already in paragraph 10 of the order passed on 12.01.2024 has directed Alliance Broadband to handover the Certificate in original to the Liquidator within a week. It has been pleaded on behalf of the Respondent that Alliance Broadband has already handed over

the physical Certificate in original to the Liquidator, which in turn has been handed over to the Successful Auction Purchaser. Hence, we do not find any substance in the submission of the Appellant that auction sale is illegal on this ground. The Liquidator has already indicated in the sale notice that physical shares are not with the Liquidator and steps are being taken to acquire the physical shares.

14. The learned Counsel for the Appellant has also referred to the balance sheets of the Alliance Broadband as on 31.03.2022. In the balance sheets, which have been brought on the record by the Appellant, it is clear that Alliance Broadband has referred to rights issue and value of shares issued. In the balance sheet under heading , Share Capital in paragraph 4, following has been stated:

<b>“2. Equity Share Capital</b>	<b>Rs.(In Lacs) As On 31.03.2022</b>	<b>Rs.(In Lacs) As on 31.03.2022</b>
i. Authorised Share Capital: Equity Shares – 20,00,000 equity shares of Rs.10/- each	200	200
ii. Issued Subscribed and fully paid up: Equity Shares – 3,00,000 equity shares of Rs.10/- each (Previous year -2,00,000 Equity Shares of Rs.10/- each)	30	30
III. Reconciliation of number of shares outstanding is set out below: Particulars	No. of Shares	No. of Shares
Equity Shares at the beginning of the year	2,00,000	2,00,000

Add: Shares issued – During the Year the Co. has allotted 100,000 equity Shares of Rs.10/- each at a premium of Rs.1145/- Only (Issue price Rs.1155/- per shares) and as on 31.03.2022 all the Shares are fully paid up.

	1,00,000	1,00,000
	<hr/>	<hr/>
<b>Equity Shares at the end of the year</b>	<b>3,00,000</b>	<b>3,00,000</b>
	<hr/>	<hr/>

**Eights and preference attached to Equity Shares**

- iv. The Company has only one class of Equity Shares having face value of Rs.10/- each and each share holder – entitled to one vote per share”

15. The Corporate Debtor being shareholder of the Alliance Broadband, which shares were put on auction sale by the Liquidator, consequent to the liquidation order, we are of the view that no exception can be taken to the process adopted by the Liquidator in putting the shares for auction.

16. In view of the foregoing discussions, we are of the view that sale of 77,500 shares, held by the Corporate Debtor of the Alliance Broadband, which are sold through auction, were not undervalued and the same was done after valuation by the IBBI Registered Valuer and the shares were sold on much more than the book value of the shares. The challenge to right issue as filed by the Appellant in IA No. 847 of 2021, which is pending consideration, has no consequence on the auction sale held on 14.02.2023. We do not find any error committed by the Adjudicating Authority in order dated 12.01.2024 rejecting IA No.334 (KB) 2023 filed by the Appellant. After rejection of the IA

No.334(KB) 2023, the Adjudicating Authority has rightly allowed IA No.497(KB) 2023 filed by the Liquidator seeking leave of the Adjudicating Authority to declare the Successful H1 bidder and issue of Sale Certificate, which application has rightly been allowed.

17. We, thus, do not find any merit in the Appeal(s) filed by the Appellant(s). Both the Appeal(s) are dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**NEW DELHI**

**30<sup>th</sup> August, 2024**

Ashwani