

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1480 of 2023

IN THE MATTER OF:

Unity Small Finance Bank Ltd.

...Appellant(s)

Versus

Suraksha Asset Reconstruction Ltd. & Ors.

...Respondent(s)

Present:

For Appellant(s) : Mr. Alok Dhir, Ms. Udit Singh & Ms. Varsha Benerjee, Advocates for Appellant.

For Respondent(s) : Mr. Sunil Fernandez, Sr. Adv. With Ms. Srishty Kaul, Mr. Sagar Bansal, Ms. Aakansha & Ms. Muskan, Advocate for R1.

With

Comp. App. (AT) (Ins) No. 10 of 2024

IN THE MATTER OF:

Marine Solutions Distributions and Services Pvt. Ltd.

...Appellant(s)

Versus

Suraksha Asset Reconstruction Ltd. & Ors.

...Respondent(s)

Present:

For Appellant(s) : Mr. Yusuf Iqbal-Yusuf, Ms. Bhavya Sethi, Ms. Shaista Pathan, Ms. Vasudha Gupta & Mr. Tushar Bagga, Advocates for Appellant.

For Respondent(s) : Mr. Sunil Fernandez, Sr. Adv. With Ms. Srishty Kaul, Mr. Sagar Bansal, Ms. Aakansha, Ms. Muskaan, Advocates for R1.

ORDER
(HYBRID MODE)

24.07.2025: **Comp. App. (AT) (Ins) No. 1480 of 2023** with **Comp. App. (AT) (Ins) No. 10 of 2024**, these two appeals have been filed challenging the same order dated 17.10.2023 passed by National Company Law Tribunal, Mumbai, Bench V. **In I.A. No. 2303 of 2021.**

2. Brief facts of the case for deciding the appeals are; criminal complaint was filed against HDIL and its groups Companies including the Corporate Debtor, 'Sapphire Land Development Pvt. Ltd.' in which proceedings the 'Yacht' owner by Corporate Debtor was attached for the economic offences. An application was filed by PMC Bank, administrator before the court of Chief Metropolitan Magistrate for seeking permission to sell the moveable properties on which an order was passed by additional Chief Metropolitan Magistrate on 25.11.2019 which directed as follows:

"1. Applicant in the capacity of Administrator and representative of Reserve Bank of India is allowed to sell the following properties in auction by following strict rules and regulations formed for that.

i) Falcon-2000 (VT-HDL)

ii) Challenger- 300 (VT-PIL)

iii) One Yatch viz. Ferreti 881 HT

2. Amount came from the auction shall be credited in the loan account of HDIL and its group companies.

3. Applicant shall submit detailed report of auction and procedure applied for that before the court immediately after the auction.

4. *Before selling the property in auction, EOW shall make proper panchanama of property and submit before the court.*
5. *Applicant is at liberty to file separate application regarding remaining properties for permission to sell before proper Forum. “*

3. In pursuance of to the order of the Additional Chief Metropolitan Magistrate, on 22.03.2021 Yacht was auctioned for a value of Rs. 3,50,00,000/- in favour of M/s Marin Solution Distribution and Service Pvt. Ltd, who is the appellant, in Comp. App. (AT) No.10 of 2014. Suraksha Asset Reconstruction Ltd & Ors. filed a Section 7 application against the Corporate Debtor, on which CP (IB) No. 987/IB/MB/2020 NCLT, Mumbai, Maharashtra, 2021 was registered and by order dated 30.04.2021, Section 7 application was admitted and IRP was appointed.

4. The applicant Suraksha Asset Reconstruction Ltd. Filed an application being **I. A. No. 2303 of 2021** before the Adjudicating Authority praying for direction from the NCLT in respect of the assets of the CD, in the application following prayers were made:

“12. In view of the aforesaid, the Applicant humbly prays as under:

a. That this Hon'ble Tribunal be pleased to cancel and set aside the entire auction process of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model) undertaken by the Respondent No.1;

b. That this Hon'ble Tribunal be pleased to restrain the Respondent No. 1 from appropriating the sale proceeds

realised from sale of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model);

c. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to deposit the amounts realised from sale of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model) with the Respondent No. 3;

d. That this Hon'ble Tribunal be pleased to restrain the Respondent No. 2 from auctioning the Seized Asset No. 2 i.e. Range Rover Reg. No. MH04-EK-2100 and handover the possession of the Seized Asset No. 2 to the Respondent No. 3;

e. For ad-interim reliefs in terms of prayer clause (a) to (c) above;

f. For such other and further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

5. The Adjudicating Authority heard the application and by the impugned order dated 17.10.2023 allowed the application and set aside the auction proceedings carried out by Respondent, further direction was issued to handover the assets to RP in view of the admission of CIRP. When this appeal was taken for consideration following interim order was passed on 22.11.2023.

“22.11.2023: Learned Counsel for the Appellant submits that auction held on 22.03.2021 i.e. prior to initiation of the CIRP has been set aside by the impugned order. The submission that auction proceeding which was held prior to the CIRP could not have been set aside. 2. Let ‘Notice’ be issued to the Respondents through ‘Speed Post’. Let the requisites together with process fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondents and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile

No. of the Respondents to the 'Office of the Registry'. 3. Respondents may file Reply within three weeks. 4. List the Appeal on 10.01.2024. In the meantime, no further steps shall be taken in pursuance of the order dated 17.10.2023."

6. We have heard learned counsel for the parties in both the appeals Shri Alok Dhir , learned counsel for the Appellant appearing in **Comp. App. (AT) No. 1480 of 2023**, submits that Adjudicating Authority had no jurisdiction to set aside the auction which auction was conducted in pursuance of the order dated 25.11.2019, passed by additional Chief Metropolitan Magistrate in criminal proceedings and in pursuance of the said order auction of the Yacht had taken place on 22.03.2021 that is much before in initiation of CIRP. There was no jurisdiction in the Adjudicating Authority to set aside the auction. It is submitted that amount received from the auction was to be deposited as per the order dated 25.11.2019.

7. Learned counsel for the Appellant has also placed reliance on judgment of the Hon'ble Supreme Court in **Civil Appeal No. 1808 of 2020 Kalyani Transco, Vs. Mr. Bhushan Power & Steel Limited** decided on 22.05.2025.

8. Learned counsel for Successful Auction Purchaser submitted that in pursuance of the auction the amount was paid on 22.03.2021 and 26.03.2021 as per the terms of auction and the auction could not have been set aside by the Adjudicating Authority. He deposited 25% as per the terms of the auction.

9. Shri Sunil Fernandis, appearing for the Respondent refuting the submissions the Appellant contends that auction cannot be held completed in pursuance of the order passed by the additional Chief Metropolitan Magistrate dated 25.11.2019. There was direction that before selling the property E.O.W shall make proper Punchnama of property and submit before the court which have not been done, auction cannot be held to be completed.

10. It is submitted that auction has not been completed even after the commencement of the CIRP on 30.04.2021. The Adjudicating Authority has rightly directed for setting aside the auction. He further, submit that the appellant Unity Small Finance Bank Ltd. cannot claim receipt of the amount which was fetched by auction of the Yacht. The CD being in CIRP in which proceeding now liquidation application is to be filed. We have considered submissions of counsel for the parties and perusal the records. Adjudicating Authority has noticed the fact that the Chief Metropolitan Magistrate has granted permission to auction. Adjudicating Authority however, relying on Section 14 of the IBC and judgment of the Hon'ble Supreme Court **in Sundaresj Bhat, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs** have held that once the Moratorium was imposed, it protects pecuniary attack against the Corporate Debtor. In **para 5 of the Judgment Adjudicating Authority made following observations. :**

"It appears that JSW, which was Respondent No. 2 in the SLP (C) No. 29327-29328 of 2019 filed by the CoC, filed an Application being I.A. No. 47947/2020 on 20.03.2020 seeking clarification of the order dated 06.03.2020 to the extent that JSW was not obligated to implement the Resolution Plan

during pendency of the SLPs filed by the CoC, Kalyani Transco, Sanjay Singal and others against the Judgment dated 17.02.2020 passed by NCLAT. The said I.A. No. 47947/2020 was resisted by the CoC by filing a detailed reply contending inter alia that JSW was attempting to seek a stay on the implementation of the plan under the garb of clarification of the order dated 06.03.2020. The CoC in the said reply made some serious allegations of misuse of process of court against JSW and sought direction against JSW to implement the plan as per its statutory obligations under the IBC.”

11. From the fact which we have noticed above, it is clear that auction proceeding was conducted in pursuance of the order passed by Chief Metropolitan Magistrate on an application filed by Punjab and Maharashtra Cooperative Bank through administrator to sell the attached moveable properties. Attached moveable properties was one of the ‘Yach’ which was owned by the Corporate Debtor. The Additional Chief Metropolitan Magistrate on 25.11.2019 granted permission to sale the attached yacht. And it was under the order of the Chief Metropolitan Magistrate that auction took place on 22.03.2021 that is much before initiation of CIRP which was initiated on 30.04.2021.

12. We fail to see the applicability of Section 14 of the IBC, reason given by the Adjudicating Authority in the impugned order for setting aside the auction is misplaced. In present case the auction cannot be held to be conducted in violation Section 14 of the IBC. We thus, are satisfied that order of the Adjudicating Authority cannot be sustained. The learned counsel for the

respondent lastly submitted that in so far as auction in favour of the Successful Auction Purchaser/Respondent may have no grievances but with regard to the amount which is received by the sale of yacht, the same cannot be given solely to Appellant in Comp. App. (AT) No. 1480 of 2023. Present appeals challenge the order dated 17.10.2023 by which Adjudicating Authority has set aside the auction, when the auction was conducted prior to initiation of CIRP and was under order of the Additional Chief Metropolitan Magistrate by fail to see any jurisdiction of the Adjudicating Authority to in set aside the said auction.

13. The judgment of the Hon'ble Supreme Court in Kalyani Transco, Distribution relied by learned counsel for the Appellant do support the submissions in paragraph 33.

*"33. The Learned Senior Advocate Mr. Diwakar Maheshwari, Mr. Manu Beri and Mr. Arjun Asthana appearing for the Appellants Operational Creditors i.e. **Kalyani Transco, CJ Darcl Logistics Ltd. And Jaldhi Overseas PTE Ltd.** made further following submissions in addition to the submissions made by the learned Senior Counsel Mr. Dhruv Mehta.*

(i) The re-classification of Appellant-Jaldhi Overseas claimed from "admitted operational creditor" to the "identified contingent creditor" by SRA was not permissible. The power to admit/reject the claim filed by the Creditors vests solely with the Resolution Professional and no such power is available with the SRA under the Code.

(ii) The re-classification of Operational Creditors claims have resulted in inter se discrimination towards class of Creditors, not permissible under the Code.

(iii) The NCLT had rightly directed the EBITDA/profit generated by the Corporate Debtor during CIRP to be distributed amongst the creditors in view of the judgment passed by the NCLAT in the matter of Standard Chartered

Bank vs. Satish Kumar Gupta, Company Appeal (AT) (INS) No. 242/2019 decided on 04.07.2019. Even the CoC had filed an affidavit before the NCLAT claiming EBITDA generated during the CIRP, however the NCLAT in the impugned judgment directed the Monitoring Committee along with the Resolution Professional to go through the RFP/RFRP and distribute the EBITDA accordingly.

(iv) There was no provision either in the IBC or in RFRP published by the Resolution Professional or in the Resolution Plan submitted by the SRA, which permitted the Monitoring Committee or the Financial Creditors/CoC to enter into any negotiations with the SRA post the approval of the Resolution Plan. The only provision which governed the conduct of CoC meetings under the IBC was Section 24 which included the representations on behalf of the operational creditors also. Admittedly, Monitoring Committee did the not have any representation on behalf of the Operational Creditors.

(v) The IBC does not provide for constitution of a Monitoring Committee, and the Monitoring Committee being a creature of the Resolution Plan, its powers would be limited to the extent granted under the Resolution Plan.

(vi) The grounds provided under Section 61(3) of the IBC are the only grounds available to the NCLAT for setting aside the approval of the Resolution Plan, however the NCLAT has set aside the directions of NCLT qua EBITDA, which does not fall within the four corners of Section 61(3)."

14. It is useful to extract paragraph 27 and 31 of the judgment of the Hon'ble Supreme Court which is to the following effects:

"27. In this regard, it is pertinent to note that the NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and NCLAT are well circumscribed under Section 31 and Section 60 so far as NCLT is concerned, and under Section 61 of IBC so far as the NCLAT is concerned. Neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision

taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law. As held by a Three-judge Bench in case of Embassy Property Developments Private Limited vs. State of Karnataka & Ors.³, the Section 60(5) speaks about any question of law or fact, arising out of or in relation to insolvency resolution, but a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of Public Law, cannot be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Section 60(5)(C) IBC. It has been further held therein that in the light of the statutory scheme as culled out from the various provisions of the IBC, it is clear that wherever the Corporate Debtor has to exercise a right that falls outside the purview of the IBC, especially in the realm of the public law, they cannot take a bypass and go before NCLT for the enforcement of such a right."

"31. In that view of the matter, it is held that the observations made and the findings recorded by the NCLAT in the impugned judgment with regard to the PAO dated 10.10.2019 passed by the Directorate of Enforcement under the PMLA, being without any authority of law and without jurisdiction, were coram non judice."

15. In so far as submissions of the Respondent No. 1, with regard to the amount which is received from the sale of the Yacht, it is not for us to consider or to express any opinion with regard to same in the present proceedings.

16. The Adjudicating Authority had no jurisdiction to interfere with auction and the order being set aside we see no reason for any further direction. The

parties are free to take steps regarding the amount deposited, in accordance with law.

Both the appeals are allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

shweta/nn