

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA/535/2020 in IA/534/2020 in TCP/111/IB/2017**  
(filed under Rule 11 of NCLT Rules, 2016)

**And**

**IA/534/2020 in TCP/111/IB/2017**

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w  
Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of **M/s. Daehsan Trading India Private Limited**

**Sumit Jain**

... Applicant

-Vs-

**M/s. Daehsan Trading India Private Limited**

Rep. by its Liquidator Mr. S. Rajendran  
2<sup>nd</sup> Floor, Hari Krupa No. 71/1,  
MC Nicholas Road (Off Ponnammalle High Road)  
Chetpet, Chennai – 600 031

... Respondent

Order pronounced on 8<sup>th</sup> September, 2020

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : Prashant Kumar, Advocate

For Liquidator : Yajura Devi, Advocate  
S. Rajendran, in person

**ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

1. IA/535/2020 is an Application filed by the Applicant Company under Rule 11 r/w Rule 13 of NCLT Rules 2016 and for the reasons

stated therein sought for urgent hearing of IA/534/2020. In view of the urgency expressed by the Applicant Company, IA/534/2020 is taken up for hearing and accordingly IA/535/2020 stands **allowed**.

2. IA/534/2020 is an Application filed under Section 60(5) of IBC, 2016 seeking relief as follows: -

- a. Allow the present Application of the Applicant.
- b. *Set aside the auction held in collusion and connivance in respect of the property having 1284 sq.ft in Shop No. DSM-060, Ground Floor, Dlf Towers, Shivaji Marg, New Delhi – 110 015 be; and quash the sale of the said property.*
- c. *Pass a direction to the Ld. Liquidator of the Respondent Company to put the aforesaid property on public auction afresh.*
- d. *Pass the direction to the Ld. Liquidator to conduct fresh e-auction under the supervision of this Hon'ble Tribunal.*
- e. *Pass the direction to the Ld. Liquidator to allow the Applicant to make a site visit of the aforesaid property.*
- f. *Any other or further orders which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and in the interest of justice.*

3. The Application has been submitted for setting aside the auction dated 17.04.2020 conducted by the Ld. Liquidator in respect

of the property having 1284 sq.ft in Shop No.DSM-060, Ground Floor, DLF Towers, Shivaji Marg, New Delhi – 110 015.

4. It is further stated that the Applicant Company is a third party intending buyer desirous of buying the property intended to be sold by the Ld. Liquidator who has been appointed by this Tribunal in TCP/111/IB/2017 and obtained the permission of sale of the said property from this Tribunal.

5. It is seen from the Application, that the Applicant Company came to know the auction sale dated 24.03.2020 published in daily newspaper viz., "Business Standard" by the Ld. Liquidator in relation to the said property and the Ld. Liquidator had fixed the date for auction on 13.04.2020 and the reserve price of the property was fixed for a sum of Rs.1 crore and 10% EMD i.e., Rs.10.00 lakh had to be deposited by 10.04.2020.

6. It is seen from the Application that on 24<sup>th</sup> March when the nationwide lockdown came in force as precautionary measure from safeguard of the pandemic threat of the viral infection COVID-19 and the lockdown was imposed for twenty one days.



7. It has been submitted that the Applicant Company had come to know about the said e-auction notice and willing to purchase the same, to which the Applicant Company sent e-mail dated 04.04.2020 to the Ld. Liquidator raising certain queries in relation to the said property and parameters of the said e-auction notice, asked the Ld. Liquidator to facilitate him in making physical inspection of the property. It is further alleged that in view of the lockdown and prevalent of COVID-19, it was not possible to participate in the said e-auction.

8. It is further stated that the Ld. Liquidator vide e-mail dated 06.04.2020 denied physical verification of the said property even though the said e-mail was not in order in relation to reply to the other queries of the Applicant Company. It is submitted that the Applicant Company sent another e-mail dated 07.04.2020 to the Ld. Liquidator stating about the difficulties in participating in the bid which has purported to be conducted on 13.04.2020 and also availed the legal remedies by the Applicant Company to which the Ld. Liquidator gave another e-mail reply dated 08.04.2020.



9. It is further stated that the Ld. Liquidator had ignored the intention and willingness of the Applicant Company to buy the said property. The Applicant Company had sent another e-mail dated 08.06.2020 intending to buy the said property and prayed for physical verification of the same.

10. It is represented that vide alleged e-auction conducted on 17.04.2020, Mr. Dhan Prakash Gupta of New Delhi had been declared as a successful bidder which had been informed to the Applicant Company by the Ld. Liquidator vide his e-mail dated 09.06.2020 and also stated therein that necessary documents have already been executed.

11. Ld. Counsel for the Applicant Company appears to have expressed doubt about the participation of the successful bidder in the e-auction proceeding when it was not possible for public in general to arrange the documents which are required mandatory provisions for e-auction. He further submitted that when the public notice dated 24.03.2020 for e-auction was fixed on 13.04.2020, then how the auction was conducted on 17.04.2020 which is stated in Ld. Liquidator's e-mail dated 09.06.2020. It is further stated that a fresh notice to be sent 15 days prior to the auction date which

clearly defaulted in conducting auction on 17.04.2020. It clearly shows the e-mail sent by the Ld. Liquidator to the Applicant Company is contrary with respect to the sale of the property during the period of lockdown.

12. It has been alleged that the Ld. Liquidator has intended to sell the property with private treaty by having connivance with the successful bidder in the garb of the prevalent of lockdown and also refused to make arrangement of site visit of the said property by the Applicant Company.

13. Ld. Counsel for the Applicant Company prayed for quashing the said e-auction in-limine and the said auction be declared as *void ab-initio*.

14. Counter has been filed on 21.08.2020 by the Ld. Liquidator through e-mail communication wherein it is brought to the notice of this Tribunal that the Liquidator had attempted to sell the property by way of auction four times during the year 2019 which turned to be futile exercise. Therefore, prior permission was sought before this Tribunal by filing an Application to proceed for a private sale of

the property to which this Bench was pleased to allow the Application.

15. It has been stated that as a few buyers proposed for bidding for a better value, the Liquidator decided to initiate another auction and the public notice was issued by the Liquidator on 24.03.2020 intimating the auction date fixed on 13.04.2020.

16. It was submitted that the Applicant, through his e-mail dated 04.04.2020 sought details of site visit, bid documents, furniture and fittings, property documents, etc to which the Liquidator replied vide e-mail dated 06.04.2020 as responded below: -

*"(1) **Site Visit:** In the wake of the lock-down announced by the Central Government due to COVID-19, we regret that at this juncture, we will not be able to arrange for site visit before the specified timeline. In this regard, your kind attention is drawn to Point 6 of the Process Memorandum, wherein it is mentioned that "The Liquidator reserves the right not to arrange a site visit for any reason whatsoever irrespective of the request of the Auction Process Applicant".*

*(2) **Bid Documents:** Due to lock-down announced by the Central Government, the Bidder is allowed to submit scanned copy of the Bid Form along with all supporting documents (instead of original physical copies) through mail to the Liquidator for participating in the Auction. Originals need to be submitted later. Further, documents to be executed in stamp paper / notary attestation can also be executed in plain paper with self attestation and submitted along with an*



*undertaking that the conditions with regard to stamping & notary attestation will be complied with within 10 days upon relaxation of this lock-down.*

**(3) Furniture & Fixtures: NIL**

**(4) Property Documents: ENCLOSED**

**(5) Cost, Expenses and Tax Implications:** *It is clarified that all property tax liabilities, maintenance and up keeping charges in respect of the said property till the date of sale, would be settled by the Liquidator. However, the stamp duty, registration fees and all applicable taxes in relation to sale of this property should be borne by the Successful Bidder.*

**(6) Also the Bidder will be allowed to register and participate in the e-Auction without DSC.**

*NOTE: All original documents need to be submitted within 10 days of lifting of lock down, failing which the sale will be annulled.*

*All other terms & conditions in the Process Memorandum remain the same. Trust this clarifies. Pls. feel free to call us in case of any clarification."*

17. Ld. Counsel for the Liquidator submitted that the Liquidator had provided all information including copy of the title deed of the said property along with various relaxations in relation to the procedure of participating in the auction considering the prevalence of COVID-19.

18. He further submitted that the Applicant vide his e-mail dated 07.04.2020 had raised pointless as well as vague allegations on the

Liquidator to which the Liquidator responded by sending e-mail dated 08.04.2020 to the Applicant informing that during the auction proceedings the interest of all the participants including the Corporate Debtor were taken care of to which the Applicant did not send any further communication.

19. According to the Ld. Counsel for the Liquidator, a detailed e-mail dated 09.04.2020 was sent to the Applicant; therefore the averment made by the Applicant that no information was provided by the Liquidator to the Applicant, is false and denied. On a query by this Tribunal, it was stated that even though the Applicant knew very well about the last date for submission of the EMD was 10.04.2020 and the Applicant did not come forward to submit the same as per the terms and conditions of the auction process while the rest of the participants had submitted the requisite EMD and hence the Application filed by the Applicant was incomplete.

20. It is also submitted that as there was no further communication from the Applicant, the Liquidator proceeded with auction as per schedule, dated 13.04.2020 and due to the technical glitch and non functioning of e-auction service provider the said auction was rescheduled from 13.04.2020 to 17.04.2020 for a fresh

auction process and it was limited to the serious bidders who had already remitted the requisite EMD for participating in the e-auction which came to be successfully ended with H1 bidder who was selected for handing over the auctioned property.

21. It has been alleged that the Applicant remained dormant for two months and on 08.06.2020 sent an e-mail enquiring about the process of auction to which the Liquidator communicated sufficiently clearly to the Applicant dated 09.06.2020 stating H1 bidder was declared as the successful.

22. It has been submitted by Ld. Counsel for the Liquidator that the Liquidator had acted diligently in the letter and spirit of the provisions of the Code and Regulations thereunder with the intention of best to the Corporate Debtor as well as to its stakeholders and it is therefore submitted that the Application filed by the Applicant had malafide intention to derail the liquidation process of the Corporate Debtor carried out by the Liquidator.

Heard both the parties, in view of the points elucidated as above by both the parties and arguments made by the Ld. Counsel for both the parties during the course of hearing, this Tribunal finds



that the Applicant has made an attempt to wriggle out the Tribunal Proceedings and derive undue advantage in a manner detrimental to the liquidation estate of the Corporate Debtor and the claimants. The Tribunal finds no *locus-standi* on the part of the Applicant especially when he has not remitted the EMD in the auctioning process which is a condition precedent to be eligible to become a bidder and as he is not at all a bidder, his Application is frivolous and without any merit. Under the circumstances, the Application in IA/534/2020 in TCP/111/IB/2017 is hereby **dismissed**, however, without cost.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

MS / Raymond