

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 811 of 2025

[Arising out of the Common Order dated 02.05.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in IA 1189/2021 in IA 847/2021 Company Petition No.294/2018)]

IN THE MATTER OF:

Krihaan Texchem Private Limited

(M/s. Reid & Taylor International Pvt. Ltd.
after change of name as of 21.01.2025)
through its authorized signatory,
Mr. Ajay Agarwal
having its registered office at:
602, Boston House, Suren Road,
Andheri East, Mumbai – 400093

...Appellant

Versus

1. UPL Limited

Having its registered office at:
3-11, G.I.D.C., Vapi, District Valsad
Gujarat – 396195

...Respondent No.1

2. Mr. Om Prakash Agarwal

Liquidator of S. Kumars Nationwide Limited
with its Office at: B2, 5th Floor
Marathon Nextgen, Off G.K. Marg
Worli, Lower Parel (West), Mumbai – 400013

...Respondent No.2

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Ms. Priyanka Vora, Advocates

For Respondent : Mr. Nand Kishor, Advocate for R-1
Mr. Rohan Agrawal, Ms. Nishtha Jindal, Advocates for R-2

With

Company Appeal (AT) (Insolvency) No. 1106 of 2025

IN THE MATTER OF:

UPL Limited

A Company incorporated under the Companies Act, 1956
Having its registered office at:
UPL House, 610B / 2 Bandra Village
Off Western Express Highway,
Bandra (E), Mumbai 400051

...Appellant

Versus

Om Prakash Agrawal

Liquidator of S Kumar Nationwide Ltd.
Having his office address at:
B2, 5th Floor, Marathon NextGen
Off G.K. Marg, Lower Parel, Mumbai-400013

...Respondent

Present:

For Appellant : Mr. Nand Kishor, Advocate

For Respondent : Mr. Rohan Agrawal and Ms. Nishtha Jindal,
Advocates for R-2

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016, (the "Code") against the order dated 02.05.2025 passed by the Ld. Adjudicating Authority, the Hon'ble National Company Law Tribunal, Mumbai, Bench-III-in IA-1189 of 2021 in IA No.847 of 2021 in CP No. 294 of 2018 ("Impugned Order"). By way of the Impugned Order, the Ld. NCLT has set aside the E-auction Notice dated 30.03.2021 and E-auction conducted on 16.04.2021 in which the Appellant had emerged the successful bidder for purchase of land parcel. It further directed the Liquidator to conduct fresh E-auction and refund 10% deposit made by the Appellant

towards Sale Consideration of the land parcel thereby vitiating the E-auction conducted following due procedure.

2. We note that the Adjudicating Authority, considering the higher purchase price offered by Respondent No. 1 (“R1”), *inter alia* directed Respondent No. 2 (“R2”) – Liquidator [in first Company Appeal (AT) (Ins.) No. 811 of 2025] as the base price to conduct a fresh auction for sale of additional land earlier awarded to Appellant – Krihaan Texchem Private Limited.

3. It is the contention of the Respondent No. 1 that the Appellant has no locus to file the present appeal. It is the Learned NCLT, who has found the liquidator to have not properly conducted the e-auction and consequently had set it aside and had thereby partly allowed the I.A. 847 of 2021, which was filed by Respondent No.1 – UPL. It is further claimed by the Respondent that in I.A. No. 1189 of 2021 the Appellant did not seek any relief to direct the Respondent No. 2 – Liquidator, to convey the title of the additional land to the Appellant. Thus, the Appellant cannot be allowed to seek any relief beyond the relief sought in I.A. No. 1189 of 2021, that is to direct Respondent No. 2 to issue a sale certificate for the additional land or to register the sale of additional land in favor of the Appellant.

4. Respondent No. 1 further claims that the learned NCLT has failed to appreciate that the additional land formed part of lot 2 asset, which was auctioned and sold in the earlier auction to R 1-UPL. Hence Adjudicating

Authority erred in directing Respondent No. 2 – Liquidator to conduct fresh auction.

5. We have heard the Counsels of both sides and also perused the material placed on record.

6. This is a challenge to the order of the Adjudicating Authority dated 02.05.2025 vide which the Adjudicating Authority has directed for a fresh auction of the liquidation estate of the Corporate Debtor namely M/s S. Kumars Nationwide Limited, Jhagadia Industrial Estate. It is worthwhile to note that the relevant portion of the impugned order, which is extracted as below:

“70. Since we have directed for a fresh auction, the Liquidator is directed to refund the amount deposited by Krihaan Texchem in pursuance of the auction held on 16.04.2021 within a period of 60 days. Needless to say, both UPL and Krihaan Texchem are at liberty to participate in the fresh auction.”

7. We note that both UPL Limited and Krihaan Texchem Private Limited have filed separate appeals and they have been taken up together in this order.

8. UPL Limited has filed CA (AT)(Ins.) No. 1106/2025 in which they have challenged the impugned order and want the setting aside of the impugned order and also want a direction to the liquidator to sell / transfer the additional land of about 12,981.64 sq. mts. to the Appellant on payment of differential consideration as per the reliefs sought as below:

“(a) Pass an order setting aside that portion of the Impugned Order dated 02.05.2025 passed by the Ld. NCLT in L.A. No. 847/2021 in CP(IB) No. 294/MB/C-11/2018 titled UPL Limited v Om Prakash Agarwal, wherein the Ld. NCLT has directed the Respondent to conduct fresh auction of the Additional Land being land with sub-division No. 825/3 admeasuring 12,981.64 sq. mt.;

(b) Pass an order directing the Respondent to sell / transfer the Additional Land being land with sub-division No. 825/3 admeasuring 12,981.64 sq. mt., as indicated in the map at Annexure-15, supra, to the Appellant on payment of differential consideration at the rate at which the entire Lot 2 Asset was sold to the Appellant which comes to INR.2,86,24,516 (Rupees Two Crore Eighty Six Lakh Twenty Four Thousand Five Hundred Sixteen Only);

(c) Pass any other and further order as this Hon'ble Appellate Tribunal may deem fit in the facts and present circumstance of the case.”

9. On the other hand, the Appellant in the related case i.e. Krihaan Texchem Private Limited in CA (AT) (Ins.) No. 811 of 2025 has also challenged the impugned order and prays that the impugned order dated 02.05.2025 be set aside and the liquidator i.e. Respondent No.2 be directed to issue sale certificate for Plot No. 825/3 admeasuring 12,981.64 sq. mts. located in Jhagadia GIDC, Village Bharuch, Dadheda, Jhagadia Taluka, Gujarat in favour and also direct Respondent No.2 i.e. Liquidator to register the sale of plot in the name of Appellant. The Appellant has also prayed that alternatively the liquidator be directed to pay interest @ 12% on ₹74,80,000/- deposited with the liquidator from the date of payment by the Appellant until date of refund by the Liquidator. The prayers are extracted as below:

- a) Allow the present appeal and set aside the Order 02.05.2025 passed by the Ld. Adjudicating Authority, the Hon'ble National Company Law Tribunal, Mumbai, Bench-III in IA No. 1189 of 2021 in IA No. 847 of 2021 in CP No. 294 of 2018;
- b) Direct Respondent No.2 to issue sale certificate for Plot No. 825/3 admeasuring 12,981.64 sq. mts. located in Jhagadia GIDC, Village Bharuch, Dadheda, Jhagadia Taluka, Gujarat in favour of the Appellant;
- c) Direct Respondent No.2 to register the sale of Plot No. 825/3 admeasuring 12,981.64 sq. mts. located in Jhagadia GIDC, Village Bharuch, Dadheda, Jhagadia Taluka, Gujarat in favour of the Appellant;
- d) Pending the hearing and disposal of this appeal, grant an order of interim stay of the Impugned Order;
- e) Interim and Ad-interim relief in terms of prayer clause a), b) and c);
- f) Alternatively, direct the Liquidator to pay interest @12% p.a. on Rs. 74,80,000/- deposited with the Liquidator from date of payment by the Appellant until date of refund by the Liquidator;
- g) Pass any other or further order(s) as this Hon'ble Tribunal deems fit and proper as per the facts and circumstances of this present Appeal and in the interest of justice.

10. Perusal of material placed on record shows that the Corporate Debtor was having a leased land at Plot No. 825 alongwith adjoining cart track land admeasuring 2,85,765.85 sq. mt. situated at Jhagadia Industrial Estate, Bharuch, Gujarat for a period of 99 years.

11. The Corporate Debtor went into liquidation and in the process, liquidator issued the E-auction notice on 12.12.2019 and the sale of assets was proposed to be held in two lots as described below:

“Lot 1 comprising of part of Plot No.825 at Jhagadia Industrial Estate admeasuring 1,70,133 sq. mtrs. along with building, plant and machinery etc. for a reserve price of Rs.201.80 crores.

Lot 2 comprising of part of Plot No.825 at Jhagadia Industrial Estate admeasuring 1,15,632 sq. mtrs. (subject to sub-division) and freehold land at Survey Nos. 67, 73, 74, 4A and 4B at Jhagadia, Bharuch, admeasuring 81,326 sq. mtrs. The Lot 2 was proposed to be sold at a reserved price of Rs.28.43 crores, which was a combined reserved price for the leasehold land and the freehold land.”

12. On 16.01.2020, E-auction was held and M/s UPL Limited which is the Appellant in second Appeal emerged as the highest and successful bidder for the sale of assets comprised in Lot 2 at a bid price of ₹43.43 Cr. Subsequently on 18.01.2020 the Liquidator issued the Letter of Intent to M/s UPL Limited in relation to sale of assets comprised in Lot 2. It is to be noted that the lease hold land i.e. 1,15,632 sq. mt. which was part of Plot No. 825 was sold subject to sub-division of the entire plot which was to be done by the lesser i.e. GIDC.

13. Subsequently, on 07.02.2020 the Liquidator addressed an email to M/s UPL Limited that during the exercise of sub-division done by GIDC for the plot No. 825 there was additional area available for sale. On pointed query as to why such an email was issued by the liquidator to the M/s UPL Limited, it was brought to our notice that these letters stated that it shall not constitute

an offer for sale and shall neither form the basis of any contract. The relevant portion of the email dated 07.02.2020 issued by the Liquidator is extracted as below:

From: O P Agrawal <opa.consulting@gmail.com>
Sent: 07 February 2020 13:25
To: Nitin A. Kolhatkar/Finance and Accounts/Mumbai <kolhatkarna@upl-ltd.com>
Cc: ramesh@vmagnumopus.com; MK Wadhwa <wadhwa.mk52@gmail.com>; yash@vmagnumopus.com; Ravi Vaswani/Legal/Mumbai <ravi.vaswani@upl-ltd.com>; SKNL Liquidator <lq.sknl@gmail.com>
Subject: External :Acceptance of LOI for lot no. 2

Dear Sir

We thank you for unconditionally accepting the LOI for purchase of lot no.2 of our E-Auction Sale Notice, as issued by us dated 18.01.2020.

As regards to your cover note dated 21.01.2020, please note following points:

1. We have already approached the GIDC for sub-division of plot and for necessary formalities for transfer of area of plot as per your bid. We will inform for the payment of necessary dues shortly.
2. Out of 5 secured creditors from whom explicit consent for relinquishment of security interest was awaited earlier, we have already received the same from Union Bank and Punjab National Bank. We are in active communication with remaining 3 creditors and expect to receive the same in sometime. We are taking all necessary steps in this regard.

In the meantime we are informed by the GIDC that the actual area of plot no. 825 is 295309.45 sqm duly surveyed by them instead of 282977.40 sqm as per earlier information. The additional area will be chargeable from you at your bid rate. **kindly confirm the same**

Thanking you

And the letter issued by the liquidator is extracted as below:

“This is in reference with sale of part of Plot no. 825 of Jhagadia GIDC, Bharuch in the village Dadheda, Jhagadia Taluka, Bharuch District, Gujarat having a total land area of 1,15,632 sq. mt.

Based on the survey conducted by GIDC approved surveyor, it has come to the notice that part of Plot no. 825 of Jhagadia GIDC, Bharuch in the village Dadheda, Jhagadia Taluka, Bharuch District, Gujarat has a total land area of 1,28,614 sq. mt. Therefore, in the said plot an overall land area of 12,982 sq. mt. is additional. However, the same is subject to Survey Report and Sub-Division Certificate to be received from the GIDC.

In light of the above, we request you to provide your consent in principle for purchase of the additional land admeasuring 12,982 sq. mt. at the same rate for which land area of 1,15,632 sq. mt. was purchased by you in E-Auction conducted on January 16, 2020.

Please note that the said letter does not constitute an offer for sale and the information contained. herein shall not form the basis of any contract.”

14. Later, on June 2020, the Liquidator filed an IA No. 1116/2020 *interalia* seeking concessions in respect of the sub-division by the GIDC. In this application, the Liquidator *interalia* mentioned the plans for private sale to UPL Limited also. The issues with respect to GIDC were settled and the IA was withdrawn on 20.06.2020 with a liberty to file a fresh application, if any, in respect of other issues. Liquidator brings to our notice that this was in line with Regulation 33 of the Liquidation Regulations, 2016 under which auction is the norm and private sale is an exception. The relevant Regulation 33 was brought to our notice which is extracted as below:

“Regulation 33: Mode of sale.

33. (1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of¹[private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I when]-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately; 2[or]

(c) 3[***]

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- (a) a related party of the corporate debtor;
- (b) his related party; or
- (c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”

15. On 29.06.2020 the liquidator issued the certificate of sale in favour of UPL Limited *inter alia* confirming the sale of the assets comprised in Lot No. 2. The certificate of sale clearly indicates that 1,15,632 sq. mt. of lease hold land being part of Plot No. 825 together with the cart track land was sold to UPL Limited. Furthermore, invoices dated 03.12.2020 were issued to UPL Limited for leasehold rights in plot No.825/2 admeasuring 1,12,742.20 sq. mt. and cart track land attached plot 825/2 admeasuring 2889.8 sq. mt. aggregating to 1,15,632 sq.mt. Furthermore, invoice dated 03.12.2020 was also issued to UPL Limited for GIDC sub-division fees towards Plot No. 825/2.

16. Later on 10.02.2021 a deed of assignment was also signed between the Corporate Debtor through the liquidator and UPL Limited whereby *inter alia* leasehold rights in respect of Lot No. 2 i.e. admeasuring 112742.2 sq. mt. with cart track land admeasuring 2788.5 sq.mt. were assigned and transferred in favour of UPL Limited. This was also confirmed by the office order issued by GIDC confirming the assignment and transfer of the UPL Limited.

17. Later, on 01.05.2020 GIDC issued a provisional sub-division of plot No. 825 into 3 parts and which was later confirmed in a final order dated 15.12.2020 by which sub-division was noted as follows:

“Final order passed by the GIDC whereby Plot No. 825 was sub-divided as under:

- (i) Plot No. 825/1 admeasuring 158,541.89 sq.mtrs.
- (ii) Plot No. 825/2 admeasuring 112,742.20 sq.mtrs.
- (iii) Plot No. 825/3 admeasuring 12,981.64.89 sq.mtrs. This sub-divided Plot No.825/3 is the additional land as surveyed (“Additional Land”)

18. The real dispute started when the liquidator issued an E-auction notice for additional land on 30.03.2021 for a reserved price of Rs.2.9 crores which was to be conducted on 16.04.2021. The Appellant herein i.e. UPL Limited filed an IA No. 847/2021 on 05.04.2021 before the Adjudicating Authority *inter alia* seeking declaration that the E-auction sale notice dated 30.03.2021 for the sale of the said additional land is untenable and seeking declaration that UPL Limited is the successful bidder in respect of the said additional land. The Appellant i.e. UPL Limited further sought an order and direction against the Liquidator to sell the said additional land at the same rate at which it had purchased part of Plot No. 825 admeasuring 1,15,632 sq. mt.

19. In the meantime, UPL Limited also participated in the E-auction and sent a conditional Expression of Interest (EoI) to participate in the E-auction proposed to be held on 16.04.2021. The Appellant i.e. UPL Limited stated that since they had challenged the E-auction Notice dated 30.03.2021 in IA No.

847/2021 before the Adjudicating Authority, therefore, their participation in the E-auction would be without prejudice to their right and contentions.

20. Immediately thereafter the Liquidator responded on 14.04.2021 and conveyed to UPL Limited that a conditional expression of interest is beyond the terms and conditions of the E-auction sale and therefore not acceptable. Consequently, UPL's expression of interest dated 12.04.2021 was rejected.

21. UPL Limited questioned the rejection of the conditional EoI by its email dated 14.04.2021 but simultaneously on 15.04.2021 also submitted fresh EoI whereby it unconditionally offered participation E-auction schedule to be held on 16.04.2021. It is brought to our notice that on the conduct on E-auction dated 16.04.2021, Appellant - UPL Limited submitted a final bid of ₹3.98 crs. But one Krihaan Texchem Private Limited – which is the Appellant in a related CA (AT)(Ins.) No. 811/2025 also participated in the e-auction and emerged as the highest bidder with a bid of ₹4.58 crores, which was significantly higher than the reserved price of ₹2.69 crs. Accordingly, the liquidator issued the letter of intent in favour of M/s Krihaan Texchem Private Limited in respect of the sale of the additional land for a consideration of ₹4.58 crs. when the matter was taken by the Adjudicating Authority in the Appeal.

22. When the Adjudicating Authority took up IA No. 847/2021 and IA 1189/2021 in CP No. 294/2018, it went into the details into the auction and concluded as follows in paras 61, 62 and 63, page 69 ABP which extracted as below:

“60. When Additional Land of approximately 12,981 sq. mts. was discovered, the same should have been put up for public auction, but Liquidator chose to send the emails dated 07.02.2020 and 12.03.2020 to UPL expressing his intention to sell the Additional Land to UPL at its bid rate. We are unable to appreciate this conduct of the Liquidator.

61. Further, we are also unable to understand the reserve price for the Additional Land in the Impugned E-Auction dated 30.03.2021 which is mentioned as Rs. 2.90 crores. UPL had already agreed to purchase the Additional Land of 12,981 sq. mts. at its bid rate which indicates that the price for the newly discovered Additional Land of 12,981 sq. mts. comes to Rs. 4.87 crores ($43,43,00,000/1,15,632 \times 12,981$). Logically, the Liquidator ought to have set a reserve price which could fetch a bid of more than what UPL was supposedly offering to pay. However, the Liquidator chose to set the reserve price of the Additional Land at Rs. 2.90 crores and no plausible explanation has been whatsoever given by the Liquidator for arriving at this reserve price.

62. We also observe the conduct of UPL that though it had offered to purchase the Additional Land at its bid rate i.e. for Rs. 4.87 crores but when it participated in the E-Auction dated 16.04.2021, it offered a bid price of Rs. 3.99 crores.”

23. It is brought to our notice that the Adjudicating Authority had committed an error in its calculations with respect to the reserved price. The liquidator has brought to our notice that the correct calculation of the reserved price is as follows:

“7.3. The Ld. Adjudicating Authority has erroneously relied on only a portion of Lot 2 (i.e. Plot No. 825/2 admeasuring 1,15,632 sq. mt.) while using the entire consolidated bid value of Rs. 43.43 Crores given for entire

Lot 2 being 1,96,958 sq. mt. [para 61, pg. 69, Ann. A-1, Vol. I]. This omission has resulted in an inflated per sq. m. value and erroneous conclusion that the value of Additional Land (12,981 sq. mt.) is Rs. 4.87 Crores.

a) The calculation adopted by the Ld. Adjudicating Authority to fix the Reserve Price was:

(INR 43.43 crores + Part of Leasehold land area under Lot 2 i.e. 1,15,632 sq. m.) x 12,981.64 sq. m. INR 4.875 crore > Rounded off by the Ld. Adjudicating Authority to INR 4.87 crore)

b) Accordingly, the Reserve Price for the Additional Land admeasuring 12,981.64 sq. m. was erroneously computed at INR 4.87 crores for the E-Auction, by the Ld. Adjudicating Authority.

7.4. The Ld. Adjudicating Authority failed to appreciate that the reserve price for Additional Land at Rs. 2.90 Crore was determined on the basis of consolidated bid of Rs. 43.43 Crores received for Lot 2 admeasuring 1,96,958 sq. mt. (i.e. including leasehold land of Plot No. 825 being 1,15,632 sq. mt. and freehold land of 81,326 sq. mt.).

c) The calculation adopted by the Liquidator to fix the Reserve Price was:

(INR 43.43 crores total land area of 1,96,958 sq. m.) x 12,981.64 sq. m. = INR 2.86 crore => Rounded off to INR 2.90 crore)

Note: Total land area includes: leasehold land of 1,15,632 sq. m. + freehold land of 81,326 sq. m.

d) Accordingly, the Reserve Price for the Additional Land admeasuring 12,981.64 sq. m. was computed at INR 2.86 crores and thereafter rounded up & fixed at INR 2.90 crores for the E-Auction.

7.5. Comparative Presentation of Computation of Correct & Wrongful Reserve Price:

Particulars	Correct Calculation as per the factual position by the Liquidator	Wrongful Calculation by the Ld. Adjudicating Authority (Para 61 of the Impugned Order)
Sale Consideration of Land under Lot 2 of the Earlier E-Auction held on 16.01.2020	INR 43.43 crore	INR 43.43 crore
Land Area under the said Lot 2	1,96,958 sq. mt. (leasehold land of Plot No. 825 being 1,15,632 sq mt. PLUS freehold land of 81,326 sq. mt.)	1,15,632 sq. mt. (Lot 2 consist of leasehold land of Plot No. 825 being 1,15,632 sq mt. PLUS freehold land of 81,326 sq. mt., however, the Ld. Adjudicating Authority has wrongfully considered the area of leasehold land only i.e. 1,15,632 sq mt.)
Computation of Reserve Price for Additional Land (12,981.64 sq. mt.) on the basis of Sale Consideration for the Land under Lot 2 of Earlier E-Auction held on 16.01.2020	= (INR 43.43 crore / 1,96,958 sq. mt.) * 12,981.64 sq. mt. = INR 2.86 crore Rounded off to INR 2.90 crore	= (INR 43.43 crore / 1,15,632 sq. mt.) * 12,981.64 sq. mt. = INR 4.87 crore (As per Para 61 of the Impugned Order dated May 2, 2025)

24. We find that the calculations as presented by the liquidator are correct and there is an error committed by the Adjudicating Authority including only leasehold land of Plot No. 825 i.e. 1,15,632 sq. mt. for ₹43.43 crores instead of the total land which was 1,15,632 + 81,326 sq.mt. which is 1,96.958 sq. mt. Such a calculation would reduce the calculation from ₹4.87 crs. to ₹2.86 crores.

25. We find that the Impugned Order erroneously questions why the reserve price was set at ₹2.86 crores, when R1 had already agreed to purchase the

Additional Land at ₹4.87 crores. It further states that logically the Liquidator ought to have set the reserve price more than R1's offer price which the Liquidator did not do. On this basis, the Impugned Order directs the conduct of fresh auction of the Additional Land. Such a conclusion is erroneously drawn. We find that the reserve price was set at ₹2.86 crores for auction of Additional Land, which was the auctioned price that R1 paid for the Lot-2 Area. Therefore, the reserve price for the Additional Land was not lesser than the reserved price or auctioned price of Lot 2 Assets. Moreover, R1-UPL never agreed to purchase the Additional Land at ₹4.87 crores, either prior to or during the auction. During the auction, R1 bid for the Additional Land at ₹3.99 crores, which the Impugned Order itself records. On the contrary Appellant bid at ₹4.57 crores, which was more than R1's bid and therefore emerged as the successful auction purchaser. Further, Impugned Order records that the offer to purchase the Additional Land by R1 at ₹4.87 crore was made orally by counsel during hearing of its IA 847/2021. Such a conclusion in the Impugned Order and directing fresh auction cannot be legally permitted, as R1 despite having bid less at auction, had the unfair advantage of knowing Appellant's bid after auction, and offered a higher amount outside of the auction. This is extraneous to any applicable law and procedure, and may not be countenanced.

26. Therefore, the conclusions drawn by the Adjudicating Authority basis incorrect calculations cannot be sustained in the impugned order.

27. The Adjudicating Authority has also concluded in para 64, that the Appellant had participated in the e-auction and is ready and willing to pay the price and bid rates at which M/s UPL Limited purchased the Lot 2 which comes around approximately ₹4.87 crs. which is more than the price quoted by the Krihaan Texchem Private Limited who was declared as the highest bidder. We find that this conclusion is based on erroneous calculations and therefore cannot be sustained.

28. Furthermore, it is also noted by the Adjudicating Authority at para 60 that when additional land was discovered, the same should have been put for publication auction. But the liquidator chose to send emails dated 07.02.2020 and 12.03.2020 to M/s UPL Limited expressing its intention to sell the additional land to M/s UPL Limited at its bid rate. And they did not appreciate this conduct of the liquidator. On a pointed query from the liquidator, it was informed to us that it was more of a price discovery mechanism rather than bid to sale the additional land to M/s UPL Limited. This communication also had a clear disclaimer that this is not an offer to sale the land, which has been noted by us separately. Therefore, in this condition we do not find these comments can be sustained and needs to be expunged.

29. The Appellant in CA (AT)(Ins.) No. 811 of 20 25 has specifically brought to our notice, the judgment of Hon'ble Supreme Court in **Eva Agro Feeds Pvt. Ltd. v. Punjab National Bank and Anr. (2023) 10 SCC 189**, to bring on record that valid auction cannot be cancelled due to the mere expectation of fetching higher price. The relevant paragraph of this judgment is as follows:

“79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to opt for another round of auction.”

30. We find that this judgment clearly lays down the law and that mere expectation of the liquidator that still higher price may be obtained can be no ground to cancel an otherwise valid auction and go for another round of auction.

31. We observe that R1-UPL has taken contrary stands. It claims that since the Additional Land forms part of the Lot-2 Assets, therefore, it could not have been auctioned separately in favour of Appellant. However, in the same breath, R1 also states that that the Additional Land may be sold to it at the same rate at which Respondent bid for Lot-2. We find that both these contentions are incorrect. First, the Additional Land does not form part of Lot-2 Assets, as has been observed in the Impugned Order. Secondly, there is no justification whatsoever as to why the Additional Land ought to be sold to R1 at the same rate that they bid for Lot-2 area. In fact, as a measure of value maximization, the Liquidator had rightly set the reserve price for the auction of the Additional Land at ₹2.90 crores, which was the same rate at which the R1 paid for the Lot-2 Area. Thereafter, R1 itself bid at a much lower price, and ultimately Appellant emerged as the highest bidder, by paying ₹4.58 crore, which was substantially much more than the price paid by R1 for Lot-2 Assets, i.e. ₹2.90 crores. Thus, there is no justification that the Additional Land should be sold to it at the same purchase price of Lot-2 Assets.

32. Further we find that the adjudicating authority cannot come to such a conclusion that an e-auction should be conducted afresh on the basis of an expectation of a higher price when the auction was conducted without any flaws. We now delve into this issue. We observe that the process of E-Auction dated 30.03.2021 was valid and not challenged by Respondent No. 1 – UPL. Further we don't find any finding in the Impugned Order of serious flaws in the conduct of the auction or any fraud or collusion that went to the root of

the auction. We further observe that the courts in a catena of judgements, have ruled that an auction, when properly conducted and confirmed, ought not to be interfered with lightly. An auction can be set aside and a fresh auction can be directed only in cases where grounds of collusion, fraud or other fundamental procedural irregularities can be made out. There is no allegation of collusion, fraud or any fundamental procedural irregularity in the present case alleged by the Respondent No.1-UPL. The appellant has placed its reliance on various judgments cited by it and specifically in **V.S. Palanivel v. Sri Lakshmi Hotels (P) Ltd. (2025) 1 SCC 559** the Hon'ble Supreme Court held that:

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88. This Court must underscore the well-settled legal position that once an auction is confirmed, it ought to be interfered with on fairly limited grounds. [Refer : Valji Khimji & Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator) [Valji Khimji & Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator), (2008) 9 SCC 299 : (2008) 145 Comp Cas 36] and Celir LLP v. Bafna Motors (Mumbai) (P) Ltd. [Celir LLP v. Bafna Motors (Mumbai) (P) Ltd., (2024) 2 SCC 1 : (2024) 1 SCC (Civ) 62 : (2024) 242 Comp Cas 45]] Repeated interferences in public auction also result in causing uncertainty and frustrate the very purpose of holding auctions. (Refer : K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple [K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple, (2022) 5 SCC 710 : (2022) 3 SCC (Civ) 178] .) Unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. Given the facts noted above, we

shall refrain from cancelling the sale or declaring the sale deed as void. Instead, it is deemed appropriate to balance the equities by directing the auction-purchaser to pay an additional amount in respect of the subject property.

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33. The above judgment supports the argument of the Appellant that the Adjudicating Authority may not have interfered with the auction.

34. Another judgment of the Hon'ble Supreme Court which is relied upon by the plaintiff and which supports its case is **Celir LLP v. Sumati Prasad Bafna and Ors. (2024) SCC OnLine SC 3727** in which the Honorable Supreme Court held that:

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218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding. In such cases, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity.

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And in this case, we find that the auction is not collusive, fraudulent, or vitiated by inadequate pricing or underbidding. Therefore, the judgment of the

Hon'ble Supreme Court supports the case of the Appellant and goes against the justification provided by the adjudicating authority for holding the fresh auction.

35. We also find no material irregularity in the liquidator's conduct by not allowing the private sale as private sale of the additional land would require mandatory prior permission from the Ld. Adjudicating Authority. Such a situation is noted in the judgment of this Appellant Tribunal in **Orissa Alloy Steel Pvt. Ltd. v. SM Steels and Power Ltd. (2025) SCC OnLine NCLAT 1758** wherein it relied on **R.K. Industries (Unit-II) LLP v. HR Commercials Pvt. Ltd. (2024) 4 SCC 166** and wherein it was noted as below:

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Regulation 33 of the Liquidation Regulations comes into play and states that ordinarily, the liquidator will sell the said assets through auction, as specified in Schedule I(1). Sub-section (2) of Section 33 IBC gives an option to the liquidator to sell the assets of the corporate debtor through a private sale, in the manner set out in Schedule I(2). Regulation 33 of the Liquidation Regulations is couched in a language which shows that ample latitude has been given to the liquidator, who may "ordinarily" sell the assets through auction thereby meaning that in peculiar facts and circumstances, the liquidator may directly go in for a private sale. To avoid the pitfalls of disposing of the assets by conducting a private sale for the pittance, Regulation 33 has prescribed some stringent conditions that the liquidator is under an obligation to comply. The said preconditions are that: (i) the asset is perishable; (ii) the asset is likely to deteriorate in value significantly if not sold immediately; (iii) the asset is sold at a higher price than the reserved price of the failed auction; and (iv) the adjudicating authority (NCLT) must grant prior permission for such a sale. The proviso

appended to Regulation 33(2) of the Liquidation Regulations places yet another embargo to the effect that when the liquidator intends to sell the assets of the corporate debtor by way of a private sale to a related party of the corporate debtor, his relative party or any professional appointed by him, it is mandatory to obtain prior permission of the adjudicating authority (NCLT).

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In this case since the liquidator had not obtained prior permission of the adjudicating authority, and also it did not go for private sale and therefore it cannot be faulted for not undertaking the private sale auction. Therefore, it averted committing a material irregularity which could have vitiated the auction process. We find that R2-Liquidator exercised its discretion correctly and took a view of profit maximization in compliance with Regulation 33 of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016 along with Schedule I. In view of the above, the R2 correctly released e-auction notice for the Additional Land and set the reserve price at a rate higher than the final auction price of the Lot-2 area.

36. Moreover, we observe that the R1-UPL cannot claim that the additional area formed part of Plot 825/2 of Lot 2. R1 argues that there was a discrepancy with respect to the leasehold land as stated within the first E-Auction notice which identified Plot 825/1 to have leasehold area of 1,70,133 sq. mt. and Plot 825/2 to have leasehold area of 1,15,632 sq. mt. in comparison to the leasehold area provided for both Plots in the Gujarat Industrial Development Corporation (“**GIDC**”) Order dated 15.12.2020 which

stated, that Plot 825/1 to have leasehold area of 1,58,541.89 sq. mt. and Plot 825/2 to have leasehold area of 1,12,742 sq. mt.

37. However, we observe that the GIDC issued Order dated 15.12.2020 permitting the sub-division of the Plot No. 825 into three Parts viz. 825/1, 825/2 and 825/3, more particularly as stated below:

Sr. No.	Proposed Plots	Area in sq. mt.	COP	Total Area
1	825/1	1,58,541.89	0.00	1,58,541.89
2	825/2	1,12,742.20	0.00	1,12,742.20
3	825/3	12,981.64	0.00	12,981.64
Total Area of Plot		2,84,265.73	0.00	2,84,265.73

R1 claims that the original auction notice on the basis of which they emerged as the successful auction purchaser, already included the additional land admeasuring 12,981 sq. mt. Thereafter, the Provisional Order of the GIDC reduced the size of Plot 825/2 and created the Additional Land which formed Plot 825/3. Thus, the Additional Land should form part of Plot 825/2. Such contention cannot be countenanced for the reason that even if the leasehold land of 12,981 sq. mt. were to be added to the post GIDC Order, leasehold land area of 1,12,742 sq. mt. belonging to Plot 825/2, the total area of land would far exceed the 1,15,632 sq. mt. of land claimed to have been purchased by Respondent No. 1 through the first E-Auction dated 16.01.2020. Furthermore, the bid document merely stated that the measurements of Plot 825/2 were tentative and subject to survey to be conducted by the Liquidator and sub-division by the GIDC. Furthermore, R2- Liquidator wrote a letter to

R1 whereby it was clarified that transfer or assignment of Plot 825/2 was subject to obtaining approval of the GIDC.

38. We find that in this case procedure followed for the e-auction was proper – a) The E-Auction notice was publicly advertised; b) Was conducted by an independent entity; c) It saw participation of interested parties – including R1 without objection; d) Was won by the highest bidder. Therefore, there was no procedural or any other irregularity in the conduct of the auction and thus, did not warrant any interference.

39. Furthermore, we observe that the R2 set the reserve price for additional land based on the bid price of R1– UPL in the previous auction. The same can be seen by the e-auction notices. Thus, we do not find any material irregularity in Liquidator’s conduct.

Conclusions

40. We have also observed that the Impugned Order erroneously calculates these amounts. At para 61 of the impugned order, the Adjudicating Authority had observed as follows:

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61. Further, we are also unable to understand the reserve price for the Additional Land in the Impugned E-Auction dated 30.03.2021 which is mentioned as Rs. 2.90 crores. UPL had already agreed to purchase the Additional Land of 12,981 sq. mts. at its bid rate which indicates that the price for the newly discovered Additional Land of 12,981 sq. mts. comes to Rs. 4.87 crores (43,43,00,000/1,15,632 x 12,981). Logically, the Liquidator ought to have set a reserve price which could fetch a bid of more than what UPL was supposedly offering to pay. However, the Liquidator chose to set

the reserve price of the Additional Land at Rs. 2.90 crores and no plausible explanation has been whatsoever given by the Liquidator for arriving at this reserve price.

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41. We find that there is an error in the calculation of the price of land as the price of the additional land as offered by Respondent No. 1 cannot come to ₹4.87 crores, as it was not $43,43,00,000 / 1,15,632 \times 12,981$ as observed by the Adjudicating Authority in its impugned order. As the Respondent No. 1 had paid ₹43.43 crores not just for the 1,15,632 sq. mt. of leasehold land but also for 81,326 sq. mt. of freehold land in Lot 2 Area, therefore, the correct calculation should be $43,43,00,000 / 196958 \times 12,981$, which comes to ₹2.86 crs. The same has been confirmed in the reply of Respondent No. 2.

42. Thus, we find that Adjudicating Authority has made a factual error that R1's bid for the additional land was for a price of ₹4.87 crores. R2 in its reply, has clarified that as per the official bid of the E-Auction, R1's bid was only ₹3.99 crores and not ₹4.87 crores.

43. Therefore, we find that the observations of the Adjudicating Authority at Para 61, which led to the conclusion by the Adjudicating Authority that re-option should be done, are based on incorrect calculations and cannot be sustained.

44. We find that in this case; there is no material irregularity or collusion or any fundamental procedural irregularity which has been alleged by the Appellant. Therefore, the conclusion arrived at by the Adjudicating Authority

that fresh auction be conducted is not in line with the settled principles of auction in liquidation.

45. R1-UPL has also questioned the locus standi of the applicant. We find that the applicant's locus standi cannot be really questioned as the present appeal has been filed against setting aside of the auction by Impugned Order. Sec. 61(1) of the Insolvency & Bankruptcy Code, 2016 (“IBC”) clearly states that “any person” aggrieved by the order of the Adjudicating Authority may prefer an appeal before this Hon’ble Tribunal. By directing a fresh auction to be conducted for sale of Additional Land, which was earlier awarded to Appellant, the Appellant is clearly aggrieved by the Impugned Order, and therefore, has locus standi to file the present Appeal.

46. We also observe that the conduct of R1 has been malicious throughout the entire e-auction process. It claimed Additional Land as a part of Plot sold to them in a prior e-auction dated 16.01.2020 (“prior e-auction”). Later it challenged Notice of said e-auction while also participating in it – tried to approbate and reprobate out of said e-auction. It also did not implead the Appellant despite it being a necessary party to said e-auction and also made oral submissions before Ld. Adjudicating Authority of revision of its bid price to a higher amount after knowing the Appellant’s winning bid. These actions of R1 jeopardize a valid e-auction and cannot be entertained.

Order

47. Therefore, we don’t find order of the Adjudicating Authority to be sustainable and we accordingly set aside the impugned order. Accordingly,

the Appeal is allowed in CA (AT)(Ins.) No. 811/2025 and the Appeal in CA (AT)(Ins.) No. 1106/2025 is dismissed. Accordingly, Respondent No.2 i.e. Liquidator is directed to issue sale certificate for Plot No. 825/3 admeasuring 12981.64 sq. mtr. in favour of the Appellant along with consequential necessary steps. All related IAs are also disposed of.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
June 30, 2026.

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