



6th September 2023

Subject: Judgment¹ dated 6th September 2023 of Hon'ble Supreme Court in Eva Agro Feeds Private Limited Vs. Punjab National Bank & Anr., [Civil Appeal No(S). 7906/2021]

Brief Facts:

On 20.07.2021 auction sale of M/s. Amrit Feeds Limited (CD) asset was conducted wherein, Eva Agro Feeds Private Limited (appellant/ auction purchaser) received an E-auction certificate from the liquidator certifying him as auction winner. However, on the same date later, liquidator cancelled the auction invoking clause 3(k) of the disclaimer clause in the E-Auction Process Information Document and communicated that a fresh E – Auction would again be conducted of the subject property. Against which, auction purchaser filed an application before AA. On 12.08.2021 AA directed the liquidator to proceed the auction in favour of the highest bidder (Eva Agro Feeds Private Limited). Complying with the directions of AA, liquidator proceeded with the auction process and finally on 15.09.2021 issued sale certificate after receiving entire sum of the bidding amount. However, Punjab National Bank (FC) aggrieved by the AA's order, filed an appeal before NCLAT. The NCLAT *vide* order dated 30.11.2021 allowed the appeal and set aside the AA's order with the direction to the liquidator to initiate a fresh process of auction. Pursuant to which liquidator sent an email to the appellant to handover peaceful possession of the auctioned property. Consequently, Eva Agro Feeds Pvt. Ltd (Auction Purchaser) filed an appeal challenging NCLAT's order.

Issues Before Hon'ble Supreme Court:

1. Whether NCLAT was right in cancelling the e- auction held on 20.07.2021 and directing the liquidator to initiate fresh auction for CD's assets?
2. Whether Appellant was debarred from participating in the auction on the ground of “related party” of the CD?

Findings & Observations of the Hon'ble Supreme Court:

- Hon'ble Supreme Court while setting aside the order of NCLAT, restored the order passed by AA. SC upheld the view of AA that liquidator was not justified in cancelling the e auction held on 20.07.2021 without assigning any reason and there were no objective materials before the liquidator to cancel the auction process and to opt for another round of auction. While examining the clause 3 (k) of the E-Auction Process Information Document, SC observed that it only declares that the liquidator has absolute right to accept or reject any or all bids or

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.

adjourn/postpone/cancel the E-auction etc., at any stage without assigning any reason therefor. It held that, “E-Auction Process Information Document is neither an agreement nor an offer by the Liquidator to the prospective bidders or any other person.”

- SC held that Para 1(11A) in Schedule 1 to the Liquidation Process Regulations (w.e.f. 30.09.2021) does not imply that an auction sale or the highest bid prior to 30.09.2021 could be cancelled by the liquidator without furnishing any reason. It observed that “*Para 1(11A) has done is to give statutory recognition to this well-established principle. It has made explicit what was implicit.*”
- SC while relying on *Valji Khimji and Company Versus Official Liquidator of Hindustan Nitro Product (Gujarat) Limited & Ors*, held that liquidator was not justified to set aside the confirmation of sale. It observed that “*if every confirmed sale can be set aside the result would be that no auction-sale will ever be completed because always somebody can come after the auction or its confirmation offering a higher amount.*”
- SC emphasised the role and duties of the liquidator while observing “*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.*”
- While deciding the second issue of appellant being the related party of CD, SC referred to various judgements including *Phoenix ARC Private Limited Vs. Spade Financial Services Limited*, pertaining to the section 5(24) and (24 A). It noted the Shri Vijay Kumar Ghidia is not a “related party” of CD as he is no longer connected with the CD and have retired a decade ago (2011) and was not in charge of the CD when made its bid pursuant to the auction sale notice.