

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 105 of 2024
&
I.A. No.330 of 2024

(Arising out of the Impugned Order dated 25.08.2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in Company Petition (IB) No. 147/MB-IV/2021]

IN THE MATTER OF:

Mr. Bhanu Pratap Singh
S/o Shri Karan Veer Singh
R/o 145 B.C. Lines, Meerut Cantt.,
U.P. – 250001 **...Appellant**

Versus

Mr. Rakesh Jindal (Liquidator)
II/E-64, Nehru Nagar, Ghaziabad
U.P. – 201001 **...Respondent**

With
Company Appeal (AT) (Insolvency) No. 57 of 2024

IN THE MATTER OF:

Mr. Bhanu Pratap Singh
S/o Shri Karan Veer Singh
R/o 145 B.C. Lines, Meerut Cantt.,
U.P. – 250001 **...Appellant**

Versus

Mr. Rakesh Jindal (Liquidator)
II/E-64, Nehru Nagar, Ghaziabad
U.P. – 201001 **...Respondent**

Present:

For Appellant : Mr. Rakesh Kumar, Mrs. Preeti Kashyap, Mr. Ankit Sharma, Mr. Suresh Chaudhary, Mr. Yash Dhawan, Advocates

For Respondent : Mr. Abhishek Garg, Mr. Yash Gaiha, Mr. Ranesh Singh M., Advocates

J U D G M E N T

(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal against the Impugned Order dated 22.11.2023 passed by the National Company Law Tribunal, Allahabad Bench, at Prayagraj, (hereinafter referred to as “Adjudicating Authority”) in I.A. No. 69 of 2023 and I.A. No. 277 of 2023 in Company Petition (IB) No. 144/ALD/2018 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”).

Brief Facts

2. The Financial Creditor namely Jammu & Kashmir Bank Ltd. had initiated Corporate Insolvency Resolution Process (for short ‘CIRP’) against the Corporate Debtor Kushal International Limited under Section 7 of the IBC, which was allowed vide order dated 08.05.2018 in CP No. (IB) 124/ALD/2018. Since the CIRP did not yield any fruitful outcome, the Committee of Creditors (for short ‘CoC’) in its 4th Meeting on 12.10.2018 decided to initiate liquidation proceedings against the Corporate Debtor and the same was allowed vide order dated 28.02.2019. Appellant holds 43% share in the Corporate Debtor company and is the Ex-Director of the Corporate Debtor.

3. On 20.12.2021 the Respondent was appointed as a Liquidator and the Liquidation proceedings commenced from 20.12.2021. The first public notice for liquidation was issued on 04.06.2022, with a reserve price of Rs.66.35 Crores and the auction proceedings continued over a period of time and it

could be finalised only in the 10th round of the auction. During the pendency of these liquidation proceedings the Appellant filed various IAs challenging the Liquidator the details of which are as follows:

I.A. No. & Date	Prayer	Disposal status
69/2023 04.02.2023	To allow the Applicant to dispose of the assets of the Corporate Debtor at fair value and to restrain the liquidator from conducting any further subsequent auction.	Disposed of by AA on 22.11.2023
117/2023 18.03.2023	To cancel and set aside the bid dated 06.02.2023 for scrap of iron / steel and alter materials.	Disposed of by AA on 22.11.2023
241/2023 20.05.2023	To set aside the e-auction dated 06.02.2023 of scrap of iron & steel and others and to restraining the Respondent for conducting any further e-auctions till disposal of I.A. 69/2023 and 117/2023.	Disposed of by AA on 22.11.2023
277/2023 03.06.2023	To restrain the Respondent from proceeding with the e-auction notice dated 24.05.2023 and subsequent auctions till the disposal of I.A. No.69 of 2023.	Disposed of by AA on 22.11.2023
302/2023 30.06.2023	To restrain the Respondent from proceeding with the e-auction notice dated 03.07.2023	Withdrawn by Appellant
385/2023 Aug., 2023	To restrain the Respondent from proceeding with the e-auction dated 14.07.2023 and further auctions till disposed of I.A. No. 69/2023 & I.A. No. 277/2023	Disposed of by AA on 22.11.2023

**Submissions of the Appellant/Corporate Debtor/
Ex-Director of Kushal International Limited:**

4. The contentions of the Appellant in the present appeal are that it had raised its grievances before the Adjudicating Authority, against the liquidator that it auctioned the prime assets of the Corporate Debtor at a price lower than fair value. Initially, the reserve price of Rs.66.53 Crores was fixed for the assets of the CD and eventually, the assets were sold for Rs.16.41 crores in the 10th e-auction on 10.08.2023. He has given details of various e-auctions which we will see together with the details provided by the Liquidator later on.

5. The concerns of the Appellant are as follows:

- The Appellant has raised the issue of violation of the provisions of Regulation 32, 32-A, 33 [Mode of sale prescribed in the Schedule-I], 34 & 36 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- The Corporate Debtor had huge chunk of land, even than the sale was carried out by the liquidator as a going concern as per Regulation 32A Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [Liquidation Regulations]. The liquidator made various attempts to sell the assets of the Corporate Debtor as a going concern and subsequently after 4th auction, the sale was declared as a slump sale basis. The Liquidator reduced the price of the assets of the Corporate Debtor beyond the permissible limits as permitted under the code, which is one of the

primary violations in terms of Regulations 34 and 36 of Liquidation Regulations 2016.

- As per Regulation 32-A Liquidation Regulations 2016, the liquidator shall endeavour to sell the assets of the Corporate Debtor as a going concern and this regulation gives paramount importance to the commercial wisdom of the CoC. In the present case, the sole CoC member in 4th CoC Meeting had objected to such a steep reduction in reserve price in the 7th CoC Meeting on 26.12.2022.
- Respondent has failed to present any valuation report with the Stakeholder Consultation Committee (SCC) and thus the respondent never took the consent of the SCC, which is in violation of Regulation 32-A(1) of the Liquidation Regulations.
- The Respondent has failed to demonstrate the list of assets which were sold under the auction and what assets were sold under the slump sale method.
- By resorting to slump sale the Respondent has defeated the purpose of the Code which is value maximization of the assets of the Corporate Debtor. Any prudent person would not reduce the value of a land so drastically.
- The Respondent was willing to find buyers for the assets of the Corporate Debtor which would have helped to fetch a higher value of the assets of the Corporate Debtor. The Respondent has failed to

adhere to the permissible limits of reduction of reserve price which provides that the Liquidator may reduce the reserve price up to 25% and for subsequent auctions the liquidator may reduce the price by up to 10% for every subsequent auction. The Respondent at multiple occasions had reduced the reserve price beyond the permissible limit, which indicates the malafide intent of the respondent. The Appellant also claims that the Respondent has failed to apprise the SCC about the reasons for such reduction of the reserve price and also the reasons for proceeding with the slump sale.

6. It is also claimed by the Appellant that the e-auction comprised of land admeasuring about 150 acres of agricultural land which has been sold at a throw away price. It is also claimed that the ex-management of the Corporate Debtor was on the verge of the settlement with the Financial Creditors of the Corporate Debtor to sell their valuable assets.

7. The main prayer of the Appellant is to admit the present Appeal, and/or and to set aside the impugned order dated 22.11.2023 passed in IA 69 of 2023 passed in CP (IB)-124(ALD)/2018 by the Ld. National Company Law Tribunal, Allahabad Bench in the matter of Jammu & Kashmir Bank Vs Kushal International Limited and /or to restrain the respondent from proceeding further in process relating to the selling off/auction of the assets of the corporate debtor, and/or to direct the respondent to not to issue any sale certificate to any third party till the adjudication of this appeal.

Submissions of the Respondent/ Liquidator:

8. The Respondent /Liquidator questions the locus of the Appellant to file the appeal in I.A. No. 69 of 2023 as such prayer is outside the purview of IBC and therefore both the IAs No.69 of 2023 and 277 of 2023 filed by the Appellant are not maintainable.

9. After the initiation of liquidation, the Respondent /Liquidator was required to form a stakeholder consultation committee ("SCC") under Regulation 31A of Liquidation Regulations. The shareholders of Corporate Debtor never nominated their representative in the SCC but in good faith the Respondent/Liquidator made the highest shareholder i.e. Mr. Karan Veer Singh (father of the appellant) as the Shareholders' representative in the SCC and the Appellant as a special invitee in all the meetings of SCC, and the other member of SCC was the sole Financial Creditor i.e., the Jammu and Kashmir Bank Limited. All the decisions regarding liquidation, including mode and manner of sale and the reserve price of auction were done with the approval of SCC. The Appellant remained absent in 4 out of 8 SCC meetings. Even that being so, all minutes of the meetings of SCC were shared with Appellant and he never raised any objection of the decisions taken in SCC meetings. Therefore, now he has no locus to file the present applications when all the decisions regarding reserve price were in his knowledge and he never objected to them earlier.

10. Further, the Appellant sought to sell the assets of the Corporate Debtor at a fair value in 2 months' time. There is no requisite provision in the IBC

through which the shareholder of the Corporate Debtor can be allowed to sell assets of the Corporate Debtor after the initiation of the liquidation process. Therefore, the Appellant had no locus to file I.A. No. 69 of 2023. The sole intent of the Appellant was to buy time for OTS proposals. During the pendency of I.A. No. 69 of 2023, the Appellant and the suspended management had already given three OTS proposal to the Financial Creditor, but each time with a decreasing value. The Financial Creditor has rejected all three OTS proposals. Following is the summary of proposals made till date:

Particulars	Date	Submitted (Appellant/ suspended management)	by	Value of OTS	Status
1 st OTS	06-Mar-2023	Kushal Pal Singh		INR 7.30 cr.	Rejected by Bank
2 nd OTS	23-Mar-2023	Bhanu Pratap Singh		INR 6.25 cr.	Rejected by Bank
3 rd OTS	07-May-2023	Bhanu Pratap Singh		INR 4.50 cr.	Rejected by Bank

11. It is ironical that the Appellant, who has prayed the Adjudicating Authority to allow 2 months' time to sell assets at fair value himself, challenges the reduction of reserve price in auction - which has fetched Rs 29.41 crores, but he had offered the Financial Creditor an amount of Rs. 4.50 crores only (almost 50% of the total admitted claim of financial creditors) as a fair value to get land assets released from the charge of financial creditor.

12. Also, the Appellant and all shareholders have been completely non-cooperative throughout the CIRP and the liquidation process, so much so that

they have not shared a single piece of information regarding the assets of the Corporate Debtor. Owing to non-compliance of orders under Section 19(2) of IBC, the IBBI had to launch prosecution on the ex-management of Corporate Debtor. The said case is pending at the Sessions Court, Kanpur as Complaint Case No. 02/2019.

13. Further, the Appellant is a beneficiary of fraudulent transactions and has sold many land assets mortgaged with financial creditor to third parties. The Appellant is the answering Respondent in IA. No. 166 of 2022 filed by Liquidator under Section 66 of IBC. Therefore, considering all this the Appellant cannot have any locus to file application and seek indulgence of this Hon'ble Authority. It is a trite law that a litigant should approach the Court with clean hands himself.

14. The Respondent / Liquidator also submits that the reduction in reserve price is in consonance with the provisions of IBC and the Appellant has lost sight of the fact that there was a change in the mode of sale of the corporate debtor as going concern to sale of assets on slump sale basis during the 4th auction wherein various assets stood excluded.

15. Further, the Respondent / Liquidator also submits that the best indication of a realizable value is the auction itself. In the present case, 8 auctions had failed. The 9th auction at the reserve price of Rs. 16.41 crores only was concluded. Therefore, if we consider market factors, that was the actual realizable value of the assets.

16. It is also submitted that the land assets of Corporate Debtor are not such parcels of land which can even fetch circle rates. Auction has been concluded at a price which will cover entire claim of creditors and will also cover substantial amounts to be paid to shareholders, including Appellant.

17. Lastly, it is submitted that, in case the auction is reversed it will deter all prospective buyers from participating in the auction. Heard Learned Counsel for both the parties and perused the records.

Appraisal

18. The primary issue before us is whether there are any violations in the liquidation process as per Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and consequently whether the IA No. 69 of 2023 and 277 of 2023 filed by the Appellant are maintainable.

19. The Appellant and the ex-management of the Corporate Debtor had given multiple One Time Settlement (OTS) proposals which have been captured at para 10 (supra). There were three settlement proposals which started with Rs.7.3 cores and had come down to Rs.4.5 cores, instead of being raised. The bank had rejected all the three OTS proposals as the reserved price was very high as per the valuation report and commercial wisdom of the Bank cannot be questioned.

20. Even though, it is claimed that the Appellant / Ex-management had the intent to present an OTS to maximize the value of assets of the Corporate Debtor. But the records do not suggest otherwise as all the OTS proposals

were on very low side and the reserved price was much more and the Bank had rejected all the proposals. Therefore, the liquidation proceedings had to go ahead. It is a claim of the Appellant that the Liquidator was in a haste to liquidate to dispose of the assets despite the fact that assets of Corporate Debtor included 150 acres of land and there was only one Financial Creditor. It is worth noting that the final OTS offered was Rs.4.5 crores and if the Corporate Debtor was having so precious assets in the form of land of about 150 acres of land, any prudent businessman, including the Corporate Debtor would have offered much more. No justification is on record to know as to why the OTS amount was not commensurate to settle the debt and stop the Corporate Debtor to be liquidated. This shows that the Appellant / Ex-management were not inclined to allow the proceeding to go any further. And furthermore, the Appellant had been challenging the Liquidation proceedings on multiple occasions, as is evident from the number of Interlocutory Applications filed, even at the Liquidation stage. Even the CIRP proceedings faced many challenges from the Appellant, which have been noted by the Adjudicating Authority while passing Liquidation orders in the chronology of events leading upto liquidation.

21. Now we proceed to look into the issue of violation of liquidation regulations. The Appellant has raised the issue of violation of the provisions of Regulation 32, 32-A, 33 [Mode of sale prescribed in the Schedule-I], 34 & 36 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

22. For understanding the provisions of Mode of sale and other related provisions, we extract them from the Regulations as follows:

**“SCHEDULE-I
MODE OF SALE**

*(Under Regulation 33 of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016)*

1. AUCTION

XXX

(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.]”

23. When we look into the auction details, we get the correct picture as to whether there is any violation of the mode of Sale. It is the claim of the Appellant that Liquidator has reduced the reserved price beyond the limit permissible under Schedule-I mode of sale. The Appellant claims that the liquidator may reduce a price by up to 25% to conduct subsequent auction. In case, where the auction fails even at the reduced price the liquidation shall reduce the price not more than 10% every time, but in this case, the liquidator has been reducing the price by the maximum permissible limits and on some occasions the liquidator has even reduced the reserved price beyond the permissible limit, which is against the essence of IBC Code. He has also produced the details of auction in a tabular form, which is at page 35 and 36 of the appeal paper book. The details of the auction are extracted as follows:

Auction as per Appellant

Particulars/Date of E-Auction	Auction Value/ reserve price (INR)	Reduction from previous price	Permissible Reduction
1 st E-Auction dated 04.06.2022	66.35 Crore	N/A	
2 nd E-Auction dated 30.06.2022	50.00 Crore	24.64%	25%
3 rd E-Auction dated 19.08.2022	45.00 Crore	10%	10%
4 th E-Auction dated 08.11.2022 (inadvertently mentioned as	33.34 Crore	25.91%	10%
5 th E-Auction dated 03.01.2023	25.00 Crore	25.01%	10%
7 th E-auction dated 04.03.2023	22.50 Crore	10%	10%
8 th E-Auction dated 21.04.2023 (ANNEXURE A 19)	20.25 Crore	10%	10%
9 th E-Auction dated 24.05.2023 (ANNEXURE A20)	18.23 Crore	9.97%	10%
10 th E-Auction dated	16.41 Crore	9.98%	10%

24. On the other side the facts placed by the Liquidator are depicted as below:

Table as per the Liquidator

Particulars of E-Auctions	Mode of Sale	Assets under Auction	Auction Value (in INR crores)	Reduction
1 st E-Auction dated 04.06.2022	Going Concern	All assets of the Corporate Debtor	66.35	-
(No EMD received)				
2 nd E-Auction dated 30.06.2022	Going Concern	All assets of the Corporate Debtor	50.00	25% (as per sub-clause 4A of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)
(No EMD received)				
3 rd E-Auction dated 19.08.2022	Going Concern	All assets of the Corporate Debtor	45.00	10% (as per sub-clause 4B of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)
(No EMD received)				

Particulars of E-Auctions	Mode of Sale	Assets under Auction	Auction Value (in INR crores)	Reduction
4 th E-Auction dated 08.11.2022	Slump Sales Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge (without Control Equipments), Cold Storage Plant and other land parcels <i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>	33.34	Change in mode of sale. Asset under auction reduced. Reserve Price fixed as per the valuation report for this mode of sale
(No EMD was received)				
5 th E-Auction dated 03.01.2023	Slump Sales Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge (without Control Equipments), Cold Storage Plant and other land parcels	25.00	25% (as per sub-clause 4A of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)
(No EMD was received)				

			<i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>		
7 th E-Auction dated 04.03.2023 (No EMD was received)	Slump Sale Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge (without Control Equipments), Cold Storage Plant and other land parcels <i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>	22.50	10% (as per sub-clause 4B of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)	
8 th E-Auction dated 21.04.2023	Slump Sale Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge (without Control Equipments), Cold Storage Plant and other land parcels <i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>	20.25	10% (as per sub-clause 4B of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)	
9 th E-Auction dated 24.05.2023	Slump Sale Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge	18.23	10% (as per sub-clause 4B of Clause 1 of Schedule I of	
		(without Control Equipments), Cold Storage Plant and other land parcels <i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>		Regulation 33 of Liquidation Regulations)	
10 th E-Auction Dated 10.08.2023 <u>Auction concluded and successful bidder declared at 29.41 crores</u>	Slump Sale Basis	Land and Building comprising of Shivalik Agro Industrial Food Park with inseparable Weigh Bridge (without Control Equipments), Cold Storage Plant and other land parcels <i>Excluding: Financial Assets of Corporate Debtor, Scrap, Vehicles, etc.</i>	16.41	10% (as per sub-clause 4B of Clause 1 of Schedule I of Regulation 33 of Liquidation Regulations)	

25. The conclusions drawn by the Appellant are factually not correct. First of all, the details provided by the Appellant have been incorrectly projected in their synopsis in the present appeal, wherein it is stated that the Liquidator has reduced the price by 32% (Page 26 of the Appeal Paper Book).

26. As is evident from the table placed on record by the Liquidator, the reduction seems to be as per the Regulations and the Clauses in Schedule-I of the Regulation 33 of the Liquidation Regulations. The reserved priced was fixed as Rs. 66.35 crores in the first auction on 04.06.2022. This was reduced by 25% on 30.06.2022 as per Clause 4A of Clause 1 of Schedule-I of Regulation 33 of Liquidation Regulations. Since it was not responsive, in the 3rd auction on 19.08.2022, there was further reduction on 10% as per Sub-clause 4B of Clause-1 of Schedule-1 of Regulation 33 of Liquidation Regulation. This is also contradicted by the Appellant himself also in Point No.7 in the facts of the case at pages 35 to 36 of the Appeal Paper Book. This is clearly a misleading statement by the Appellant. So we cannot rely upon such submissions which are contradictory. We note that even with the reductions in the reserve prices, the three auctions did not lead to any result.

27. Now we see the violations or otherwise of other Regulations 32, 34 & 36 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. For better appreciation they are reproduced as follows:

“32. Sale of Assets, etc. - The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

32A. Sale as a going concern.

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

*(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction.
Explanation: For the purpose of this sub-regulation, it is hereby clarified that the sale of the corporate debtor under clause (e) of regulation 32 cannot be offered as the only option for bidders after the first auction.*

34. Asset memorandum.

[(1) For cases under sub-regulation (1) of regulation 35, the liquidator shall, within thirty days from the liquidation commencement date, prepare an asset memorandum in accordance with this regulation based on the information memorandum prepared under section 29, with suitable modifications.]

(1A) For cases covered under sub-regulation (2) of regulation 35, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date.]

(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-

- (a) value of the asset, valued in accordance with Regulation 35;*
- (b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;*
- (c) intended manner of sale in accordance with Regulation 32, and reasons for the same;*
- (d) the intended mode of sale and reasons for the same in accordance with Regulation 33;*
- (e) expected amount of realization from sale; and*

(f) any other information that may be relevant for the sale of the asset.

(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-

(a) value of the asset;

(b) intended manner and mode of realization, and reasons for the same;

(c) expected amount of realization; and

(d) any other information that may be relevant for the realization of the asset.

(4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.

(5) The liquidator shall share the asset memorandum with the Board and members of the consultation committee having voting rights after receiving an undertaking from each member that such member shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person.

36. Asset sale report.

On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing -

(a) the realized value;

(b) cost of realization, if any;

(c) the manner and mode of sale;

(d) if the value realized is less than the value in the asset memorandum, the reasons for the same;

(e) the person to whom the sale is made; and

(f) any other details of the sale.”

28. Without going specifically into each Regulation, we go on to see the overall circumstances in which the Liquidation process was completed and whether any of the above provisions have been violated or not.

29. Liquidator had appointed 2 IBBI registered valuers for the purpose of conducting valuation under Regulation 35 of the Liquidation Regulations. Regulation 35 mandates that the realizable value has to be determined under clauses (a) to (f) of Regulation 32 of Corporate Debtor. In the instant case, after obtaining the valuation reports, since the land assets of Corporate Debtor were marred with various issues, the Respondent/Liquidator, after

obtaining approval of SCC decided to try auction by putting the entire corporate debtor on sale as a going concern i.e., under clause (e) of Regulation 32.

30. Accordingly, the first 3 auctions were attempted on sale of corporate debtor as going concern which included all the assets of the Corporate Debtor.

31. The Respondent / Liquidator obtained the approval of SCC meeting on 20.10.2022 for conducting E-auction on 'Slump Sale' basis wherein certain assets like shares of Barnawa Agro Industries, vehicles, scrap etc. were excluded. The reserved price was fixed as per the valuation reports. It is on record that the Appellant was also present in the 6th SCC meeting as a special invitee. The changes in the prices over different auctions are noted in table in paragraph 28 (supra). Appellant has missed out on the provisions that Schedule I of Liquidation Regulations only lays down the manner of sale. If the mechanism of sale as specified in Regulation 32 is changed, the Schedule I will have to be followed afresh after every such change. Nowhere, therefore, do we find that the reductions are violative of the Liquidation Regulations.

32. In any case the Schedule I of Liquidations Regulations is directory in nature and not mandatory as is evident in the use of the word "shall ordinarily" in Regulation 33 (1), which is extracted below:

"...

Mode of sale.

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

..."

[Emphasis supplied]

33. Since the 2nd round of auction was conducted on slump sale basis, Liquidator was well within its right to reduce for the first time by 25% as per the Regulations which were applied again on slump sale basis. We agree with the submission of the liquidator that when the mechanism of sale as specified in Regulation 32 is changed, the Schedule-I has to be followed afresh after every such change. In the 2nd round of Auction which was slump sale basis, many assets were excluded and therefore on slump sale basis the reduction of 25% reduction is allowable.

34. In the 10th e-auction dated 10.08.2023, the reserve price was Rs.16.41 crores and the realizable value was 29.41 crores, which was beyond the reserve price. It is also noted that Rs.29.41 crores was realized without the assets such as the shares in subsidiary of Barnawa Agro Industries Ltd., vehicles, scrap etc. which were not part of the sale. It is also noticed that Rs.29.41 crores will not only cover the claim of the Financial Creditors but substantial amounts will also accrue to the shareholders.

35. The argument of the Appellant that presuming that the Respondent had continued with the same mode of sale and reduction of only 10% happened every time, even by that means, by the time of 9th auction the price would have been somewhere around 24 crores. And in the current auction done by the Liquidator realized value at Rs. 29.41 crores, without including some assets, is more than Rs.24 crores. Therefore, we do not see any merit in the allegations of the Appellant.

36. In all, we do not find any violation of the Regulations 32, 32-A, 33, 34 & 36 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

37. The Appellant had also sought to sell the assets of the Corporate Debtor at a fair value in two months' time when the Liquidator is already in place as per the IBC. There is no requisite provision in the IBC through which the shareholder of the Corporate Debtor can be allowed to sell assets of the Corporate Debtor after the initiation of the liquidation process. We do not see how such a prayer could have been legally allowed in I.A. No. 69 of 2023 and has been rightly rejected. During the pendency of these I.A. No. 69 of 2023, the Appellant and suspended management have already given three OTS proposal to the Financial Creditor but each time with a decreasing value. It appears that the sole intent of the Appellant was to buy time for OTS proposals.

38. Even the OTS proposal under this I.A. No. 69 of 2023 was rejected by the Bank, as the value offered was on low side and by the 3rd OTS, the value of OTS had come down from Rs.7.3 Crores to Rs.4.5 Crores as shown in the table in paragraph 11 (supra).

39. From the records, it appears that the Appellant and all the shareholders have been completely non-cooperative throughout the CIRP and the liquidation process. They have not shared any information regarding the assets of the Corporate Debtor. Owing to their non-compliance of orders, the IBBI had to launch prosecution on the ex-management of Corporate Debtor

under Section 19(2) of the IBC. The said case is pending before the Learned Sessions Court, Kanpur as Complaint Case No. 02/2019.

40. Furthermore, it is brought on record that the Appellant has been a beneficiary of fraudulent transactions and has sold many land assets mortgaged with financial creditor to third parties. The Appellant has to answer under Section 66 of IBC, which has been filed by the Liquidator in I.A. No. 166 of 2022. We are not going into that issue.

41. I.A. No. 69 of 2023 was filed with a prayer to dispose of the assets of the Corporate Debtor at fair value and to restrain the liquidator from conducting any further auction. The auction was conducted several times and the value, which was realized by the auction is much more than the reserved price fixed in the 10th auction. The reserved price was Rs.16.41 crores and the value realized was Rs.29.41 crores. Firstly, it is much more than the OTS of Rs.4.5 crores which was offered by the Appellant and furthermore, it is covering all the financial creditors and will also provide substantial amounts to the shareholders. Looking at the circumstances in the present case, wherein there was lack of cooperation from the ex-management and also the Land Assets of Corporate Debtor being marred with various issues which can never fetch circle rates, it appears to be a fair value and the grounds raised by the Appellant are not tenable.

42. From the facts of the case, it can be noted that the Appellant / Ex-management were not cooperating the Liquidator and providing full details of the assets of the Corporate Debtor. Liquidator has rightly proceeded ahead

and we cannot find reasons to question the liquidation proceedings in this ground.

43. Therefore, we do not find any justification in the argument of the Appellant that the Liquidator has not followed the Liquidation Regulations. The non-cooperation of the ex-management is clearly noted by the Adjudicating Authority in its order dated 28.02.2019. In fact, the Adjudicating Authority has clearly brought out in detail the circumstances & problems existing during the CIRP process while finally ordering for Liquidation as extracted below in CA No.265/2018 and CA No 281/2018 in CP No. (IB) 124/ALD/2018:

“19. A perusal of the progress report filed by the RP no doubt shows that there is no preparation of information memorandum, there is no invitation for expression of interest. It is also a fact that there are no resolution plans, there is no expression of interest given by any of the prospective Resolution Applicant and in fact there is no Resolution Applicant that filed the resolution plan. The controversy is, whether the RP had not taken up all the steps that are required to be taken in the CIRP, is on account of his lapse or on account of non-cooperation of the Suspended Directors of the Corporate Debtor. According to the RP, it was on account of the non-cooperation of the Suspended Directors of the Corporate Debtor. According to the Suspended Directors of the Corporate Debtor it was because of the attitude and inaction of the IRP/RP in following various steps in the resolution process that ultimately led the CoC that consist of only one Financial Creditor to take a decision for liquidation. On examination of the entire material placed on record, it appears that the RP decided to proceed against the assets of the M/s Barnawa Agro Industries Ltd. the subsidiary of the company (KIL) by filing CA No. 200 of 2018. It appears if the said issue made the Directors of the Corporate Debtor not to cooperative with the KIL to the extent they are required to cooperate. The material on the record also goes to show that there is no proper cooperation from the Suspended Directors of the Corporate Debtor. In fact, applications have also been filed to punish the

Suspended Directors of the Corporate Debtor for not following the directions given by this Authority to cooperative with the RP in the CIRP process.”

44. After noting various problems associated with the CIRP in this order, the liquidation was ordered and since there were serious allegations against the RP by the Suspended Directors of the Corporate Debtor, Adjudicating Authority decided to appoint a new Insolvency Professional as a liquidator, which was confirmed later on.

Conclusion:

45. In the facts of the case, it is clearly made out that there appears to be no violation in the liquidation process as provided in various regulations of the Liquidation Process Regulations. In fact, the CIRP process could not proceed because of the non-cooperation of the ex-management. This ultimately led to the liquidation of the Corporate Debtor. Even during liquidation process, there was non-cooperation. So many IAs were filed even during the e-auctions, the details of which are given in paragraph 3 (supra), which was to stall and delay the whole process, which were disposed of by the Adjudicating Authority.

46. Liquidation started with the reserve price of about Rs.66.35 crores and finally after 10th round of e-auction Rs.29.41 crores was realized. This amount is sufficient not only to discharge the liability of the Financial Creditors, but shareholders will also get some amount from the surplus. We do not find any justification in the Appeal for setting aside the orders passed in I.A. No. 69 of 2023 and other reliefs sought for stalling the liquidation process.

47. The Company Appeal (AT) (Insolvency) Nos. 105 and 57 of 2024 is therefore dismissed. The connected pending Interlocutory Applications, if any, are Closed. No orders as to cost.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

3rd April, 2024

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