

Punjab National Bank vs Eva Agro Feeds Pvt. Ltd. & Anr on 30 November, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal(AT) (Insolvency) No. 757 of 2021

IN THE MATTER OF:

Punjab National Bank
Sastra Division, Zonal Office,
"United Towers" 11, Hemanta
BasuSarani, Kolkata - 700001

...Appellant

Vs.

1. EVA Agro Feeds Pvt. Ltd.
Having Registered Office at
DK 1103, DLF Galleria
Premises No. 02/124 Plot No.
BG/8, Action Area I, New Town,
Parganas South, Kolkata - 700156

...RespondentNo. 1

2. Sunil Mohan Acharya,
The Liquidator of M/s. Amrit
Feeds Ltd. (In liquidation),
Having his office at
Intelligent IP Management
Solutions Pvt. Ltd., YMCA
Building, 2nd Floor, 25,
Jawaharlal Nehru Road,
Kolkata - 700131

...Respondent No. 2

Present:

For Appellant: Mr. Rajesh Gautam, Mr. Nipun Sharma,
Mr. Anant Gautam, Advocates.
For Respondent: Mr. Rajshekhar Rao, Sr. Advocate with
Ms. Manju Bhuteria, Ms. Sarvapriya Mukherjee,
Mr. Saurav Gupta and Mr. Raghav Kacker,
Advocates for R-1.
Mr. K. Thaker, Advocate for R-2.

Company Appeal (AT) (Ins) No. 757 of 2021

JUDGMENT

1. The Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code (IBC in short) against the Impugned Order dated 12th August, 2021 in I.A. (IB) No. 663/KB/2021 in CP(IB) 440/KB/2018 passed by NCLT, Kolkata Bench (Adjudicating Authority).

2. The Appellant being the Financial Creditor and has security interest in the Mirzapur Asset of the Corporate Debtor which is the subject matter of the Appeal, has filed this Appeal and is seeking relief as stated below:

"a) Set aside the order against the impugned order dated 12.08.2021 in I.A.(IB) No. 663/KB/2021 in CP(IB) 440/KB/2018 passed by the Ld. NCLT Kolkata Bench (Adjudicating Authority) at Kolkata; and/or

b) Call for record from the Ld. Adjudicating Authority, Kolkata Bench at Kolkata in I.A (IB) No. 663/KB/2021 in CP(IB) 440/KB/2018; etc."

3. The Adjudicating Authority has allowed the I.A. filed by Respondent No. 1-EVA Agro Feeds Pvt. Ltd. observing the followings:

a. He has not found irregularity in the e-auction process in terms of Regulation 33 and Schedule 1 of the IBBI (Liquidation Process) Regulations, 2016.

b. He has also observed that there is no whiff of any sort of collusion between the highest bidder and other bidders.

Company Appeal (AT) (Ins) No. 757 of 2021 c. There is no material in record to sustain the perception of the Liquidator that cancelling the present auction would have resulted in a better price for the assets in question.

d. There cannot be endless wait to get the best price for assets especially when there is no material to support a conjecture that there may be a better price for the assets etc. Based on above observations, the Adjudicating Authority has asked the liquidator to send communication to the successful bidder requiring him to deposit the balance sale consideration within the time specified in the e-auction notice.

4. The Appellant-Bank has raised the issue that even if some bidder is highest, it does not amount to that the auction has successfully been completed. They have also raised the issue that sale may not be completed to the highest bidder even if full amount is received. The bidding terms and conditions has given absolute authority to the liquidator to accept or reject any or all bids or cancel the e-auction at any stage. The Highest bidder does not get a vested or acquired right in law.

5. The learned Counsel for the Appellant liquidator placed reliance on the following rulings;

Hon'ble Supreme Court in case of Purxotoma Ramanata Quenim v. Makan Kalyan Tandel, (1974) 2 SCC 169 at page 175 wherein it is held that;

Company Appeal (AT) (Ins) No. 757 of 2021 "11. In State of Orissa v. Harinarayan Jaiswal [(1972) 2 SCC 36] the respondents were the highest bidders at an auction held by the Orissa Government through the Excise Commissioner, for the exclusive privilege of selling by retail the country liquor in

some shops. The Government of Orissa had reserved the right either to accept or reject the highest bid and had actually rejected the bids of the respondents and later on the privilege was sold by negotiation to some others. One of the contentions taken on behalf of the writ petitioners in that case was that the power retained by the Government "to accept or to reject any bid without assigning any reason therefor" was an arbitrary power and, therefore, violative of Articles 14 and 19(1)(g). Hegde, J., speaking for this Court rejected that contention in the following words (at p. 43, para 10):

"One of the contentions taken on behalf of the writ petitioners was that the power retained by the Government 'to accept or to reject any bid without assigning any reason therefor' in clause (6) of the Order made by the Government on 6 January, 1971, in exercise of its powers under Section 29(2) of the Act was an arbitrary power and therefore it is violative of Articles 14 and 19(1)(g). This contention has been upheld by the High Court. It was urged on behalf of the writ petitioners that they have a fundamental right to carry on trade or business in country liquor. That right can be regulated only by imposing reasonable restrictions in the interest of the general public. It was further urged that the power retained by the Government to accept or to reject the Company Appeal (AT) (Ins) No. 757 of 2021 highest bid without assigning any reason is an unguided power and hence it is violative of Article

14. These contentions were accepted by the High Court. To us, none of these contentions appear to be well founded. As seen earlier Section 22 of the Act confers power on the Government to grant to any person on such conditions and for such period as it may think fit the exclusive privilege of selling in retail any country liquor. Section 29 empowers the Government to accept payment of a sum in consideration for the grant of any exclusive privilege under Section 22 either by calling tenders or by auction or otherwise as it may by general or special Order direct. The powers conferred on the State Government by Section 22 and Section 29 are absolute powers. As seen earlier, the validity of those provisions has not been challenged before us. Under Section 29(2) the Government had power to dispose of any of the exclusive privileges mentioned in Section 22 either by auction or otherwise as it may by general or special Order direct. That being the amplitude of the power of the Government, we fail to see how the Government can be said to have conferred on itself arbitrary power under clause (6) of its Order made on 6 January, 1971, when it provided that:

'No sale shall be deemed to be final unless confirmed by the State Government who shall be at liberty to accept or reject any bid without assigning any reason therefor?' Company Appeal (AT) (Ins) No. 757 of 2021 Even apart from the provisions of Sections 22 and 29, this Court took the view that the power retained by the Government under clause (6) reproduced above was not unconstitutional. It was observed in this context (at p. 44, para 13):

"Even apart from the power conferred on the Government under Sections 22 and 29, we fail to see how the power retained by the Government under clause (6) of its

Order, dated 6 January, 1971, can be considered as unconstitutional. As held by this Court in Cooverjee B. Bharucha case [AIR 1954 SC 220 : 1954 SCR 873 : 1954 SCJ 246] one of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue.

Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction-sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privilege set out in Section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once those aspects are Company Appeal (AT) (Ins) No. 757 of 2021 recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids -- see Union of India v. Bhimsen Walaiti Ram [(1969) 3 SCC 146:

(1970) 2 SCR 594]. By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant."

Hon'ble Supreme Court in case of State of Jharkhand v. CWE-SOMA Consortium, (2016) 14 SCC 172: 2016 SCC OnLine SC 690 at page 177 wherein it is held that;

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant v.

Company Appeal (AT) (Ins) No. 757 of 2021 Satyawar [Laxmikant v. Satyawar, (1996) 4 SCC 208], Rajasthan Housing Board v. G.S. Investments [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] and U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 :

(2013) 2 SCC (Civ) 737])."

Further, in case of HUDA v. Orchid Infrastructure Developers (P) Ltd., (2017) 4 SCC 243: (2017) 2 SCC (Civ) 545 : 2017 SCC OnLine SC 64 at page 255 Hon'ble Supreme Court has held that;

13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its Authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the 1978 Regulations, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case, allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus, there was no concluded contract. Regulation 6 of the 1978 Regulations is extracted hereunder:

"6. Sale of lease of land or building by auction.--(1) In the case of sale or lease by auction, the price/premium to be charged shall be such Company Appeal (AT) (Ins) No. 757 of 2021 reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-

regulation (2) of Regulation 5. The successful bidder shall be issued allotment letter in Form CC or C-II by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the land or building auctioned. (3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5. (4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot."

14. We are fortified in our view by a decision of this Court in U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 Company Appeal (AT) (Ins) No. 757 of 2021 : (2013) 2 SCC (Civ) 737], wherein the questions arose for its consideration that : whether there is any vested right upon the plaintiff bidder until the bid is accepted by the competent Authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent Authority and it amounts to a concluded contract in relation to the plot in question; and whether the plaintiff could have maintained the suit in the absence of a concluded contract? Considering the aforesaid questions, this Court has discussed the matter thus: (SCC pp. 195- 97, paras 30-31) "30. In support of the said proposition, the learned Senior Counsel for the

defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of U.P. v. Vijay Bahadur Singh [State of U.P. v. Vijay Bahadur Singh, (1982) 2 SCC 365] . The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] which reads as under: (SCC p. 483, para 9) '9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand Company Appeal (AT) (Ins) No. 757 of 2021 note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.' In the case State of Orissa v. Harinarayan Jaiswal [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36], relevant paragraph of which reads as under (SCC pp. 44-45, para 13);

"13. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram [Union of India v. Bhim Sen Walaiti Ram, (1969) 3 SCC 146]). [Ed.: The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182.] By merely giving bids, the bidders had not acquired any vested rights [Ed.: The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182.].'

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of Company Appeal (AT) (Ins) No. 757 of 2021 acceptance of bid offered by the plaintiff to the competent Authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff."

(emphasis supplied)

6. Hon'ble Supreme Court in case of Meerut Development Authority Vs. Association of Management Studies (2009) 6 SCC 171 has held that tender conditions are not open to judicial scrutiny unless the action of tendering Authority is found to be malicious and misuse of statutory powers. Bidders participating in the tender process have no other right except the right to equality and fair treatment. The terms of the invitation to tender are not open to judicial scrutiny as they lie in the

realm of contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice are provided for such negotiation.

7. The Appellant has also stated that Liquidator is suppose to conduct multiple rounds of auction to maximise the realization from the sale of assets and merely on account of a person or party having been declared as highest bidder the sale cannot be awarded to the bidder. The highest bidder can also participate in multiple rounds of auctions. Company Appeal (AT) (Ins) No. 757 of 2021

8. The Respondent No.2-Liquidator of the corporate debtor has submitted that the reserve price for the CD (Corporate Debtor) Mirzapur Asset was Rs. 10 Crores against the capital cost of Rs. 17.30 Crores and written down the book value of Rs. 8.59 Crores. He has also stated that CDs Lucknow Asset with a capital cost of Rs. 9.28 Crores and written down book value of Rs. 2.45 crores were sold at Rs. 14.79 Crores against reserve price of Rs. 8.5 Crores. While Mirzapur Assets is getting sold only at Reserve Price instead of a higher value which may be more than the Lucknow assets. So, he has decided to cancel the auction and go for another auction. He has also reiterated that the bidder with the highest bid does not get any right to demand for acceptance of his bid. He has also stated that Liquidator is the final authority to take decisions pertaining to the auction sale and stakeholders' consultation committee constituted under Regulation 31A of IBBI (Liquidation Process) Regulations, 2016.

9. The Liquidator, R-2, contends that the auction was not closed by declaring R-2 as the highest and successful bidder and confirming the sale in its favour. There is no provision in IBC or the Liquidation Regulations that prohibits the Liquidator from cancelling an auction. Sub-clause (11) of Clause 1 of Schedule 1 of the Liquidation Process Regulations expressly recognises the Liquidator's absolute right to cancel an auction and hold multiple further auctions for maximisation of the value of the assets. Sub-clause (11) of Clause 1 of Schedule 1 of the Liquidation Process Regulations is given below for ready reference:

Company Appeal (AT) (Ins) No. 757 of 2021 Clause 3(f), 3(k) and 5(m) in the sale auction notice specifies that;

"i) Clause 3(f) at pg. 49 - The Applicant accepts the terms of the disclaimer, which forms an integral part of the E-Auction Process information Document and part of all the other terms and conditions of this E-

Auction Process information Document.

ii) Clause 3(k) at pg. 49 - The Liquidator has absolute right to accept or reject any or all bids or adjourn / postpone / cancel the E-Auction or withdraw any asset / property or portion thereof from the E-Auction at any stage without assigning any reason thereof.

iii) Clause 5(m) at pg. 51 of the Appeal Paper book -

The Bidder with the highest offer / bid does not get any right to demand for acceptance of his bid."

10. It is necessary to go through Regulation 31A, 33 of the Liquidation Process Regulations and Schedule 1 of the Liquidation Process Regulations, given below for ready reference:

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

33. 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. Company Appeal (AT) (Ins) No. 757 of 2021 (2) The Liquidator may sell the assets of the corporate debtor by means of private sale 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;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(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.

"SCHEDULE I MODE OF SALE Company Appeal (AT) (Ins) No. 757 of 2021 [Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016]

1. Auction.--(1) Where an asset is to be sold through auction, a liquidator shall do so in the manner specified herein.

(2) The Liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include--

- (a) releasing advertisements;
- (b) preparing information sheets for the asset;
- (c) preparing a notice of sale; and
- (d) liaising with agents.

(3) The Liquidator shall prepare terms and

conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any:

[Provided that the Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process:

Provided further that the earnest money deposit shall not exceed ten percent of the reserve price.] [(4) The reserve price shall be the value of the asset arrived at in accordance with Regulation 35.

(4-A) 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.

Company Appeal (AT) (Ins) No. 757 of 2021 (4-B) 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.] (5) The Liquidator shall [issue a public notice] of an auction in the manner specified in Regulation 12(3):

Provided that the Liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction.

(6) The Liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.

(7) The Liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.

(8) If the Liquidator is of the opinion that a physical auction is likely to maximise the realisation from the sale of assets and is in the best interests of the creditors, he may

sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The Liquidator may engage the services of qualified professional auctioneers specialising in auctioning such assets for this purpose.

(9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

(10) If the Liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximise Company Appeal (AT) (Ins) No. 757 of 2021 realisations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.

(11) If required, the Liquidator may conduct multiple rounds of auctions to maximise the realisation from the sale of the assets, and to promote the best interests of the creditors.

[(11-A) Where the Liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.] [(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:

Provided that payments made after thirty days shall attract interest at the rate of 12%:

Provided further that the sale shall be cancelled if the payment is not received within ninety days.

(13) On payment of the full amount, the sale shall stand completed, the Liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.]"

31. List of stakeholders.--

(1) The Liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-- Company Appeal (AT) (Ins) No. 757 of 2021

(a) the amounts of claim admitted, if applicable,

(b) the extent to which the debts or dues are secured or unsecured, if applicable,

(c) the details of the stakeholders, and

(d) the proofs admitted or rejected in part, and the proofs wholly rejected.

[(2) The Liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.] (3) The Liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

(4) The Liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under Section 42. (5) The list of stakeholders, as modified from time to time, shall be--

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;
- (c) displayed on the website, if any, of the corporate debtor.

[(d) filed on the electronic platform of the Board for dissemination on its website:

Company Appeal (AT) (Ins) No. 757 of 2021 Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.] [31-A. Stakeholders' consultation committee.-- [(1) The Liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under Regulation 31, to advise him on matters relating to--

- (a) appointment of professionals and their remuneration under Regulation 7;
- (b) sale under Regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:

Provided that the decision(s) taken by the Liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.] (2) The composition of the consultation committee under sub-regulation (1) shall be as shown in the Table below:

TABLE Class of Description Number of Stakeholders Representatives (1) (2) (3)
 Secured financial Where claims of Number of creditors, who have such creditors
 creditors in the Company Appeal (AT) (Ins) No. 757 of 2021 relinquished their
 admitted during the category, subject security interests liquidation process is to a
 maximum of under Section 52 less than 50% of 2 liquidation value Where claims of
 Number of such creditors creditors in the admitted during the category, subject
 liquidation process is to a maximum of at least 50% of 4 liquidation value Unsecured
 financial Where claims of Number of creditors such creditors creditors in the

admitted during the category, subject liquidation process is to a maximum of less than 25% of 1 liquidation value Where claims of Number of such creditors creditors in the admitted during the category, subject liquidation process is to a maximum of at least 25% of 2 liquidation value employees Operational Where claims of Number of creditors other than such creditors creditors in the Workmen, admitted during the category, subject employees and liquidation process is to a maximum of Governments less than 25% of 1 liquidation value Company Appeal (AT) (Ins) No. 757 of 2021 Where claims of Number of such creditors creditors in the admitted during the category, subject liquidation process is to a maximum of at least 25% of 2 liquidation value partners, if any (3) The Liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.

[(4) If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.]

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the Liquidator under sub-regulation (1).

(6) The Liquidator shall convene a meeting of the consultation committee when he considers it necessary and shall convene a meeting of the consultation committee when a request is received from at least fifty-one percent of representatives in the consultation committee.

(7) The Liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

Company Appeal (AT) (Ins) No. 757 of 2021 (8) The Liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of Regulation 39-C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the Liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.(10) The advice of the consultation committee shall not be binding on the Liquidator:

Provided that where the Liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing [and mention it in the next progress report].]

11. Regulation 33(3) of the Liquidation Process Regulation casts a duty upon the Liquidator not to proceed with the sale in the circumstances mentioned therein. Regulation 33(3) is not an exhaustive provision applicable only in the specific circumstances stated therein. Thus, it cannot be said that the Liquidator can cancel an auction only if Regulation 33(3) is attracted. Clause 1(11) of Schedule-I specifically authorises a Liquidator to conduct multiple rounds of auctions to maximise the

realisation from the sale of assets. Multiple rounds of auctions can be conducted because the Liquidator is competent to hold successive auctions. In the instant case, R-2 Company Appeal (AT) (Ins) No. 757 of 2021 have issued the certificate of sale in favour of R-1 in compliance with the directions of the Learned Adjudicating Authority. All steps taken by the Liquidator in compliance with the impugned Order will stand reversed subject to the outcome of this Appeal.

12. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids. Public auctions are held to get the best possible price. Once those aspects are recognised, there appears to be no basis for contending that the owner who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate.

13. In the instant case, Respondent No 1, the sole bidder on 20 July 2021, had placed its bid at the reserve price. For the reasons as stated supra, the learned Liquidator invoked the provisions contained in Clause 3(k) of the sale auction notice dated 28 June 2021 and decided to cancel the auction. However, the learned Adjudicating Authority failed to consider Clause 13 of the Schedule 1, to IBBI (liquidation process) Regulation 2016, which provides that on payment of the total amount, the sale shall stand completed, the Liquidator shall execute the certificate of sale deed to transfer such assets. The assets shall be delivered to him in the manner specified in terms of sale.

14. Therefore, it is clear that the learned Adjudicating Authority proceeded on the wrong assumption, i.e. the sale was successfully concluded; therefore, arriving at the wrong conclusion that the sale Company Appeal (AT) (Ins) No. 757 of 2021 has been successfully concluded; could not have been cancelled by the learned Liquidator.

15. It is well-settled law laid down by Hon'ble Supreme Court in the catena of decisions that the successful bidder in the auction sale does not acquire any vested right in law to enforce the auction, more particularly, when the auction notice confers power on the Authority conducting the auction to cancel the auction in its discretion. Therefore Respondent No. 1, being the highest bidder (sole) that too at the reserve price, had no vested right in law.

16. The learned Adjudicating Authority in the impugned judgement and Order dated 12 August 2021 has only relied upon clause 12 of Schedule 1 of the Regulations 2016 to hold that clause 12 does not vest any discretion in the learned Liquidator to cancel the auction. However, while arriving at the above conclusion, the Learned Adjudicating Authority has failed to consider that clause 11 of the Schedule 1 authorises the Liquidator to conduct multiple rounds of the auction to maximise the realisation from the sale of assets and promote the creditors' best interest. Therefore, unless the power to cancel the auction is read into the conjoint reading of clauses 11, 12 and 13, the provisions in Clause 11 cannot be implemented.

17. An auction sale is not completed under Clause 12 merely because the person has been declared the highest bidder. Instead, the Company Appeal (AT) (Ins) No. 757 of 2021 sale is concluded only on full payment of the amount envisaged under Clause 13 of Schedule 1.

18. Therefore, given the settled position in law as stated above, the learned Liquidator in a stage between Clause 12 and Clause 13 of Schedule 1, and given the provisions contained in Clause 3(K) of the sale auction notice, was entitled to cancel the auction.

19. Thus, it is clear that the learned Adjudicating Authority has committed an error in reading the provisions contained in Clause 12 of Schedule 1, in isolation and considering the provisions contained in Clause 13 and 11 of Schedule 1 of the Liquidation Process Regulations 2016 and the law laid down Hon'ble Supreme Court as referred above.

20. Based on the above, it is clear that the auction bidder has no vested right to claim the auction in its favour in a liquidation sale.

21. It is also clear that the terms of auction sale notice that provides absolute right to accept or reject any or all bids or adjourn/postpone/cancel the E-Auction or withdraw any asset/property or portion thereof from the E-Auction at any stage without assigning any reason thereof cannot be considered as in violation of the Schedule I of the Liquidation Process Regulations.

22. In fine, Appeal deserves to be allowed, and impugned Judgement/Order deserves to be set aside and accordingly, the Company Appeal (AT) (Ins) No. 757 of 2021 Appeal is allowed by setting aside the impugned order. Steps taken in compliance with the said Order during the pendency of this Appeal is reversed. The Liquidator may initiate the fresh process of Auction in accordance with laid down provisions of I&B Code, 2016 read with IBBI (Liquidation Process) Regulation, 2016. No order as to costs. Interim order, if any, passed by this Tribunal stands vacated. Pending application, if any, stands disposed of.

[Justice M. Venugopal] Member (Judicial) [Mr. V.P. Singh] Member (Technical) (Dr. Ashok Kumar Mishra) Member (Technical) 30th November, 2021 New Delhi Basant B. Company Appeal (AT) (Ins) No. 757 of 2021