

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 732 of 2019

[Arising out of order dated 10th June, 2019 passed by Adjudicating Authority (NCLT, Bench-II, New Delhi) in CA No. 551/ND/2019]

IN THE MATTER OF:

Manjit Commercial LLP,
F-143, Industrial Area Bhiwadi,
Rajasthan

.. Appellant

Vs.

SPM Auto Pvt. Ltd. (In Liquidation)
WZ/406/S, Janak Park,
Hari Nagar,
New Delhi.

Dry Nut Enterprises (Auction Purchaser),
2204, 1st Floor, GaliHinga Beg, Tilak Bazar,
Delhi – 110 006

.. Respondents

For Appellant: Mr. Dinkar Singh, Advocate.

For Respondent: None.

J U D G M E N T

KANTHI NARAHARI, MEMBER(TECHNICAL)

Manjit Commercial LLP filed this appeal aggrieved by the order passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-II dated 10th June, 2019. The Appellant/Applicant challenged the second Public Auction held on 15.04.2019 in CA 551/ND/2019 before the Adjudicating Authority and the Adjudicating Authority dismissed the said application.

2. The brief facts of the case are:
 - 2.1. The liquidation process of the 'Corporate Debtor', viz., M/s SPM Auto Pvt. Ltd. (in liquidation) was initiated under the provision of Insolvency and Bankruptcy Code, 2016 (In short '**IBC**') by the Adjudicating Authority. In that process, the Liquidator, vide e-auction information document dated 15.02.2019, invited bids for auction of assets of M/s SPM Auto Pvt. Ltd. under the provisions of IBC. As per the said auction, 4 (four) assets of the Company under liquidation were to be auctioned. The process of liquidation followed the process of e-auctioning namely, public announcement of auction, opening of auction portal (e-auction process), submission of bid forms due diligence (KYC declaration), site visits, announcement of successful bidder, signing of Letter of Intent, return of EMD for unsuccessful bidder and payment of balance consideration by successful bidder etc. Such e-auction process commenced from 15.02.2019 till 15.03.2019.
 - 2.2 Out of four assets made public for the aforesaid e-auction, one asset of the Company in liquidation could not be auctioned.
 - 2.3 The Liquidator again, vide e-auction process dated 10.04.2019, invited bids for auction of only one asset i.e., land and building at plot No. B-169 and 170, RIICO Industrial Area, Phase-II, Delhi Jaipur Highway, Behror, Rajasthan.

2.4 The Liquidator, vide second Sale Notice dated 10.04.2019 invited bids for auction of aforementioned one asset and fixed the reserve price of Rs. 6.15 crores and following time table was specified vide e-auction document dated 10.04.2019:

- a. Public announcement of auction and opening of auction portal-
10.04.2019
- b. Submission of bid forms and declaration forms – 10.04.2019 to
12.04.2019
- c. KYC declaration and due diligence – 10.04.2019 to 12.04.2019
- d. Site visits and discussion meeting – 13.04.2019 to 14.04.2019
- e. Bid and EMD submissions – 10.04.2019 to 12.04.2019
- f. E- auction – 15.04.2019 (11.00 am to 01.00 pm)
- g. Announcement of successful bidder – 16.04.2019
- h. Signing the Letter of Intent – 16.04.209 to 22.04.2019
- i. Return of EMD for unsuccessful bidders – 16.04.2019 to
22.04.2019
- j. Payment of balance consideration by successful bidder –
22.04.2019 to 21.05.2019

3. The contention of the Appellant is that the Liquidator reduced the Reserve Price of this asset from 7.24 Crores to 6.15 Crores with sole objective to favour pre-decided buyer. It is further contended that the Liquidator deliberately did not disclose the area of the asset for public advertisement so that the maximum bidders could not participate in the bidding process and the assets could have been sold to a known bidder.

The Liquidator deliberately reduced the time period to submit the bid forms, declaration form and EMD from 8 days, which was given in the first e-auction to 3 days in the second e-auction. It is submitted that the Liquidator violated the Liquidation Regulations and provisions of the IBC.

4. Heard learned Counsel for the Appellant, perused the records and prima facie we are not convinced and inclined to interfere with the impugned order passed by the Adjudicating Authority for the following reasons:

- I. The e-auction held for the asset, which the Appellant is questioning that the Liquidator had not followed the Liquidation Process Regulations under IBC is concerned that the initiation of liquidation process commenced as per Section 33(1) of IBC wherein the Adjudicating Authority before expiry of Insolvency Resolution Process period for the maximum period permitted for completion of the 'Corporate Insolvency Resolution Process (CIRP) under Section 12 or the First Track Corporate Insolvency Resolution Process under Section 56, as the case may be, does not receive Resolution Plan under Section 30(6) of IBC or reject Resolution Plan under Section 31 IBC for non-compliance of the requirement specified therein which shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this Chapter. Further the liquidation process as prescribed under the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations 2016), the Liquidator has to follow Schedule-

1 under the said regulations regarding mode of sale of assets of the liquidation estate.

- II. Accordingly, the Liquidator has to perform his duties as per IBC and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. As per Regulation 12(1) of the (Liquidation Process Regulations, 2016), the Liquidator shall make a public announcement in Form-B, Schedule-II within 5 days from his appointment.
- III. Public announcement shall be published in one English and one regional language newspaper with wide circulation at the location of the Registered Office and Principal Office, if any, of the 'Corporate Debtor' and any other location where in the opinion of the Liquidator, the 'Corporate Debtor' conducts material business operations, on the website, if any, of the 'Corporate Debtor' and on the website of any designated by the Board for the purpose.

5. In accordance with the said Regulation, the Liquidator issued Sale Notice of the 'Corporate Debtor' (in liquidation) on 10.04.2019. In the said notice the Reserve Price is mentioned as 6.15 Crores and EMD amount is Rs. 61,54,122/-

6. One of the contentions of the Appellant is that the Reserve Price in the first e-auction was Rs. 7.24 Crores and contended that the Reserve Price in the second e-auction was reduced to Rs. 6.15 Crores. The

grievance of the Appellant was that the Reserve Price was reduced by the Liquidator to favour some of the 'buyers'. However, the same is not supported by any evidence. On the other hand, as per Clause-(4) of Schedule-I of the Liquidation Process, the Liquidator is allowed to reduce the Reserve Price by 75%, if an auction at the original Reserve Price fails. However, in this case, the Liquidator reduced the Reserved Price only by 15%. The Liquidator can reduce the Reserve Price for the reason that the earlier auction for this asset has failed. Therefore, the said contention of the Appellant is without any basis.

7. In so far as the wide publicity was not given in the second e-auction held on 15.04.2019 is concerned, the Liquidator has publicly advertised the auction notice in the Business Standard circulated in Delhi and Jaipur duly disclosing the asset for auctioning and followed the procedure as laid down in the Regulations 12 of (Liquidation Process Regulation). Hence we do not find any merit in the allegation.

8. In so far as the allegations of the Appellant with regard to reducing the time period is concerned, the Liquidator followed the procedures as contemplated in clause 3 of Schedule I of the Regulations, which provides that the Liquidator shall prepare the terms and conditions of sale, Regulation 2 of Schedule I and the Liquidator shall prepare a marketing strategy with the help of marketing Professionals, if required for sale of the Asset. The strategy may include releasing advertisement, preparing of information sheets for the asset, preparing a notice of sale and liaising with Agents. Moreover, in the code and in the liquidation Regulations, no

time limit was specified for the auction process, other than the mode of Sale as prescribed in Schedule I of Liquidation Process Regulations, 2016. We do not find any merit in the allegation.

9. Further, the Appellant vide e-mail dated 15.04.2019 addressed to the Liquidator wherein it was stated that the he intended to purchase the asset at a much higher price than the Reserve Price of Rs. 6.15 Crores. However, the Appellant instead of addressing letter to the Liquidator should have participated in the bid process on the date the Sale Notice was advertised in the newspapers and we are of the view that the Appellant was aware of the Sale Notice. However, to the reasons best known to the Appellant, he did not participate in the e-auction held on 15.04.2019. We also noticed that one of the ex-Director, Mr. Vikrant Mahajan by e-mail dated 20.04.2019 addressed to the Liquidator wherein it is stated that the conduct of second public e-auction with a shorter time given smell that the whole process was done to sell the property to a pre-settled buyer.

10. From the letter of the ex-Director dated 20.04.2019 and the earlier letter of the Appellant dated 15.04.2019, it is apparent that the Appellant may be related party to the ex-Director. However, we are not expressing any opinion with respect to the same. As per Regulation 33 (Liquidation Process Regulations, 2016) and as per sub-clause 3, the Liquidator shall not proceed with the sale of asset if he has reason to believe that there is any collusion between the buyer and creditor and the buyer shall submit

a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

11. However, the Appellant did not participate in the e-auction and now making vague allegations without any substantial grounds cannot be accepted. As per Regulation 44(1) of the Liquidation Process Regulations, 2016, the Liquidator shall liquidate the 'Corporate Debtor' within a period of two years. We are of the view that there should not be any unnecessary delay and protract the liquidation process for undue advantage of some of individuals or group, which would adversely affect the liquidation process.

12. For the aforesaid reasons, we do not find any merit in the appeal and we are not interfering with the order of the Adjudicating Authority dated 10th June, 2019. Accordingly, the appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

(Kanthi Narahari)
Member(Technical)

New Delhi
5th September, 2019

AKC