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(2021) 10 NCLT CK 0030

In the National Company Law Tribunal

Case No : C.P.(IB) No. 642/KB/2018, I.A.(IB)No. 189, 660, 734/KB/2021

Eastern Electrodes & Coke Private Limited APPELLANT

Vs

Maa Sherawali Ispat Private Limited (In Liqdn.) RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Citation : (2021) 10 NCLT CK 0030

Hon'ble Judges : Rajasekhar V.K., Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1. Learned Counsel on all sides present in respect of IA(IB)NO.189/KB/2021, IA(IB)NO.660/KB/2021 and IA(IB)/734(KB)2021.

2. IA No. 189/KB/2021 is an application filed by the Liquidator on 4th February, 2021, seeking permission for private sale of all the assets of the Corporate Debtor at a price below the reserved price in an earlier failed public e-auction to a private purchaser who has since withdrawn its pertinent offer on 2nd August, 2021.

3. I.A. No. 660/KB/2021 is an application filed by Asansol Alloys Private Limited seeking permission to bid for the assets of the Corporate Debtor in course of the instant liquidation process.

4. I.A. No. 734/KB/2021 is an application filed by West Bengal Financial Corporation in and around 16th August, 2021, seeking, inter alia, an order allowing it to sell outside the instant liquidation process the assets of the Corporate Debtor over which it enjoys first charge.

5. The liquidation commencement date is 1st March, 2019.

6. After hearing the learned Counsel appearing for each of the parties, the

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following orders are passed:

i. A fresh electronic auction process on an online portal shall be conducted in respect of all the assets of the Corporate Debtor only by the Liquidator herself and the same may witness auction/sale of any permutation and combination of the said individual assets the Liquidator may deem fit in the interest of maximization of assets.

ii. This electronic auction shall be in consonance with the requirements of Schedule I to the IBBI (Liquidation Process) Regulations, 2016, insofar as these requirements are not inconsistent with or do not exceed any of the terms of disposal herein that have secured the consent of the Counsels of all the parties present.

iii. The necessary publication of electronic auction notices with pertinent details of the chosen online portal must be done by the Liquidator within 18th October, 2021, in any English and any regional language newspaper having wide circulation at the location of the registered office of the Corporate Debtor as well as the website designated by the IBBI for purpose of auction of assets of a Corporate Debtor.

iv. The cost incurred by the Liquidator for causing the necessary advertisements of the e-auction notices in the aforesaid newspapers and for obtaining the necessary services of the pertinent electronic auction process platform provider i.e. the online portal for this particular Tribunal monitored public e-auction process in an expedient manner shall be reimbursed by West Bengal Financial Corporation to the Liquidator directly within 7 days of the Liquidator raising the pertinent demands on West Bengal Financial Corporation or its successors and/or assigns. These specific costs reimbursed by West Bengal Financial Corporation in such a manner will not be included in the liquidation process costs incurred by the instant Liquidation Process and will be payable solely by West Bengal Financial Corporation for its delay in filing I.A.(IB)No.734/KB/2021.

v. Any prospective bidder is to take and complete inspection of the assets of the Corporate Debtor and satisfy itself/himself regarding the availability and condition thereof on as-is-where-is-basis during working hours between 18th - 30th October, 2021, at its own costs with 48 hours' notice issued beforehand to the Liquidator for the same in order to enable her to make requisite arrangements.

vi. The Cumulative Reserve Price for all the assets of the Corporate Debtor shall be Rs. 6,00,00,000/- (Rupees Six Crore only) which was the price finally discovered by the Liquidator for all the assets of the Corporate Debtor upon conducting inter-se bidding between a private purchaser Kashvi Power and Steel Private Limited, who has since withdrawn its offer, and another interested private purchase Angraj Vanijya Private Limited who had expressed interest in buying the assets of the Corporate Debtor through private sale some time after the Liquidator had filed I.A.(IB) No. 189/KB/2021.

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vii. A prospective bidder eligible in terms of the IBC to purchase the assets of the Corporate Debtor is to submit Earnest Money Deposit (EMD) amounting to 15% of the aforesaid Cumulative Reserve Price by the close of 30th October, 2021 along with requisite proof of eligibility under the Code to bid for the assets of the Corporate Debtor and any other documentation the Liquidator may desire such a prospective bidder to execute/prepare and submit to her.

viii. The EMD so deposited by any prospective bidder shall be non-refundable once this bidder emerges as the highest and/or successful bidder (as applicable) in the instant e-auction process.

ix. The electronic auction process is to be started on the chosen online portal by 1:30 P.M. of 8th November, 2021.

x. The Liquidator will decide the time and/or event for closing this e-auction process and announcing the Successful Bidder(s) after as many rounds of bidding she may deem adequate for maximization of the realization from sale of the assets of the Corporate Debtor while having due regard to the need to adhere to timelines of the instant Liquidation Process.

xi. The Liquidator shall be at liberty to keep the individual bid amounts invisible during the course of the auction process if she is of the Opinion that such an approach is likely to maximize realizations from the sale of assets and is in the best interests of the creditors and need not need additional permission of this Tribunal in this regard.

xii. Payment of 25% of the Bid money (including the EMD already deposited) has to be made by the successful bidder(s) to the Liquidator within 3 days of closure of the instant e-auction process as notified by the Liquidator.

xiii. The requisite Letter of Intent (LOI) has to be written and signed by the Successful Bidder and submitted to the Liquidator within 9 days of closure of the e-auction process.

xiv. The EMD of unsuccessful bidders shall be shall be returned by the Liquidator within 11 days of closure of the e-auction process by the Liquidator.

xv. Payment of balance consideration by the Successful Bidder along with GST or other taxes as per applicable laws shall be completed within 11 days of the successful bidder signing the LOI. The sale to a successful bidder shall be cancelled and the amount deposited till then will stand forfeited if this balance consideration is not paid by the successful bidder within 11 days of signing the LOI.

xvi. An indicative timeline for this Liquidation Process is provided as follows:

SL.

EVENT

TIMELINE

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NO.

1.

Public Announcement of Auction

18.10.2021

2.

Opening of E-Auction Portal and E-Auction process

18.10.2021

information   document being made available as per

Terms & Conditions

3.

KYC declaration, eligibility declaration via requisite

18.10.2021 - 30.10.2021

affidavit, submission of EMD, bid form etc.

4.

Site visits for inspection of assets on as-is-where-is-

18.10.2021 - 30.10.2021

basis

5.

Start of E-Auction

8th November, 2021

[1:30 PM]

6.

Announcement of Successful Bidder by Liquidator

10th November, 2021

[3 P.M.]

7.

Payment of 25% of the Bid Money by the successful

13th November, 2021

bidder (Including EMD already deposited)

8.

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Signing of Letter of Intent by the Successful Bidder

19th November, 2021

9.

Return of EMD to unsuccessful bidder(s)

21st November, 2021

10.

Payment of balance consideration by the Successful

30th November, 2021

Bidder along with GST or other taxes as per

applicable laws.

xvii. IA(IB)NO.189/KB/2021, IA(IB)NO.660/KB/2021 and IA(IB)/734(KB)2021 shall stand disposed of accordingly. Parties are free to approach the Adjudicating Authority in case of any difficulty

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