

(2023) 09 NCLT CK 0019

In the National Company Law Tribunal

Case No : IA No. 3148 Of 2022 In CP(IB) 1042 (IB)2017

**Hitesh Vasantlal Bhanushali And Ors Vs Udipi Vasudev Ganesh Nayak,
The Liquidator P & S Jewellery Limited ?**

Date of Decision : 15-09-2023

Acts Referred:

Citation : (2023) 09 NCLT CK 0019

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Aditya Ajgaonkar, Vidhi Suthar, Pulkit Sharma, Smriti Shahani

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, Member (Judicial)

1. By way of this order we intend to dispose of IA 3148 of 2022 filed by Hitesh Vasantlal Bhanushali and Ors. (here in after referred to as "Applicant") who are the successful bidders at the E-auction sale of the Corporate Debtor held on 23.02.2021. We further proposed to dispose of IA 3455 of 2022 filed by Applicant i.e. Jain International Trade Organization, also a successful bidder of the assets of the Corporate Debtor sold in E-auction held on 23.02.2021. In both the IA's common questions of facts and law are involved.

Brief facts of IA 3148 of 2022

2. The Applicants are the successful bidders of Lot-1 property of the Corporate Debtor out of the E-auction held on 26.02.2021 in respect of properties Lot-1 and Lot-2 assets of the Corporate Debtor which were sold for Rs. 3.10 crores and Rs. 41.25 crores respectively. The Applicants were allotted 90 days' time to pay the entire sale consideration. The Applicants paid the EMD amount and also paid the entire sale consideration of 3.10 crores along with interest of Rs. 3.22 Lakha at the rate of 12 percent per annum as per schedule 1 of the amended Liquidation Regulations and also paid Rs. 30,000/- as GST at the rate of 18 percent on plant and machinery. In all the Applicants paid Rs. 3,13,58,000/-.

3. It is further stated that the liquidator filed IA No. 1012 of 2021 seeking confirmation of sale and the then Adjudicating Authority vide order date 29.10.2021 indicated that it was not inclined to give benefit of 90 days to pay the balance sale consideration as per amended clause 12 of Schedule 1 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016. As a result, the e-auction was set aside. The order passed by the Adjudicating Authority on 29.10.2021 was subsequently set aside by the Hon'ble NCLAT vide its order dated 23.05.2022 passed in Civil Appeal (AT) Insolvency No. 1096 of 2021. Subsequent to that, the Liquidator sent an email demanding bank guarantee of 12 % on the bid amount from the date of the refund of the bid amount to the date of payment. As a result, a bank guarantee issued on 09.06.2022 was furnished by the Applicant for an amount of Rs. 17,83,560/-. The applicant claims that the Liquidator is not entitled to charge interest on the amount of Rs. 3.10 crore which was unilaterally refunded to the Applicants and therefore, the Liquidator be directed to discharge the Applicant from the onus of furnishing bank guarantee for an amount of Rs. 17,83,560/-.

Brief facts of IA 3455 of 2022

4. This IA has been filed by the Applicants stating that the Applicant was successful bidder for Lot-2 asset of the Corporate Debtor which was sold for Rs. 41.25 crores. The Liquidator issued letter of intent to the Applicant. The Applicant was allotted 90 days time to pay the entire sale consideration as per the amended Liquidation Regulations. However, the payment made after 30 days was to attract interest at the rate of 12% per annum. The Applicant paid the entire sale consideration of Rs. 41.25 crores with interest of Rs. 29,23,150/- at the rate of 12% per annum as per Schedule 1 of the amended Liquidation Regulations for payments beyond 30 days. In all, the Applicant paid a total sum of Rs. 41,54,23,150/- to the Liquidator.

5. The auction was, however, set aside by the Adjudicating Authority vide order dated 29.10.2021. The Applicant received email dated 01.12.2021 from the Liquidator that the sale consideration has been refunded vide RTGS. An appeal was preferred before the Hon'ble NCLAT against order dated 29.10.2021 and the said Appellate Authority granted stay vide order dated 04.01.2022. Eventually the impugned order dated 29.10.2021 was set aside in appeal by the Hon'ble NCLAT vide its order dated 23.05.2022.

6. It is further stated that immediately after the appeal was allowed, the Applicant informed the Liquidator vide email dated 23.05.2022 expressing willingness to re-deposit the sale consideration which was refunded by the Liquidator. Thereafter, the Applicant on 24.05.2022 made the payment of Rs. 41.25 crores. However, the Liquidator through his email dated 24.05.2022 called upon the Applicant to deposit the amount along with the interest of Rs. 2,35,97,260/-. As the liquidator refuse to hand over the possession of Lot-2 asset and execute the sale agreement, the Applicant furnished bank guarantee to the Liquidator for an amount of Rs. 2,35,97,260/-. The Applicant has claimed that the Liquidator is

not entitled to charge interest on the amount which was unilaterally refunded to the Applicant from the date of refund till the date of re-deposit and the Liquidator be directed to discharge the Applicant from the onus of furnishing the bank guarantee for an amount of Rs. 2,35,97,260/-.

Reply filed by the Liquidator

7. In reply to both the IA's, it has been stated in the reply that since the auction was set aside vide order dated 29.10.2021, the Liquidator was under an obligation to go for a fresh e-auction. The Liquidator was left with no option but to refund entire bid amount received from the Applicant. The amount was refunded through RTGS on 01.12.2021. It is further stated that after the Applicant preferred an appeal against the order dated 29.10.2021, the Hon'ble NCLAT vide its order dated 17.12.2021 directed that further proceedings in pursuance of the order dated 29.10.2021 shall remain stayed. Even after the Hon'ble NCLAT stayed the proceedings, the Applicant did not think it fit to refund the bid amount to the Liquidator. The order dated 29.10.2021 was set aside in appeal and the e-auction held on 26.02.2021 was upheld and confirmed by the Hon'ble NCLAT vide order dated 23.05.2022. It is further stated by the Liquidator that the Hon'ble NCLAT has not held in its order that interest for the interim period between the date of refund till the date of actual payment is not to be recovered. In fact, the Liquidator is entitled to claim interest from the period which he received the amount and 30 days from the date of auction as per the amended clause 12 of Schedule 1 of the IBC Regulation, 2016. Besides, the Liquidator has demanded a very reasonable rate of interest of 12% per annum, which is in accordance with the amended Regulations. As the Applicants were adopting dilatory tactics, the Liquidator on 18.08.2022 sent an email asking them to provide an amended bank guarantee. The Applicant has neither amended the bank guarantee nor paid interest till date. In the end, the Liquidator has requested that the Applicant be directed to pay interest on the amount from the date of refund till the date of re-deposit.

Findings:

8. We have heard the Counsel for the parties and gone through the record.

9. During the Course of the arguments, the Counsel for the Applicants has argued that the Liquidator is not entitled to claim any interest on the amount deposited by the Applicants from the date it was refunded by the Liquidator till the date it was redeposited by the Applicants after the e-auction was set aside by the Hon'ble NCLAT vide order dated 23.05.2022. According to the Counsel for the Applicants, it is not the case of the liquidator that the payment was not made by the Applicants within the stipulated period of 90 days. The entire amount was, in fact, paid by the Applicants within time. The Counsel for the Applicants has further contended that after the order dated 29.10.2021 was passed by this Authority setting aside the e-auction dated 26.02.2021, the Applicants did not ask for the refund of the money deposited by him and the Liquidator refunded

the same by way of RTGS on his own and in the given circumstance, the Applicants cannot be made to pay any interest for the integrum period.

10. The Counsel for the Applicants has further argued that after the order dated 29.10.2021 was set aside by Hon'ble NCLAT vide order and judgment dated 23.05.2022, the Applicants immediately informed the liquidator and made the entire payment. Since the order dated 26.02.2021 merged into the order passed by Hon'ble NCLAT dated 23.05.2022 and the payment was made within time from the date of the said order, no case is made out by the Liquidator for claiming any interest. The Counsel for the Applicants has further argued that in the entire process, nobody can be blamed, nor the Applicant can be stated to be at fault in anything. Therefore, the Applicant cannot be made to pay interest. In support of the arguments, Counsel for the Applicants has relied upon *South Eastern Coalfields Limited Vs. State of MP & Others.*, 2003 (Supreme Court Case 8), whereby it has been held that no one should be made to suffer by an act of Court which embraces within its sweep all such acts to which the Court may form opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and law.

11. On the other hand, Counsel for the Respondent /Liquidator has argued that the money deposited by the Applicant was bound to be refunded once the e-auction was set aside by Order dated 29.10.2021. Therefore, it cannot be said that the Liquidator wrongly refunded the money which was never demanded by the Applicant. Counsel for the Respondent has further argued that as per LOI issued, the payment made after 30 days is to attract interest at the rate of 12% per annum. Since the payment was delayed not because of any action attributable to the Liquidator, the Applicant should be made to pay interest.

12. We have weighed the contentions raised by the counsel for the parties.

13. It is no doubt true that the applicant did not make a request to the Liquidator for the refund after the e-auction was set aside vide Order dated 29.10.2021. However, it was justified on the part of the Liquidator to have refunded the amount as the Liquidator was duty bound to refund the amount once the e-auction was set aside with the direction to conduct fresh e-auction. It is also not disputed that after the order dated 29.10.2021 was set aside by the Hon'ble NCLAT on 24.05.2022, the money was deposited by the applicant within time. It has also been pointed out that the order dated 29.10.2021 passed by Adjudicating Authority merged into the order dated 23.05.2022 passed by the Hon'ble NCLAT and therefore, there is no question of payment of any interest by the applicant as the payment was made within the prescribed period from the date of the said order. However, in our considered view, considering the fact that the amounts in question in both the IAs were admittedly refunded to the Applicants and the amounts were redeposited only after the order dated 29.10.2021 was set aside by the Hon'ble NCLAT and that during this period the amounts were utilized by the Applicants, it would be just and equitable if the Applicants are directed to pay interest on the amounts in question at the rate of

6% per annum from the date the amounts were refunded by the Liquidator till the same were re-deposited with the Liquidator after the passing of the order by the Hon'ble NCLAT on 23.05.2022.

14. With the above observations, both the IAs are disposed of with an Order that the Applicants shall pay interest @ 6% per annum on the amounts in question from the date the same were refunded by the Liquidator till the date the said amounts were redeposited with the Liquidator.