(2026) 07 NCLAT CK 0014

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi, CHENNAI Bench

Case No : Company Appeal (AT) (CH) (Ins) No.217/2024

Karthik Rukmini Energy Limited, Smt. B. G. Lakshmi & Ors. APPELLANT

Vs

Deepak Maini, Liquidator, Ind Bharat Thermal Power Limited RESPONDENT

Date of Decision : 10-07-2026

Acts Referred:
IBC — Section 29A

Citation : (2026) 07 NCLAT CK 0014

Hon'ble Judges : Justice Sharad Kumar Sharma, Member (Judicial);Jatindranath Swain, Member (Technical)

Bench : Division Bench

Advocate : For Appellant: Mr. T. Ravichandran, Advocate; For Respondents: Mr. Aadil Khan, Advocate, Mr. Shashank Agarwal, Advocate

Final Decision : Dismissed

Judgement

(Hybrid Mode)

Justice Sharad Kumar Sharma, Member (Judicial):

The brief facts which engage consideration in these two company appeals are that the Appellants, who happen to be the successful bidder, question the propriety of the impugned order dated 08.05.2024, by virtue of which Ld. NCLT, has proceeded to dismiss the Interlocutory Applications IA(IBC)/225/2024, IA(IBC)/597/2024 & IA(IBC)/819/2024. The first application IA(IBC)/225/2024 was preferred by the ex-Director of the corporate debtor (CD) M/s. Ind Bharat Thermal Power Ltd., whereas the other two applications being IA 597 of 2024 and IA 819 of 2024 were filed by the Appellant herein.

2. In **Comp App (AT) (CH) (Ins) No.217/2024**, the Appellant challenges the dismissal of the Application IA No.819/2024, wherein it had prayed for a direction to the Stakeholder Consultation Committee (SCC) to accept the balance sale consideration of Rs. 14.88 crore towards purchase of the land of CD situated

at Tuticorin, which was submitted by him with a delay of 7 days, by condoning the said delay and not to cancel the letter of intent issued in his favour. In fact, this application was filed by the Appellant on 22.04.2024 after the SCC rejected the request of the Appellant to extend the timeline to pay the balance sale consideration and also refused to accept the payment which was made belatedly. The request for extension of the timeline to pay the balance sale consideration was made by the Appellant much earlier on 16.03.2024 and it had filed the application IA/597/2024 before Ld. NCLT praying a direction for the same. Dismissal of the said application IA/597/2024 by Ld. NCLT has been challenged by the Appellant in the other Appeal **Comp App (AT) (CH) (Ins) No. 218/2024**. Therefore, we will deal with the Appeal Comp App (AT) (CH) (Ins) No. 218/2024 at the first instance.

3. While considering the Appeal **Comp App (AT) (CH) (Ins) No.218/2024** on merits, we will need to have a reference to the application IA(IBC) No. 225/2024 that was preferred by the Suspended Director of the Corporate Debtor of Ind Bharat Thermal Power Limited, the CD. The said application was filed in the proceedings of the Company Petition by instituting the same on 24.01.2024, praying for that, the E-Auction conducted by the liquidator in relation to the land of the CD lying at Tuticorin, Tamil Nadu be annulled and the liquidator be directed not to proceed further with the E-Auction conducted for Block VIII consisting of 311.72 Acres of land situated at the said place on the grounds that the buildings and the plant and machinery are also situated on the said land and that if the land is sold separately, it will severely erode the value of the CD and therefore, the sale of land of the CD on standalone basis will not be in the best interests of the value maximisation of the CD. While this, application was under consideration, Appellant who had already been determined as to be the successful bidder, filed the application IA(IBC) No.597/2024 in the Company Petition on 16.03.2024, praying for grant of extension of time for depositing the balance sale consideration, for a direction to the liquidator not to cancel the e-auction of 22.12.2023, wherein it had been declared as the successful bidder and for a direction not to cancel the EMD remitted by it. The reliefs prayed for are detailed below: -

> *"(a) To grant extension of the Applicant herein to make the payment of the balance consideration of Rs.14,87,52,047/-to the Liquidator till the disposal of IA 225/2024 by the Hon'ble Adjudicating Authority.*
>
> (b) *To direct the liquidator not to cancel the said sale dated 22.12.2023 wherein the Applicant herein was declared as the successful bidder till the disposal of the instant Application.*
>
> (c) ***To direct the liquidator not to cancel the EMD of Rs.80,52,819 paid by the Applicant herein to the liquidator towards the said sale of land situated at Tuticorin, Tamil Nadu.***
>
> (d) *To pass such other orders as this Hon'ble Court may deem fit and proper".*

4. When this application came up for consideration before Ld. NCLT on

26.03.2024, it observed that it does not have jurisdiction to extend the timelines beyond what has been allowed by the Code or the Regulations and since the Appellant has stated that it has time to deposit the said amount till 27.03.2024 and it would be submitting a bank guarantee for the balance sale consideration, the matter be listed on 03.04.2024. Meanwhile the Appellant could neither deposit the balance sale consideration nor furnish the required bank guarantee within the time limit, the liquidator, on the recommendation of the SCC, cancelled the letter of intent and forfeited the EMD amount already deposited and informed the same to the Appellant. Subsequently, Ld. NCLT heard the matter on 03.04.2024 & 24.04.2024 and pronounced its orders on 08.05.2024, dismissing the application IA/597/2024, in light of the orders passed on the application IA/224/2024, where it recorded that in light of the decision of SCC, the said application does not survive.

5. It is argued by the Learned Counsel for the Appellant that the dismissal of IA(IBC) No.225/2024, which in itself should not have led to consequential dismissal of IA(IBC) No.597/2024, particularly qua in the context of the Relief No. III as extracted above. He submits that once he has raised certain issues in his application IA(IBC) No.597/2024, though the said issues did have some correlation with the issues raised in the application IA(IBC) No.225/2024, by the promoter, still the relief prayed for in IA No.597/2024, ought to have been considered on their own merits and that the impugned order has not given any detailed reasoning for dismissal of his application. In this context, it is to be noted that Ld. NCLT has relied upon the decisions taken by the SCC in not extending the timeline for deposit of the balance sale consideration. In its decision, SCC has deliberated in detail the possibility of extending the said timelines and has finally concluded that the liquidation regulations do not allow for extension of timelines beyond 90 days and that there is no compelling reason for extending the timelines. It has further noted that extending timelines may add to further rounds of litigation, especially when there is an application pending, filed by the ex-Director for cancelling e-auction of the land of the CD on a stand-alone basis. Ld. NCLT, after noting the decision of the SCC of cancelling the auction of the land, had closed the application IA 225/2024 as not surviving anymore, and in that context, also had closed IA 597/2024 as dismissed. Given the reasons offered by SCC, the decision of NCLT to dismiss IA 597/2024 cannot be faulted. In that view, the only thing that needs to be examined will be the prayer made for the refund of the EMD amount, which has been deposited by the Appellant. The Appellant submits that while deciding the said application based upon the inference drawn from the decision of IA(IBC) No.225/2024, it was still incumbent upon the Tribunal to have addressed upon all the reliefs on merits that were claimed by the Appellant in IA(IBC) No.597/2024 and that, the same has not been done as his grievance relating to refund of EMD has not been ventured into or decided on merits by the Learned Tribunal.

6. The Appellant submits that the E-Auction Process Information, as it was published by the Respondents, contained the stipulations governing the necessity

for depositing of the Earnest Money Deposit as contained in its Clause I the conditions of its forfeiture as contained under Clause L, which is extracted hereunder: -

"L. FORFEITURE OF EARNEST MONEY DEPOSIT FROM

THE E-AUCTION APPLICANT / BIDDER

It is to be noted that the Earnest Money furnished can be forfeited at any time, upon the occurrence of any of the following events:

i. *if there is a breach of any of the conditions under this E-Auction Process Information Document by the Bidder or in case Bidder is found to have made any misrepresentation; or;*

ii. *if Bidder is found to be ineligible to submit the bid as per the conditions set out in Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility as per the conditions set out in Section 29A of the IBC (as amended from time to time); or*

iii. *if the Bidder is identified as the Successful bidder and does not accept the Letter of Intent issued by the Liquidator.*

iv. *if the Successful Bidder fails to make the complete payment as per the terms of the Letter of Intent issued by the Liquidator".*

7. If we scrutinise the process contained under Clause L contemplating the forfeiture of the Earnest Money Deposit, the Appellant's case can only be considered in the light of the implications that could flow from sub-clause IV of Clause L of the bidding document.

8. Since, as of now, when the decision was taken on the Appellant's IA(IBC) No.597/2024, the refund of the EMD was not an aspect, which stood covered or reserved to be made by any of the covenants of the bidding documents, it was still an issue, which was required to be dealt with by the Learned Adjudicating Authority on its own merits, owing to the subsequent developments which have taken place, such as subsequent sale of the CD as a going concern on 13.06.2024, issue of letter of intent on 19.06.2024 to the successful bidder M/s. Orissa alloy steel Private Ltd, completion of the payment by 16.07.2024, issue of the sale certificate dated 20.07.2024 in favour of the successful bidder and handing over the assets of the CD being undertaken and the submission of the closure report and it's subsequent acceptance by the Learned NCLT.

9. As regards the Comp App (AT) (CH) (Ins) No.217/2024, the SCC has already rejected the prayer of the appellant to receive the balance sale consideration by condoning the delay of seven days on the grounds that it may multiply the litigations, apart from the fact that it doesn't have the power to extend timelines. Ld. NCLT, while recording the same and while recording the dismissal of IA 225/2024 as having been rendered infructuous in view of cancellation of the auction of the land of the CD, has dismissed the application IA 814/2024 by virtue of the impugned order. In view of the logic as above and the subsequent developments leading to filing of the closure report and its acceptance by learned NCLT, we see no grounds to interfere with the said impugned order.

10. In these peculiar circumstances, both the **Company Appeals CA (AT) (CH) (Ins) No. 217 & 218 of 2024** are dismissed. While dismissing the Company Appeals, we make it clear that the dismissal of Company Appeal CA (AT) (CH) (Ins) No.218/2024 will not preclude the Appellant, to file an appropriate application before the Learned Adjudicating Authority for seeking the refund of the Earnest Money Deposit made by him in compliance of Clause I of the bidding document and if such application is filed within two weeks from the date of uploading of this order by the Appellant, the same would be considered by the Learned Tribunal in accordance with law.

11. We made it clear, that it may be construed from any observation made by us as to touching or remarking upon the refund of EMD, that is requested to be decided independently.