
(2023) 07 NCLT CK 0043

In the National Company Law Tribunal

Case No : IA No.779/2023 & 953/2023 In CP (IB) No. 23/Chd/Pb/2019

?Symcom Exim Private Limited Vs Rainbow Denim Ltd ?

Date of Decision : 26-07-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 30(2), 60(5)
Companies Act, 2013 — Section 424
National Company Law Tribunal Rules 2016 — Rule 11
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 1(12), 32, 33

Citation : (2023) 07 NCLT CK 0043

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Balwinder Singh Kalsi, Manish Jain, Vishwas Arora, Divya Sharma, Krishna Dayama, Aalok Jagga, Deepshikha Gupta, APS Madaan

Final Decision : Company Appeal (AT) (Ins.) No. 1212-1213 of 2022""

Judgement

Subrata Kumar Dash (Member Technical)

1. IA No. 779/2023 and IA No. 953/2023 are being taken up together as the same are interconnected, and IA No. 953/2023 is filed in IA No. 779/2023.

2. The IA No. 779/2023 is filed by M/S Symcom Exim Private Limited through its Authorised Signatory, Mr. Vipin Chandra Kushal ('Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the NCLT Rules, seeking issuance of directions on the Respondent /Liquidator to consider the bid submitted by the Applicant on 24.02.2023 for acquiring the corporate debtor as a going concern on as is where is the basis in the process of liquidation of the Corporate debtor and to direct the Liquidator to declare the applicant as H1 bidder and accordingly, issue a letter of intent inviting the applicant to deposit balance sale consideration amount as per provisions of the Code.

3. The applicant in IA No. 953/2023 has been impleaded as respondent in IA No.

779/2023 vide order dated 20.04.2023 of this Adjudicating Authority.

4. The applicant states that this Tribunal vide order dated 09.12.2019 initiated the CIRP of the Corporate Debtor. The Respondent Mr. Dharmendra Kumar Bhasin, was thereby appointed as the Interim Resolution Professional and later confirmed as the Resolution Professional. Subsequently, this Tribunal, vide its order dated 12.04.2022, initiated the Liquidation Process of the Corporate Debtor, and the Respondent was appointed as the Liquidator of the Corporate Debtor.

5. It is further stated that the Liquidator published a Sale Notice dated 20.01.2023 for the Auction to be conducted on 20.02.2023. The said Auction was proposed to be conducted on a "Swiss Challenge Mechanism". The details of the same are as follows:

Particulars

Block

Reserve Price

EMD

Incremental Value

Amount in Rs./Cr.

Sale of

Corporate Debtor as a going concern

A

47.30*

4.73

0.01

SLUPM Sale Basis

B

46.59

4.66

0.01

Set of Assets collectively

C

10.06

1.00

0.01

Set of Assets collectively

D

41.71

4.17

0.01

6. It is submitted that as per the Sale notice dated 20.01.2023, the following terms are mentioned below:

" This Auction shall be subject to the Swiss Challenge mechanism, of which some of the details are mentioned below:

a. (*)The Auction of CD as a going concern has been initiated on the behest of an interested buyer (hereinafter referred to as "Reserve Value Bidder") who has submitted its unconditional and irrevocable EOI/Qffer for purchase of all unsold assets excluding all liabilities (as existing on liquidation commencement date) of the Corporate Debtor on a going concern basis on "As is where is", "As is what is,", "Whatever there is basis" and "Without recourse basis" for Rs. 47.30 crores and the price offered by him has been taken as reserve price for Option A (Sale of Corporate Debtor as a going concern (all assets, excluding liabilities)).

b. The highest bid, amongst bids received under Option A, Option B, and cumulative sum of highest bids of Option C and Option D, being more than the reserve price of Option A, if any, shall be declared as "Challenger Bid" by the Liquidator.

c. The Reserve Value Bidder shall be given preference to match the Challenger Bid and shall have right of refusal to match or give higher bid against the Challenger Bid within 24 hours. If Reserve Value Bidder submits to the liquidator his intention to match or give higher bid than Challenger bid, within 24 hours from the declaration of Challenger Bid, then the liquidator shall conduct another round of bidding interse the Reserve Value Bidder and Challenger Bid. Accordingly, bidder, amongst Reserve Value Bidder and Challenger Bid, offering highest value shall be declared as successful bidder.

D. In case the Reserve Value Bidder fails or abstains from exercising his right of refusal to match or give higher bid against the Challenger Bid within 2 4 hours from declaration of Challenger Bid, the Challenger Bid shall be declared as Successful Bid. "

The copy of the Sale Notice dated 20.01.2023 and E-Auction Process Information Document dated 20.01.2023 published by the Liquidator is annexed with the application and marked as Annexure A-2.

7. The applicant states that by email dated 03.02.2023, the applicant submitted

a refundable fee of Rs. 10,00,000/ (Rupees Ten Lacs only) and thereafter, vide email dated 17.02.2023, duly submitted the Earnest Money Deposit (EMD) of Rs. 1,00,00,000/ (Rupees One Crore Only) for Block - C - Plant & Machinery assets of the Corporate Debtor. The copy of emails dated 01.02.2023, 03.02.2023 and 17.02.2023 submitting the relevant disclosures, refundable fees, and E-Will for Block-C assets is annexed and attached as Annexure A-3 (Colly).

8. Thereafter, the applicant duly participated in the e-auction process held on 20.02.2023 and placed the highest bid for assets under Block C. However, vide email dated 21.02.2023, the Bid placed by the Applicant was cancelled/rejected by the Liquidator. The said email dated 21.02.2023 reads as:

"Dear Sir

After examination of bids received under various Lot/Block(s) it has been observed that no bids under Option D was received by the Liquidator and therefore, the cumulative bids for Option C and Option D is less than bid received under Option A.

Therefore, in view of Clause 5. 6 (Declaration of Challenger Bidder by the Liquidator) of the Auction Process Document dated 20.01.2023, no bidder can be declared as, Challenger Bid". Consequently, the Reserve Value Bidder will be treated as the highest and successful bidder. Your EMD deposit shall be returned in the next 48 hours. "

9. Subsequently, the applicant also received a refund of EMD. The copy of the email dated 21.02.2023 received by the Applicant qua rejection of a bid for Block-C assets is annexed herewith and marked as Annexure A-4.

10. The applicant further referred to Clause 5.6 (Declaration) of Challenger Bidder by the Liquidator) of the Auction Process Document dated 20.01.2023 in support of his claim.

11. The applicant has placed reliance on the following judicial decisions:

- a) Swiss Ribbons (P) Ltd. Vs UOI (2019) 4 SCC 17.
- b) Binani Industries Limited vs. Bank of Baroda and Anr. 2018 SCC Online
- c) NCLAT 521 of Bank of Baroda vs. M/s Rathi Super Steel Limited
- d) Jindal Stainless Steel vs. Mr. Harish Chandra Arora in IA 4489/2021 in CP (IB) 1446/2021
- e) Punjab National Bank vs. Eva Agro Feeds Pvt Ltd. & Anr. CA (AT) (Ins) No. 757 of 2021 (at para 15,17,20)
- f) Divya Manufacturing Co. v Union Bank of India & Ors. (2000) 6 SCC 69

12. The respondent Liquidator has furnished his reply stating inter alia that the present application is not maintainable at this stage and is liable to be dismissed,

as the Auction Proceedings of the Corporate Debtor has been successfully concluded with the declaration of the Successful Bidder by the Liquidator on 22.02.2023 at 3 PM. It is pertinent to mention that the Auction Process was supplemented with the Swiss Challenge Method.

13. The respondent has referred to the following dates, which are important for proper appreciation of the facts of the case:

a) 20.01.2023: The Liquidator issued and published the 'Auction Process Information Document' on the official web portal of the Corporate Debtor/Rainbow Denim Limited to enable the prospective bidders/applicants to know the Terms & Conditions of the Auction Sale

b) 01.02.2023: The Applicant submitted his expression of interest to participate in the e-auction process for "Option I Lot-C" only. Along with the detailed expression of interest, the Applicant submitted necessary affidavits' undertakings, and other documents as required to be submitted in terms of the auction sale process document dated 20.01.2023.

c) 05.02.2023: The Liquidator confirmed receipt of the EOI under the category/option/lot C, which included a specified group of assets. Subsequent to the submission of the EOI to participate in the e-auction process for Option/Lot C, the Applicant duly submitted Earnest Money Deposit (EMD) to the tune of Rs. 1.00 Crores. It would be relevant to mention here that in the email dated 17.02.2023, the Applicant has duly confirmed that it shall be taking part in the auction process under Option I Lot C only.

d) 20.02.2023: The E-auction process was conducted with the following outcome:

Option/Lot

Bidder Name

Bid Value (Highest)

Option/Lot A

(Going Concern)

Consortium of Shreya Strips Private Limited & M/s. RD Bansal (A partnership concern)

Rs. 47.30 Crores

Option/Lot B

(Slump Sale of Assets)

No Bid received

Option/Lot C

Symcom Exim Private Limited

Rs. 10.24 Crores

Option/Lot C

No Bid received

(i) The auction was supplemented by the Swiss Challenge Method. Clause 5.6 of the auction process information document provided for Declaration of Challenger Bidder by the Liquidator. Clause 5.6 of the auction process information document provided for Declaration of Challenger Bidder by the Liquidator and provided as under:

(ii) The Liquidator at the end of the Auction phase upon examination of bids received under various Lot/Block(s) shall declare the 'Challenger bid' for the sale of Corporate Debtor (as a going Concern) or asset(s) of Corporate Debtor. The highest bid among the bids received under Option A, Option B and cumulative sum of highest bids of Option C and Option D, being more than the reserve price of Option A, if any, shall be declared as "Challenger Bid" by the Liquidator'

(iii) The bidder(s) with the highest value (amongst respective bids received under Option A, Option B and cumulative sum of highest bids of Option C and Option D) shall be determined on the basis of highest bid received for sale by the Liquidator via the Auction portal process'

(iv) In case of any dispute/discrepancy, the Liquidator shall examine the Auction applications and declare the Challenger bid(s) offering maximum value for the auctioned assets/ sale of assets of the Corporate Debtor' This right of selecting and declaring the Challenger bid shall solely rest with the Liquidator at all times. The Challenger bid shall be declared on the conclusion of e-Auction of Options A, B, C and D.

e) 21.02.23: Since no bid was received under Option/Lot D, therefore, the Applicant was informed that in terms of Clause 5.6 of the auction process information document dated 20.01.2023, no bidder can be declared as 'Challenger Bid' Accordingly, the Reserve Value Bidder, as defined under the auction process information document, was declared as Successful Bidder. Accordingly, the earnest money deposits (EMD) as submitted by the unsuccessful bidders, were returned on the same day.

f) 22.02.23: The Liquidator convened a meeting of the Stakeholders Consultation Committee to discuss the outcome of the auction held on 20.02.2023 and further to discuss the terms and conditions of the demand notice to be issued to the Successful Bidder.

14. It is further argued that there is no challenge to the process adopted by the liquidator. The applicant has not been able to point out any illegality in the process adopted by the Liquidator. After the issue of the Sale notice dated 20.01.2023, the Applicant consciously submitted his detailed Expression of Interest to participate in the e-auction process, particularly for Option/Lot C

only'. As the EOI was submitted in the format as mentioned in the stated Auction Process Information Document, it is clear that the Applicant had full knowledge of the terms and conditions of the Auction Process Information Document as issued by the Liquidator on 20.01.2023. Despite the knowledge of the terms and conditions of the Auction Process Document, Applicant submitted his Expression of Interest only in one category viz' OPTION/ LOT C. In the said Auction Notice dated 20.01.2023, Applicant had an opportunity to participate / to bid in the auction process for other options as well, including Option A- " Sale of Corporate Debtor as a Going Concern. However, the Applicant chose not to submit his Expression of Interest Option A and instead opted to participate in the process pertaining to only Option C-" Sale o/assets other than Land & Buildings. For participating in the Eauction process for Lot A, the Applicant was required to submit an Earnest Money Deposit of Rs. 4.73 Crores, which is clear from the Sale Notice dated 20.01.2023, but the same was not done. In short, the applicant is trying to purchase Corporate Debtor as a "Private SaIe" in terms of Regulation 33 (2) of the Liquidation Process Regulations and bye-pass the auction process, which has already been concluded by the Liquidator. The process of sale concluded on 22.02.2023, and the Applicant herein evinced an interest in Option A only on 24.02.2023, i.e. after the conclusion of the process.

15. Respondent No. 2 - SRA, in its reply, has stated that the present application filed by the Applicant is sheer misuse of the process of law, and the same is liable to be dismissed at the threshold. The relief claimed is in contravention of the Process Document. Respondent No. 2 was declared Successful Bidder on 22.02.2023 by the Liquidator, and the time limit for payment of the sale consideration was available to

the Applicant till 29.05.2023 as per Clause 5.10 of the Auction Process Information Document which is in conjunction with Schedule I Sr No. 1(12) provided under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The unsuccessful bidder filed the present application seeking consideration of his fresh proposal dated 24.02.23 for the sale of Corporate Debtor as a going concern, submitted after the date of sale, i.e. 20.02.2023. In the present case, even though Regulation 33(2) of the Liquidation Regulations, 2016 permits private sale, it still seems that the liquidator and Stakeholders Consultation Committee was of the view to issue a fresh 5th Public Auction Notice.

16. As per the terms of the process document, specifically as per clause 5.6, the liquidator, after the examination of the bids received under various lots/blocks, will declare the highest bid as a 'Challenger Bid'. For declaring the bidder with the highest value, Option A, Option B, and the cumulative sum of the highest bids of Option C & D were to be determined as per clause 5.6 (ii). Thereafter, as per Clause 5.7, Pg 22, subsequent to the declaration of the Challenger bid, the reserve value bidder had to be given the option to exercise the right of refusal to match and provide better value than the challenger bid, and consequently, as per

clause 5.8, after the 2nd round of auction, i.e. Interse between the challenger bid and the reserve value bid was to be declared as a Successful Bidder.

17. Thereafter, as per Clause 5.7, subsequent to the declaration of the Challenger bid, the reserve value bidder had to be given the option to exercise the right of refusal to match and provide better value than the challenger bid, and consequently, as per Clause 5.8, after the 2nd round of auction, i.e. Interse between the challenger bid and the reserve value bid was to be declared as a Successful Bidder.

18. That relief claimed by Applicant is contrary to Process Document and is bound by Estoppel and Waiver. Having known, he never opted for Option A and hence forfeited and relinquished his right by his own action amounting to estoppel. Process document, which as per Format IV undertaking, is binding, does not permit him to give any further bid after the conclusion of the sale process. Having known, he never opted for Option A and hence forfeited and relinquished his right by his own action amounting to estoppel. Process document which, as per Format IV undertaking is binding, does not permit him to give any further bid after the conclusion of the sale process as per the timelines provided under clause 3.3, page 40 of the process document, the last date for payment of final consideration by the successful bidder is 29.05.2023. However, meanwhile, the present application has been filed seeking consideration of his fresh proposal dated 24.02.23 for the sale of Corporate Debtor as a going concern, submitted after the stipulated date of submission of EMD, i.e. 17.02.2023 and even after the date of sale, i.e. 20.02.2023 and subsequent to declaring the Applicant as an H-1 bidder. Further, the Applicant, without impleading the Successful Bidder/ Proposed Respondent No. 2, has obtained an ex-parte restraint order on 28.02.2023, whereby this Hon'ble Tribunal has restrained the Respondent No.1 Liquidator not to issue the Sale Certificate till the next date of hearing, i.e. 20.04.2023, which has caused great prejudice to the respondent no.2 herein.

19. The applicant being an Unsuccessful Bidder, has no locus standi to file the present application seeking consideration of the bid offered subsequent to the sale.

20. That this position of law has been examined by the Hon'ble NCLAT, Chennai, in the case of Dr. S. Jackson vs. R. Venkatakrishnan CA (AT) Ins No. 33 of 2023, decided on 17.03.23], relevant extract of which is reproduced hereinbelow:

"25. It comes to be known that, when a 'Meeting', was convened on 06.04.2022, to receive and considered all 'Bids' in the 'Swiss Challenge', the 'Petitioner / Appellant', had not attended the 'Meeting' and also made 'no offer'. 28. In the 'Swiss Challenge Auction', which took place on 06.04.2022, in which, the '2nd Respondent', was named as a 'Successful Bidder', and it satisfied the payment of Rs.44,64,00,000/-. Further, the purchase of the 'Corporate Debtor', as a 'Going Concern', by the '2nd Respondent', was 'allowed', by the 'Adjudicating Authority',

through its 'Order', passed in IA(IBC)/101 8/CHE/2022 in main CP/759/IB/CB/2018. 31. Not resting with the above, this 'Tribunal', keeping in mind of a primordial fact that the 'Petitioner Appellant', is not a 'Stakeholder', in the 'Liquidation Process' of the 'Corporate Debtor', and in any event, has 'no substantial interest' in the 'Corporate Debtor', comes to a cocksure conclusion that the 'Petitioner I Appellant', has no vested interest in the 'Corporate Debtor', and in view of the fact that the entire 'Management', was handed over to the '2nd Respondent' and the entire 'Sale Proceeds', were distributed to the 'Stakeholders', the 'Leave' sought for by the 'Petitioner /Appellant', to prefer the instant Comp. App (AT) (CH) (INS.) No. 33 of 2023, before this 'Tribunal', is not 'acceded to'. Viewed in that perspective, the IA No. 124 of 2023 in Comp. App (AT) (CH) (INS.) No. 33 of 2023, fails.' For D. Bans&”

[Emphasis Supplied]

21. On the issue of whether the claim of the applicant that his higher bid was filed subsequent to the completion of the bid, it is submitted by the respondent that the same cannot be accepted in violation of the terms of Process Documents and the timelines stipulated therein.

22. It is averred that Clause 5.5 (vii) of the Process Document, provided that in case a bidder wished to increase the Financial Proposal, the same had to be done within the timelines fixed and not thereafter. Thus, any acceptance of the impugned offer of the applicant would be tantamount to delaying the liquidation process.

23. In this connection, reliance has been placed on the ratios of the following judicial decisions:

a) In the case of Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. f 2022 (2) SCC 4011, Hon'ble Supreme Court held as under:

“We urge the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best-effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. The judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate.”

b) In the case of Kalinga Allied Industries India Private Limited vs. Committee of Creditors & Anr. f CA (AT) Ins No. 689 of 2021, dated 19.12.2022, it was held that:

“This Order has attained finality and no fresh consideration of any Resolution Plan at this stage can be entertained. It is reiterated that the 'Maximisation of Value of Assets' ought to be 'within the specified timelines' and if it is not a timebound process', the entire scope and objective of the Code would fail merely

because there is another higher offer made by a third party, the CoC cannot consider another Plan of a third party who did not participate in the CIRP Proceedings . For all the ongoing reasons, this Tribunal is of the earnest view that once Plan is submitted for approval, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code the Adjudicating Authority cannot, in its limited jurisdiction, interfere .'

[Emphasis Supplied]

c) The Hon'ble NCLAT, New Delhi in the case of Express Resorts and Hotels Ltd versus Amit Jain CA (AT) Ins No. 1158 of 2022, decided on 09.02.2023], it was held by Hon'ble NCLAT, New Delhi that:

"21. To the similar effect is another judgment of this Tribunal in Kalinga Allied Industries Pvt. Ltd. vs. Committee of Creditors & Anr. Company Appeal (AT) (Ins.) No.689 of 2021 where reliance of the decision in the case of Ebix Singapore has been placed. This Tribunal rejected the submission that higher value offer is to be considered. It was held that after completion of process and lapse of the CIRP period, there was no occasion to reconsider the Plan. In the above case, CoC itself has filed an Application praying for direction to the RP to call a meeting of CoC to consider a Resolution Plan of several entities and sought for additional time to consider their Plans. The Appeal was allowed and the order granting said permission was set aside.

23. The IBC and the CIRP Regulations provide a tight scheme and timeline for completion of entire process

24. The maximisation of value of the Corporate Debtor is admittedly an object of the CIRP, but the said maximisation has to be achieved within the timeline provided in the scheme.

25. The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed.

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The mere fact that certain other offers have been received after the approval of the Resolution Plan, CoC cannot have a change of heart and start clamoring before the Adjudicating Authority that they have no objection to sending back the Resolution Plan for reconsideration. This will be permitting an unending process, since by passing of time situation keeps on changing. After coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be entertained.

xxxxxx'

[Emphasis Supplied]

d) The Hon'ble NCLAT, New Delhi, while considering a similar matter in the case of M/s Mohan Fabtex Limited vs. Rajesh Jhunhunwala, Liquidator Parasrampuriah Synthetics Ltd. CA (AT) Ins No. 670 of 2022, dated 15.03.2023 has upheld the view of NCLT that Liquidation Process is a time bound process and secondly even if Liquidator carried out a private sale without giving opportunity to any other, who may after the process offer a better value still commercial wisdom of liquidator shall prevail .

24. It is further submitted that negotiations had already taken place in the cited case, and the preference given to the private bidder was held to be justified. The present case is on a better footing. There is no private but public sale. Secondly, the applicant participated and was granted full opportunity to participate. Thirdly, he was fully aware while submitting the bid that it would be meaningless in the presence of a Reserve Value Bidder, still continued with the process. Fourthly, he forfeited his right to challenge by participating in the process knowing fully well the conditions of the Process document, which as per undertaking in Format IV, terms of the Process document will be binding. Further, the view that maximization of value has to be considered within the timelines has also been upheld, and even the higher offer to purchase the Corporate Debtor has not been considered, the same being offered at a belated stage and that too in contravention of Process document.

25. It is also submitted that the applicant, being an unsuccessful bidder- is not a stakeholder in the Liquidation process of the Corporate Debtor and cannot maintain the present application, which is liable to be dismissed.

26. It is further submitted that the applicant/unsuccessful bidder is fully aware of the fact that the terms and conditions of the process information document are binding, which cannot be modified, and thus, by way of filing the present application before this Hon'ble tribunal seeking direction to the liquidator to consider his subsequent bid is against the terms and conditions of the process document. However, it is a settled position of law that what cannot be done directly can also not be done indirectly, which has been held by the Hon'ble NCLAT, New Delhi in Avantha Holdings Limited Versus Abhilash LaI CA-304 of 22 decided on 04.07.2022. Therefore, the conduct of the applicant in trying to override the terms and conditions of the process document is deprecated. Further, the Applicant, by way of filing the present application, has approached this Hon'ble Tribunal to conduct the sale proceedings, denovo, which is not permissible.

27. The applicant, in its rejoinder, has submitted that since the bid of the applicant was rejected on the ground of receiving no bids under Option D, the applicant vide email letter dated 24.02.2023 expressed its interest in acquiring the Corporate Debtor as a GOING CONCERN (excluding all liabilities (as existing on liquidation commencement date) for an amount of Rs. 48,00,00,000/-

(Rupees Forty-Eight Crores) and proposed to pay the 5% of offer amount within 2 days from the date of acceptance of applicant's bid by the Respondent.

28. It is further submitted that the said bid offer of Rs. 48 Crores (with reserving the right to increase the bid amount further), in case the bid value amount is further increased by the Reserve Value Bidder) placed by the applicant herein is higher than that of the Reserve Value Bidder, which is for Rs. 47.30 Crores only. However, in the present case, the Liquidator failed to conduct a meeting of the Stakeholders Consultation Committee ('SCC') to discuss the highest bid offer amounting to Rs.48 Crores submitted by the Applicant.

29. It is averred that the Liquidator is mandated to seek advice/consultation of the SCC members qua the decisions relating to the Sale of assets of the Corporate Debtors. Further, the Liquidator has expressed by his actions that he is in collusion with the Reserve Value Bidder and has certain ulterior motives of hiding the factum of receiving the highest bid amount of the applicant of Rs. 48 Crores from the SCC members.

30. It is submitted that since the highest bid offer of the applicant was received by the Liquidator prior to the finalization and circulation of the said minutes of the meeting, the Liquidator ought to have further discussed or apprise the highest bid offer of the applicant with the members of the SCC.

31. The Liquidator, on 22.02.2023, declared the Reserve Value Bidder as H-1 bidder. Pertinently, on the said letter for declaration of Successful Bidder, it was explicitly mentioned as "the issuance of this letter shall not be deemed to grant any right against the Liquidator or the Corporate Debtor or their obligation or cost or risk shall be undertaken by the Liquidator or their Representative or advisor". Hence, it is submitted that the mere issuance of a letter of declaration does not conclude or crystalize the auction process in favour of the Reserve Value Bidder.

32. The acquisition of the Corporate Debtor by the applicant is in line with the objective of the Code and in the best interest of the Corporate Debtor and its stakeholders.

33. The applicant has reiterated its reliance on the same judicial decisions as mentioned in the application and referred to in para 9 above.

34. It is further submitted that since till date, neither any application on behalf of the Liquidator is filed before this Hon'ble Tribunal seeking approval of the sale of Corporate Debtor as a going concern in favour of the Reserve Value Bidder, nor has the Liquidator till date has issued the Sale Certificate in favour of the Reserve Value Bidder, the present auction is yet attaining its finality.

35. Further, it is pointed out that as per Recital 5.9 of the Process Document dated 20.01.2023, it allowed a sale to be cancelled by the Liquidator at any time before its conclusion without assigning any reason for the same. Hence, the liquidator is well within its right to cancel the present auction/sale and thereby

accept the bid submitted by the Applicant, the same being higher than the amount of Reserve Value Bidder.

36. It is averred that since no prospective bidder submitted its bid under Option D of the assets of the Corporate Debtor, the bid submitted by the applicant under Option-C was automatically rejected.

37. It is further stated that the applicant herein is a qualified bidder of the present, ongoing auction process, who already submitted its bid for Option C however, the bid was rejected on the sole premise that no other bid was received for Option D assets. 38. The applicant further submitted that the unilateral acts of the liquidator of not considering the bid offer of the applicant show the collusion of the liquidator with the reserve value bidder. Moreover, despite the ad-interim stay of this Hon'ble Adjudicating Authority on the issuance Sale Certificate, the Liquidator has failed to conduct a meeting of the SCC to apprise the members of the same and consult them on the way forward.

IA No. 953/2023

39. The Applicant in this application is a member of the Consortium of Shreya Strips Private Limited, and M/s R D Bansal formulated vide Memorandum of Understanding dated 24.12.22 to form a Consortium to purchase the Corporate Debtor, i.e. Rainbow Denim Limited. A copy of the MOU dated 24.12.2022 is attached as Annexure A-1.

38.1) That the Applicant in IA No. 779/2023 has filed the said application without any locus standi , which is not even maintainable before this Hon'ble Tribunal and is also bad for non-joinder of necessary parties. The Applicant herein has also filed the accompanying application for impleading the Applicant being a necessary and proper party and also filed a detailed reply to the Application bearing IA NO. 779/23 for the effective adjudication of the instant matter, which may be considered in case impleadment is allowed. The contents of the Application as well as the reply may be read as part of the present application as well.

38.2) On 28.03.2023, on which date, this Hon'ble Court, while issuing notice on the application, has also issued a direction to the Liquidator not to issue the sale certificate till the next date of hearing. The aforesaid order has been obtained from this Hon'ble Tribunal without impleading the Applicant herein, the applicant is the Successful Bidder, whose Bid for an amount of Rs. 47.30 crores for Block/ Option A, i.e. Sale of Corporate Debtor as a going concern has been accepted by the liquidator in the auction conducted on 20.2.2023, in the matter of Rainbow Denim Limited (Corporate Debtor) and the Applicant was declared Successful Bidder on 22.02.2023 by the Liquidator and the time limit for payment of the sale consideration is available to the Applicant till 29.05.2023 as per Clause 5.10 of the Auction Process Information Document which is in conjunction with Schedule I Sr No. 1(12) provided under The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

38.3) IA No. 779/2023 filed by the unsuccessful bidder is not maintainable as he has no locus standi to maintain an application at this stage when the auction has already been conducted on 20.02.2023, in which the applicant had participated but never submitted any bid qua Option A (CD as a going concern); but knowingly submitted the bid only for Option-C i.e. (Sale of Assets Collectively- All assets other than land and building 66 KV sub-station and pumphouse). It is pertinent to mention here that the auction process information document dated 20.01.2023 was issued to all the prospective bidders, wherein it was categorically mentioned that the auction will be conducted as per the Swiss challenge mechanism as the liquidator has already received an unconditional bid/ offer from the reserved value bidder the Applicant herein to purchase the corporate debtor as the going concern (i.e. Block/ Option A) at a value of Rs. 47.30 crore.

38.4) A Reliance in this regard is placed on the judgment of Hon'ble NCLAT in the case of M/s Mohan Fabtex Limited vs. Rajesh Jhunjhunwala, Liquidator Parasrampuriah Synthetics Ltd. [CA (AT) Ins No. 670 of 2022, decided on 15.03.23 and Dr. S. Jackson vs. R. Venkatakrishnan [CA (AT) Ins No. 33 of 2023, decided on 17.03.2023], wherein subsequent higher bid after the conclusion of the process has been held to be beyond consideration, and plea of maximization of assets has been rejected, as the same cannot be considered in contravention of the Process Document.

38.5) The unsuccessful bidder, who in fact had never submitted any offer under Option A and without any locus or being stakeholder after the sale was conducted, submitted the fresh offer dated 24.02.2023, which cannot be accepted at a belated stage beyond the date fixed for submission of EMO, i.e. 17.02.2023.

38.6) The Proceedings under IBC are to be completed within a fixed timeline, and permitting any intervention after the expiry of such timeline would be against the intent and purpose of the Code IBC. Reliance is placed on Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. [2022 (2) sec 401].

38.7) It is submitted that what cannot be done directly cannot be permitted to be done indirectly. The applicant in IA No. 779/23 could not now submit a fresh offer which could be submitted till 17.02.2023. Furthermore, Schedule 1 (12) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides for payment of the entire sale consideration within a period of 90 days; however, the payment made after 30 days attracts 12% interest.

38.8) The operation of the interim order has affected the payment schedule of the Applicant, and in case the payment is not made within 90 days, expiring on 29.05.23, the entire auction would be cancelled, and perhaps the liquidator would then claim forfeiture of EMO without any fault on the part of the applicant herein because had the instant challenge not been there, the applicant herein

would have deposited the entire amount within the prescribed time which time period also is not being granted to the applicant for no fault of his.

40. We have heard the learned counsels for the parties and have carefully perused the relevant records.

41. The decisions relied upon by the Applicant are now taken up for consideration as below:

? The decision in the case of Swiss Ribbons (Supra) has been clearly misread by the applicant in the sense that the said judgment underlines the maximization of the value of the Corporate Debtor by completing the reorganization and insolvency resolution in a time-bound manner. In the context of the present case, any intervention by this Adjudicating Authority after the completion of the completed bidding process will only result in delaying the liquidation process and not in maximizing the value of the Corporate Debtor.

? In the case of Binani Cement, the Adjudicating Authority noticed that the claim filed by (Ultratech Cement Limited) including the revised offer, was not properly considered by the CoC and also noticed that the resolution plan, which was originally approved by the CoC was discriminatory and contrary to the claim of the I&B Code. In the present case, no such fact is noticed as the auction process has been transparent, and the applicant has not been able to point out any particular defect in the auction process.

? In the case of Rathi Super Steel Private Limited (Supra), the Principal Bench, National Company Law Tribunal, observed that the original purchaser agreed to pay Rs. 177.5 Crore, whereas the new applicant offered to pay Rs. 190 Crores which was subsequently revised upwards. In its order, the Principal Bench, NCLT, ordered a fresh auction with a reserve price of Rs. 201 Crores, i.e. 12.9% increase on the bid by the original H1 Bidder. In the present case, the increase offered by the applicant, i.e. Rs.0.70 Crore, which works out to 1.4% increase only. Furthermore, the present applicant had participated in the original bid, whereas, in the above-referred case, the opportunity was given to an applicant who has not participated in the original bid. Thus, the present case is clearly distinguishable on the basis of facts and ratios of the above-referred decision are not applicable to the case in hand

? In the case of Divya Manufacturing (supra), the Hon'ble High Court in a case of winding up, used its discretion to set aside the confirmation of a previous highest bid and directed a fresh sale to be conducted on the ground that there was a specific condition in the terms and conditions of sale which empowered the Court to set aside the sale even though it was confirmed, for the interests of the Creditors, Contributors, and all concerned and/or public interest. We, however, note that no such pre-condition exists in the present case, and hence the ratio of this decision is clearly not applicable.

? In the case of Everest Fincap Private Limited, the Hon'ble Supreme Court of

India cited specific conditions in the terms and conditions of the sale, which empowered the Court to set aside the sale even-though, it was confirmed for the interests of the Creditors, Contributors and all concerned and/or public interest. The Hon'ble Court also found the original offer to be totally inadequate in comparison to the fresh offer, where a much higher price is offered and held that the latter would be in the interest of the company and its creditors. In the present case, the difference between the offers being very negligible, and hence, the ratio of the cited case does not apply.

? In the case of Kotak Mahindra (Supra), it was held that if a property is disposed of by private treaty without adopting any other mode provided under the statutory rules, etc., the possibility of collusion and fraud cannot be ruled out. It was further held that even while accepting the bid of the highest bidder, the authority is required to be fully satisfied that the property has fetched the appropriate prices and that there has been no collusion between the bidders. It is further held that "it becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price". In the present case, there is negligible difference between the offers to justify any intervention by this Authority in the results of a transparent auction process which has been concluded.

? In the case of Punjab National Bank (supra), it was held that an auction sale is not complete merely because the person has been declared the highest bidder. Instead, the sale is concluded only on the full payment of the amount envisaged. The successful bidder in the auction sale does not acquire any vested right in law to enforce the auction. We note that this is settled law, the same is not under challenge in the present case in hand.

42. To reiterate, in the case in hand, the sale notice was issued on 20.01.2023 along with the e-auction process information document dated 20.01.2023. The applicant submitted its Expression of Interest for option/Lot C on 01.02.2023 and submitted necessary affidavits/undertakings and other documents. The liquidator confirmed receipt of EOI under category/option/Lot C on 05.02.2023 after the applicant duly submitted an Earnest Money Deposit of Rs. 1 Crore. The e-auction process was submitted on 20.02.2023, and the applicant was informed on 21.02.2023 that his bid was rejected, and subsequently, his EMD was also refunded.

43. In this case, we observe that the applicant has consciously decided to participate in Auction-C (Plant and Machinery, Assets of the Corporate Debtor) and has chosen not to participate in Block-A, i.e. sale of the Corporate Debtor as a going concern. As is evident from the sale notice, equal opportunities have been given to participant buyers. Furthermore, the sale auction was proposed to be supplemented by the Swiss Challenge Mechanism. We further note that within a span of a few days of having failed in its attempt to win the bid by making an offer of Rs. 10.24 crores for the plant and machinery assets of the Corporate Debtor, the applicant submitted a slightly enhanced offer for the corporate debtor

as a going concern than the highest bidder in the original bid. This was done on 24.02.2023, i.e. four days after the conclusion of the bidding process and two days after the meeting of the Stakeholders Consultation Committee in which the outcome of the e-auction was discussed to decide on the terms and conditions in the demand notice to be issued to the successful bidder. In our view, this sequence of events hints at an opportunistic effort by the applicant to somehow succeed in the bid rather than following the norms of a transparent bid process.

44. As discussed in the forgoing paragraphs, the ratios of the judicial decision relied upon by the applicant are not applicable to the facts of the present case. To put the issue in perspective, a reference is made to the following decisions:

Valji Khimji & Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited, (2008) 9 SCC 299 which held that entertaining objections after the sale is confirmed should not be allowed, except on limited grounds like fraud.-f it is held that every confirmed sale can be set aside, the result would be that no auction sale will ever be complete because somebody can always come after the auction or its confirmation offering a higher amount. Further, when an auction sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they will be themselves be to blame if they do not come forward to bid at the time of the auction

Kalinga Allied Industries India Private Limited vs. Committee of Creditors & Anr. [CA (AT) Ins No. 689 of 2021, which held that: "It is reiterated that the 'Maximisation of Value of Assets' ought to be 'within the specified timelines' and if it is not a 'timebound process', the entire scope and objective of the Code would fail merely because there is another higher offer made by a third party, the CoC cannot consider another Plan of a third party who did not participate in the CIRP Proceedings. For all the ongoing reasons, this Tribunal is of the earnest view that once Plan is submitted for approval, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code the Adjudicating Authority cannot, in its limited jurisdiction, interfere."

Express Resorts and Hotels Ltd versus Amit Jain [CA (AT) Ins No. 1158 of 2022, which held that: "The IBC and the CIRP Regulations provide a tight scheme and timeline for completion of the entire process. In the present case, we have noticed that the CIRP period had come to an end, and by order dated 09.07.2020, an extension was granted by the Adjudicating Authority of 146 days. The extended period was also come to an end in October 2020. The CIRP period had come to an end and by an order passed on 09.11.2020, the Adjudicating Authority granted three weeks' time for filing of Resolution Plan before it. The period of CIRP was over long ago and Adjudicating Authority after about two years, subsequent of completion of CIRP period cannot direct the CIRP process to begin again by providing for inviting applications for fresh Resolution Plan.

24. The maximisation of value of the Corporate Debtor is admittedly an object of

the CIRP, but the said maximisation has to be achieved within the timeline provided in the scheme.”

M/s Mohan Fabtex Limited vs. Rajesh Jhunjhunwala, Liquidator Parasrampuriah Synthetics Ltd. [CA (AT) Ins No. 670 of 2022 which held that: “The submission which has much pressed by learned counsel for the Appellant is that the Appellant has made a higher offer of more than 10% from the offer of Respondent No. 2 which was sufficient ground to accept the offer of the Appellant, maximisation of the value of the Corporate Debtor being the main objective of the I&B Code. There can be no dispute that maximisation of the value of the Corporate Debtor is one of the objectives of the I&B Code. However, the said objective has to be achieved within timelines. There has been already five failed e-auctions and the Respondent No. 2 was an entity who had been interested in the Corporate Debtor from very beginning by submitting Resolution Plan. Respondent No. 2 was objecting to the liquidation and even filed an appeal in this Tribunal, where this Tribunal observed that Liquidator should explore the possibility for a scheme for compromise and arrangement. The Respondent No. 2 has also filed a scheme for compromise which came to be considered by the Stakeholder Consultation Committee, which was not approved having received only 64% voting share. The Stakeholder Consultation Committee have thus well aware of the plan and scheme submitted by Respondent No. 2 and Stakeholders has given their express approval to the proposal of Respondent No. 2. The acceptance of proposal of Respondent No. 2, which was more than the last Reserve Price of the failed auction, after due deliberation was accepted by the Stakeholders.

13. Learned counsel for the Appellant has placed reliance on judgment of this Tribunal in "Rimjhim Ispat Limited & Anr. Vs. Jindal Stainless Limited & Anr., Company Appeal (AT) (Ins.) No. 1212-1213 of 2022" and submitted that in the similar facts and circumstances when a higher offer was made before the Adjudicating Authority by Jindal Stainless Ltd. before approval of the private sale, the Adjudicating Authority has accepted the said offer by Jindal Stainless Ltd. and directed for limited e-auction between the Appellant- Rimjhim Ispat Ltd. and Jindal Stainless Ltd.

14. When we look into the facts of the Rimjhim's case (supra), the private sale in favour of Rimjhim Ispat Ltd. for Rs. 177.50 Crore whereas Jindal Stainless Ltd. filed an application before the Adjudicating Authority where it made an offer of initially Rs. 190 Crore and revised to Rs. 200 Crore. The Adjudicating Authority held that in the circumstances sale in favour of the Appellant cannot be said to be complete and directed Jindal Stainless Ltd. to deposit Rs. 50 Crore to show its bonafide and directed for limited e-auction. This Tribunal dismissing the appeal filed by Rimjhim Ispat Ltd., whose private sale was accepted by the Liquidator, held that private sale in favour of the highest offer shall not be treated to be complete since terms of the sale require prior approval of the Adjudicating Authority. The law laid down by this Tribunal in the above case is well settled. In

the above case, the Adjudicating Authority exercised its discretion and directed for limited e-auction after deposit of Rs. 50 Crores by Jindal Stainless Ltd. The discretion exercised by the Adjudicating Authority was in the facts of the above case, which was affirmed by this Tribunal in Rimjhim's case (supra). There are few specific facts which have been relied by the Adjudicating Authority in the present case for approving the offer of Respondent No. 2. The proposal submitted by Respondent No. 2 came to be approved by Stakeholder Consultation Committee and thereafter after filing of application by the Respondent No. 2 as well as the Appellant, the Adjudicating Authority directed the Stakeholders to again file affidavit giving their response. Affidavits filed by both the Financial Creditors, as noted above, where they clearly shown their acceptance to the proposal of Respondent No. 2. When the stakeholders had expressed their acceptance to the proposal of Respondent No. 2, we do not find any error in the decision of the Adjudicating Authority approving the proposal, as noted above. The Respondent No. 2 was not a stranger to the above process and he has already filed Resolution Plan and a scheme which was not earlier approved. Financial Creditors were aware of the credentials of the Respondent No. 2 and must have interacted with the Respondent No. 2 even earlier. The judgment of this Tribunal in Rimjhim Ispat Ltd. (supra) was a case where the Adjudicating Authority exercised its discretion for directing for limited auction whereas in the facts and circumstances of the present case, the Adjudicating Authority proceeded to approve the proposal of Respondent

No. 2. We, thus, do not find any error in exercise of jurisdiction by the Adjudicating Authority in approving the proposal of Respondent No. 2 and judgment of this Tribunal in Rimjhim Ispat Ltd. was on its own facts."

45. While the aforementioned decisions have settled the law on the issues under discussion, we note the fact that the Hon'ble NCLAT has discussed the decision in the case of "Rimjhim Ispat Limited & Anr. Vs. Jindal Stainless Limited & Anr., Company Appeal (AT) (Ins.) No. 1212-1213 of 2022" and has held that it is on its own facts, and did not apply the same ratio in the case of M/s Mohan Fabtex Limited (supra).

46. While agreeing with the submission that the auction bidder has no vested right to enforce the auction in his favour in a liquidation sale, we also note that the marginally enhanced offer will not actually benefit the Corporate Debtor. Rather, reinitiating the bidding process and the consequent delays will harm the stated objective of the Code to complete the liquidation process within a strict timeline. By allowing such offers, a bidding process will become an endless exercise and would adversely affect the concept of maximization of the value inherent in the code.

47. The applicant has also alleged that the liquidator failed to apprise, seek advice or consult with SCC members after receiving its bid of Rs. 48 Crores even though the Code provides for mandatory consultation with SCC members (with the voting of 66%) in respect of the sale under Regulation 32 of the Liquidation

Regulations. After going through the sequence of events in the present case, where a transparent bid has been concluded, and the results of the same have been placed before the SCC, we do not find any justification for the liquidator to place before the SCC the slightly enhanced offer received after the conclusion of the bidding process. We note that the additional amount offered by the applicant who had participated in the bidding process is so negligible that any consideration of the same would only result in a delay in the time-bound proceedings of the liquidation.

48. As regards the respondents' prayer to waive the interest and also to allow time of 90 days for payment as per the provisions of Regulation 33 after excluding the period from the date of the stay order issued by this Bench, we extract the provisions of Schedule 1 (12) of IBBI, the Insolvency and Bankruptcy Board of India (Liquidation Process) 2016:

"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".

49. It is noted that this Bench in its order dated 28.03.2023, issued the following directions in IA No. 779/2023.

"The learned counsel for the liquidator is directed not to issue a sale certificate till the next date of hearing. This order did not prejudice his obligations under the bid."

50. Subsequently, on 20.04.2023, the following order in IA No. 953/2023 was passed:

"Heard the learned counsel for the parties. Status quo be maintained regarding issuance of the certificate"

51. In the present case, we note that the purpose of giving 90 days in Schedule 1(12) of the Liquidation Process Regulation is to give clear time to the bidder to arrange and deposit the bid amount. It is stated that the Successful Bidder could not take any action towards the arrangement of funds due to legal impediments beyond his control. It is further stated that the bankers, 'being aware' of the interim order, decided to await the conclusion of a challenge to the sale process as they would prefer to process the proposal only when there is no legal impediment. It is further stated that there has been no stay order, the applicant in IA No. 953/2023 would have deposited the amount of the bid within 90 days.

52. In this connection, we profitably quote the following from the decision of the Hon'ble NCLAT, Chennai Bench in the case of Mr. V.S. Palanivel vs. Mr. P. Shriram, CS, Liquidator; Company Appeal (AT) (CH) (Ins) No. 336 of 2021:

11. The 'Auction Purchaser' has approached the 'Adjudicating Authority' in I.A. No. 335 of 2020, seeking 'extension of time' for making payment, stating that there were various issues, pertaining to the property, due to which, they could not make the 'Payments' within stipulated time. The 'Auction Purchaser' had highlighted one of the major issues that there was an 'Order of Attachment' made by the 'Income Tax Authority' on property.

12. The averment of the 'Appellant' is that the 'Auction Purchaser' could not seek an 'Extension', since the provisions of the 'Insolvency Regulations' are mandatory in character and under in any circumstances, 'Time Period' for making the 'Payment' cannot be extended.

xxxx

Discussions:

(II) Whether 'Sale' was valid, when 'Payment' from 'Auction Purchaser' is not received within 90 days. Can any extension be granted for the same?

xxxx

d. Para 28 - It is pertinent to mention that Liquidation Process Regulation 47 deals with the Model Timeline for Liquidation Process. Model Timeline is only a directory in nature. It cannot be considered a deadline. It is provided under Regulation as a guiding factor to complete the liquidation process in a timebound manner. In exceptional circumstances, such a time limit can be extended.

Xxxx

Para 32

"The timeline for payment of final sale consideration may be extended by the sole discretion of Liquidator."

xxxx

(iv) Moreover, the property was said to be in subsistence of attachment of Income Tax Department, and due to the same, the Registrar was not registering the property in the name of the 'Successful Bidder' and subsequently the 'Adjudicating Authority' directed the Income Tax Department to issue a NOC, and then the property was registered successfully in name of Successful Bidder.

(v) Further the delay in payment if reasonable, the 'Adjudicating Authority' by exercising its 'inherent powers' under Rule 11 of I & B Code, 2016, can grant extension of payment by the 'Successful Bidder'.

"Rule 11 of NCLT Rules, 2016

Inherent Powers- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of

the Tribunal.

Section 424 of the Companies Act, 2013.

Procedure before the Tribunal and Appellate Tribunal.- (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it, or the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice, and subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.”

In view of all the above discussions, including Rules, cited Judgments, we do not find any error on the part of the liquidator. The ‘Adjudicating Authority’ correctly gave the ‘impugned order’ on this issue.

53. In view of the aforementioned discussions, we hold that there is no need to interfere with the results of the concluded bidding process. The prayer of the applicant in IA No. 779/2023 is to direct the Liquidator to consider the bid submitted by the Applicant on 24.02.2023 for acquiring the corporate debtor as a going concern and to direct the Liquidator to declare the applicant as an H1 bidder is hereby rejected. The successful bidder is directed to provide balance sale consideration as per provisions of Schedule 1 (12) of IBBI, the Insolvency and Bankruptcy Board of India (Liquidation Process) 2016. It is also clarified that as prayed by the applicant in IA No. 953/2023, the applicant-successful bidder is allowed exclusion of the time period from 28.03.2023 till the date of this order for the purpose of determination of time required for completion of the sale and depositing payment and computing interest under Schedule 1(12) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

54. In the result, IA No. 779/2023 is dismissed, and IA No. 953/2023 is allowed as above.