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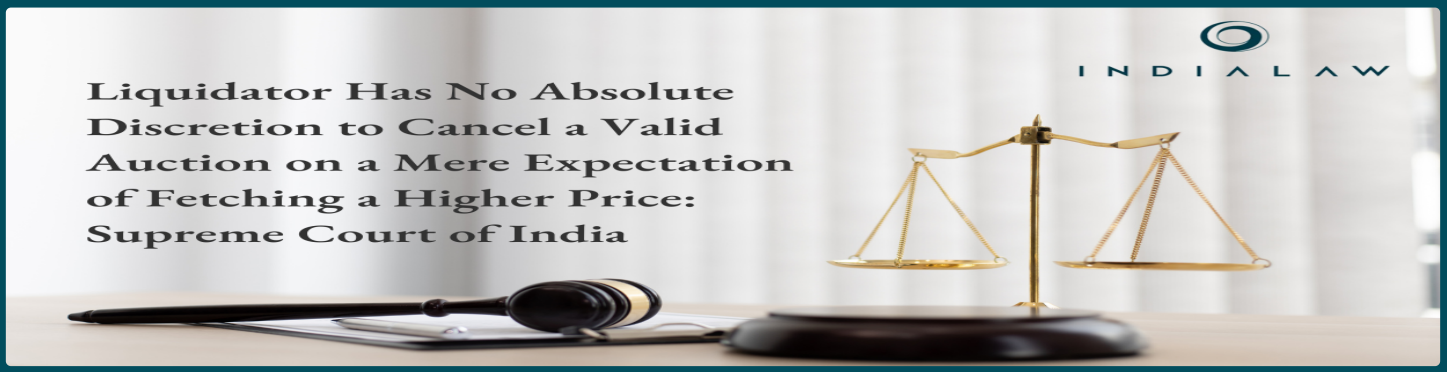

INSOLVENCY & BANKRUPTCY

Liquidator Has No Absolute Discretion to Cancel a Valid Auction on a Mere Expectation of Fetching a Higher Price: Supreme Court of India

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The Hon'ble Division Bench of the Supreme Court of India, comprising of Justice B. V. Nagarathna and Justice Ujjal Bhuyan, in a recent appeal in the matter of *Eva Agro Feeds Private Limited vs. Punjab National Bank and Anr*[1], vide its Order dated 06.09.2023, held that the mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction.

The Supreme Court further held that the expressions 'related party' and 'relative' does not include a person who is not in charge of the Corporate Debtor or is an influential member of the Corporate Debtor when the Appellant had made its bid pursuant to the auction sale notice.

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Facts of the Case

In the present case, the Appellant (Eva Agro Feeds Pvt. Ltd.) who was the successful Auction Purchaser received an E-auction certificate on 20.07.2021 from the Liquidator (Respondent No. 2) certifying that the Appellant had won the auction for the asset of the Corporate Debtor put up for auction sale.

On 21.07.2021, the Appellant received another e-mail from the Liquidator regarding the cancellation of the E-auction certificate dated 20.07.2021 under Clause 3(k) of the Disclaimer Clause of the E-Auction Process Information Document thereby informing that the auction of the asset of Corporate Debtor will be done by a fresh E-auction. That aggrieved by the cancellation of an E-auction, the Appellant preferred an application under Section 60 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the Tribunal (NCLT, Kolkata Bench).

The NCLT vide its Order dated 12.08.2021 directed the Liquidator to send a communication to the Appellant to deposit the balance sale consideration within the time specified in the E-auction. Accordingly, the Appellant deposited the balance sale consideration amount on 10.09.2021 following which the Liquidator issued a sale certificate on 15.09.2021 to the Appellant.

One of the financial creditors i.e., Punjab Nation Bank (Respondent No. 1) filed an appeal before the Appellate Tribunal (NCLAT, New Delhi) under Section 61 of the IBC against the Order dated 12.08.2021 passed by the NCLT. The NCLAT vide its Order dated 30.11.2021 had set aside the Order dated 12.08.2021 passed by the NCLT and gave liberty to the Liquidator to initiate the fresh auction process. Aggrieved by the order of the NCLAT the Appellant filed an appeal before the Supreme Court under Section 62 of the IBC.

Issues Involved

1. Whether the Liquidator can cancel the E-auction certificate before the completion of the actual sale without giving proper reasoning?
2. Whether the promoter of the Appellant who was the co-founder of the Corporate Debtor but resigned a decade ago can fall within the ambit of a 'related party' under the IBC?

Contentions of the Parties

By the Appellant (i.e., Eva Agro Feeds Pvt. Ltd.)

The Appellant submitted that the Liquidator had cancelled the auction sale without giving any proper reasoning or justification, the same being arbitrary. The Appellant was the sole and the highest bidder and their bid amount matched the reserve price mentioned in the sale notice. The Liquidator cannot go for a fresh auction keeping the reserve price at the same amount of Rs. 10 crores which was the bid offered by the Appellant and accepted by the Liquidator.

The promoter of the Appellant retired from the Corporate Debtor in the year 2011 and was no longer connected or associated with the Corporate Debtor or involved in the affairs of the Corporate Debtor and therefore do not fall within the definition of the 'related party' as defined under IBC. Hence, not disqualified under Section 29A of the IBC. To attract disqualification under Section 29A of the IBC, the relationship has to be proximate.

By the Respondent No. 1 (i.e., Punjab National Bank)

The contention of the Respondent was that as per Clause 3(k) of the auction sale notice, the Liquidator has the absolute right to accept, reject, adjourn, postpone, or cancel any bids at any stage without assigning any reason. There has been no bar under the IBC or the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations) which restrains the Liquidator from cancelling an auction sale before the completion of the actual sale.

The Liquidator decided to cancel the E-auction certificate to explore the possibility of further price enhancement of asset of the Corporate Debtor. It was also submitted by the Respondent that the promoter of the appellant was also the founding promoter of the Corporate Debtor so the sale of the Corporate Debtor asset could not be conducted in favour of a related party of the corporate debtor as per Section 29A of the IBC.

Findings of the Supreme Court

The Supreme Court held that a mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. The Court observed that as per the provisions of Schedule-I, more particularly paras 1(11) to (13) of the Regulations, a view may be taken that ordinarily the highest bid may be accepted by the Liquidator unless there are statutory infirmities in the bidding or the bidding is collusive in nature or there is an element of fraud in the bidding process.

The Liquidator has to apply his mind to the relevant factors if he does not want to accept the bid of the highest bidder and such application of mind must be visible or manifest in the rejection order itself. The Court has emphasized the importance and necessity of furnishing reasons while taking a decision affecting the rights of parties, it is incomprehensible that an administrative authority can take a decision without disclosing the reasons for taking such a decision.

The Supreme Court also observed that the disqualification sought to be attached to the Appellant is without any substance as the promoter of the auction purchase had ceased to be in the helm of affairs of the Corporate Debtor more than a decade ago and he was not in charge of the Corporate Debtor or an influential member of the corporate debtor when the Appellant had made its bid pursuant to the auction sale notice.

The Supreme Court set aside the Order dated 30.11.2021 passed by the Appellate Tribunal and restored the Order of the Tribunal dated 12.08.2021.

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[1] Civil Appeal No. 7906 of 2021