



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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(July 11, 2022)

ARRHUM TRADELINK PVT LTD vs VINEETA MAHESHWARI LIQUIDATOR OF KANERIA GRANITO LTD & ANR
IA/238(AHM)2022 in CP(IB) 320 of 2018
DATE OF NCLT'S ORDER: June 20, 2022

Facts of the Case: -

This application was filed by the unsuccessful bidder under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (IBC) with a prayer to direct the liquidator to declare the applicant as the successful bidder and cancel the bid of the Respondent i.e M/s. Torrecid India Pvt. Ltd. (Torrecid) which the liquidator had accepted. The applicant requested the Adjudicating Authority (AA) to direct the liquidator to accept its bid because the applicant was ready to purchase the Corporate Debtor as a going concern.

The liquidator had held e-auction of the assets of the Corporate Debtor in the liquidation process. She had decided to sell the assets by e-auction adopting two methods simultaneously: (i) to sell the assets on a stand-alone basis, and (ii) to sell the Corporate Debtor as a going concern. It was clear from the records that the amount offered by both the bidders was the same. The liquidator declared Torrecid as the successful bidder because the system by which e-auction was held, had accepted its bid at 3.21 pm. The record revealed that at 3.21 pm, the successful bidder i.e. Torrecid had offered Rs. 38.40 Crores and it was accepted by the system. At the point of time, the liquidator ought to have closed the e-auction process itself but within two minutes and before the auction process declared to be completed by the liquidator, the applicant offered the same amount as was offered by the Torrecid. It is not in dispute that even at that point of time i.e 3.23 pm the system was on and the bid by the applicant was recorded, although rejected later by the system.

The main issue to be adjudicated upon was whether the bench should accept the result of the e-auction sale in respect of the successful bidder or should they direct the liquidator to accept the bid of the applicant who had offered to purchase the Corporate Debtor as a going concern.



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NCLT's Observations: -

AA held that during the entire e-auction process, if any party does not raise its offer by a certain sum of money that it is not sufficient to reject its bid unless and until its final offer is considered. Final amount offered by the bidder should be considered. In this case, at end of e-auction both the Applicant and successful bidder had finally offered the same amount but the Applicant had offered the amount to purchase the Corporate Debtor as a going concern.

The Court observed that the liquidator ought to have taken into consideration the broad object of Insolvency and Bankruptcy Code, 2016 to sell the Corporate Debtor as a going concern and it was the pre-condition for e-auction set out by the liquidator herself. The liquidator put the clause in the tender document that in case the highest amount is offered by all the bidders and the bid amount is same then the bidder who wishes to purchase the Corporate Debtor as a going concern shall be declared to be the successful bidder.

The object of the Insolvency and Bankruptcy Code, 2016 is to maximize the value of the assets of the corporate person and to promote entrepreneurship and it is the duty of the liquidator to protect the existence of the Corporate Debtor as far as possible and avoid its death by ultimately pushing the Corporate Debtor to be dissolved.

Order: -

The Bench directed the liquidator to declare the Applicant as a successful bidder upon the Applicant's depositing with the liquidator a sum of Rs. 38.40 crores within seven days from the date of the order, failing which liquidator shall issue sell certificate in favor of Torrecid.

Case Review: -

Appeal stands allowed.