



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 06 | Number 28

(July 10, 2023)



**Naren Seth Vs. Sunrise Industries & Ors. *With*, Marine Electrical Ltd. Vs Sunrise Industries & Ors.
Company Appeal (AT) (Insolvency) No. 401 of 2023, No. 695 of 2023
Date of NCLAT Judgement: July 04, 2023**

Facts of the Case: -

The present two appeals are filed by aggrieved parties in response to the impugned order dated 02.03.23 passed by the Adjudicating Authority (AA). The first is by Naren Seth (hereinafter referred as the 'Appellant/Liquidator') and the other by Marine Electrical Ltd., the successful bidder. The CIRP application u/s 9 of IBC has been initiated by M/s Vijisan Exports Pvt. Ltd. in the capacity of Operational Creditor against the CD - Ciemme Jewels Ltd. before AA which was admitted and CIRP was initiated against the CD through an order dated 18.04.18. Due to non-receipt of any resolution plan the AA passed a liquidation order dated 25.03.19 and the official liquidator has been appointed.

The Liquidator contented that he conducted two separate auctions for the sale of premises of the CD, but both the auctions were unsuccessful as no bid was received. Subsequently, the 3rd Sale Notice was issued which was later revised due to certain dates being incorrect caused by typographical errors. Finally, the Liquidator issued a revised notice for sale of assets and date of E-auction was fixed on 08.04.22 for which the last date of submission of Expression of Interest (EoI) by bidders was fixed on 04.04.22.

The Marine Electrical India Ltd., the successful bidder and appellant in second appeal submitted that all the formalities towards bidding process have been furnished within stipulated time including required payment of EMD and Sales Certificate was obtained dated 11.05.22. It also stated that the AA has wrongly passed the impugned order in setting aside the E-auction dated 08.04.22 without granting an opportunity to the successful bidder.

The Sunrise Industries (hereinafter referred as 'Respondent-1') submitted that the liquidator published E-auction notice with vital errors and wrongful intention. Besides, only one working day was given for submission of documents and no time was provided to due diligence including site visit, executing the required documents and the money needed for EMD. Learned counsel for Respondents assailed the conduct of Liquidator and stated that even the corrigendum on the IBBI website and newspapers was published on 08.04.22 and 09.04.22, after the sale was concluded. The Main issue arises in the present two appeals before the Appellate Tribunal is that:

- (i) Whether the correct procedure was followed in the E-auction or not?
- (ii) Whether auction was conducted in haste without giving adequate opportunity to all to participate?



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NCLAT Observations: -

The Appellate Tribunal said that after examining the submission of both the parties, the dates which are published in previous bidding notice and later on changed can't be treated as typographical errors as claimed by the liquidator and entire auction was conducted in just five days including weekend. However, no specific timeline has been given in the IBBI (Liquidation Process) Regulations, 2016 but normally notice period of 30 days should be given to get the best value. The Appellate Tribunal also agreed to the observations of the AA that the 'haste' and 'procedural irregularities' committed by the Liquidator in conducting the auction clearly points out finger towards his conduct.

The Appellate Tribunal while placing reliance on the judgment given by Hon'ble Supreme Court in the matter of *M/s Jainsons Exports India Vs. Binatone Electronics Ltd, 1996*, said that "the purpose of open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value". The liquidator acted in hurry in conducting the E-auction without giving adequate opportunity to the entire participant.

Order/Judgement: The Appellate Tribunal didn't find any error in the impugned order dated 02.03.23 wherein the E-auction was set aside, and it was held that the Liquidator must bear all expenses incurred for the auction. It also did not appreciate the conduct of liquidator in whole process as observed by AA.

Case Review: Both the Appeals are dismissed. No costs.