



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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EVA AGRO FEEDS Pvt. Ltd. Vs. PUNJAB NATIONAL BANK AND ANR.
CIVIL APPEAL NO.7906 OF 2021
Date of Supreme Court Judgement: Sept. 06, 2023

Facts of the Case: -

The present appeal is filed by Eva Agro Feeds Pvt. Ltd. (hereinafter referred to as the 'Appellant') after being aggrieved by the order dated 30.11.21 passed by the Appellate Tribunal.

CIRP proceedings were initiated against M/s. Amrit Feeds Ltd/CD by One Huvepharma Sea Pvt. Ltd., and the same was accepted by the AA. The AA later ordered the Liquidation of the CD, and the Liquidator (hereinafter referred to as 'Respondent no. 2') was appointed. Several attempts to auction the CD's assets did not materialize.

The Appellant, incorporated on 09.07.21, submitted a bid for the CD's assets and also paid an earnest money deposit (EMD) of ₹1 Cr. The Appellant later submitted the bid amount of ₹10 Crore within the stipulated time prescribed under the sale notice in respect of the subject property. The Appellant received an E-auction certificate from Respondent no. 2 stating that it had won the auction. However, on an email dated 21.07.21 received from Respondent no. 2, it was stated that the E-auction process had been cancelled under clause 3(k) of the disclaimer clause in the E-auction process, and a fresh auction would be conducted.

The Appellant filed an application against this decision to the AA, which instructed Respondent No. 2 to send communication to the Appellant for depositing the balance sale consideration. The appellant complied, and Respondent no. 2 issued a sale certificate. However, Punjab National Bank, in the capacity of a Financial Creditor (hereinafter referred to as 'Respondent no. 1'), filed an appeal against the AA's decision, and the Appellate Tribunal ruled in their favor, setting aside the earlier order of AA and allowing Respondent no. 2 to initiate a fresh auction process.

As a result, the Appellant has filed this appeal in the Apex Court, challenging the Appellate Tribunal's decision.



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Supreme Court's Observations: -

The Apex Court, relying on judgments like *S. N Mukherjee vs. UOI 1990*, *State of Orissa vs Dhaniram Luhar 2004*, *East Coast Railway vs Mahadev Appa Rao 2010*, and *Kranti Associates (P) Ltd. vs Masood Ahmed Khan 2010*, emphasized that recording reasons is a fundamental principle of natural justice governing the exercise of power by administrative authorities. The Court dismissed the argument that para 1(11A) of Schedule 1 of the IBBI (Liquidation process) Regulations, which mandates the liquidator to provide reasons for rejecting the highest bid, applies only prospectively since it was added on 30.09.21. The Apex Court clarified that this provision merely recognizes an existing principle, applicable even before 30.09.21.

The Court highlighted that, unless a material irregularity and/or illegality in holding the public auction and/ or the auction sale was vitiated by any fraud or collusion it is not open to set aside the auction or sale in favour of the highest bidder. Further, the contention of Respondent 2, that he was expecting higher price is not justifiable as the reserve price for the second auction was the same as in the first auction. Rejecting the Appellant's bid and going for another round of auction at the same reserve price without justification erodes the credibility of the auction process.

On the issue of related party, the Apex Court, citing *Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd. 2021*, found the disqualification attached to the appellant is groundless, as the related party had not been in control or an influential member of the company for over a decade.

Order: The Apex Court concluded that the Appellate Tribunal had erred in setting aside the order dated 12.08.21 passed by the AA. As a result, the Apex Court set aside the order dated 30.11.21 passed by the Appellate Tribunal and restored the order dated 12.08.21 passed by the AA.

Case Review: *Appeal Allowed.*