

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 456 of 2022

IN THE MATTER OF:

Ayan Mallick

...Appellant

Versus

Pratim Bayal, Liquidator & Ors.

...Respondents

Present:

**For Appellant: Mr. Sanwal Tibrewal and Mr. Shaunak Mitra,
Advocates.**

**For Respondents: Mr. Ashish Makhija and Mr. Deep Bisht,
Advocates for R-1 (Liquidator).**

**Mr. Om Narayan Rai and Mr. Mohit Seth,
Advocates for R-2 (SBI).**

**ORDER
(Virtual Mode)**

13.05.2022: Heard learned counsel for the Appellant, Shri Ashish Makhija, learned counsel for the Liquidator and learned counsel appearing for the Bank. This Appeal has been filed against the order dated 01.02.2022 by which the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata has dismissed the I.A. No. 32/KB/2022 filed by the Applicant/Appellant. In the I.A. the prayer made by the Appellant who is Suspended Director of the Corporate Debtor was that e-auction sale notice dated 16.12.2021 for sale of the assets of the Corporate Debtor under liquidation and assets of the guarantor under SARFAESI Act be stayed until the disposal of the I.A.

2. The e-auction notice was issued for sale of factory and land. Apart from the assets of the Corporate Debtor, the land was owned by the Promoter/

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Guarantor, hence, e-auction notice was for a joint sale of the assets. It was submitted before the Adjudicating Authority that joint sale will maximize the value of assets of the Corporate Debtor, hence the Court should permit the same. After hearing the learned counsel for the parties, the Adjudicating Authority rejected the application and observed that if there is maximization of the assets, selling it as a combined should not prejudice the applicant in any manner as it is going to get a better value for the corporate guarantor.

3. With regard to value of both properties i.e. of the Corporate Debtor and the guarantors, Rs.16.15 crores is the joint reserved price mentioned in the e-auction notice. Learned counsel for the Appellant submits that by selling the assets of the guarantors also, he will lose his rights which are given under SARFAESI Act, 2002 qua the properties.

4. Learned counsel for the Respondent has also referred to judgment of this Tribunal in Company Appeal (AT) (Ins.) No.147/2022 – ‘Prateek Gupta and Ors. vs. Kotak Mahindra Bank Ltd. and Anr.’. The above judgment do support the submissions raised by learned counsel for the Respondent.

5. We have considered submissions of learned counsel for the parties and perused the record. When the Adjudicating Authority is satisfied that joint sale shall bring maximization of assets of the Corporate Debtor and the possession of the properties of the Guarantors have already been taken under SARFAESI and both land and factory need to be sold together to maximize the value of the assets, we fail to see that how the Appellant shall be prejudiced in

any manner. We do not find any error in the order of the Adjudicating Authority rejecting the I.A. We dismiss the Appeal. We, however, observe that it shall be open to the Appellant to take such remedy under SARFAESI with regard to auction in accordance with law.

**[Justice Ashok Bhushan]
Chairperson**

**[Shreesha Merla]
Member (Technical)**

Archana/nn