

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 718 of 2022

IN THE MATTER OF:

Bankey Bihari Infrahomes Pvt. Ltd.
Through its Director,
Regd. Off: Chamber No.11,
Vindhyachal Apartment,
Kausambhi, Ghaziabad
UP 201010 . **.... Appellant**

Versus

Mr. Alok Kumar Kuchchal,
Liquidator,
Ratandeep Infrastructure Private Limited,
C-154, Sector 51,
Noida 201301. **.... Respondent No. 1**

AKJ Realtech Private Limited,
NLW – 140, Gali No. 3, Block E,
West Vinod Nagar, Delhi-110092 ... Respondent No. 2

Present:

For Appellant: Mr. Abhijeet Sinha, Mr. Aditya Shukla, Heena Kochar, Mr. Narendra Kumar, Advocates

For Respondent: Mr. Abhishek Anand, Rukbaan Tyagi, Advocates for Liquidator
Mr. Alok Kumar Kuchchal, party in person
Mr. P. Nagesh, Sr. Advocate with Advocate Akshay Sharma, for R-2
Advocate Srijan Mehrotra,
Advocate Anshu Yadav, for Homebuyer

JUDGMENT
(Dated: 06.12.2022)

[Per. Dr. Alok Srivastava, Member (Technical)]

The present appeal is filed under section 61 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') by the Appellant aggrieved by the order dated 1.6.2022 (hereinafter called Impugned Order)

passed by the Adjudicating Authority (National Company Law Tribunal, Allahabad) in the matter of IA(IB) No. 154/ALD/2022 in CP(IB) No. 45/ALD/2019.

2. In brief, the case of the Appellant is that it is involved in the construction and development of own or leased property, including buying, selling, renting and operating of self-owned or leased real estate such as apartment buildings, non-residential buildings, developing and subdividing real estate into lots etc. The Corporate Insolvency Resolution Process (in short 'CIRP') was initiated against the Corporate Debtor Ratandeeep infrastructure Pvt. Ltd. vide order dated 16.4.2019 of the Adjudicating Authority on an application under section 7 of the IBC filed by Nitin Jain & Anr. as Financial Creditor. Upon unsuccessful completion of CIRP, order for liquidation of the corporate debtor was passed on 31.1.2022 in IA No. 73/2021 and Alok Kumar Kuchchal/Respondent was appointed as the Liquidator. The Appellant preferred IA No. 115/2022 under section 60(5) of IBC seeking direction to the Resolution Professional to place the scheme of compromise and arrangement submitted by the Appellant under section 230 of the Companies Act, 2013 read with Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (in short 'Liquidation Process Regulations'). This IA No. 115/2022 was disposed by the Adjudicating Authority vide order dated 13.4.2022, whereby the Liquidator was directed to consider the

scheme of compromise and arrangement submitted by the Appellant and the time allowed for completion of this exercise was three weeks.

3. The Appellant has further stated that after passing of order dated 13.4.2022, he sought details and information from the Liquidator to enable him to prepare the scheme of compromise and arrangement, but instead of providing such information the Liquidator through an e-mail dated 24.3.2022, asked the Appellant to submit a confidentiality undertaking which was provided to the Liquidator. The requisite information was provided by the Liquidator on 29.4.2022, but since there were some discrepancies in the list of creditors provided by the Liquidator, the Appellant again sent e-mail on 21.5.2022 repeating his request to provide a correct list of claims.

4. The Appellant has further stated that while he was in the process of eliciting necessary information for preparing the scheme of compromise and arrangement, the Liquidator published a public announcement for initiating the auction process of the corporate debtor's assets. Thereafter, the Appellant submitted a scheme of compromise and arrangement to the Liquidator on 24.5.2022. The Appellant has claimed that the Liquidator continued with the auction process, and hence the Appellant was compelled to file IA No. 154/2022 before the Adjudicating Authority seeking stay of the

auction scheduled on 19.5.2022 and also direction to the Liquidator to place the scheme of compromise and arrangement before the Stakeholders Consultation Committee. The Appellant has further stated that IA No. 154/2022 was disposed vide order dated 1.6.2022 whereby the reliefs sought by the Appellant were not granted and directions for the auction process to be reinitiated.

5. We heard the oral arguments advanced by the Learned Counsels for all the parties and perused the record.

6. The Learned Counsel for Appellant has submitted that the Appellant was interested in offering scheme of compromise and arrangement under section 230 of the Companies Act, 2013 to enable the corporate debtor to avoid liquidation, which would have meant definite corporate death of the corporate debtor, and in pursuance of this objective, the Appellant obtained an order on 13.4.2022 from the Adjudicating Authority directing the Liquidator to consider the Appellant's scheme of compromise and arrangement in respect of the corporate debtor. He has further submitted that consequent to this order, the Appellant sought information about the claims from the Liquidator vide e-mail dated 20.4.2022, and also for providing documents required by him to enable him to prepare the scheme of compromise and arrangement.

7. The Learned Counsel for Appellant has further stated that after the Appellant submitted a confidentiality undertaking to the Liquidator, he was supplied some incomplete information which also contained discrepancies in the list of creditors/claims. Thereafter, some more e-mails were exchanged between the Appellant and Respondent/Liquidator which resulted in delay in submission of the scheme of compromise and arrangement him. The Liquidator, without considering the scheme presented by the Appellant, in total disregard of the directions given by the Adjudicating Authority for consideration of the scheme of compromise and arrangement, issued a public notice dated 19.5.2022, which was published on 20.5.2022, for auction sale of the land of the corporate debtor.

8. The Learned Counsel for Appellant has further stated that, in view of this auction sale notice publication, the Appellant was compelled to file IA No. 154/22 seeking stay of the auction process and direction to the Liquidator to submit the scheme presented by the Appellant for consideration of the Stakeholders Consultation Committee. He has claimed that the Adjudicating Authority, without giving due consideration to its earlier order regarding submission of the scheme of compromise and arrangement, passed the Impugned Order, whereby it refused to intervene in the process of e-auction of the corporate debtor's land, and further directed the

Liquidator to act with the view to maximize the value of the corporate debtor's land.

9. The Learned Counsel for Appellant has referred to various e-mails sent by the Appellant dated 7.4.2022, 20.4.2022, 23.4.2022, 29.4.2022 and 4.5.2022 to claim that the Appellant was genuinely interested in putting forward a scheme of compromise and arrangement, but due to various unnecessary and irrelevant issues raised by the Liquidator which resulted in delay in obtaining the required list of claims, the Appellant could not submit the said scheme in time. He has explained that when the Liquidator continued with the e-auction schedule on 19.5.2022, the Appellant sent e-mail dated 21.5.2022 to the Liquidator seeking a clear list of claims in view of the repetition of certain claims in the list already sent to him, and upon receiving a final list of creditors from the Liquidator he could finally submit the said scheme through e-mail dated 24.5.2022. He has claimed that in view of the unreasonable functioning of the Liquidator in moving forward with the e-auction process, since the Liquidator had shown his helplessness through e-mail dated 20.4.2022 for providing any extension of time for consideration of the scheme stating that it was beyond his power as a Liquidator the Appellant had to file an application bearing IA No. 154/2022 on 25.5.2022 seeking direction from the Adjudicating Authority for stay of the e-auction process and direction to the Liquidator to consider the scheme that he had submitted.

10. The Learned Counsel for Appellant has further submitted that the lack of seriousness on the part of the Appellant in putting forward a credible and meaningful scheme of compromise and arrangement is clearly displayed by the fact that the said scheme purports to make provision for payment of Rs.12.48 crores to the stakeholders, but a major portion of payments are meant for creditors whose claims were either not accepted in the CIRP or who are related parties of the corporate debtor. He has claimed that the Liquidator is required to act with a view to maximise the value of the corporate debtor and the successful bid found in the e-auction is only Rs. 7.45 crores which is much less than the amount offered by the Appellant through the said scheme, and, therefore, the scheme is worth considering as it would lead to maximisation value of the assets of the corporate debtor, which is the primarily objective of the IBC.

11. In response, the Learned Senior Counsel for the Respondent No. 1/Liquidator has adverted to the string of e-mail communication exchanged between the Appellant and the Liquidator after the direction dated 9.4.2022 given by the Adjudicating Authority, starting with e-mail dated 20.4.2022 of the Appellant. He has claimed that the Appellant was not really interested in submitting a genuine scheme of compromise and arrangement, but his motivation was to only derail the process of

liquidation of the corporate debtor. The Learned Counsel of the Liquidator has further submitted that Mr. Rakesh Kumar Agarwal, a director of the Appellant had earlier filed IA No. 220/2021 in July, 2021 through one of his group companies AIG Infratech (Pvt.) Ltd. requesting permission of the Adjudicating Authority for submission of a resolution plan, which was turned down vide order dated 7.12.2021.

12. The Learned Senior Counsel for Respondent No. 2 has further brought to our notice that later another application IA No. 115/2022 was preferred by Mr. Rakesh Kumar Agarwal, a director of the Appellant company, wherein by an order dated 13.4.2022, the Adjudicating Authority had granted three weeks' time for submission and complete consideration of the said scheme of compromise and arrangement but the Appellant failed to submit the said scheme, nor did he inform the Liquidator about the delay. He has contended that it was only after the Liquidator published the auction notice on 20.5.2022 that the Appellant again became active and submitted a half-baked scheme which is in no way better than the value of land discovered through the successful bid. He has claimed that the Liquidator has been absolutely fair and unprejudiced in dealing with various requests of the Appellant, but time and again, the Appellant has raised frivolous and irrelevant issues to only buy time and derail the process of liquidation, but the Liquidator is duty bound to complete the liquidation of the

corporate debtor in view of the time-lines prescribed in IBC and Liquidation Process Regulations.

13. The Learned Senior Counsel for Liquidator has cited the judgment of Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Anr (2021 7 SCC 474)** to highlight that a scheme of compromise and arrangement under section 230 of the Companies Act, 2013 could not have been filed by someone who is trying to takeover the corporate debtor through 'backdoor'.

14. In support of the above, the Learned Counsel for Liquidator has pointed out that in Interlocutory Application No. 177 of 2022 filed by Mr. Prince Jain, a creditor of the corporate debtor whose claim was not admitted during the CIRP, for seeking directions against the Liquidator for staying the auction process, it was found that Mr. Prince Jain is acting in collusion with Mr. Rakesh Kumar Agarwal, a director of the Appellant/Bankey Bihari Infrahomes Pvt. Ltd., an allegation that has not been denied by the Appellant. He has also claimed that the act of 'collusion' between the erstwhile management of the corporate debtor and Mr. Rakesh Kumar Agarwal is established by the sharing of e-mail dated 30.4.2022 by Mr. Rakesh Kumar Agarwal, a director of the Appellant, with the erstwhile directors of the corporate debtor when this email contained confidential information relating to the claims filed in the

liquidation of the corporate debtor and Mr. Rakesh Kumar Agarwal was bound by the confidentiality undertaking to keep such information confidential.

15. With regard to the Liquidator's conduct as being fair and without prejudice, the Learned Counsel for Liquidator has explained that the Liquidator has provided all the necessary information sought by the Appellant in time, but he was completely remiss in submitting a full and complete scheme within the allotted time i.e. by 02.05.2022. Therefore, the Liquidator was duty-bound to continue with the e-auction process in which eventually the successful bid of Rs. 7.45 crores was received. He has further contended that action of the Liquidator is fully above board and in accordance with the various directions received from the Adjudicating Authority, and therefore e-auction process should now be permitted to be culminated and the appeal of the Appellant should be dismissed.

16. The Learned Senior Counsel for the successful bidder AKJ Realtech Private Limited (who was impleaded as Respondent No. 2 on order of this Tribunal) has submitted that the e-auction process was a validly undertaken process in consonance with the provisions of IBC and Liquidation Process Regulations. He has further submitted that Respondent No. 2 participated in the e-auction of sole asset of the corporate debtor i.e. land admeasuring 3542 sq.m.

comprising of Tower No. S2 falling in undivided Khasra Nos. 1470 (area 0.0070 hectare), 1471 (area 0.2830 hectare) and 1484 (Area 0.0642 hectare) falling in GH Plot No. 2 in Township known as “Jaipuria Sunrise Greens”, Bamheta, Ghaziabad and there is no allegation made by the Appellant against Respondent No. 2, but only some vague allegation of collusion between some parties and the Respondent No. 2 to sell the corporate debtor’s land at throwaway price, which is completely false.

17. The Learned Senior Counsel for Respondent No. 2 has further submitted that the Liquidator was duty bound to complete the liquidation process within 90 days from the liquidation commencement date, which time limit was expiring on 31.4.2022 and since there was no order for further extending the e-auction process, the Liquidator has acted in his call of duty in accordance with law to conduct e-auction in which the Respondent No. 2 is the successful bidder.

18. The Learned Senior Counsel for Respondent No. 2 has cited the judgment of Hon’ble Supreme Court in the case of **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022 2 SCC 401)** to emphasise that IBC provides for completion of CIRP ‘unswayed by abstract conceptions of equity and contractual freedom of the parties with unfettered discretion’. He referred to the conduct of the Appellant by stating that the Appellant was

allowed by the Adjudicating Authority vide order dated 13.4.2022 in IA No. 115/2022 to submit the scheme of compromise and arrangement, which was not done in time of 3 weeks granted by this order and thus, the Appellant has not been able to establish its bonafide by timely submission of the scheme of compromise and arrangement. He has pointed out such scheme was submitted on 24.5.2022, which is after almost six weeks from the date of order dated 13.4.2022.

19. The Learned Senior Counsel for Respondent No. 2 has adverted to the scheme of compromise and arrangement submitted by the Appellant to rebut. He has pointed out that the said scheme does not provide a better value to the legitimate stakeholders, since the scheme proposes to make payments to a number of unrelated parties, whose claims were not admitted during the CIRP and if such claims are disregarded and taken out from the total payments and then the Net Present Value (NPV) of the amount offered is considered, it will show that the resulting payments will not be better than the payments the bid offered by Respondent No. 2. He has also pointed out that while the proposed scheme proposes to make payment only to such homebuyers whose claims have been admitted by the Liquidator, it makes provision for payment to many other creditors, whose claims are not admitted during CIRP and also who are related parties of the corporate debtor. The Learned Senior Counsel for Respondent No. 2 has thus claimed that

Appellant was never interested in submitting a serious and meaningful scheme of compromise but to only derail and delay the liquidation process. He has finally submitted that the Appellant's case fails as the e-auction process was carried out in accordance with the provision of law and also the demerits of the said scheme of compromise and arrangement.

20. It is noted that the CIRP of the corporate debtor was initiated with appointment of Interim Resolution Professional (IRP) on 16.4.2019. Since no resolution plan could be obtained in the CIRP, the CoC in its 6th meeting decided for liquidation of the corporate debtor, and the application for liquidation was filed before the Adjudicating Authority on 6.2.2021. It is further noted that while this application for liquidation was under consideration of the Adjudicating Authority, Mr. Rakesh Kumar Agarwal showed interest for the first time in submitting a resolution plan through his company AIG Infratech Private Limited in April, 2021 and as the Resolution Professional (in short 'RP') showed his inability to accept such a plan for consideration, Mr. Rakesh Kumar Agarwal director of the AKJ Realtech Private Limited filed IA No. 220/2021 seeking directions for submission and consideration its resolution plan. This IA 220/2021 was dismissed by the Adjudicating Authority on the ground that no useful purpose would be served in considering the request of the Applicant, when the CoC had already resolved to

liquidate the corporate debtor. Thereafter, liquidation of the corporate debtor was ordered and it commenced on 31.1.2022.

21. It is further noted that while the liquidation process was on, Mr. Rakesh Kumar Agarwal again filed IA 115/2022 through the company Bankey Bihari Infrahomes Private Limited (Appellant in the present appeal), in which he is a director seeking directions of the Adjudicating Authority for submission of a scheme of compromise and arrangement with respect to the corporate debtor on 7.4.2022. This IA 115/2022 was disposed of vide order dated 13.4.2022 with a direction to the Liquidator to consider the scheme and a time period of three weeks from the date of order was allowed for submission of the scheme and decision thereon.

22. It is further noted that, thereafter, a series of e-mails were exchanged between Mr. Rakesh Kumar Agarwal and the Liquidator, starting with e-mail dated 20.4.2022 whereby Mr. Rakesh Kumar Agarwal requested certain information relating to claims from the Liquidator in order to prepare the scheme of compromise and arrangement. After a confidentiality undertaking was provided by the Appellant, a list of claims was provided to Mr. Rakesh Kumar Agarwal, the Appellant submitted a scheme to the Liquidator vide e-mail dated 24.5.2022.

23. It is relevant to note that the three weeks' time granted by the Adjudicating Authority for submission of the scheme of compromise and arrangement by the Appellant expired on 4.5.2022, and in view of complete silence on the part of Appellant since 2.5.2022 regarding submission of the scheme, the Liquidator was proceeding with the e-auction process. It was only on 21.5.2022, nineteen days after the last e-mail communication from Mr. Rakesh Kumar Agarwal to the Liquidator that Mr. Rakesh Kumar Agarwal sent an e-mail to the Liquidator, seeking more time for finalisation of the scheme.

24. It is also noticed that when the Appellant did not submit the scheme of compromise and arrangement within the allotted three weeks' time, which expired on 4.5.2022, the Liquidator issued a public notice on 20.5.2022 for auction of the land property of the corporate debtor namely, land admeasuring 3542 sq. m. located in GH Plot No. 2 in "Jaipuria Sunrise Greens" Township, Bamheta, Ghaziabad.

25. The Appellant submitted the said scheme after considerable delay on 24.5.2022, and thereafter he filed IA 154/2022 on 25.4.2022 for staying the auction process and directing the Liquidator to place the scheme before the Stakeholders Consideration Committee for consideration. This IA 154/2022 was

dismissed vide the Impugned Order. The relevant part of the order is as follows:-

- “10. Considering this fact, we do not find any merit to intervene as of now as the object of maximization of value of assets can be achieved during the liquidation process also. We also make it clear that the Liquidator shall act with a view to maximize the value of the corporate debtor and in case the value offer is found to be below the value offered made by the applicant herein, the auction process may be reinitiated.*
- 11. With these directions, this application stands disposed of in terms indicated above.”*

26. A perusal of the order of the Adjudicating Authority dated 1.6.2022 shows that the Adjudicating Authority, after considering the past proceedings in the liquidation process and also the inability of the Appellant to submit a scheme of compromise and arrangement in the given time of three weeks from 19.4.2022, ordered that the e-auction process may be continued. The Adjudicating Authority further ordered that if the Appellant offers a better value for the land of the corporate debtor than what is discovered in the e-auction, the e-auction could be reinitiated.

27. A perusal of the series of events during the liquidation process makes it clear that the Appellant, through Mr. Rakesh Kumar Agarwal, made an attempt through the company AIG Infratech Private Limited to submit a resolution plan much after the CoC had decided to liquidate the corporate debtor and the application for liquidation has been filed by the Resolution

Professional before the Adjudicating Authority. This IA 220/2021, was filed in July, 2021 through the company AIG Infratech Private Limited for seeking order to submit a resolution plan, was dismissed by the Adjudicating Authority on the ground that “no useful purpose would be served in keeping IA 220/2021, when the COC had already resolved to liquidate the Corporate Debtor.”

28. Thereafter, after the commencement of liquidation process vide order dated 31.1.2022, Mr. Rakesh Kumar Agarwal again sent a letter to the Liquidator on 3.3.2022, after passage of more than one month from the date of commencement of liquidation requesting to submit a scheme of compromise and arrangement, and upon the Liquidator expressing inability to accept such a scheme in view of the commencement and progress of liquidation, Mr. Rakesh Kumar Agarwal filed IA 115/2022 through another company ‘Bankey Bihari Infrahomes Private Limited’ seeking permission of the Adjudicating Authority for submission of a scheme of compromise and arrangement. This interlocutory application was disposed of by the Adjudicating Authority vide order dated 13.4.2022 with the following observations: -

“This is an application filed by the “Bankey Bihar Infrahomes Private Limited” seeking a direction to the liquidator to consider the scheme propounded by the Applicant herein.

Ms. Babita Jain, learned counsel for the Applicant present. Ms. Snehal Sharda, learned counsel appearing on behalf of the liquidator present.

The liquidator is expected to act in accordance with the Liquidation Process Regulations. The decision on the proposed scheme be taken within a period of three weeks' from today. No other directions are called for in IA No. 115/2022 and hence the same shall stand disposed."

29. It is noted that after exchange of a number of e-mails between the Appellant and the Liquidator, starting with e-mail dated 20.4.2022, the Appellant finally submitted the requisite scheme vide e-mail dated 24.5.2022 (The e-mails exchanged between the Appellant and the Liquidator are attached at pp. 98-122 of the appeal paperback). It is noted when the information regarding claims which was sought by the Appellant was provided by the Liquidator vide e-mail dated 4.5.2022 (attached at pp. 103-104 of the appeal paperback), the Appellant forwarded the confidential information to erstwhile directors of the corporate debtor, which was in breach of the confidentiality undertaking provided by the Appellant.

30. The Liquidator, on not receiving no further information from the Appellant about submission of the scheme of compromise and arrangement after his e-mail dated 2.5.2022, and when the three weeks' time starting from 13.4.2022 granted by the Adjudicating Authority had expired on 4.5.2022, proceeded to publish the auction notice on 20.5.2022.

31. It appears that on publication of this auction notice, the Appellant sent an e-mail dated 21.5.2022 seeking more time for submission and finalization of the scheme on which the Liquidator expressed his inability to provide more time vide e-mail dated 24.5.2022. The Appellant, thereafter, submitted the requisite scheme to the Liquidator on the evening of 24.5.2022 and immediately thereafter filed IA 154/2022 before the Adjudicating Authority requesting for stay of the auction process and directions to place the proposed scheme before the Stakeholders Consultation Committee.

32. The above-stated actions of Mr. Rakesh Kumar Agarwal make it absolutely clear that he, through different corporate entities, has attempted to intervene in the process of liquidation by filing the three interlocutory applications viz. IA 220/2022, (which was dismissed by the Adjudicating Authority), IA 115/2022 and IA 154/2022. We also note that Mr. Rakesh Kumar Agarwal in utter disregard to the confidentiality agreement provided to the Liquidator to keep the information supplied to him by the Liquidator confidential, went ahead and shared such information with the counsel of Mr. Prince Jain, a creditor whose claim was not admitted during CIRP of the corporate debtor.

33. We also note that the Liquidator and the Adjudicating Authority have with due regard to fairness, natural justice and in

consonance with the objectives of IBC, provided an opportunity through order in IA 115/2022, giving three weeks' time for the submission and decision on the purported scheme of compromise and arrangement as claimed by the Appellant which the Appellant failed to do in the time limit provided and was, thus, unable to establish his *bonafide* about his seriousness in proposing such a scheme. This has to be seen in the context of the fact that the liquidation order was passed on 31.1.2022, and that the prescribed time period for completing liquidation process was substantially over by this time.

34. Thus, in view of the fact that the Appellant neither submitted the scheme of compromise and arrangement within the stipulated time which was upto 4.5.2022 nor did he inform the Liquidator about the delay in submitting the scheme or seek any extension of time limit from the Adjudicating Authority, the intention and seriousness of the Appellant in submitting a scheme as prayed by him appears to be doubtful.

35. In view of the above-stated situation and the turn of events, we are of the clear opinion that the Liquidator, being duty bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations when the purported scheme was not submitted in three weeks, acted quite appropriately and in consonance with the provisions of law by issuing the auction notice dated 19.5.2022

which was published in newspapers on 20.5.2022. The submission of the said scheme by the Appellant on 24.5.2022 after a delay of twenty days and the filing of IA No. 154/2022 on 25.5.2022, should therefore, be viewed in this context. The order of the Adjudicating Authority dated 1.6.2022 in IA 154/2022, whereafter a fresh auction notice was published by the Liquidator are also events that follow the correct course as stipulated in the liquidation process of the corporate debtor.

36. We now turn our attention to the features of the scheme submitted by the Appellant, albeit after much delay, to understand whether the Appellant was interested in providing a credible scheme of compromise and arrangement.

37. A perusal of the scheme (attached with the Affidavit of the Liquidator, filed vide Diary No. 40689 dated 1.11.2022) tells us that the total payments proposed to all the stakeholders is provisioned at Rs. 11,48,56,758. This amount includes a figure of Rs. 1.5 crores for payment to the creditors whose claims were not admitted by the RP during CIRP. Another amount of Rs. 1.32 crores has been provisioned for payment to other creditors/stakeholders, unsecured financial creditors who are related parties and other creditors/stakeholders. Thus, an amount of approximately Rs. 2.82 crores is proposed as payment to creditors, who may not be entitled to any payment in the liquidation process of the corporate

debtor or would come lower down in 'waterfall mechanism' and may not even get such large payments. Further the very important financial creditors in class, who are 33 homebuyers in number and have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor, are proposed to be paid within 90 days from the date of approval of the scheme whereas other creditors are to be made 100% payments irrespective of whether their claims are admitted or not by the Liquidator. The flats are supposed to be completed in 24 months and provided to the homebuyers against their claims filed with the Liquidator. It is not at all clear as to how the homebuyers who have only paid part of the total cost will be treated and whether they will be required to pay any extra amount and what would be its quantum.

38. It is, therefore, noted that the purported scheme proposes to make payments to a number of related parties/unsecured creditors/not submitted claims upto an extent of 100% of admitted claimed amounts. Another issue in the proposed scheme is that it proposes to make payments within 90 days of approval of scheme whereas in the event of auction-sale the payments would be made promptly to claims in accordance with the 'waterfall mechanism' under section 53 of IBC.

39. The Learned Counsel for Appellant has cited the judgments of this Tribunal in the matters of **S.C. Sekaran vs Amit Gupta &**

Ors. [CA (AT)(INS) 495-496/2018] and **Y. Shivram Prasad vs. S. Dhanapal & Ors. [CA(AT)(Ins) 224/2018]** wherein the Tribunal held that steps should be taken for the revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from corporate death by liquidation. We distinguish this judgment on the ground that while it affirms the spirit and ethos of the IBC in that “the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation”, and also “even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern” but it doesn’t hold that the any scheme of compromise or arrangement if proposed in breach of regular timelines of the liquidation process has to be necessarily considered.

40. We also note that only 33 allottees have filed a total claim of Rs. 2.68 crores during the CIRP of the corporate debtor which means that, on an average, each allottee has claimed Rs. 8.10 lakhs. Considering this full amount to have been used for construction of flats, it is quite understandable that the level of construction would not be significant. How then the Appellant, as proponent of the scheme of compromise and arrangement, proposes to bring in additional funds to complete construction and how he will bring in the extra funds is unclear on a deeper

examination of the scheme. The said scheme, therefore, appears to be a 'fictional one' ostensibly to appropriate the land to the benefit of a select few who are related parties of the corporate debtor.

41. Both the Learned Counsel for Appellant and the Learned Counsel for Respondent No. 2 have cited the judgment of Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka vs. Jindal Steel and Power Limited & Anr. [(2021) 7 Supreme Court Cases 474]** in support of their rival contentions with regard to any ineligibility that would attach to the Appellant in providing a scheme of compromise and arrangement under section 230 of the Companies Act, 2013 with reference to section 29-A of IBC which pertain to ineligibility of related persons to submit resolution plan and section 35(1)(f) of IBC, which is a provision applicable during liquidation. It is instructive to have a look at the relevant portion of the **Arun Kumar Jagatramka judgment (supra)**, which is as hereunder :-

“71.....In the context of the statutory linkage provided by the provisions of Section 230 of the 2013 Act with Chapter III IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be farfetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29-A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

72. An argument has also been advanced by the appellants and the petitioners that attaching the ineligibilities under Section 29-A and Section 35(1)(f) IBC to a scheme of compromise and arrangement under Section

230 of the 2013 Act would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the 2013 Act. We find no merit in this contention. As explained above, the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the 2013 Act, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally.”

42. A perusal of the above-mentioned observation in the **Arun Kumar Jagatramka judgment (supra)** makes it very clear that the promoter or those in the management of the company under liquidation cannot be allowed a ‘backdoor entry’ into the company and hence, would be considered ineligible to submit a proposal under section 230 of the Companies Act, 2013. When we view the continuous efforts of Mr. Rakesh Kumar Agarwal in seeking to ‘takeover’ the corporate debtor through various stratagems, and also the finding that he is in ‘collusion’ or acting in concert with the erstwhile management of the corporate debtor, the motive or intention in putting forward a useless scheme of compromise and arrangement in respect of the corporate debtor becomes seriously doubtful. The observation of Hon’ble Supreme Court regarding ‘backdoor entry’ in the corporate debtor by the erstwhile management then appears to be a very distinct, something that we should not disregard. In this background, the

judgment of this tribunal in the matter of **Y. Shivram Prasad (supra)** should also be viewed, so that following such a judgment should not lead to undesirable consequences as are pointed out in the **Arun Kumar Jagatramka Judgment (supra)** of Hon'ble Supreme Court.

43. The Learned Counsel for Appellant has also cited the judgment of this Tribunal in the matter of **Punjab National Bank vs. EVA Agro Feeds Pvt. Ltd. & Anr. [CA(AT)(INS.) No. 757 of 2021]**, wherein it is held that “*the successful bidder in the auction sale does not acquire any vested right in law to enforce the auction.*” We are conscious of the fact that the issue in this appeal is not about any right of the successful bidder, but where the Adjudicating Authority has considered all the related facts and circumstances concerning the request of the Appellant in proposing a scheme of compromise and arrangement, and thereafter passed an order which balances the liquidation process with the need to avoid liquidation of the corporate debtor. This judgment, therefore, does not support the case of the Appellant.

44. The Senior Learned Counsel for Respondent No. 2 has adverted to the judgment of the Hon'ble Supreme Court in the matter of **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. [(CoC), (2022) 2 SCC 401]**, wherein it is held that the “*if the CIRP*

is not completed within the prescribed timeline, the corporate debtor is sent into liquidation.....We cannot afford to be swayed by abstract conceptions of equity and ‘contractual freedom’ of the parties.” We note that the Adjudicating Authority in the present case has struck a fine balance between the right of the Appellant in proposing the scheme for compromise and arrangement and the timely and successful completion of the liquidation process of the corporate debtor, a move that would be in accordance with the ruling in the **Ebix Singapore judgment (supra)**.

45. In view of the above-noted detailed discussion, it is clearly established that the Adjudicating Authority provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme of compromise and arrangement, and the fact that the scheme so presented by the Appellant was *prima-facie* found to inflate the total payments by provisioning payments to creditors who are either related to the corporate debtor or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.

46. We, therefore, hold the clear opinion that the Adjudicating Authority has not committed any error in disposing of the IA 154/2022 by the Impugned Order allowing the Liquidator to proceed with the e-auction and not allowing any more time for

consideration of the scheme proposed under section 230 of the Companies Act, 2013. In view of this inescapable conclusion that the Adjudicating Authority has not erred in passing the Impugned Order, the appeal is dismissed, and is accordingly disposed of.

47. There is no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Mr. Barun Mitra]
Member (Technical)

New Delhi
6th December, 2022

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