

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

Company Appeal (AT) (Insolvency) No. 1070 of 2023

&

I.A. No. 3688 of 2023

(Arising out of Order dated 01.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj in IA No.394/2022 in CP(IB) No.223/ALD/2018)

IN THE MATTER OF:

Gokul Agro Resources Ltd.
Crown 3, Inspire Business Park,
Shantigram, Near Vaishnodevi Circle,
S.G. Highway, Ahmedabad-382421,
Gujarat, India

... Appellant

Versus

Mr. Supriyo Kumar Chaudhuri
Liquidator of JVL Agro Industries Ltd.,
BDO Restructuring Advisory LLP,
C/o BDO India LLP,
4th Floor, Duckback House, 41,
Shakespeare Sarani,
Kolkata – 700017.

... Respondent

Present:

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate along with
Mr.Saumitra Chaturvedi, Mr. Himanshu Chaubey,
Mr. Srijan Sinha, Mr. Siddharth Garg and Mr.
Shubham Solanki, Advocates**

For Respondent: Ms. Swati Dalmia and Mr. Palzer Muktan Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

Interlocutory Application No. 3688 of 2023

This Application has been filed by the Appellant for condoning the delay of 13 days in filing of the Appeal. Sufficient cause being shown, the delay in filing of the Appeal is hereby condoned. IA No.3688 of 2023 is accordingly disposed of.

Company Appeal (AT) (Insolvency) No. 1070 of 2023

This Appeal has been filed by Successful Bidder challenging the order dated 01.06.2023 passed by National Company Law Tribunal, Allahabad Bench, Prayagraj in IA No.394 of 2022 filed by the Appellant, insofar as it did not grant relief as prayed in prayer clause V(B) of IA No.394 of 2022 and further did not direct Respondent to pay interest @ 12% per annum from 10.06.2022 actual date of issuance of Sale Certificate till 02.06.2023 on sale consideration amount deposited by the Appellant.

2. Brief facts of the case necessary to be noted for deciding the Appeal are:

- (i) Corporate Insolvency Resolution Process (“**CIRP**”) process commenced against the Corporate Debtor - JVL Agro Industries Ltd. by an order passed by the Adjudicating Authority in Section 7 Application filed by Standard Chartered Bank on 25.07.2018. On 19.08.2020, an order was passed by Adjudicating Authority directing for liquidation of the Corporate Debtor.
- (ii) Order of liquidation was challenged by Promoter in this Tribunal by filing Appeal being **Company Appeal (AT) (Insolvency) Nos.832 of 2020 – Satya Narayan Jhunjunwala vs. Supriyo Kumar Chaudhuri**, which Appeal was dismissed by this Tribunal vide order dated 18.01.2022. After dismissal of the Appeal by this Tribunal,

Sale Notice was issued by the Liquidator for sale of assets of the Corporate Debtor as going concern on 24.01.2022. E-auction in terms of Sale Notice failed, as no bids were received to purchase the Corporate Debtor as a going concern.

(iii) On 04.03.2022, Sale Notice was issued by Liquidator to sale the assets of the Corporate Debtor on standalone basis by way of a public E-auction scheduled on 06.04.2022. An IA No.98 of 2022 was filed by Employee Welfare Trust challenging the Sale Notice on 04.03.2022. The Adjudicating Authority vide order dated 04.04.2022 though directed the Liquidator to proceed with the auction sale, but directed not to issue any Sale Certificate without seeking prior approval of the Adjudicating Authority.

(iv) The Liquidator issued Sale Notice inviting prospective Bidders to submit bids for the Blocks of the assets of the Corporate Debtor. Sale Notice was issued on 11.04.2022 by Liquidator for remaining Blocks of assets on standalone by way of public auction scheduled on 29.04.2022. The Appellant submitted Bid Application Form along with EMD to the Liquidator to enable itself to submit its bid to purchase the property slotted at A-5 in E-auction Process Documents dated 11.04.2022. On 25.04.2022, the Appellant addressed an email to the Liquidator requesting the Liquidator to provide details with regard to any pending litigations in respect of the subject

property. On 29.04.2022, the Liquidator informed the Appellant that it has been declared as the Successful Bidder for offering the highest amount of Rs.107.35 crores for purchasing the subject property. Letter of Intent (“**LOI**”) was issued by the Liquidator on 29.04.2022 to the Appellant. The LOI mentioned that it is subject to terms and conditions set out therein in Process E-auction Documents and such orders as may be passed by NCLT and NCLAT or any other competent Court, including order dated 04.04.2022 passed by NCLT in IA Nos. 89 and 98 of 2022. The LOI was unconditionally accepted by the Appellant without any demur or protest. On 01.06.2022, the Appellant deposited the entire sale consideration with the Liquidator.

- (v) On 07.06.2022, hearing in IA Nos.89 and 98 of 2022 was concluded before the Adjudicating Authority and orders were reserved. The Allahabad Bench of NCLT was reconstituted and the said IAs were again posted for rehearing.
- (vi) On 03.08.2022, Liquidator filed IA No.210 of 2022 for urgent hearing of IA Nos.89 and 98 of 2022. Another IA No.292 of 2022 was filed by the Liquidator on 19.09.2022 for urgent hearing of IA Nos.89 and 98 of 2022, which Application was rejected by the Adjudicating Authority on 19.09.2022. An Appeal (Company Appeal (AT) (Insolvency) No.1235 of 2022) was preferred by the Liquidator against the order dated

19.09.2022, which was dismissed by this Tribunal on 13.10.2022 requesting the Adjudicating Authority to consider the matter on the date fixed or as early as possible.

- (vii) On 04.11.2022, the Appellant filed IA No.394 of 2022 praying for issuance of Sale Certificate, which was stayed by order dated 04.04.2022. The Appellant filed Company Appeal (AT) (Insolvency) No.1525 of 2022 claiming that order dated 04.04.2022 was not absolute prohibiting from issuing Sale Certificate and Sale Certificate could be very well issued, even if it is subject to order passed in IA 98 of 2022. The Appeal was disposed of on 23.12.2022 requesting the Adjudicating Authority to consider IA No.394 of 2022 on the next date or as early as possible.
- (viii) Hearing took place on IA Nos.89 and 98 of 2022 and by order dated 01.06.2023, IA Nos.89 and 98 of 2022 were dismissed. By the order of the same date, IA No.394 of 2022 was allowed and direction was issued to the Liquidator for issuance of Sale Certificate.
- (ix) The Appellant aggrieved by the order of Adjudicating Authority, insofar as it has not considered the prayer made in by the Appellant in prayer clause V(B) of IA No.394 of 2022 has come up in this Appeal.

3. In the Appeal, only prayer made by the Appellant in paragraph-21 is as follows:

“21. Reliefs sought, in view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8, the Appellant prays for the following relief(s):

It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

- (a) Set aside the Impugned Order dated 01.06.2023 passed by National Company Law Tribunal, Allahabad Bench in I.A. No.394 of 2022 in C.P.(IB) No.223/ALD/2018 to the extent not granting relief as prayed vide Para V(B) of I.A. No.394 of 2022 and further be pleased to direct the Respondent to pay interest @ 12% annum (from 10.06.2022 until the date of issuance of sale certificate being 02.06.2023) on the sale consideration amount of Rs.107.35 Crores deposited by the Appellant, as prayed vide Para V(B) of I.A. No.394 of 2022, in the interest of justice;
- (b) Pass such other or further order as this Hon’ble Appellate Tribunal may deem fit in the proper circumstances of the case.”

4. We have heard learned Senior Counsel for the Appellant as well as learned Counsel for the Liquidator.

5. The learned Senior Counsel for the Appellant, challenging the order submits that Adjudicating Authority committed error in not granting the relief as prayed in para V(B) to grant interest on the sale consideration amount deposited by the Appellant. It is submitted that under the Liquidation Regulation, 2016, since the amount was deposited by the Appellant and the sale was completed, it was obligation of the Liquidator to handover possession of the assets to the Appellant, which asset could not be handed over. It is submitted that after the Appellant having been

declared as Successful Bidder, it was the duty of the Liquidator to file an Application seeking prior approval for issuance of Sale Certificate as was earlier directed by the Adjudicating Authority vide its order dated 04.04.2022 while hearing IA No.98 of 2022. The Liquidator did not take appropriate steps for obtaining prior approval from the Adjudicating Authority for issuance of Sale Certificate. Hence, the amount of interest, which was earned by the deposit made the Appellant, the Appellant is entitled to get the refund. It is submitted that the Appellant has taken loan for making payment of the sale consideration and due to non-issuance of Sale Certificate, the Appellant, could not adhere to the terms of the Loan. The Appellant has also approached this Tribunal by filing an Appeal, being Company Appeal (AT) (Insolvency) No.1525 of 2022, which was disposed of on 23.12.2022. The order passed by the Adjudicating Authority is non-speaking order and no reasons have been given for refusing the relief of interest as claimed by the Appellant. The Adjudicating Authority failed to exercise its jurisdiction under Section 60(5)(c) of the IBC read with Rule 11 of the NCLT Rules, 2016. The Adjudicating Authority failed to consider that provisions of Clause 12 and 13 of Schedule-1 of Liquidation Regulation 2016 are mandatory and the Liquidator ought to have obtained approval of the Adjudicating Authority for issuance of Sale Certificate. The entire sale consideration was deposited by the Liquidator, which earned interest. The Appellant was deprived of the assets during the entire period. Hence, the Appellant is clearly entitled for interest on the deposit made by him. The Appellant is entitled to the interest @ 12% per annum as compensation for

the delay caused in issuance of Sale Certificate. The Liquidator charges interest @ 12% on the deposit, which is made after one month. Hence, the same interest be allowed to the Appellant. In alternative, the Appellant be paid at least the interest, which accrued on the fixed deposit of the sale consideration. The principle of restitution is a common law principle and it is a remedy against unjust enrichment or unjust benefit. No party can take benefit of litigation. In event the interest of sale consideration is allowed to be appropriated by the Liquidator then the same shall amount to unjust enrichment and benefit. The Adjudicating Authority had inherent power to do complete justice by not only restituting the Appellant but also awarding interest @ 12% per annum.

6. The learned Counsel for the Liquidator refuting the submissions of learned Counsel for the Appellant submits that the Liquidator was diligent in pursuing IA Nos.89 and 98 of 2022 and has filed twice the Applications for early hearing of IAs. Although, IA Nos.89 and 98 of 2022 were heard by the Adjudicating Authority and orders were reserved on the IAs, but due to reconstitution of the Bench, the IAs were again directed for fresh hearing. The order dated 04.04.2022 by which Adjudicating Authority permitted the Liquidator to go ahead with the e-auction, but directed the Liquidator to obtain prior approval before issuing Sale Certificate. The Liquidator being bound by the order, could not have issued Sale Certificate. The LOI was issued to the Appellant, which contained reference to the order dated 04.04.2022, which was condition mentioned in the LOI. The Liquidator also filed Appeal before the Appellate Tribunal, challenging the order of the

NCLT, by which urgent hearing Application filed by the Liquidator was rejected by the Adjudicating Authority. This Tribunal on 13.10.2022 disposed of the Company Appeal (AT) (Insolvency) No.1235 of 2022 requesting the Adjudicating Authority to consider the matter on the date fixed or as early as possible. The Appellant filed IA No.394 of 2022 and also preferred an Appeal in this Tribunal being Company Appeal (AT) (Insolvency) No.1525 of 2022 seeking direction for issuance of Sale Certificate, which was prohibited by Adjudicating Authority by order dated 04.04.2022. The Appeal was disposed of by this Tribunal, however, the prayer of the Appellant to issue Sale Certificate was not granted. The Adjudicating Authority heard IA Nos.89 and 98 of 2022 on several dates and ultimately by order dated 01.06.2023 dismissed the Applications. Consequently, the Application filed by the Appellant being IA No.394 of 2022 was allowed. The Appellant is not entitled for any interest on the sale consideration. The sale consideration had to be deposited by the Appellant as per the terms and condition of E-auction, which also noticed that Sale Certificate could not be issued to the Appellant due to restraint contained in the order dated 04.04.2022 and Liquidator is not to be blamed for any restriction imposed by the Adjudicating Authority. The Liquidator has taken all necessary steps for disposal of the matter and the Appellant's submission that the Liquidator has not done his duty is wholly incorrect and fallacious. There is no question of unjust enrichment by the Liquidator and the amount of the sale consideration deposited was kept in the fixed deposit to earn interest and the sale consideration along with interest is

required to be distributed to the stake holders as per Section 53 of IBC and the Appellant cannot be held to be entitled for any interest. The Sale Certificate has been issued to the Appellant and the Appellant has taken possession of the assets. The consideration along with interest is in lieu of the assets, which has been given to the Appellant.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. As noted above, the liquidation order was challenged by the Promoters by way of Appeals, which Appeals were dismissed by this tribunal on 18.01.2022. It was after the dismissal of the Appeals, Sale Notice was issued. As noted above, IA No. 98 of 2022 was filed by the Employee Welfare Trust, in which following order on 04.04.2022 was passed:

“IA No.98/2022

The Liquidator directed to file reply affidavit in the matter within TEN days from today. Copies of the same be served on the counsel on record for the applicant.

List the matter on 26th April, 2022.

In the meantime, auction sale to proceed as planned. **However, the same shall be subject to outcome of this IA. Further, the liquidator shall not proceed to issue sale certificate without prior approval of the Adjudicating Authority.”**

9. The Appellant was Successful Bidder of the property slotted at A-5, for which a LOI dated 29.04.2022 was issued by the Liquidator. LOI in paragraph-8 has clearly mentioned about the order dated 04.04.2022

passed by the Adjudicating Authority in IA Nos.89 and 98 of 2022.

Paragraphs-8 of the LOI is as follows:

“8. This Letter of Intent shall be read with the terms of the E – Auction Process Information Document and is subject to the terms and conditions set out therein and such orders as may be passed by the Hon’ble NCLT/NCLAT, any other Competent Court including the order dated 04.04.2022 passed by the Hon’ble NCLT, Allahabad Bench in I.A. No.89 of 2022 and I.A. No.98 of 2022 in C.P.(IB) No.223/ALD/2018 [Standard Chartered bank vs. M/s JVL Agro Industries Ltd.]. This Letter of Intent shall be binding on you as the Successful Bidder.”

10. From the sequence of events, as noted, after issuance of LOI, Application Nos.89 and 98 of 2022 were heard by the Adjudicating Authority and orders were reserved on 07.06.2022. However, the Bench being reconstituted, the matter was again listed for rehearing. The Liquidator filed IA No.210 of 2022 for early hearing and again IA No.292 of 2022 was filed for early hearing, which was dismissed by the Adjudicating Authority on 19.09.2022. The order dated 19.09.2022 passed by the Adjudicating Authority on IA No.292 of 2022 is as follows:

“IA No.292/2022

This application has been filed by the applicant/ liquidator under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with a prayer to prepone the applications bearing IA No.89 of 2022 and IA No.98 of 2022 in CP (IB) No.223/ALD/2018 at the earliest date.

We have perused the last order in which the next date of hearing is 18th October, 2022. Keeping in view the fact that this Bench is also holding the Chandigarh Bench and there is a huge

pendency in both the Benches and additionally, considering the urgency in the matter involved, we have already fixed it higher on the board on the date fixed and parties have been directed to file their written submissions. In these circumstances, there is no justification to prepone the application and it is made clear that if any of the parties does not comply with the last order, then the arguments will be heard on the date fixed.

Accordingly, IA No.292/2022 is dismissed and disposed of.”

11. The Liquidator even preferred an Appeal against the order dated 19.09.2022, being Company Appeal (AT) (Insolvency) No.1235 of 2022, which was dismissed by this Tribunal, requesting the Adjudicating Authority to consider the matter. This Appellate Tribunal on 13.10.2022 passed following order:

“**13.10.2022:** This Appeal has been filed against the order dated 19.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench. The Adjudicating Authority in the order itself has noted that the next date of hearing is 18.10.2022. The Adjudicating Authority has further noted that the order has been passed to fix the matter high on the Board.

2. In view of the aforesaid, we see no reason to entertain this Appeal. We only request the Adjudicating Authority to consider the matter in the facts of the present case on the date fixed or as early as possible.

3. The Appeal is dismissed with the observation as made above.”

12. The above clearly indicates that Liquidator was diligently pursuing the proceedings and has requested for hearing of the IA Nos. 89 and 98 of 2022. It is also relevant to notice that IA No.394 of 2022 was filed by the

Appellant on 14.11.2022. In the IA, following prayers were made by the Appellant:

- “(A) That this Hon’ble Tribunal may be pleased to allow the present application, in the interest of justice and direct the respondent to issue Sale Certificate to the applicant in compliance with the terms and conditions stipulated in the Sale Notice & E- Auction Process Information, both dated 11.04.2021 annexed at Annexure-B & Annexure- C read with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- [B] That this Hon'ble Tribunal may be pleased to pass an order directing the respondent to deposit an amount towards interest at the rate 12% per annum on the sale consideration amount of Rs 107.35 Crores to the Applicant starting from 10.06.2022 upto the date of issuance of sale certificate by the respondent for non-issuance of sale certificate within 10 days from the payment of the entire amount towards sale consideration as per clause 6 of the E-Auction Process Document annexed at Annexure-C read with the provisions of stipulated under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- [C] That this Hon'ble Tribunal may be pleased to direct to grant an order directing the respondent to issue Final Sales Invoice as contemplated in the Sale Notice dated 11.04.2022 annexed at Annexure-B and E-Auction Process Information Document dated 11.04.2022 annexed at Annexure-C so as to enable the applicant to make requisite payment towards GST and TCS as per the provisions of the law;
- [D] That this Hon'ble Tribunal may be pleased to fix early date of hearing of Interlocutory Application No. 98 of 2022 in CP(IB) No. 223 of 2018, and dispose the same as expeditiously possible;
- [E] Pending the admission, hearing and final disposal of this application, this Hon'ble Tribunal may be pleased to direct the respondent herein to deposit an amount of Rs 85 Crores in a

Cumulative Fixed Deposit Receipts in a Nationalised Bank for the period till the Sale Certificate in terms of the Sale Notice and E-Auction Process Information Document, both dated 11.04.2022 is issued which shall be renewable from time to time upto the issuance of the Sale Certificate by the respondent and the interest accrued thereupon may be deposited by the respondent in the account of the applicant in the interest of justice;

- [F] Pending the admission, hearing and final disposal of this application, this Hon'ble Tribunal may be pleased to direct the respondent herein to issue the sale certificate in compliance with the terms and conditions stipulated in the Sale Notice & E- Auction Process Information. Both dated 11.04.2021 annexed at Annexure-B & Annexure-C read with the provisions stipulated under Regulation 33 of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 subject to the outcome of Interlocutory Application No. 98 of 2022 in CP(IB) 223/ALD/2018 pending for hearing before this Hon'ble Tribunal;
- (G) Pending the admission, hearing and final disposal of this application, this Hon'ble Tribunal may be pleased to direct the respondent herein to allow the applicant to conduct a fresh valuation of Block of Assets at no. A-5 as mentioned in the E-Auction Process Information Document dated 11.04.2022 (Annexure-C) so as to adhere with terms and conditions of the sanction letters dated 27.05.2022 and 30.05.2022 (Annexure-M&N);
- (H) That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice.”

13. In IA No.394 of 2022, an order was passed on 14.11.2022 by the Adjudicating Authority, refusing the prayer of the Appellant for issuance of Sale Certificate. Order dated 14.11.2022 in IA No.394 of 2022 is as follows:

“IA No.394/2022 & IA No.397/2022

Let the notice of the same be given to the other side.

Ld. Counsel for the applicant in IA No.394/2022 & IA No.397 of 2022, have prayed for the short interim relief for issuance of the sale certificate which has already been stayed v.o.d. 4th April, 2022. However, at this stage, the relief cannot be granted.”

14. The Appellant also filed an Appeal before this Appellate Tribunal, being Company Appeal (AT) (Insolvency) No.1525 of 2022 challenging order dated 14.11.2022 passed in IA No.394 of 2022. However, this Appellate Tribunal did not issue any direction to issue Sale Certificate. This Tribunal noticed that amount deposited by the Appellant has been deposited in Term Deposit Advice, which has been produced in the Court. This Tribunal, however, disposed of the Appeal observing that Adjudicating Authority shall give priority to the matter and take appropriate decision as early as possible. In paragraphs 5 and 6 of the order, this Tribunal directed:

“5. The Application 394 of 2022 is still pending before the Adjudicating Authority and we have been informed that it is fixed on 25th January, 2023, we see no reason to keep this Appeal pending, we dispose of this Appeal requesting the Adjudicating Authority to consider the I.A. No. 394 of 2022 on the next date or as early as possible and pass appropriate Order. Both the parties may request the Adjudicating Authority to pass any further order as may be deemed fit and proper.

6. Appellant having deposited the huge amount of Rs. 107.35 Crores, it is expected that the Adjudicating Authority shall give priority to the matter and take appropriate decision as early as possible. Learned Counsel for the Liquidator submits that period of deposit is automatically renewable.”

15. Ultimately, by detailed order dated 01.06.2023, both the IA Nos.89 and 98 of 2022 were dismissed by the Adjudicating Authority. Consequently, IA No.394 of 2022 filed by the Appellant was allowed, directing for issuance of Sale Certificate.

16. The issue which has been pressed by the Appellant, is direction to the Liquidator to pay the interest on the deposit made by the Appellant, @ 12% per annum or at least the amount of interest, which has been earned on the said deposit, till the date Sale Certificate was issued. The Appellant in the Appeal filed the copy of E-auction Process Information Document as Annexure A-7, issued by the Liquidator. Under the Heading – A. Disclaimer, Clause (4) of the E-auction Process Information Document, following is provided:

“(4) It is to be noted that no information being provided in this E-Auction Process Information Document for Sale of the Stand-alone Block(s) of assets of the Corporate Debtor is being claimed to be comprehensive; hence independent due diligence and verification shall be required to be conducted by all Prospective Bidders/ Bidders to their satisfaction prior to submission of EOI. No Person, including the Bidder, shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this E- Auction Process Information Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions, if any, contained in this E-Auction Process Information Document for Sale of the Stand-alone Block(s) of assets of the Corporate Debtor and any assessment, assumption, statement or information contained therein or deemed to form part of this E-Auction Process Information

Document, and the Liquidator or any of his respective advisors, consultants and representatives and the Company, do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.”

17. The learned Counsel for the Appellant has referred to Schedule-1 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. He has relied on Clauses 12 and 13 of Schedule-1. Schedule-1, which is under Regulation 33 of the Liquidation Process Regulation, provides as follows:

- “(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand: Provided that payments made after thirty days shall attract interest at the rate of 12%: Provided further that the sale shall be cancelled if the payment is not received within ninety days.
- (13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.”

18. The Regulations provides that on the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days from the date of such demand and Regulation (13) provides that on payment of the full amount, the sale shall stand completed and the Liquidator shall execute certificate of sale. There cannot be any dispute to the statutory scheme as delineated under Clauses 12 and 13 of the Schedule-1 of the Liquidation Regulation. But as noted above, there being

order of the Adjudicating Authority dated 04.04.2022 that Sale Certificate be not issued without obtaining prior approval of the Adjudicating Authority, the Liquidator was not free to issue Sale Certificate in favour of the Appellant without obtaining prior approval. Thus, it cannot be said that Liquidator failed in its duty by not issuing Sale Certificate in favour of the Appellant. The Sale Certificate could not be issued, till the order was passed on 01.06.2023 by the Adjudicating Authority as noted above.

19. Insofar as the submission of the Appellant that Appellant is entitled to interest @ 12% per annum on the sale consideration deposited by the Appellant, we are of the view that there was clear disclaimer in Clause (4) as extracted above, which clearly provided that no person, including the Bidder, shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this E- Auction Process Information Document or otherwise. The Liquidator has disclaimed any liability. As noted above, when the Sale Certificate was prohibited by the Adjudicating Authority and the Sale Certificate could be issued only after order dated 01.06.2023 passed by the Adjudicating Authority, rejecting IA Nos.89 and 98 of 2022, no blame can be put on the Liquidator for not issuing Sale Certificate, immediately after the deposit of sale consideration by the Appellant.

20. The learned Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in **South Eastern Coalfields Ltd.**

vs. State of M.P. & Ors. – (2003) 8 SCC 648, where the Hon'ble Supreme Court has held that interest is also payable in equity in certain circumstances and the proposition of law is that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called. In paragraphs 21 and 22, following have been held:

“**21.** Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see Chitty on Contracts, 1999 Edn., Vol. II, Para 38-248 at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

22. We may refer to the decision of this Court in Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj [(2001) 2 SCC 721] wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J., has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.”

21. There cannot be any dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. However, here the Sale Certificate could not be issued to the Appellant despite deposit of the sale consideration due to the restraint order of the Adjudicating Authority dated 04.04.2022 and as soon as the restraint order was vacated, the Sale Certificate was issued. The learned Counsel for the Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in ***United Bank of India vs. Official Liquidator & Ors. (1994) 1 SCC 575***, where in paragraph 14, the Hon'ble Supreme Court has laid down following:

“14. When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs 1 crore 98 lakhs.”

22. In the above case, the Court rejected the prayer with regard to sale by Liquidator and that Successful Bidder should not be directed to pay interest on the sale consideration. There was delay in payment of sale

consideration, hence the direction was issued for payment of interest. The present is a case where, there is no delay in payment of sale consideration by the Appellant, but assets could not be handed over due to restraint order of the Adjudicating Authority. When restraint order was vacated, immediately, Sale Certificate was issued and assets were handed over to the Appellant. No one can be said to be prejudiced by order of the Court. The Liquidator has made all efforts for disposal of the IA Nos. 89 and 98 of 2022 and it cannot be said that Liquidator failed in its duty in prosecuting the proceedings and taking steps to obtain approval of the Adjudicating Authority for issuance of the Sale Certificate.

23. The sale consideration was deposited by the Appellant, which was lying with the Liquidator and has earned interest. Sale consideration received for the assets of the Corporate Debtor is to be distributed to the stakeholders. The present is a case where assets have been handed over to the Appellant. Present is not a case where due to any reason, the Appellant is entitled for refund of sale consideration. In event the Appellant may be entitled for refund of sale consideration the prayer for refund of the sale consideration along with interest could have been considered. But, here the sale consideration, which was deposited and which has earned interest is in lieu of the assets, which have been ultimately sold to the Appellant and handed over to him.

24. We, thus, are of the view there is no merit in the submission of the Appellant that Liquidator should be directed to make payment of interest on the sale consideration, which was deposited by the Appellant due to

delay in handing over of assets to the Appellant, which assets could not be handed over earlier due to restraint order of the Adjudicating Authority dated 04.04.2022, which could be vacated only on 01.06.2023. We, thus, do not find any merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

15th April, 2024

Ashwani