

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.145

IA/238(AHM)2022 in CP(IB) 320 of 2018

Proceedings under Section 60(5) IBC,2016

IN THE MATTER OF:

Arrhum Tradelink Pvt Ltd

.....Applicant

V/s

Vineeta Maheshwari Liquidator of Kaneria Granito Ltd & Anr

.....Respondent

Order delivered on ..20/06/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
AHMEDABAD BENCH
COURT-1**

IA No. 238 of 2022 in CP(IB) 320 of 2018

IN THE MATTER OF:

Arrhum Tradelink Private Limited

A company registered under the
Companies Act,
Having its address at:
56/A, Sthanakvasi, Jain Society,
Usmanpura, Ahmedabad

....Applicant

V/S

1. Vineeta Maheshwari

Liquidator of Kaneria Granito Limited
Having an address at:
3rd Floor, Reegus Business Centre,
Above Mercedes Showroom, New City
Light Road, Bharthana, Vesu,
Surat – 395 007

2. Auction Tiger

B 704-705, Wall Street – II,
Opp-Orient Club, Nr. Gujarat
College, Ellis Bridge, Ahmedabad – 380006

3. Torrecid India Pvt. Ltd.

Having it registered office at;
Plot No. 29,30 & 31, GIDC Salvi,
Alindra Taluka, Salvi, District- Vadodara,
Gujarat- 391775

....Opponents

**Order Reserved on: 10.05.2022
Order pronounced on: 20.06.2022**

**Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)
KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)**

Appearance:

Mr. Navin Pahwa, Sr. Advocate for the Applicant.

Mr. Manish R. Bhatt, Sr. Advocate along with Mr. Karan Sanghani, Advocate for the Liquidator.

Mr. Saurabh Soparkar, Sr. Advocate along with Mr. Jaimin Dave, Advocate for the Successful Bidder.

ORDER

1. This application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) is filed by the unsuccessful bidder with prayer to direct the liquidator to declare the applicant as the successful bidder and cancel the bid of M/s. Torrecid India Pvt. Ltd. (R-3) which has been accepted by the liquidator.

2. The following facts are not in dispute:

- i. On 28.02.2020, the liquidator held e-auction of the assets of the Corporate Debtor in the liquidation process. She had decided to sell the assets by e-auction adopting two methods simultaneously. (i) to sell the assets on a stand-alone basis, and (ii) to sell the Corporate Debtor as a going concern.

3. In the e-auction, there were two bidders i.e., the applicant and the declared successful bidder i.e., Respondent No. 3. It is seen from the record that both the applicant and declared successful bidder had offered the same amount i.e., Rs. 38.40 Crores. However, the applicant was ready to take the Corporate

Debtor as a going concern whereas the successful bidder had offered the same amount as the price of the assets of the Corporate Debtor on stand-alone basis.

4. The applicant by this application requested this Adjudicating Authority to direct the liquidator to accept its bid because the applicant is ready to purchase the Corporate Debtor as a going concern-which is the main object of the Insolvency and Bankruptcy Code, 2016.

5. We heard Learned Senior Counsel Mr. Navin Pahwa for the applicant, Learned Senior Counsel Mr. Manish R. Bhatt, and Learned Senior Counsel Mr. Saurabh Soparkar for the successful bidder (R-3).

6. In view of the material on record and arguments made at the bar, we are faced with the question for our determination whether we should accept and certify the result of the e-auction sale in respect of the successful bidder or we should direct the liquidator to accept the bid of the applicant who has offered to purchase the Corporate Debtor as a going concern.?

7. It is because the amount offered by both of them is the same i.e, Rs. 38.40 Crores. The liquidator declared Respondent No. 3- M/s. Torrecid India Pvt. Ltd. as the successful bidder because the system by which e-auction was held had accepted the bid of

Respondent No. 3 at 3.21 pm. The record reveals that at that point of time, i.e., 3.21 pm, the applicant had offered the same amount of Rs. 38.25 Crores. It was less than the amount offered by the successful bidder. But it is also admitted fact that immediately at 3.23 pm, the applicant had also offered the same amount as Rs. 38.40 Crores but the system rejected the same.

8. The admitted facts before us are that at 3.21 pm, the successful bidder had offered Rs. 38.40 Crores. It was accepted by the system. In fact, at the point of time, the liquidator ought to have closed the e-auction process itself but within two minutes and before the auction process declared to be completed by the liquidator, the applicant offered the same amount as has been offered by the successful bidder. It is not in dispute that even at that point of time, the system was on.

9. At this stage, it is necessary to see what are the rules framed in the Insolvency and Bankruptcy Code, 2016 to regulate the process of the auction sale. Under Regulation 33 of IBBI (Liquidation Process) Regulations, 2016, certain rules are incorporated in Schedule-I to regulate the mode of sale. Clause-7 of those rules, speaks about the sale of assets thorough electronic auction but those rules do not give any guidance as to when the liquidator is set to have declared the auction to be completed. In

this case, Clause-12 of the tender document states that “the bidder having highest bid shall be the successful bidder. In case of highest bidder under auction option no. 1 and 2 are equal, then, bidder who has given offer for sale of the Corporate Debtor as a going concern shall be declared as successful bidder”.

10. As already noted above, in this case, the applicant and successful bidder offered the same price. The only difference is that at 3.21 pm, the successful bidder had offered Rs. 38.40 Crores and at 3.23 pm, the applicant offered the same amount whereas one of the conditions of e-auction was that a person taking part in the auction process has to offer Rs. 5 Lakh more than what has been offered by the earlier bidder. In this case, Respondent No. 3 has offered Rs. 38.40 Crores, the same is offered within two minutes by the Applicant but the applicant has given offer to purchase the Corporate Debtor as a going concern whereas the Respondent No. 3 offered same amount to purchase the assets of the Corporate Debtor on stand-alone basis.

11. It is brought to our notice that during e-auction process, the Applicant had not raised the bid amount by Rs. 5 Lakhs intermittently which was mandated by the tender document and that point of time and that every point of time, the Applicant’s bid was rejected by the system itself. Considering the material on

record, we hold that during the entire e-auction process, if any party did not raise its offer by a certain sum of money that it is not sufficient to reject its bid unless and until its final offer is considered. Ultimately, the result of e-auction would depend on as to what amount is offered finally by the party taking part in the auction process. In this case, at end of e-auction both the Applicant and successful bidder have finally offered the same amount but the Applicant had offered the amount to purchase the Corporate Debtor as a going concern. It is true that the Applicant ought to have raised the amount of Rs. 5 Lakh but in our considered opinion, the liquidator ought to have taken into consideration of the broad object of Insolvency and Bankruptcy Code, 2016 to sell the Corporate Debtor as a going concern and it was the pre-condition for e-auction set out by the liquidator herself. The liquidator put the clause in the tender document that in case the highest amount is offered by all the bidders and the bid amount is same then the bidder who wishes to purchase the Corporate Debtor as a going concern shall be declared to be the successful bidder. In this case, the Applicant had given the offer to purchase the Corporate Debtor as a going concern for the same amount as has been offered by the declared successful bidder i.e., Respondent No. 3.

12. In our considered opinion since the liquidator allowed the system to run even after the successful bidder had offered the highest amount and exactly at that point of time within two minutes the Applicant offered the same price. The fact is that the Applicant had offered the same price to purchase the Corporate Debtor as a going concern, the liquidator ought to have considered this aspect. It is the object of the Insolvency and Bankruptcy Code, 2016 i.e., to maximize the value of the assets of the corporate person and to promote entrepreneurship etc. It is not the object of the Insolvency and Bankruptcy Code, 2016 only to clear the debts of the creditors of such a corporate person. It is the duty of the liquidator to protect the existence of the Corporate Debtor as far as possible and avoid its death by ultimately pushing the Corporate Debtor to be dissolved.

13. For the above reasons, we allow this application and pass the following orders:

ORDER

- I. The liquidator is directed to declare the Applicant as a successful bidder upon the Applicant's depositing with the liquidator a sum of Rs. 38.40 crores within seven days from the date of this order failing which liquidator to issue sell

certificate in favor of Respondent No. 3 i.e., M/s. Torrecid India Pvt. Ltd.

- II. In case, the applicant deposits the amount as ordered above, the liquidator to refund the amount of the declared successful bidder with the interest as accrued on such amounts within two weeks therefrom.

14. With these directions, application stands allowed and disposed of.

-SD-

(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)

-SD-

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer