

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

I.A (IB) No. 892/KB/2022

In

C.P. (IB) No. 511/KB/2018

In the Matter of:

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016, reads with Rule 11 of the National Company Law Tribunal Rule, 2016.

And

In the Matter of:

Sauria Corporation

... Operational Creditor

Versus

Kohinoor Pulp & Paper Private Limited

... Corporate Debtor

And

In the Matter of:

Universaltech Paper LLP

... Applicant

-Versus-

Krishnaswami CVR, Liquidator of Kohinoor Pulp & Paper Private Limited

.....

Respondent

Date of Hearing : 30/08/2022

Date of pronouncing the order: 31/08/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances via (Video Conferencing/Physical)

Mr. Abhrajit Mitra, Sr. Advocate : For the applicant in IA No. 892/KB/2022
Mr. Rishav Banerjee, Advocate :
Ms. Sudarshana Dutta, Advocate :

Mr. Joy Saha, Sr. Advocate : For SCC
Mr. Avishek Guha, Advocate :

Mr. Chitresh Saraogi, Advocate :
CVR Krishnaswami, Liquidator : in person

Mr. Shaunak Mitra, Advocate : For Liquidator
Mr. Avik Choudhuri, Advocate :

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through video conferencing.
2. This Interlocutory Application has been filed by the applicant seeking direction to the Liquidator to carry out auction sale of the Corporate Debtor as a going concern following Swiss Challenge Method, wherein the applicant would be a Swiss challenger. It also seeks interim order of staying auction to be held as per the publication notice dated 22nd August, 2022.
3. On 29th July, 2022, this Adjudicating Authority passed the following order:-

“ f. Keeping in view of the object of the Code which is the maximization of the value of the assets of the Corporate Debtor put under CIRP/liquidation, it is for the Liquidator to decide the mode and manner of conducting the sale with a view to achieve the

maximization of value of the assets and in this endeavour he is free to take a resort to all methods including Swiss Challenge Method.

g. With these directions, the IA(I.B.C.) 745/KB/2022 is disposed of”.

4. Through this instant application, it has been brought to our notice that the Liquidator issued notice dated 02 August, 2022, conducting Sale of the Corporate Debtor as a going concern by Swiss Challenge Method.
5. It need to be noted in this notice, it mentioned by Liquidator that the “ *Liquidator reserves the right to amend and or /annul this invitation including any timelines or the process therein, without giving reasons, at any time and in any respect. Any such amendment in the invitation, including the aforementioned timelines, shall be notified”.*
6. The applicant states that a fresh notice issued on 22nd August, 2022 has been issued by the Liquidator, wherein now the sale of the Corporate Debtor is sought to be conducted through normal e-auction process instead of Swiss Challenge Method. The date of auction is fixed on 31st August, 2022.
7. According to the Ld. Senior Counsel for the applicant that he received an email, which is placed on record at page 61, wherein it is mentioned that the Liquidator informed him that the change in the mode auction from Swiss Challenge Method to normal auction process has been taken as per view fo Stakeholders’ Consultation Committee.
8. According to the Ld. Senior Counsel, it is not the Stakeholders’ Consultation Committee view and it is the Liquidator who has to decide the mode and method of conducting the liquidation process.

9. Ld. Senior Counsel has further stated that this decision to change the mode of conducting the Sale from Swiss Challenge Method to normal e-Auction process is arbitrary and he has specifically taken this plea in this context at page 27 of the application.
10. It is further pleaded by the applicant that by not conducting the sale through Swiss Challenge Method, the Liquidator has acted in an arbitrary manner and has proceeded in a manner unknown in law.
11. We are of the firm view that it is the Liquidator who has to take call on what mode of sale is in the best in the interest of maximization of the value of the assets. He may not be bound by the recommendations/ advice of Stakeholder' Consultation Committee, however, in exercise of process of consultation if something better transpires, he can take the same into consideration.
12. On being asked, he has furnished minutes of the meeting of Stakeholders' Consultation Committee held on 8th August, 2022.
13. We see from the minutes, Stakeholders Consultation Committee was of the opinion that there should be increase in reserve price and to conduct the normal auction without Swiss Challenge Method. It is seen from the notice of sale impugned dated 22nd August, 2022, the reserve price have been increased to Rs.48 Crores, which was earlier Rs. 36 Crores fixed by the Liquidator. Thus, we are of the opinion that there is no arbitrariness as such as contended by the applicant.
14. Be that as it may, the Liquidator has taken a decision to go for the sale through normal e-Auction process and the Liquidator is empowered to do so. Otherwise also as referred above, it was mentioned that the Liquidator reserved the right to amend and annul earlier invitation without giving any reasons.

15. It also need to be noted that the applicant is free to participate in the newly notified auction process by the Liquidator.
16. While considering the above position, we seek to rely on the judgment passed by the Hon'ble Supreme Court in the case of **R.K. Industries (UNIT-II) LLP Vs. Respondent: H.R. Commercials Private Limited and Ors. and Welspun Steel Resources Private Limited Vs. Respondent: R.K. Industries (UNIT II) LLP**, para 56 which are as under:-

“ The Statute enjoins the Liquidator to sell the immovable and movable assets of the Corporate Debtor in a manner that would result in maximization of value, lead to a higher and quicker recovery for the stakeholders, cut short the delay and afford a guaranteed timeline for completion of the process. On examining the records, we find that these were the considerations that have weighed not only with the Respondent No. 2 - Liquidator, but also with the stakeholders, who were unanimous in their decision that the Second Swiss Challenge Process Document ought to be abandoned in favour of the Private Sale process where not only the Appellant, but all the other prospective bidders who had participated in the process were permitted by the Adjudicating Authority (NCLT) to make a bid in respect of the consolidated assets of the Corporate Debtor. In its anxiety to claim a vested right as an Anchor Bidder, the Appellant tends to forget that the Swiss Challenge Process adopted by the Respondent No. 2 - Liquidator also falls in the category of a Private Sale, referred to in Schedule-I(2) Under Regulation 33 of the Liquidation Regulations. For conducting a Private Sale, all that the Liquidator is required to do is to prepare a strategy to approach the interested parties.

He is authorized to directly liaise with the potential buyers to ensure that realization from the sale of the assets can be maximized. We do not find any infirmity in the said approach adopted by the Respondent No. 2 – Liquidator” .

17. Keeping in view the facts as mentioned above and the position of law referred above, we see there is no infirmity as alleged in the bidding process initiated by the Liquidator in terms of public notice dated 22nd August, 2022 and therefore, this application is liable to be rejected.
18. Accordingly, IA (IB) No. 892/KB/2022 is hereby rejected.
19. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 31st day of August. 2022