

**National Company Law Appellate Tribunal**  
**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 117 of 2022**

(Arising out of Order dated 14<sup>th</sup> December, 2021 passed by National Company Law Tribunal, New Delhi, Principal Bench, in I.A. 5738 of 2021 in C.P. (IB) No.- 1644 (PB)/2018).

**IN THE MATTER OF:**

**M/s. SGA Fashion Pvt. Ltd.**

Shop No. 7, Defence Colony, Flyover Market,  
New Delhi, Delhi – 110024.

**...Appellant**

**Versus**

**CMA Sandeep Kumar Bhatt**

Liquidator of KMG A to Z System Pvt. Ltd.  
F-103, DAV Complex,  
Opposite Samachar Apartment,  
Mayur Vihar, Phase-I,  
Delhi – 110091.

**...Respondent**

**For Appellant:**

**Mr. Rishi Sood, Mr. Ashutosh Gupta &  
Mr. Gaurav Gupta, Advocates.**

**For Respondent:**

**Mr. Mohit Nanda, Advocate.**

**J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. The present Appeal has been filed against the Impugned Order dated 14.12.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) in I.A. 5738 of 2021 in CP (IB) No. 1644/PB/2018 under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'), by 'M/s. SGA Fashion Pvt. Ltd./the Appellant herein. By the Impugned Order, the Adjudicating Authority has imposed a cost of Rs.9Lakhs/- on the Appellant for misconceived litigation.

2. It is the case of the Appellant that the imposition of huge cost of Rs. 9 Lakhs/- by the Adjudicating Authority is highly arbitrary; that Rule 149 of

the National Company Law Tribunal (NCLT) Rules 2016, does not give any powers to the Adjudicating Authority to impose such a heavy cost and that the cost of Rs.9Lakhs/- ought to be set aside in the interest of justice. It is submitted by the Learned Counsel that CIRP was initiated against KMG A to Z System Private Limited on 06.08.2019 and the Company went into Liquidation and the Liquidator was appointed on 13.05.2021. On 28.11.2021, the Liquidator made a publication and issued the tender documents for auctioning the properties of the 'Corporate Debtor' in Liquidation. On 06.12.2021, the Appellant submitted its bid documents to the Liquidator that both the properties under auction. Namely, the Industrial Land and Building situated at C-48, Sector 81 Noida and also at C-49, Sector 81 Noida. It is further contended that after going through the bid of the Appellant, the Liquidator sent an email rejecting their bid on the ground that the turnover of the Company should be Rs.20Crores/- for each Land and Building and that the net worth should be Rs.3Crores/-. It is submitted that a last opportunity was given to the Appellant to submit their documents by 8:00 PM on 09.12.2021, but the said email was never received by the Appellant and the Respondent due to typographical error had mentioned the wrong email-ID. Subsequently, another email was sent on 09.12.2021, wherein it was mentioned that objection with respect to the bids had to be raised only before 08.12.2021. On 10.12.2021 at 9:21 PM, the Appellant had sent an email to the Liquidator with a prayer to allow the Appellant to bid at least for one property i.e., C-49 Sector 81, Noida. Subsequently on 11.12.2021, the Liquidator had consented and the Appellant was allowed to bid for one property.

**3.** It is submitted that the Appellant had nowhere delayed the Liquidation Process; that they were well within their rights to invoke their remedy by filing an Application before the Adjudicating Authority; it is the fault of the Liquidator to reject both the bids of the Appellant instead of one of them; that the Adjudicating Authority has erroneously imposed cost of Rs.9Lakhs/- on the ground that it was misconceived litigation without taking into consideration that a right to prejudice was caused to the Appellant as the Appellant was eligible for at least one property, but the Respondent has rejected their eligibility for both the bids.

**4.** It is the case of the Respondent/Liquidator that the Appellant was eligible to participate in one property only; the Liquidator had accorded the Appellant all opportunities to prove their eligibility but he had failed; it was on the request of the Appellant that he was allowed to bid in one property, for which he had bid but again left proving their *mala fide* intent; the Appellant sought to cancel the bid by filing an Application before the Adjudicating Authority on the day of bid i.e., 14.12.2021; that the contention of the Appellant as per bid terms, the last date for asking any clarification was 08.12.2021, only is completely misconceived; that in paras 4.3(f), 4.19(c), 5.5(b), 7.2 and 11 of the bid terms, it is clearly mentioned that the Liquidator may amend/modify any of the terms of the bid even up to the date prior to online bidding to maximize the value of the stakeholders and the decision of the Liquidator is binding; that the email was once again forwarded on 09.12.2021 and again on 12.12.2021 giving him an opportunity to participate; as per the request of the Appellant vide email dated 10.12.2021 to participate in the bidding of one property, the same was allowed by the Liquidator on

11.12.2021 and despite the best efforts to accommodate the Appellant to participate in the auction of both the properties, the Liquidator allowed the Appellant to participate the Appellant in one of its property of its choice but the Appellant has chosen to file an Application before the Adjudicating Authority on the last date only with the sole intention of getting the auction cancelled and therefore the Adjudicating Authority was justified in imposing costs of Rs.9Lakhs/-.

**5.** The documentary evidence on record establishes that the Appellant herein contended before the Learned Adjudicating Authority that pre-bidding qualification will not bind the bidders and sought for relief to be granted under the eligibility criteria at Clause 1.15 of the tender document. Having sought for participating in the bidding process, the contention that pre-bid qualification will not bind the bidders is erroneous as such a situation would only negatively affect the efforts of the Liquidator to 'maximize the value of the asset' and would moreover delay the proceedings as all and sundry would participate in the bidding process. Secondly, the record evidences that the email was resent on 09.12.2021 and even otherwise on 11.12.2021 at 7:25 PM, the Liquidator confirmed the eligibility of the Appellant in respect of one property based on his turnover and his net worth. Having participated in the bidding process, the conduct of the Appellant in turning around and stating that the eligibility criteria is erroneous, without challenging the said condition in any appropriate forum, is truly misconceived.

**6.** We are also conscious of the fact that the Learned Adjudicating Authority has recorded in their Order that the Application preferred by the Appellant/Applicant was taken up as it was the last date for the bidding and

spent two long hours in futility and vexed with the conduct of the Appellant herein for wasting the time and energy of the Court by indulging in these misconceived litigation, has imposed a cost of Rs.9Lakhs/-.

7. This Tribunal is of the earnest view that the Learned Adjudicating Authority has rightly recorded the reasons that the Appellant had indulged in frivolous litigation. However, we are of the considered view that the cost may be reduced from Rs.9Lakhs/- to Rs.2Lakhs/- in the interest of justice.

8. This Appeal is partly allowed only modifying the amount of cost imposed from Rs.9Lakhs/- to Rs.2Lakhs/- to be paid within one week from the date of this Order.

9. The Registry is directed to upload the Judgement on the website of this Tribunal and send a copy of this Judgement to the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) forthwith.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

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

**NEW DELHI**  
**26<sup>th</sup> August, 2022**  
*Himanshu*