

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-4421/2023

In

IB-589(PB)/2020

**IN THE MATTER OF IB-589(PB)/2020:**

Under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019.

**Mr. Anil Syal**

**R/o** 117, First Floor, Uday Park

New Delhi-110049.

**..... Debtor/Personal Guarantor**

**AND IN THE MATTER OF IA-4421/2023:**

under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

**Union Bank of India**

**..... Applicant**

**Versus**

**Mr. Ajay Gupta & Anr.**

1. Mr. Ajay Gupta

Bankruptcy Trustee of Mr. Anil Syal

**..... Respondent No. 1**

2. Mr. Akshat Gupta

Auction Purchaser

**..... Respondent No. 2**

**Order Pronounced On: 04.07.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For UBI : Mr. Brijesh kumar Tamber, Mr. Prateek Kushwaha,  
Advs.

**IA-4421/2023 In IB-589(PB)/2020**

**Date of Order: 04.07.2024**

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For Respondent : Mr. Nikhil Kr. Jha, Adv.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present application has been filed by Union Bank of India through Mr. Goverdhan Prasad, authorized representative & signatory of the Applicant Bank, under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking appropriate directions for setting aside of undervalued sale conducted by the Bankruptcy Trustee. The Applicant seeks the following prayers:

*“(a) Set aside the undervalued sale conducted by the Respondent No. 1 in collusion with the Bankrupt;*

*(b) Set aside the Notice of Dividend dated 09.07.2023 issued by the Respondent No. 1;*

*(c) Recall the sale certificate issued by the Respondent No. 1 in favour of the Respondent No. 2 and direct the Respondent No. 1 to refund the wrong sale consideration received to the Respondent No. 2;*

*(d) Grant permission to the Applicant Bank to conduct the sale of 50% share of Bankrupt mortgaged to the Applicant Bank as the Applicant Bank also have charge on the another 50% share held by the wife of the Bankrupt for the effective realization;*

*(e) Refer the matter to the Insolvency and Bankruptcy Board of India (IBBI) for the initiation of the disciplinary proceedings against the Respondent No. 1 for abusing the Bankruptcy process;*

*(f) Pass such other or further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”*

**A. Submissions of the Applicant Bank:**

2. It is submitted that the Bankruptcy process against Mr. Anil Syal has been started pursuant to the application filed by the Bankrupt under Section 121 read with Section 122 of the Insolvency and Bankruptcy Code, 2016. This Adjudicating Authority vide order dated 30.09.2022 has commenced

the Bankruptcy Process of Mr. Anil Syal and appointed Mr. Ajay Gupta/ Respondent No. 1, an Insolvency Professional proposed by the Applicant/ Debtor/ Bankrupt as Bankruptcy Trustee.

3. The Applicant Bank has filed a claim with the Respondent No. 1 in FORM F on 16.03.2023 for an amount of Rs. 71,90,78,635/-. The Applicant Bank has also released and relinquished the security interest on the mortgaged property. The personal guarantor has mortgaged with the Applicant Bank 50% share of the Bankrupt in the property situated at First Floor 117, Uday Park, New Delhi - 110049. As per the Sr. No. 11 of the prescribed claim form by the Insolvency and Bankruptcy Board of India (IBBI) wherein it is mandatory to provide the value of security created, the Applicant Bank in the claim form dated 16.03.2023 has intimated that as on 18.02.2021, the value of the security mortgaged to the Applicant Bank is Rs. 3.82 crores as determined by the valuer namely M/s. Sahu & Associates.
4. It is further submitted that from the minutes of the 1<sup>st</sup> meeting of creditors, it is reflected that the registered valuer was appointed to determine the value of the asset. However, the value so determined and the valuation report was never shared with the Applicant Bank.
5. The fact that the Applicant Bank has charge on the entire asset on which the Bankrupt has 50% share, the Respondent No. 1 has failed to conduct any due diligence and has not even checked the public records which reflects that the Applicant Bank has a charge on the entire property situated at First Floor 117, Uday Park, New Delhi - 110049. Thereafter, it has come to the knowledge of the Applicant Bank that the Respondent No. 1 had issued the notice for the sale of the asset on 02.06.2022 and in the sale notice, it has not been informed that the other portion of 50% share is mortgaged to the Applicant Bank.
6. It is the case of the Applicant that the value of the property in 2021 was Rs. 3.80 crores and as per the market incremental rate of land, the value of the property should be around Rs. 4.5 crores and the Respondent No. 1 without consulting with the Applicant Bank and without informing the Applicant has issued the notice by keeping the reserve price as Rs.

90,72,161/- which is only around 20% of the total current realizable value of the property.

7. Hence it has been submitted that by proceedings with the sale of asset, the Respondent No. 1 has violated the Regulation 27(4) and other provisions of the Code, 2016 and Regulations frames thereunder and is liable to face disciplinary proceedings before the IBBI for abusing the process.
8. It has been submitted that the Respondent No. 1 had called for the 2<sup>nd</sup> meeting of creditors on 07.07.2023 and the Applicant Bank was about to take objection with respect to the whole process conducted by the Respondent No. 1. However, in the meantime, the Respondent No. 1 issued the sale certificate to the auction bidder i.e. Respondent No. 2 on 05.07.2023 leaving no room for the Applicant Bank to take objection with respect to the sale conducted by the Respondent No. 1 in 2<sup>nd</sup> Meeting.
9. This creates serious doubt that the Respondent No. 1 has acted on the whims and fancies of the Bankrupt for his benefit to get rid of the recovery actions initiated by the Applicant Bank and to handover the 50% share of the property to his associate by way of sale in Bankruptcy Process so that it will be difficult for the Applicant Bank to sale the rest of the 50% share which is also mortgaged to the Bank because the asset is a residential house which can never be divided into 50% and the Bank will not be able to sell the rest of the asset ever.
10. It is further submitted that in the 2<sup>nd</sup> meeting of the Creditors, the Respondent No. 1 informed that he has also appointed the Transactional Auditor for the determination of the Avoidance Transactions and without discussing the contents of the transactions report, the Respondent No. 1 suo moto has decided that there is no such transaction reported and no investigation is required, with this the Respondent No. 1 has closed the matter without discussing the same with the creditors. The Applicant Bank had also demanded a copy of the Transaction Audit Report which was also never shared with the Applicant Bank.

**B. Submissions of the Respondent No. 1:**

11. The Respondent No. 1 has filed a reply affidavit denying the allegations made by the Applicant Bank and stated that the sale of the asset was conducted by the Answering Respondent in strict compliance of the rules and regulations specified in the Code. The Answering Respondent conducted the transaction in a transparent manner through designated e-auction vendor in an online mode fixing the reserve price in accordance with the valuation arrived under Regulation 30 read with clause 5 of Part A to Schedule II under Regulation 27 of the Bankruptcy Regulations, 2019.
12. It has been further submitted that the Applicant Bank in Form-F on 16.03.2023 provided the value of the entire property/ asset in complete disregard of the fact that the asset under consideration was only 50% share in the entire property. The valuation of the 50% undivided share in the entire property was valued as per the prescribed norms and standards by the IBBI registered valuer and the allegation that it was undervalued is baseless, incorrect and unfounded without any evidence in support.
13. It is contended that the Applicant Bank was duly informed by the Answering Respondent of the valuation of the bankrupt's share in the property as determined by the registered valuer vide its Preliminary Report dated 23.03.2023. The Applicant Bank has very conveniently concealed the fact of receipt of the Preliminary report which contained all the information which the applicant is alleging to not have been shared with it. However, even after being informed of the value of the asset to be sold vide the said report, the Applicant Bank never objected to the same being undervalued. Further, notice of sale was also published in newspapers on 02.06.2023, which has been admitted to have been in the knowledge of the Applicant Bank, whereas the Applicant Bank chose not to object to the same. Whereas, with no objection being raised by the creditors, the auction process was completed on 27.06.2023.

**C. Submissions of the Respondent No. 2:**

14. The Respondent No. 2 has filed a reply affidavit denying the allegations made by the Applicant Bank and stated that there is no role of the

answering Respondent in the present matter as the answering Respondent is the auction purchaser and the answering Respondent being the highest bidder has purchased the 50% share in the property bearing H. No. 117, First Floor, Uday Park, New Delhi-110049 by way of the E-Auction Process held by the bankruptcy trustee i.e. the Respondent No. 1 herein on 27.06.2023 following all the Rules and Regulations.

15. It is submitted that the answering Respondent got to know about the auction sale of the said property through the advertisement dated 02.06.2023 in the newspaper namely Financial Express and Jansatta, based on the same the answering Respondent approached the bankruptcy trustee and expressed his interest in participating in the E-Auction of assets by way of a letter of intent and duly filed bid declaration form, both dated 12.06.2023 along with the earnest money of Rs. 9,07,216/- by way of a demand draft dated 09.06.2023 drawn on HDFC Bank.

**D. Analysis and Findings:**

16. We have heard the submissions of Ld. Counsel appearing for the Applicant Bank as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
17. The following issues arise for consideration:
- i. Whether the Bankruptcy Trustee has committed any illegality or material irregularity in conducting the e-auction?
  - ii. Whether the e-auction dated 27.06.2023 (advertisement dated 02.06.2023) is liable to be set aside?
18. In order to answer the above questions, it would be relevant to note that the advertisement for conducting the e-auction was published in two newspapers namely Financial Express (English) and Jansatta (Hindi) on 02.06.2023. In the said advertisement the date of e-auction was mentioned as 27.06.2023. In the normal course, the e-auction would have to be conducted after a period of 30 days from the date of publication of the advertisement in the Newspapers. In this connection, as a referring point, we would like to refer to the provision of sub-rule 6 of Rule 8 of the SARFAESI Security Interest (Enforcement) Rules, 2002, which stipulates that 30 days' time period should be given for conducting the e-auction. In

the instant case, admittedly the advertisement was issued on 02.06.2023 and e-auction was conducted on 27.06.2023 which is much before the 30 days period. In this regard, we would like to refer to the judgement passed by the Hon'ble NCLAT in the case of **Naren Seth Vs. Sunrise Industries & Ors.** in *Company Appeal (AT) (Insolvency) No. 401 of 2023* wherein the Hon'ble Appellate Authority has made the following observations:

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*“Although, no specific timelines have been given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016, normally notice period of 30 days is given to get best value. In this connection, as a referring point only, we would like to refer to the provision of sub-rule (6) of Rule 8 of the SARFAESI Security Interest (Enforcement) Rules, 2002 which are as under:-*

*"Rule 8 Sale of immovable secured assets*

*(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5) \*\*\*\**

*(Emphasis Supplied)*

*This also indicates that sufficient time say 30 days ought to have been given. Thus, we find the Liquidator acted in hurry in concluding the E-auction.”*

- 19.** The above observation made by the Hon'ble NCLAT makes it clear that a sufficient time of 30 days ought to be given for conducting e-auction to get the best value. However, in the instant case, the Bankruptcy Trustee acted in a hasty manner and conducted the e-auction on 25<sup>th</sup> day from the date of the issuance of the advertisement dated 02.06.2023. We are therefore of the view that the Bankruptcy Trustee of Mr. Anil Syal has acted in a hest in conducting the auction of the 50% undivided share in the residential flats in question.
- 20.** We direct the Bankruptcy Trustee to conduct the fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. The Applicant Bank is also directed to conduct a fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is

indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. Thereafter, the Average of both the Valuation will be considered for the fresh auction by the meeting of the Creditors.

- 21.** We further direct the Bankruptcy Trustee to return the e-auction sale proceeds to Mr. Akshat Gupta, Auction Purchaser including EMD, if any and cancel the sale certificate issued to Mr. Akshat Gupta, Auction Purchaser.
- 22.** Accordingly, the IA-4421/2023 is **allowed** by setting aside the e-auction dated 27.06.2023 conducted by the bankruptcy trustee by directing the bankruptcy trustee to conduct a fresh auction by maintaining at least 30 days' time between the paper publication and the e-auction so as to enable more bidders to participate in the auction for fetching high value of the property. The bankruptcy trustee shall also clearly mention the timings for the inspection of the property in the paper publication.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**