

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 340/JPR/2020
CP No. (IB)- 79/7/JPR/2019

IN THE MATTER OF:

SHREE BHARKA SYNTHETICS LTD.

...PETITIONER

VERSUS

M/S GLOBAL SYNTAX (BHILWARA) LTD.

...RESPONDENTS

IA (IBC) No. 340/JPR/2022

MEMO OF PARTIES

M/S PAMMVI CONSULTANCY SERVICES LTD.

Registered Office at C-501 Remi Bizcourt
plot no. 9 Shah Industrial estate off Veera
Desai Rd. Andheri {w} Mumbai
Maharashtra- 400053

...Operational Creditor/ Applicant

VERSUS

1. MR. PRASHANT AGARWAL,

The Liquidator of M/s Global Syntax (Bhilwara) Ltd.

Resident of: F-106, First Floor, Sumer
Complex, Behind Bagadia Bhawan,
Gautam Marg, C-Scheme, Jaipur- 302001.

2. M/S SHREE BHARKA SYNTHETICS LTD.,

Registered Office at Bazar No. 2,
Bhilwara- 311001.

Sd/-

Sd/-

3. M/S AHINSA INFRASTRUCTURE AND DEVELOPERS LTD.,

Registered Office at 60, Mulji Jetha Building, 3rd Floor, 185/187, Princess Street, Mumbai Maharashtra 400002

4. M/S BHILWARA SPINNERS LTD.

Registered Office at: 26, Industrial Area, Gandhinagar, Bhilwara- 311001, Rajasthan.

...RESPONDENTS

FOR APPLICANT(S) : Prabhansh Sharma, Adv

FOR RESPONDENT(S) : Prakul Khurana, Adv.
Prashant Agarwal, Liquidator.

Order Pronounced On:23.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The instant Application has been filed under Sections 42, 50, 60, and 65 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 and Regulation 33 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') by *M/s Pammvi Consultancy Services Limited* ('Applicant'/ 'Operational Creditor') against the Liquidator and the Financial Creditors of *M/s Global Syntex (Bhilwara) Limited* ('Corporate Debtor) for setting aside the sale of assets of the Corporate Debtor and quashing of the entire Corporate Insolvency Resolution Process ('CIRP') and the Liquidation Process.

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2. Before Proceeding further with the contentions of the Parties, it will be apposite to provide a brief background of the matter which is as follows:-

2.1. An application under Section 7 of the Code for initiation of CIRP bearing CP (IB) No. 79/7/JPR/2019 was filed by *M/s Shree Bharka Synthetics Limited* ('Respondent No. 2') against the Corporate Debtor. The said application was admitted and CIRP was initiated *vide* Order dated 21.08.2019 wherein *Mr. Prashant Agarwal* ('Respondent No. 1'/ 'Liquidator'/ 'RP') was appointed as the Interim Resolution Professional ('IRP'), who was later confirmed as the RP by the Committee of Creditors ('CoC').

2.2. Respondent No. 1 constituted the CoC comprising of *M/s Shree Bharka Synthetics Limited* ('Respondent No. 2'), *M/s Ahinsa Infrastructure And Developers Limited* ('Respondent No. 3'), and *M/s Bhilwara Spinners Limited* ('Respondent No. 4').

2.3. Respondent No. 1 invited an Expression of Interest ('EOI') for the revival of the Corporate Debtor and received four enquiries concerning the qualification of the Resolution Applicant, however, only one Prospective Resolution Applicant expressed its interest. However the same was dropped due to the non-interest of the Resolution Applicant and its failure to submit a Resolution Plan.

2.4. The CoC in its third meeting dated 18.01.2020 passed the resolution for Liquidation of the Corporate Debtor as per Section 33 of the

2.4. The CoC in its third meeting dated 18.01.2020 passed the resolution for Liquidation of the Corporate Debtor as per Section 33 of the Code. The Adjudicating Authority *vide* its order dated 24.01.2020 initiated the Liquidation of the Corporate Debtor and appointed Respondent No. 1 as the Liquidator.

2.5. The Liquidator made a public announcement inviting claims from stakeholders against the Corporate Debtor. After verification of the claims, Respondent No. 1 constituted the Stakeholders Consultation Committee ('SCC'), the details of which are as follows:

S. No	Class of Stakeholders	Name (s)	Amount Admitted	Representative (s)
1.	Unsecured Financial Creditors	Shree Bharka Synthetics Limited (Respondent No. 2)	1,28,05,494/-	Ashok Kumar Kothar & Narendra Kumar Kothari
		Ahinsa Infrastructure and Developers Limited (Respondent No. 3)	4,18,47,903/-	
		Bhilwara Spinners Limited (Respondent No. 4)	10,23,84,512/-	
2.	Governments	Central Goods and Service Tax Department	12,29,08,325/-	Shri Mohammad Harun Chippa, Supreintendent, Central GST range-XXI, Bhilwara
3.	Operational Creditor	Pammvi Consultancy Services Limited (Applicant)	2,17,04,875/-	Advocate Nitish Bagri
		Ram Kumar Chechani (Sole proprietor of M/s Shyam Enterprises & Sohan Lal & sons)	3,61,595/-	

2.6. The Liquidator prepared an Asset Memorandum of the Corporate Debtor in compliance with Regulation 34 of the Liquidation

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Regulation. As per the Asset Memorandum, the Corporate Debtor had the following assets: -

S.No	Classification of Assets	Particulars of Assets
1	Non-Current Assets	Leasehold land & Building situated at Plot no. SPL-1, at industrial area, biliya extension, Bhilwara having area of 26,800 sq. mtr. Freehold Agriculture Land Situated at Araji No. 1442/135 & Araji No. 135 adjacent to industrial land at industrial area, biliya extension, Bhilwara.
	Current Assets	Cash at Bank amounting to Rs. 12,714/-

2.7. Thereafter, the Liquidator proposed to sell the non-current assets i.e., leasehold land & freehold land, collectively for maximization of value as both the lands were adjacent. The Liquidator apprised the SCC about the value of the properties of the Corporate Debtor as per the report submitted by the registered valuers.

2.8. The SCC in its first meeting dated 25.06.2020, allowed the Liquidator to sell the properties of the Corporate Debtor. The first E-auction was conducted on 31.07.2020 at a reserve price of Rs. 11,13,42,501.5/- (Rupees Eleven Crore Thirteen Lakh Forty-two Thousand Five Hundred One And Five Paise Only). In the first E-auction, only one prospective bidder namely *M/s Aman Sulz Private Limited* showed interest but on the date of the E-auction,

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the prospective bidder failed to participate and the auction was concluded with no results. Subsequently, the SCC reduced the reserve price of the properties by 25% to Rs. 8,35,06,876.125/- (Rupees Eight Crore Thirty-five Lakh Six Thousand Eight Hundred Seventy-six And One Hundred Twenty-five Paise Only). In the Second E-Auction, two bidders i.e., *M/s Jasolmaa Marbles & Industries Limited* and Respondent No. 4, showed their interest and submitted bid applications. However, on the date of the E-Auction, both the prospective bidders failed to participate.

2.9. Due to the failure of the earlier two E-auctions, the reserve price of the properties was further reduced by 10% to 7,51,56,188.51/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-eight And Fifty-one Paise Only). In the third E-auction, two prospective bidders i.e., *M/s Kanak Corporation* and Respondent No. 4, showed their interest and submitted bid applications to the Liquidator but only Respondent No. 4 deposited the Earnest Money Deposit. On the scheduled date of E-Auction i.e., 31.08.2020, Respondent No. 4 submitted its bid at the reserve price and was declared as the successful bidder.

2.10. Respondent No. 4 paid the complete consideration of 7,51,56,189/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-Nine Only). Further, the sale

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proceeds were distributed among the creditors of the Corporate Debtor as per the Waterfall Mechanism in the following manner: -

S.No	Stakeholder under Section 53(1)	Amount Admitted	Amount Distributed	Percentage
1	CIRP Cost	7,51,316	7,51,316	100
2	Liquidation Cost	21,13,569.42	21,13,569.42	100
3	Financial Debts owed to unsecured Creditors:-			
	(1) M/s Bhilwara Spinner Ltd.	10,23,84,512	4,70,47,967	45.95
	(2) M/s Shree Bharka Synthetics Ltd.	1,28,05,494	58,88,371	45.98
	(3) M/s Ahinsa and Infrastructure Developers Ltd.	4,18,47,903	1,92,54,611	46.01
		15,70,37,909	7,21,90,949	45.97%
4	Any Amount due to the Government CGST	12,29,08,325	-	-
5.	Any remaining Debts & Dues Pammvi Consultancy Services Ram Kumar Chechani	2,17,04,875 3,61,595	- -	- -
	Total	30,48,77,589.42	7,50,55,834.42	24.61

2.11. The present Application has been filed by the Operational Creditor, *M/s Pammvi Consultancy Services* wherein the Applicant has challenged the Auction Proceedings as well as the complete CIRP process.


3. The Applicant has filed the present Application vide diary No. 575/2020 dated 13.10.2020 challenging the E-Auction Proceedings as well as the complete CIRP process. Also, Written Submissions were filed vide Diary No. 181/2023 dated 19.01.2023 and Diary No. 728/2024 dated 22.03.2024. The submissions made by the Applicant are as follows:

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3.1 The CIRP of the Corporate Debtor was an outcome of the fraudulent actions of the Corporate Debtor and Respondent No. 2. Respondent No. 2 filed an application for initiation of the CIRP under Section 7 of the Code against the Corporate Debtor for defaulting in repayment of the loan amount of Rs. 40,00,000/- (Rupees Forty Lakh Only) along with the interest. It was submitted that the directors of Respondent No. 2 were interested in the Corporate Debtor, and thus, Respondent No. 2 was not eligible to advance any loan to the Corporate Debtor as per Section 185 of the Companies Act, 2013. Further, Respondent No. 2 did not file the balance sheets of the Corporate Debtor according to which the Corporate Debtor has stopped its operations and ceased to be an operational entity since April 2002.

3.2 Further, the CoC formed by Respondent No. 1 consisted only of interested and related parties. The CoC of the Corporate Debtor consisted of three financial creditors i.e., Respondent No. 2, Respondent No. 3, and Respondent No. 4. Respondent No. 4 is a subsidiary of Respondent No. 3 as per the AOC-4 filed by Respondent No. 3. Further, as per the Balance Sheet of Respondent No. 2, its directors are interested in Respondent No. 3. The relevant extract of the Balance Sheet of Respondent No. 2 is reproduced hereunder:-

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“5 Advance to other includes advances to concerns in which directors are interested;

<i>Name of Concern</i>	<i>Current Year Closing Balance</i>	<i>Previous Year Closing Balance</i>
<i>Ahinsa Infrastructure & Developers Ltd.</i>	322307505	304074563
<i>Global Syntex (Bhilwara) Ltd.</i>	4000000	4000000
<i>Susheela Devi Kothari</i>	200000	-
<i>Tail Trees Hotels Pvt. Ltd</i>	2500000	-

Hence, the CoC was formed by the related parties with the sole objective of defrauding the creditors of the Corporate Debtor. Thus, the initiation of CIRP of the Corporate Debtor on the application filed by Respondent No. 2 stands vitiated due to the aforementioned fraud.

- 3.3 The Applicant has submitted that the Financial Creditors i.e., Respondent No. 2, 3, and 4 have charged an exorbitant rate of interest i.e., 18% P.A. for the first year and 24% P.A. compounded monthly for the remaining duration. As a result of the same, the Principal sum advanced by the Respondents has culminated into a huge amount. In support of its contention, the Applicant has relied upon the claims submitted by the Respondents during the CIRP which are as follows:-

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<i>Sr. No</i>	<i>Name of Financial Creditor</i>	<i>Amount Claimed</i>	<i>Amount Admitted</i>	<i>Principal Component</i>
1	<i>Shree Bharka Synthetics Limited (Respondent No. 2)</i>	1,28,05,494	1,28,05,494	40,00,000/-
2	<i>Ahinsa Infrastructure and Developers (Respondent No. 3)</i>	4,18,47,903	4,18,47,903	17,00,000/-
3	<i>Bhilwara Spinners Limited (Respondent No. 4)</i>	10,23,84,512	10,23,84,512	4,09,00,000
	Total	15,70,37,909	15,70,37,909	4,66,00,000

3.4 It was stated that the agreements and the addendums executed between the Respondents and the Corporate Debtor were not duly stamped as prescribed under the law. Further, the Books of Accounts of the Corporate Debtor and the Financial Creditors do not provide for interest over the loans advanced and limit the liability of the Corporate Debtor only to the extent of the Principal Amount. In support of the said contention, the Applicant has relied upon the Balance Sheet of the Corporate Debtor for the year ended on 31.03.2018.

3.5 It was contended that the Financial Creditors have misused their majority position in the SCC to purchase the properties of the Corporate Debtor at a throw-away price and have vitiated the Liquidation Proceedings. It was submitted that three back-to-back auctions were conducted to dispose of the properties of the Corporate Debtor without any reasonable gap between them. The E-auction proceedings were completed hastily during the COVID-19 pandemic when the market conditions were unstable.

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3.6 The auction proceedings were conducted in violation of Regulation 33 (1) read with Schedule I of the Liquidation Process. The Auction Proceedings conducted by the Liquidator are in complete violation of the time-line prescribed under Schedule I and the same is highlighted hereunder:-

<i>Sale Notice Date</i>	<i>Eligibility Documents (+14 days)</i>		<i>Inspection (+7 days)</i>		<i>Auction</i>
	<i>Actual</i>	<i>Prescribed</i>	<i>Actual</i>	<i>Prescribed</i>	<i>Actual</i>
09.07.2020	-	23.07.2020	28.07.2020	30.07.2020	31.07.2020
08.08.2020	-	22.08.2020	14.08.2020	29.08.2020	18.08.2020
21.08.2020	-	04.09.2020	28.08.2020	11.09.2020	31.08.2020

3.7 It was submitted that the Auction Process was completed in a collusive manner. The sole participant in the third auction was Respondent No. 4 and the property was sold to him at the Reserve Price. The Applicant raised its grievances against the fraudulent auction proceedings before the liquidator vide its email but no heed was paid to the same. Respondent No. 4 misused its position to reduce the auction price of the properties and then purchased the same at a discounted price. Further, the Auction Notices issued by the Liquidator were bereft of the description of the property. Therefore, the Auction of the properties of the Corporate Debtor should be set aside.

3.8 The properties of the Corporate Debtor were auctioned at an undervalued price by the Liquidator. As per the valuation

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conducted by the Applicant through *M/s Astro Tech*, a government-approved valuer, the properties of the Corporate Debtor were worth 15.40 Crores and the distress value of the properties was Rs. 13.86 Crores. The Applicant stated that in the first Auction, the reserve price was set at Rs. 11,13,42,501.5/- (Rupees Eleven Crore Thirteen Lakh Forty-two Thousand Five Hundred One And Five Paise Only), the said price was reduced to Rs. 8,35,06,876.125/- (Rupees Eight Crore Thirty-five Lakh Six Thousand Eight Hundred Seventy-six And One Hundred Twenty-five Paise Only) in the Second Auction, and ultimately, the properties were auctioned on 31.08.2020 at the reserve price of Rs. 7,51,56,188.51 (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-eight And Fifty-one Paise Only). Thus, the properties were sold at a minuscule price than their worth as per the report of the valuer. Details of the Auction Proceedings undertaken by the Liquidator are as follows:

<i>Sale Notice Date</i>	<i>Auction Date</i>	<i>Reserve Price (Rs.)</i>
09.07.2020	31.07.2020	11,13,42,501.5
08.08.2020	18.08.2020	8,35,06,876.125
21.08.2020	31.08.2020	7,51,56,188.51

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3.9 It was submitted that the present Application does not suffer from any delay or laches as Section 60 (5) of the Code does not prescribe any specific time limit for filing of an application. The same is governed by Article 137 of the Limitation Act, 1963 read with section 238A of the Code which provides a limitation period of 3 years. Since the auction proceedings were concluded on 31.08.2020, the present application is within the prescribed period of limitation.

3.10 The Applicant relied upon the following judgments in support of its contentions:-

- I. *Phoenix Arc Private Limited Versus Spade Financial Services Limited & Ors. (2021) 3 SCC 475*
- II. *Beacon Trusteeship Limited V/s Earthcon infracon Pvt. Ltd & Anr 2020 SCC OnLine SC 1233*
- III. *Smt. Anamika Singh V/s Shinhan Bank 2020 SCC OnLine NCLAT 1041*
- IV. *Naren Seth v/s Sunrise Industries 2023 SCC OnLine NCLAT 1942*

4. The Liquidator submitted his Reply vide Diary No. 709/2021 dated 16.03.2021. Further, Written Submissions were filed vide Diary No. 3345/2022 dated 14.11.2022, Diary No. 3472/2022 dated 25.11.2022, Diary No. 181/2023 dated 19.01.2023, and Diary No. 815/2024 dated 04.04.2024. The Reply and the Written Submissions filed by the Liquidator are considered jointly hereunder:-

4.1 It was submitted that as per Section 42 of the Code, a Creditor can file an appeal before the Adjudicating Authority against the order

of the Liquidator accepting/rejecting the claim of the Creditor within 14 days of the receipt of such decision. Since, neither the Applicant has preferred any appeal nor had any grievance regarding non-admission of its claim, the present application seeking to invoke Section 42 of the code is ex-facie misconceived and non-maintainable.

4.2 It was contended that an application for avoidance of Extortionate credit transactions under Section 50 of the Code can only be filed by a Liquidator or a Resolution Professional as the case may be. Further, Section 50 of the Code provides for a look-back period of two years for extortionate credit transactions. Since the loans were advanced by the Financial Creditors to the Corporate Debtor prior to two years of initiation of the CIRP, the same were not considered for the purposes of Section 50. Therefore, the present Application under Section 50 of the Code is not maintainable.

4.3 The instant Application suffers from delay and laches. The Applicant actively participated in the CIRP and the Liquidation process. The Applicant never raised any objection or grievances till the conclusion of the third E-auction and disbursement of the entire sale proceeds. Thus, the present Application has been filed only upon the realization that the auction proceeds of the assets of the Corporate Debtor will not satisfy the claims of the Applicant.

Thus, the Application has been filed with malicious intentions and with ulterior motives.

- 4.4 Without prejudice to the aforementioned submissions, it was submitted that the CIRP as well as the Liquidation process have been carried out per the Code. After the initiation of the CIRP, Respondent No. 1 made the public announcement as prescribed under Sections 13 and 15 of the Code and collated the claims of the creditors in accordance with Section 18 of the Code and Regulation 13 of the CIRP Regulation. The claims of the Financial Creditors i.e., Respondent No. 2, 3, and 4, were collated only after due verification of the term sheets and addendum which were signed by *Mr. Balwant Ranka*, suspended director of the Corporate Debtor. It was further submitted that the Adjudicating Authority initiated the CIRP of the Corporate Debtor *vide* Order dated 21.08.2019 on the basis of the term sheets and addendums qua the loan executed between Respondent No. 2 and the Corporate Debtor. Thus, the allegations of the Applicant pertaining to the loans advanced by the Financial Creditors are untenable.

- 4.5 The Liquidation process of the Corporate Debtor was initiated after the passing of the requisite resolution by the CoC and its approval by the Adjudicating Authority *vide* its order dated

24.01.2020. The Liquidator constituted the SCC in consonance with the provisions of the Code and the relevant regulations. It was pointed out that the Applicant was duly represented in the SCC meetings through its authorized representative *Advocate Nitish Bagri*.

- 4.6 Subsequently, the Liquidator prepared an Asset Memorandum as per Regulation 34 of the Liquidation Process and proposed to collectively sell the properties of the Corporate Debtor for maximization of their value as per Regulation 33 of the Liquidation Process. The SCC in its first meeting dated 25.06.2020, allowed the Liquidator to sell the properties of the Corporate Debtor. In compliance with the Liquidation Regulations, the Liquidator conducted three E-auctions. Due to the failure of the first two E-auctions, the reserve price of the properties was reduced to 7,51,56,188.51/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-eight And Fifty-one Paise Only). The reduction of the reserve price of the Properties and the E-auctions were duly approved by the SCC. In the third E-auction, two prospective bidders i.e., *M/s Kanak Corporation* and Respondent No. 4, showed their interest and submitted bid applications to the Liquidator but only Respondent No. 3 deposited the Earnest Money Deposit. On the scheduled



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CP NO. (IB) 79/7/JPR/2019

date of E-Auction i.e., 31.08.2020, Respondent No. 4 submitted its bid at the reserve price and was declared as the successful bidder.

4.7 The Liquidator pointed out that public notices were issued for all the E-auctions as mandated under the Code in two newspapers i.e., *Economic Times* (English Newspaper) and *Virat Vaibhav* (Hindi Newspaper). The sale notices were in the prescribed format and the link provided therein contained all the details concerning the e-auction including the Asset Memorandum. Further, the notices contained contact details of the Liquidator and the service provider of the E-auction for any clarification sought by anyone. Thus, the E-auction proceedings were completed in accordance with Schedule I of the Liquidation Regulations and the Code.

4.8 Concerning the allegations qua the undervaluation of the Properties, the Liquidator submitted that the Liquidator appointed two Registered Valuers as per Regulation 27 of the Insolvency Process. The valuations of the properties were determined as per the reports of the Registered Valuers and the same forms a part of the Asset Memorandum.

4.9 All the aforementioned actions and proceedings were intimated to the Adjudicating Authority in a timely fashion by filing various progress reports by the Liquidator as required under Regulation

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15 of the Liquidation Regulation. The compliance of Regulation 33 of the Liquidation Regulation along with Schedule I as submitted by the Liquidator is reproduced below:-

REG.	PARTICULARS	COMPLIED (YES/NO)
33(2)	<i>The Liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-</i>	
	<i>(a) Releasing advertisements;</i>	Yes
	<i>(b) Preparing information sheets for the asset;</i>	Yes
	<i>(c) Preparing a notice of sale; and</i>	Yes
	<i>(d) Liaising with agents</i>	Yes
33(3)	<i>The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.</i>	Yes
33(4)	<i>The reserve price shall be the value of the asset arrived at in accordance with regulation 35.</i>	Yes
33(4A)	<i>Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.</i>	Yes
33(4B)	<i>Where an auction fails at a reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.</i>	Yes
33(5)	<i>The liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3); Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction</i>	Yes
33(6)	<i>The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.</i>	Yes
33(7)	<i>The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid, and receive confirmation of the acceptance of their bid online.</i>	<i>There is no such portal in existence yet, due to which liquidator used the services provided by M/s Claim-Bridge Technologies</i>
33(8)	<i>If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interest of the creditors, he may sell assets through a physical auction after obtaining the</i>	<i>Not Applicable in the wake of</i>

	<i>permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.</i>	<i>global pandemic</i>
33(9)	<i>An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.</i>	<i>Yes</i>
33(10)	<i>If the liquidation is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interest of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner</i>	<i>Not Applicable</i>
33(11)	<i>If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.</i>	<i>Yes, hence conducted such auctions in compliance of Regulation 33 (4A)/ (4B) of the Liquidation Process</i>
33(12)	<i>On the close of the auction, the higher 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.</i>	<i>Yes</i>
33(13)	<i>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 shall be delivered to him in the manner specified in the terms of sale.</i>	<i>Yes</i>

4.10 It was stated that all the proceedings were conducted in compliance with the Code and the applicable regulations. In the present Application, the Applicant has made vague and baseless allegations for vitiating the CIRP, the Liquidation proceedings.

4.11 The Liquidator relied upon the following Judgments in support of its contentions:-

- I. *Maharashtra Seamless Limited V/s Padmanabhan Venkatesh (2020) 11 SCC 467*
- II. *Jagmeet Singh Sabharwal V/s Rubber Products Limited 2019 SCC OnLine NCLAT 277*
- III. *Srei Multiple Asset Investment Trust V/s IDBI 2022 SCC OnLine NCLAT 304*

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5. Respondent No. 2 submitted its Reply *vide* Diary No. 936/2021 dated 07.04.2021 wherein the following contentions were raised:-

5.1. The Answering Respondent extended a loan of Rs. 40,00,000/- (Forty Lakh Rupees Only) to the Corporate Debtor in furtherance of the objective clause under the Memorandum of Association ('MoA'). The terms sheets and the addendums for the loan were filed with the Petition u/s 7 of the Code bearing CP No (IB) 79/7/JPR/2019. The said term sheets and addendums were executed without any fraud, coercion, or undue influence and is binding between the parties.

5.2. The said loan was advanced on the representation of the directors of the Corporate Debtor concerning the bright future prospects of the Corporate Debtor. On the said representation, Respondent No. 2 took a commercial call to grant a loan to the CD. At the time of repayment, the Corporate Debtor expressed its inability to repay the due amount. Further, the amount of interest was not recorded in the books of accounts for the avoidance of tax upon the contingency of receiving the interest payment or not. In the aforesaid maneuver, no provision of the Companies Act or the Income Tax Act was violated by Respondent No. 2.

5.3. Thereafter, on account of the non-repayment of the loan and the interest amount, Respondent No. 2 filed an application under

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Section 7 of the Code for initiation of the CIRP of the Corporate Debtor. This Adjudicating Authority vide its order dated 21.08.2019 initiated the CIRP on the basis of the term sheet and the addendums of the loan.

- 5.4. The allegations of the Applicant concerning the loan advanced by Respondent No. 2 are untenable as the loan has been advanced in accordance with the law and as per the MoA of the answering Respondent. Further, the Applicant cannot challenge the Liquidation proceedings and the auction sale at this juncture when the Liquidation Proceedings are about to conclude and the proceeds of the auction sale have already been distributed among the stakeholders. The Answering Respondent emphasised the fact that the Applicant has actively participated in the CIRP as well as in the Liquidation proceedings. Thus, the Application is not maintainable.
6. Respondent No. 3 submitted its Reply *vide* Diary No. 933/2021 dated 07.04.2021 wherein the following contentions were raised:-
- 6.1. The Answering Respondent advanced a loan to the Corporate Debtor on the representation of the directors of the Corporate Debtor concerning the bright prospects of the Company. The terms of the loan along with the interest were duly recorded in the loan sheet executed between Respondent No. 3 and the Corporate

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Debtor. Further, the alleged relationship i.e., Subsidiary Company, between Respondent No. 3 and Respondent No. 4 has nothing to do with the loans granted to the Corporate Debtor as it was purely a commercial decision that was taken after considering the business prospects of the Corporate Debtor.

6.2. The Answering Respondent refuted the allegations of the Applicant qua fraudulent initiation of the CIRP, Liquidation proceedings, and the Auction Sale. It was submitted that Respondent No. 3 had no role in the initiation of the CIRP or the Auction proceedings of the assets of the Corporate Debtor. It was submitted that Respondent No. 3 extended financial assistance to the Corporate Debtor in furtherance of the objectives contained in its MoA. Due to default in repayment of the Loan Amount along with the interest by the Corporate Debtor, Respondent No. 3 filed its claim before the RP and the liquidator in compliance of the public notices, and after due verification, the said claims were admitted.

6.3. It was submitted that the Applicant was a part of the SCC and was cognizant of all the decisions taken by the committee. The Applicant never raised any objections against any of the decisions taken by the Committee, therefore, it cannot be allowed to raise such disputes at a belated stage.


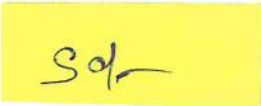
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7. Respondent No. 4 submitted Reply *vide* Diary No. 908/2021 dated 07.04.2021 and Written Submissions *vide* Diary No. 3473/2022 dated 25.11.2022. The submissions made by Respondent No. 4 are stated hereunder:-

7.1. The answering Respondent advanced a loan to the Corporate Debtor in furtherance of the objectives contained in its MoA. The terms of the loan along with the applicable interest rate were duly recorded in the loan sheet executed between Respondent No. 4 and the Corporate Debtor. The aforesaid loan was secured by the deposit of the title deed as recorded in the memorandum dated 02.11.2015. It was agreed between the parties that the Corporate Debtor would get the charge registered but due to a delay in filing, the charge could not be registered, and the loan advanced by the Answering Respondent was treated as an unsecured loan. The aforesaid transaction is in conformity with the provisions of the Indian Contract Act 1872 and is binding between the parties. Further, the Applicant has wrongly relied upon Section 186 of the Companies Act, 2013 to challenge the veracity of the loan as it does not bar the Answering Respondent from extending any loan to the Corporate Debtor.

7.2. It was submitted that the Financial Creditor and the Corporate Debtor do not fall within the definition of related parties, and the



Applicant is making feeble attempts to establish the same by selectively reading the headings of the Balance Sheets of Respondent No. 2. In support of its contention, the Applicant has relied upon the heading "*Advance to others includes advance to concerns in which directors are interested*" as contained in the Balance Sheet of Respondent No. 2. The word "*includes*" in the said heading reflects its inclusive nature and does not in any way signify that the Directors of Respondent No. 2 were interested in the Corporate Debtor or Respondent No. 3. Further, related party disclosure as per the Balance Sheet of Respondent No. 2 does not contain the name of the Corporate Debtor. Thus, the Financial Creditors and the Corporate Debtor cannot be considered as related parties on the basis of unsubstantiated allegations of the Applicant.

7.3. Concerning the alleged relationship between Respondent No. 3 and Respondent No. 4 i.e., Subsidiary Company, it was submitted that the same has nothing to do with the loan granted to the Corporate Debtor as it was purely a commercial decision that was taken after considering the business prospects of the Corporate Debtor.

7.4. The Answering Respondent refuted the allegations of the Applicant qua fraudulent initiation of the CIRP, Liquidation

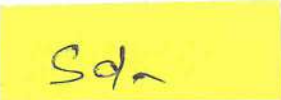

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Proceedings, and the E-auction Sale. It was submitted that Respondent No. 4 had no role in the initiation of the CIRP. Due to default in repayment of the Loan Amount along with the interest by the Corporate Debtor, Respondent No. 4 filed its claim before the RP and the liquidator in pursuance of the public notices and after due verification, the said claims were admitted.

7.5. Concerning the E-auction Proceedings, it was submitted that the same were carried out in compliance with the Code and Regulation 33 read with Schedule I of the Liquidation process. The Answering Respondent participated in the third E-auction in pursuance of the public notice issued by the Liquidator. Further, Respondent No. 4 is a qualified bidder as it does not fall within the category of prohibited persons within Section 29A of the Code. The Code does not prohibit a Financial Creditor from participating in the auction of the assets of the Corporate Debtor. Thus, the allegations of the Applicant against the Answering Respondent's participation in the auction proceedings are misconceived.

7.6. It was submitted that the Applicant was a part of the SCC and was cognizant of all the decisions taken by the committee. The Applicant never raised any objections against any of the decisions

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taken by the Committee, therefore, it cannot be allowed to raise the same at such a belated stage.

8. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, and Written Submissions along with the documents enclosed therein.
9. Having considered the submissions made by the learned advocates for the respective parties, the issues that deserve our consideration in the present application are as follows:

I. Whether the CIRP and the Liquidation Process of the Corporate Debtor have been vitiated due to the alleged fraud committed by the Financial Creditors?

II. Whether the Loans extended by the Financial Creditors to the Corporate Debtors fall within the category of Extortionate Credit Transactions or not?

III. Whether the Auction dated 31.08.2020 wherein properties of the Corporate Debtor were sold to Respondent No. 4 deserves to be set aside or not?

10. Concerning the first issue, the Applicant has alleged that the Financial Creditors i.e., Respondent No. 2, Respondent No. 3, and Respondent No. 4 have initiated the CIRP and the Liquidation Proceedings fraudulently. It was submitted that the Financial Creditors were related parties to the Corporate Debtor and thus, ineligible to be a part of the 'CoC' as per the

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first proviso of Section 21 of the Code. The relevant extracts of the said Section is reproduced hereunder:

“21. Committee of Creditors

(2)...

“PROVIDED that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the Corporate debtor shall not have any right of representation, participation or voting in a meeting of the committee of creditors”

11. The definition for the term “related party” has been provided in Section 5(24) of the code which is reproduced hereunder:-

“ 5(24) “related party”, in relation to a corporate debtor, means-

- (a) a director or partner of the Corporate Debtor or a relative of a director or partner of the corporate debtor;*
- (b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;*
- (c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;*
- (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent of its share capital;*
- (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two percent of its paid-up share capital;*
- (f) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;*
- (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor*
- (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*

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- (i) *a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*
- (j) *any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement;*
- (k) *any person in whom the corporate debtor controls more than twenty per cent of voting rights on account of ownership or a voting agreement;*
- (l) *any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*
- (m) *any person who is associated with the corporate debtor on account of-*
 - (i) *participation in policy making processes of the corporate debtor; or*
 - (ii) *having more than two directors in common between the corporate debtor and such persons; or*
 - (iii) *interchange of managerial personnel between the corporate debtor and such person; or*
 - (iv) *provision of essential technical information to, or from, the corporate debtor;”*

12. In the present Application, the Applicant has failed to prove any relationship as specified in Section 5(24) of the Code between the Corporate Debtor and the Financial Creditors. Further, the reliance placed by the Applicant on the Balance Sheet of Respondent No. 2 for the year ending on 31.03.2019 wherein the name of the Corporate Debtor was shown under the heading “*Advance to other includes advances to concerns in which directors are interested*” appears to be misplaced. The aforesaid heading cannot be interpreted to suggest a related party relationship between Respondent No. 2 and the Corporate Debtor especially when the related party disclosure in the Balance Sheet does not contain the name of the Corporate Debtor. It is a settled principle of law

that a document must be looked at in its entirety and cannot be read in a piecemeal manner.

13. Further, the Proviso of Section 21(2) of the Code only restricts the related parties of the Corporate Debtor from participating in the CoC. The said Section does not impose any restriction concerning the relationship between the Financial Creditors. Thus, the Subsidiary Company relationship between Respondent No. 3 and 4 will have no impact on their status as the Financial Creditors of the Corporate Debtors.
14. The CIRP of the Corporate Debtor was initiated by this Adjudicating Authority by passing a detailed order dated 21.08.2019. It will be apposite to mention that in Reply to the Petition, the Corporate Debtor acknowledged the existence of the debt owed to Respondent No. 2. Thus, the CIRP of the Corporate Debtor was initiated in strict compliance with the provisions of the Code.
15. In relation to the Liquidation Process, the Applicant contended that the CoC in a fraudulent manner initiated the Liquidation Proceedings at a premature stage. The CIRP of the Corporate Debtor was initiated vide order dated 21.08.2019, and as per Section 12 of the Code, the CIRP shall be completed within a period of 180 days, which may further be extended for 90 days by the Adjudicating Authority. The CoC without making any efforts for revival of the Corporate Debtor passed the resolution for liquidation in its third meeting dated 18.01.2020.

16. In dealing with the aforesaid contention, it will be germane to refer to the explanation of Section 33(2) of the Code that deals with initiation of liquidation. The said explanation reads as follows:

“For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum”

17. The Hon’ble NCLAT was seized with the interpretation of the explanation of Section 33(2) in the case of *Sunil S. Kakkad v/s Atrium Infocom* 2020 SCC OnLine NCLAT 1160 and it held that:

“Thus, it is clear that the decision of CoC to liquidate the Corporate Debtor without taking any steps for Resolution of the Corporate Debtor is covered under explanation to sub-clause (2) of Section 33 of the I&B Code and the same being decision on commercial wisdom, is non-justiciable given the law laid by Hon’ble Supreme Court of India in case of K. Sashidhar (supra). Thus, it is clear that there is no illegality in the decision of CoC in liquidating the Corporate Debtor before taking any steps for inviting Expression of Interest for submission of Resolution Plan.”

18. The aforementioned judgment has also been affirmed by the Hon’ble Apex Court in *Sunil S. Kakkad v/s Atrium Infocom Pvt. Ltd.* 2021 SCC OnLine SC 723. In view of the Judicial pronouncement and the compliances referred to above, we find no flaw in the conduct of CIRP or the Liquidation Proceedings.
19. In relation to the loans advanced by the Financial Creditors, the details of the same are as follows:

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<i>Sr. No</i>	<i>Name of Financial Creditor</i>	<i>Amount Claimed</i>	<i>Amount Admitted</i>	<i>Principal Component</i>
1	<i>Shree Bharka Synthetics Limited (Respondent No. 2)</i>	1,28,05,494	1,28,05,494	40,00,000/-
2	<i>Ahinsa Infrastructure and Developers (Respondent No. 3)</i>	4,18,47,903	4,18,47,903	17,00,000/-
3	<i>Bhilwara Spinners Limited (Respondent No. 4)</i>	10,23,84,512	10,23,84,512	4,09,00,000
	Total	15,70,37,909	15,70,37,909	4,66,00,000

20. Respondent No. 2 disbursed a loan of Rs. 40, 00,000/- (Forty Lakh Rupees Only) on 13.11.2014 to the Corporate Debtor with interest chargeable at the rate of 18% p.a. for the period of 1 year and thereafter at the rate of 24% p.a. compounded monthly. Similarly, in the Financial Year 2017-18, Respondent No. 4 advanced a loan of Rs. 4,09,00,000 (Rupees Four Crores and Nine Lakh only) to the Corporate Debtor with interest chargeable at the rate of 18% p.a. for the period of 1 year and thereafter at the rate of 24% p.a. compounded monthly. Further, Respondent No. 2 disbursed an amount of Rs 17,00,000 (Seventeen Lakh Rupees Only) with the same conditions as the other creditors to the Corporate Debtor in the Financial year 2015-2016.

21. For the adjudication of the second issue, it will be relevant to refer to the Judgment of the Hon'ble NCLAT in the case of *Smt. Anamika Singh & Ors v/s Shinhan Bank* 2020 SCC OnLine NCLAT 1041 wherein it was held that:-

"21.The transactions of the Appellants No. 1, 5 & 8 which are prior to two years preceding the insolvency commencement date...."

22. In so far as the stand of the Appellant that for seeking appropriate direction with respect to make an Application for avoidance of such transaction to the Adjudicating Authority, either liquidator or the RP may make an Application is concerned, in this context we are of the view that as per Section 60(5) of IBC, the Adjudicating Authority has jurisdiction to entertain or dispose of any Application or proceedings by or against the Corporate Debtor or Corporate Persons. For beneficial reference Section 60 Sub Section 5 IBC is reproduced below:

...

60. Adjudicating Authority for corporate persons.

...

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code.”

...

23. In the present case, Respondent No. 1 herein made an Application to the Adjudicating Authority by invoking Section 60 Sub-Section 5 read with Section 22 of the IBC (Annexure R-8, page 90 of Reply) which in our opinion is in accordance with law and the Respondent No. 1 rightly invoked the jurisdiction.

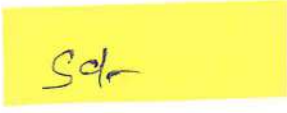
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26. In so far Appellants No. 1, 5 & 8 are concerned, though technically they may not be covered under Section 50(1) of the IBC. However, keeping in view that the rates of interest which they charged are exorbitant, we are of the view that claim of exorbitant rates of interest is extortionate regarding interest and thus illegal. However, Appellants No. 1, 5 & 8 can make their claims for Principal Amount as Unsecured Creditors.”

22. A perusal of the records of the Corporate Debtor would reveal that the Financial Creditors advanced loans to the Corporate Debtor which ceased to be an operational entity since April 2002. The aforesaid loans were advanced on the term sheets that were not duly stamped. Further, there is

no evidence on record to show that the Corporate Debtor was in need of the loans disbursed by the Financial Creditors. Moreover, there is no document to prove that the Board of the Corporate Debtor resolved to take the loans with an interest of 18% P.A. for the first year and 24% P.A. compounded monthly for the remaining duration.

23. Due to the exorbitant interest charged by the Financial Creditors on the total principal amount of Rs. 4,66,00,000/- (Rupees Four Crore Sixty Six Lakh Only) advanced by the Financial Creditors i.e., Respondent No. 2, 3, and 4, the due amount has compounded into a humongous sum of Rs. 15,70,37,909 (Rupees Fifteen Crore Seventy Lakh Thirty Seven Thousand Nine Hundred and Nine Only). The interest component has become more than double of the principal amount. Further, the amount of interest has not been shown in the Books of Accounts of either the Corporate Debtor or any of the Financial Creditors.
24. In the light of the Judgments referred to above, we are of the view that the debts advanced by the Financial Creditors i.e., Respondents No. 2, 3, and 4, are technically not covered under Section 50(1) of the Code. However, keeping in view the exorbitant rates of interest charged on the said loans, we are of the view that the interest charged is extortionate in nature and thus illegal. However, the Financial Creditors are entitled to the principal amount as contained in the Books of Accounts of the Corporate Debtor.

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25. As far as the Auction dated 31.08.2020 is concerned, the Applicant has challenged the same on the following grounds:-

25.1. The Property was auctioned at an undervalued price and the reserve price of the Property was wrongly reduced by the Liquidator in each subsequent auction.

25.2. The Auction dated 31.08.2020 stands vitiated as Respondent No. 4, a financial creditor, was the sole bidder in the Auction and the property was sold to him at the Reserve Price.

25.3. The Liquidator conducted three back-to-back auctions within a span of one month, thereby, not affording a proper opportunity to other interested parties to take part in the same. Further, the Auction Proceedings were completed in a hurried manner during the COVID-19 pandemic.

26. A perusal of the records will reveal that the Liquidator/ Resolution professional appointed two registered valuers at the time of initiation of the CIRP in compliance of Regulation 27 R/w Regulation 35 of the CIRP Regulations. The details of the Registered Valuers duly appointed by the Liquidator/Resolution Professional is as follows:

<i>Sr. No.</i>	<i>Name of the Registered Valuer</i>	<i>Registration Number</i>	<i>Class of Assets</i>
1	Mr. Anil Kumar Saxena	IBBI/RV/02/2019/10004	Land & Building
2	Mr. Dhiraj Jaiswal	IBBI/RV/02/2019/1406	Land & Building

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27. The Liquidator filed the Asset Memorandum of the Corporate Debtor in compliance with Regulation 34 of the Liquidation Regulations vide Diary No. 648/2020 dated 27.07.2020. The valuation of the properties of the Corporate Debtor as contained in the Asset Memorandum is as follows:

Sr. No.	Particulars	Land & Building (leasehold)		Freehold land	
		Fair market value (In Rs.) (A)	Liquidation Value (In Rs.) (B)	Fair market value (In Rs.) (C)	Liquidation Value (In Rs.) (D)
1.	First Valuer	14,62,90,000	10,24,03,000	1,62,00,000	1,13,40,000
2.	Second Valuer	14,01,22,816	10,53,98,253	47,25,000	35,43,750
	Total	28,64,12,816	20,78,01,253	2,09,25,000	1,48,83,750
	Average value (Rs.)	14,32,06,408	10,39,00,626.5	1,04,62,500	74,41,875
	Total Average Market Value of land (Rs.) (A+C)	15,36,68,908/-			
	Total Average Liquidation Value of land (Rs.) (A+C)	11,13,42,501.5			

28. The Liquidator after receiving reports of the Registered Valuers arrived at the Market Value and the Liquidation Value of the Properties by taking an average of the valuation submitted by both the Valuers. Admittedly, the reserve price of the properties in the First Auction was 11,13,42,501.5 (Rupees Eleven Crores Thirteen Lakhs and Forty-Two Thousand and Five Hundred and One rupees and five paise Only) which is the average liquidation value of the properties as per the Asset Memorandum.

29. As far as the reduction of the reserve price in subsequent auctions is concerned, it will be apposite to refer to Para 1(4) of Schedule I of the Liquidation Regulations which is as follows:

“(4) The reserve price shall be the value of the asset arrived at in accordance with regulation 35

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(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time."

30. In the present case, after the failure of the first E-auction dated 31.07.2020, the SCC reduced the reserve price of the properties by twenty-five percent and the next auction was scheduled for 18.08.2020. Subsequently, on account of the failure of the second auction, the reserve price of the properties was further reduced by ten percent. Thus, the reduction in the reserve price was in accordance with Schedule I of the Liquidation regulation.
31. The Argument concerning the participation of the Financial Creditor in the Auction Proceedings is also not tenable. It has already been held that the Financial Creditors were not related parties of the Corporate Debtor. Further, they do not fall within any of the prohibited categories provided under Section 29A of the Code to make them ineligible.
32. The main contention against the validity of the auction proceedings is that the Liquidator conducted three back-to-back auctions within a span of one month, thereby, not affording proper opportunity to other interested parties to take part in the same. The Applicant has relied upon Para (1-D) and (1-E) of Schedule 1 of the Liquidation process to contend that there

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has to be a gap of 21 days between the issuance of the Auction Notice and the date of Auction.

33. The timeline of the Auction Proceedings undertaken by the Liquidator is tabulated hereunder:-

<i>Sale Notice Date</i>	<i>Auction Date</i>
09.07.2020	31.07.2020
08.08.2020	18.08.2020
21.08.2020	31.08.2020

34. The third E-auction Notice dated 21.08.2020 wherein the properties of the Corporate Debtor were sold contained the following terms and conditions:-

34.1. *The Earnest Money Deposit (EMD) of Rs. 15 Lakh shall be payable by interested bidder through NEFT/RTGS/Demand Draft on or before 28th August, 2020 in the mentioned account.*

34.2. *Inspection of the property can be done on or before 29th August, 2020 from 11:00 A.M. to 5:00 P.M.*

34.3. *Any prospective bidder who is desirous of submitting the bid, is required to submit the bid application form, confidentiality and Non-disclosure undertaking, requisite affidavits on or before 27th August, 2020.*

35. It will be pertinent to mention here that the successful bidder of the Auction i.e., Respondent No. 4, has already paid the consideration and the same has also been distributed among various stakeholders. Thus, in

terms of Para 1(13) of Schedule I of the Liquidation Regulations, the sale stands completed. The aforesaid para of Schedule-I provides that:

“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.”

36. The Applicant has placed reliance upon Para 1(1-D) and 1(1-E) of Schedule I of the Liquidation Regulation to contend that the liquidator has not adhered to the prescribed timeline and completed the auction process in a hasty manner. The aforesaid contention appears to be misconceived as the said paras were inserted by *Amendment No. IBBI/2022-23/GN/REG094*, dated 16.09.2022 and came into effect from 16.09.2022, which is after the conclusion of the auction proceedings i.e., 21.05.2020.
37. It will be relevant to refer to the Judgment of the Hon’ble NCLAT in the case of *Manjit Commercial LLP V/s SPM Auto Pvt. Ltd. 2019 SCC OnLine NCLAT 1173* in which the Hon’ble Appellate Authority held that:

“8. In so far as the allegations of the Appellant with regard to reducing the time period is concerned, the Liquidator followed the procedures as contemplated in clause 3 of Schedule I of the Regulations, which provides that the Liquidator shall prepare the terms and conditions of sale, Regulation 2 of Schedule I and the Liquidator shall prepare a marketing strategy with the help of marketing Professionals, if required for sale of the Asset. The strategy may include releasing advertisement, preparing of information sheets for the asset, preparing a notice of sale and liaising with Agents. Moreover, in the code and in the liquidation Regulations, no time limit was specified for the auction process, other than the mode of sale as prescribed in Schedule I of Liquidation Process Regulations, 2016. We do not find any merit in the allegation.

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11. *However, the Appellant did not participate in the e-auction and now making vague allegations without any substantial grounds cannot be accepted. As per Regulation 44(1) of the Liquidation Process Regulations, 2016, the Liquidator shall liquidate the 'Corporate Debtor' within a period of two years. We are of the view that there should not be any unnecessary delay and protract the liquidation process for undue advantage of some individuals or group, which would adversely affect the liquidation process"*

38. The law with regard to setting aside of the confirmed auction sale in no more res integra. The Hon'ble Supreme Court in the case of *Valji Khimji & Company v/s Official Liquidator* (2008) 9 SCC 299 has held that:

"11. It may be noted that the auction-sale was done after adequate publicity in well-known newspapers. Hence, if anyone wanted to make a bid in the auction he should have participated in the said auction and made his bid... However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction-sale will ever be complete."

39. In the present case, the Auction Notice dated 21.08.2020 was duly published in two Newspapers i.e., the Economic Times (English) and Virat Vaibhav (Hindi). Further, the Auction sale appears to be in conformity with Regulation 33 of the Liquidation Regulations read with its Schedule I. Further, In view of the Judgments referred above, it becomes clear that a confirmed auction sale can only be set aside in cases of material irregularity and fraud. The brief timeline as provided in the auction notice dated 21.08.2020 cannot be considered as a material irregularity so as to warrant the setting aside of the completed auction proceedings. Moreover, the Applicant has failed to prove its allegations of

fraud qua the E-auction proceedings. Thus, we are of the view that the Applicant has failed to prove any material irregularity in the Auction proceedings, and therefore, we find no ground to interfere in the same.

40. After considering the submissions made and the documents enclosed therein and the judicial pronouncements referred to above, we partly allow the present Application and observe as below:

40.1 The Applicant has failed to prove any material irregularity in the CIRP, Liquidation, and Auction Proceedings. Therefore, we find no ground to interfere in the same.

40.2 In so far as the amount claimed by Financial Creditors i.e., Respondent No. 2, 3, and 4 is concerned, the Financial Debt granted by them is beyond the purview of the look-back period as provided under Section 50(1) of the IBC. However, keeping in view the rates of interest charged on the loan and its compounding on delays, we are of the opinion that the interest charged on the loans is extortionate in nature and thus illegal for the reasons mentioned in Para 22 and 23. However, Respondent No. 2, 3, and 4 are entitled to the Principal Amount as shown in the balance sheet of the Corporate Debtor.

40.3 The Financial Creditors i.e., Respondent No. 2, 3, and 4 are hereby directed to return the amount received by them in addition to their Principal Amount to the Liquidator within a month of passing of the

present order, failing which they shall be liable to pay an interest of 10% P.A. on the said amount from the date of passing of the order. The amount required to be returned by the Financial Creditors is tabulated below:-

<i>Name of Respondent</i>	<i>Amount Required to be returned</i>
<i>M/s Shree Bharka Synthetics Ltd. (Respondent No. 2)</i>	18,88,371
<i>M/s Ahinsa Infrastructure and Developers Ltd. (Respondent No. 3)</i>	1,75,54,611
<i>M/s Bhilwara Spinner Ltd. (Respondent No. 4)</i>	61,47,967
TOTAL	2,55,90,949

40.4 The Liquidator is directed to distribute the amount returned by the Financial Creditors among the remaining creditors in accordance with the Code. The Liquidator is further directed to apprise this Adjudicating Authority about the compliance of the aforesaid directions after the expiry of one month from the passing of the order.

41. In view of the foregoing directions the I.A. bearing No. 340/JPR/2020 stands disposed of.

Sdr
**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

Sdr
**RAJEEV MEHROTRA,
TECHNICAL MEMBER**

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 68/JPR/2022
In CP No. (IB)- 79/7/JPR/2019

IN THE MATTER OF:

SHREE BHARKA SYNTHETICS LTD.

...PETITIONER

VERSUS

M/S GLOBAL SYNTAX (BHILWARA) LTD.

...RESPONDENTS

IA (IBC) No. 68/JPR/2022

MEMO OF PARTIES

**Central Goods and Service Tax
Department, Bhilwara,**
through the office of Asst. Commissioner,
Central Goods & Service Tax Division-E,
10, Azad Nagar, Bhilwara (Raj.)

...Applicant

VERSUS

- 1. M/s Global Syntex (Bhilwara) Limited,**
F-106, First Floor, Sumer Complex,
Behind Bagadia Bhawan, Gautam Marg,
C-Scheme, Jaipur- 302001, through
Liquidator, Prashant Agarwal
- 2. M/s Shree Bharka Synthetics Limited,**
Registered Office at Bazar No. 2, Bhilwara
311001.

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3. **M/s Bhilwara Spinners Limited,**
Registered Office at: 26, Industrial Area,
Gandhinagar, Bhilwara- 311001,
Rajasthan.

...RESPONDENTS

- FOR APPLICANT(S)** : Vartika Mehra, Adv.
Pranjul Chopra, Adv.
- FOR RESPONDENT(S)** : Prakul Khurana, Adv.
Prashant Agarwal, Liquidator
Nites Srivastava, Adv.
Ankit Sareen, Adv.

Order Pronounced On: 23.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The instant Application has been filed under Section 60 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 by *Central Goods and Service Tax Department* ('Applicant'/ 'CGST') against *M/s Global Syntax (Bhilwara) Ltd.* ('Corporate Debtor') represented through its Liquidator namely *Mr. Prashant Agarwal* ('Respondent No. 1' / 'Liquidator' / 'Resolution Professional'), *M/s Shree Bharka Synthetics Limited* ('Respondent No. 2'), and *M/s Bhilwara Spinners Limited* ('Respondent No. 3') inter-alia seeking the following reliefs:

- I. *Quash and set aside the sale confirmation in favour of M/s Bhilwara Spinners (Respondent No. 3);*

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- II. *Quash and set aside the Liquidation Process, as conducted by the Liquidator (Respondent No. 1);*
- III. *Issue necessary directions for the commencement of the Liquidation Process afresh and for completion thereof strictly in accordance with the provisions of the IBC and the Liquidation Process Regulations;*
- IV. *Pass any other order or direction that the Hon'ble Tribunal deems just and proper in the facts and circumstances of the present case in favour of the applicant.*
2. Before proceeding further with the contentions of the Parties, it will be apposite to provide a brief background of the matter which is as follows:-
- 2.1. An application under Section 7 of the Code for initiation of CIRP bearing CP (IB) No. 79/7/JPR/2019 was filed by Respondent No. 2 against the Corporate Debtor. The said application was admitted by this Adjudicating Authority *vide* its order dated 21.08.2019 and Respondent No. 1 was appointed as the Interim Resolution Professional ('IRP') which was later confirmed by the Committee of Creditors ('CoC') as the RP. The IRP constituted the Committee of Creditors ('CoC') comprising of *M/s Ahinsa Infrastructure and Developers Limited, M/s Shree Bharka Synthetics Limited* ('Respondent No. 2), and *M/s Bhilwara Spinners Limited* ('Respondent No. 3').

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- 2.2. Respondent No. 1 invited an Expression of Interest ('EOI') for the revival of the Corporate Debtor and received four enquiries concerning the qualification of the Resolution Applicant, however, only one Prospective Resolution Applicant expressed its interest. Although the same was dropped due to the non-interest of the Resolution Applicant and its failure to submit a Resolution Plan.
- 2.3. The CoC in its third meeting dated 18.01.2020 passed the resolution for Liquidation of the Corporate Debtor. This Adjudicating Authority *vide* its order dated 24.01.2020 initiated the Liquidation of the Corporate Debtor and appointed Respondent No. 1 as the Liquidator.
- 2.4. Thereafter, the Liquidator made a public announcement inviting claims from the stakeholders against the Corporate Debtor. After verification of the claims, the Liquidator constituted the Stakeholders Consultation Committee ('SCC'), the details of which are as follows:

S. No	Class of Stakeholders	Name (s)	Amount Admitted	Representative (s)
1.	Unsecured Financial Creditors	Shree Bharka Synthetics Limited (Respondent No. 2)	1,28,05,494/-	Ashok Kumar Kothar & Narendra Kumar Kothari
		Ahinsa Infrastructure and Developers Limited	4,18,47,903/-	
		Bhilwara Spinners Limited (Respondent No. 3)	10,23,84,512/-	
2.	Governments	Central Goods and Service Tax Department (Applicant)	12,29,08,325/-	Shri Mohammad Harun Chippa, Supreintendent, Central GST range-XXI, Bhilwara
3.	Operational Creditor	Pammvi Consultancy Services Limited	2,17,04,875/-	Advocate Nitish Bagri

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		<i>Ram Kumar Chechani (Sole proprietor of M/s Shyam Enterprises & Sohan Lal & sons)</i>	3,61,595/-	
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2.5. The Liquidator prepared an Asset Memorandum of the Corporate Debtor in compliance with Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulation'). As per the Asset Memorandum, the Corporate Debtor had the following assets: -

S.No	Classification of Assets	Particulars of Assets
1.	Non-Current Assets	Leasehold land & Building situated at Plot no. SPL-1, at industrial area, biliya extension, Bhilwara having area of 26,800 sq. mtr. Freehold Agriculture Land Situated at Araji No. 1442/135 & Araji No. 135 adjacent to industrial land at industrial area, biliya extension, Bhilwara.
2.	Current Assets	Cash at Bank amounting to Rs. 12,714/-

2.6. Thereafter, the Liquidator proposed to sell the non-current assets i.e., leasehold land & freehold land, collectively for maximization of value as both the lands were adjacent. The Liquidator apprised the SCC about the value of the properties of the Corporate Debtor as per the report submitted by the registered valuers.

2.7. The SCC in its first meeting dated 25.06.2020, allowed the Liquidator to sell the properties of the Corporate Debtor. The first E-auction was conducted on 31.07.2020 at a reserve price of Rs. 11,13,42,501.5/- (Rupees Eleven Crore Thirteen Lakh Forty-two Thousand Five Hundred One And Five Paise Only). In the first E-

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auction, only one prospective bidder namely *M/s Aman Sulz Private Limited* showed interest but on the date of the E-auction, the prospective bidder failed to participate and the auction was concluded with no results. Subsequently, the SCC reduced the reserve price of the properties by 25% to Rs. 8,35,06,876.125/- (Rupees Eight Crore Thirty-five Lakh Six Thousand Eight Hundred Seventy-six And One Hundred Twenty-five Paise Only). In the Second E-Auction, two bidders i.e., *M/s Jasolmaa Marbles & Industries Limited* and Respondent No. 3, showed their interest and submitted bid applications. However, on the date of the E-Auction, both the prospective bidders failed to participate.

- 2.8. Due to the failure of the earlier two E-auctions, the reserve price of the properties was further reduced by 10% to 7,51,56,188.51/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-eight And Fifty-one Paise Only). In the third E-auction, two prospective bidders i.e., *M/s Kanak Corporation* and Respondent No. 3, showed their interest and submitted bid applications to the Liquidator but only Respondent No. 3 deposited the Earnest Money Deposit. On the scheduled date of E-Auction i.e., 31.08.2020, Respondent No. 3 submitted its bid at the reserve price and was declared as the successful bidder.

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2.9. Respondent No. 3 paid the complete consideration of 7,51,56,189/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-Nine Only). Further, the sale proceeds were distributed among the creditors of the Corporate Debtor as per the *Waterfall Mechanism* in the following manner: -

S.No	Stakeholder under Section 53(1)	Amount Admitted	Amount Distributed	Percentage
1	CIRP Cost	7,51,316	7,51,316	100
2	Liquidation Cost	21,13,569.42	21,13,569.42	100
3	Financial Debts owed to unsecured Creditors:-			
	(1) M/s Bhilwara Spinner Ltd.	10,23,84,512	4,70,47,967	45.95
	(2) M/s Shree Bharka Synthetics Ltd.	1,28,05,494	58,88,371	45.98
	(3) M/s Ahinsa Infrastructure and Developers Ltd.	4,18,47,903	1,92,54,611	46.01
		15,70,37,909	7,21,90,949	45.97%
4	Any Amount due to the Government CGST	12,29,08,325	-	-
5.	Any remaining Debts & Dues			
	Pammvi Consultancy Services	2,17,04,875	-	-
	Ram Kumar Chechani	3,61,595	-	-
	Total	30,48,77,589.42	7,50,55,834.42	24.61

3. The Applicant has filed the present Application *vide* Diary No. 169/2022 dated 19.01.2022 challenging the E-auction proceedings as well as the Liquidation process. Also, Written Submissions were filed *vide* Diary No. 3553/2022 dated 06.12.2024. Both of these are being considered jointly as under:

3.1 The Applicant submitted its claim of Rs. 12,29,08,325 (Rupees Twelve Crore Twenty-nine Lakh Eight Thousand Three Hundred

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And Twenty-five Only) which was admitted by Respondent No. 1 in the 3rd CoC meeting. The CoC in the very same meeting passed the resolution for the Liquidation of the Corporate Debtor without making efforts for the resolution of the Corporate Debtor. The CIRP of the Corporate Debtor was initiated on 21.08.2019, and as per Section 12 of the Code, the CIRP is required to be completed within a period of 180 days which may be further extended for 90 days by this Adjudicating Authority. Thus, Respondent No. 1 had time until 17.02.2019 to attempt the resolution of the Corporate Debtor. However, no such attempts were made and the Liquidation proceedings were initiated in ignorance of the settled principles of law and against the intent of the IBC.

3.2 The CoC of the Corporate Debtor consisted of only 3 unsecured creditors out of which Respondent No. 3 had the highest voting share i.e., 64%. Respondent No. 3 misused its majority position in the CoC to initiate the Liquidation Proceedings. The composition of the CoC along with the voting share of its members is as follows:-

<i>Financial Creditor</i>	<i>Admitted Claim (Rs.)</i>	<i>Voting Share (%)</i>
<i>Shree Bharka Synthetics Ltd. (Respondent No. 2)</i>	<i>1,15,68,751</i>	<i>7.94</i>
<i>Ahinsa Infrastructure and Developers Ltd.</i>	<i>4,14,01,307</i>	<i>28.43</i>
<i>Bhilwara Spinners Ltd. (Respondent No. 3)</i>	<i>9,26,62,570</i>	<i>63.63</i>
<i>Total</i>	<i>14,56,32,628</i>	<i>100</i>

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3.3 Subsequently, the Liquidator constituted the SCC and proceeded with the sale of assets of the Corporate Debtor. The Liquidator conducted the E-auctions during the COVID-19 pandemic and consequently, the first two E-auctions dated 30.07.2020 and 18.08.2020 failed miserably due to the non-participation of bidders. Thereafter, the Liquidator hastily issued another sale notice dated 21.08.2020 and conducted another E-auction on 31.08.2020 wherein the properties of the Corporate Debtor were sold to Respondent No. 3 at the reserve price of Rs. 7,51,56,188.51/- (Rupees Seven Crore Fifty-one Lakh Fifty-six Thousand One Hundred Eighty-eight And Fifty-one Paise Only). It was pointed out that the lockdown was only partially lifted in the month of June 2020 and several restrictions were still in place at that time.

3.4 In the third SCC meeting dated 9.08.2021, objections were raised by one of the operational creditors, *M/s Pammvi Consultancy Services*, concerning the procedure adopted by the Liquidator in conducting the E-auctions and finalisation of the sale in favour of Respondent No. 3. As the E-auctions and the sale of the property were conducted in an unscrupulous manner, the Applicant sought clarification from the Liquidator *vide* its letter dated 20.09.2021. In the aforementioned letter, the Applicant highlighted Regulation 33(3) of the Liquidation Process Regulations wherein the Liquidator is liable to ensure that

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there is no collusion between any buyer and creditor. The Liquidator replied to the Applicant's letter *vide* its letter dated 19.10.2021 but failed to address the issues and queries raised by the Applicant.

- 3.5 It was contended that Regulation 33(3) of the Liquidation Process bars the sale of the assets of the Corporate Debtor in cases of collusion between the buyer and the creditor. Thus, the sale of the properties cannot be confirmed when the buyer itself is a Creditor of the Corporate Debtor.
- 3.6 The Applicant contended that there was no need for conducting the E-auction proceedings in such a hasty manner. The Hon'ble Supreme Court Suo-Moto in *Writ Petition No. 3/2020* issued necessary directions in the wake of the COVID-19 pandemic and extended the limitation period from time to time. Further, Regulation 47A of the Liquidation Process excludes the period of lockdown imposed by the Central Government in the wake of the COVID-19 outbreak for computation of the timeline in relation to the liquidation process. Moreover, as per the model timeline prescribed under Regulation 47 of the Liquidation Process, the Liquidator was required to complete the Liquidation process within 365 days. Since the Liquidation process commenced on 24.01.2020, the Liquidator had until 24.01.2021 to complete the Liquidation Process. Therefore, the Liquidator cannot justify the hasty completion of the E-auction

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proceedings by taking recourse to the timeline for liquidation prescribed under the Code.

3.7 The E-auction proceedings were conducted in violation of Regulation 33(1) read with Schedule I of the Liquidation Regulations. As per Regulation 33(1) of the Liquidation Regulations, a sale by way of public auction shall be carried out as per the timeline prescribed under Schedule I. Although, the provisions concerning the time-line have been brought into force with effect from the year 2022, but use of the word “shall” in Para 1 of the Schedule makes it apparent that the timeline prescribed under the Schedule is mandatory in nature. The discrepancy between the prescribed timeline and the timeline adopted by the liquidator is shown as under:

<i>Sale Notice Date</i>	<i>Eligibility Documents (+14 days)</i>		<i>Inspection (+7 days)</i>		<i>Auction</i>
	<i>Actual</i>	<i>Prescribed</i>	<i>Actual</i>	<i>Prescribed</i>	<i>Actual</i>
09.07.2020	-	23.07.2020	28.07.2020	30.07.2020	31.07.2020
08.08.2020	-	22.08.2020	14.08.2020	29.08.2020	18.08.2020
21.08.2020	-	04.09.2020	28.08.2020	11.09.2020	31.08.2020

3.8 In the E-auction proceedings, the property was sold to Respondent No. 3, who is one of the Financial Creditors, at the reserve price. Further, the sale proceeds were distributed among the Financial Creditors, and Respondent No. 3 being an unsecured Financial Creditor received an amount of Rs. 4,70,47,967.00/- (Rupees Four

Crore Seventy Lakh Forty-Seven Thousand and Nine Hundred and Sixty-Seven Only). Thus, effectively the assets of the Corporate Debtor were purchased by Respondent No. 3 for a paltry sum of Rs. 2,75,85,167.42/- (Rupees Two Crore Seventy-five Lakh Eighty-five Thousand One Hundred Sixty-seven And Forty-two Paise Only).

3.9 The properties of the Corporate Debtor were sold at an undervalued price. As per the valuation report of the Corporate Debtor, the properties were valued at Rs. 11 Crores. However, the properties were sold to Respondent No. 3 effectively for a consideration of Rs. 3 Crores. The reserve price of the properties was reduced by more than 30% of the original reserve price.

3.10 It was submitted that the present application has been preferred within the limitation period. Section 60(5) of the code does not prescribe any time period for filing of the application and it is governed by Article 137 of the Limitation Act, 1963 read with Section 238A of the Code which provides a limitation period of 3 years. Since the E-auction was held on 31.08.2020, the present Application has been filed within the prescribed period. Further, as per the directions of the Hon'ble Supreme Court in *SMWP (C) no. 3/2020*, the limitation period for all the proceedings was extended from time to time.

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3.11 The Applicant relied upon the following judgments in support of its contentions:-

- I. *Order dated 29.05.2020 passed by Hon'ble Rajasthan High Court in Gyanesh Kumar Sharma v/s RBI S.B. Civil Writ Petition No. 5748/2020*
- II. *Order dated 24.03.2020 passed by Hon'ble Karnataka High Court in Sri. C.M. Shanthakumar v/s Governor Reserve Bank of India Writ Petition No. 6641/2020*

4. The Liquidator submitted the Reply vide Diary No. 1149/2022 dated 18.04.2022 and two sets of Written Submissions were filed vide Diary No. 3484/2022 dated 28.11.2022 and Diary No. 815/2024 dated 04.04.2024. The Reply and the Written Submissions are considered jointly hereunder:-

4.1 It was submitted that the Applicant has made vague and general allegations that do not warrant the invocation of Section 60(5) of the Code R/w Rule 11 of the NCLT Rules. Since the revival of the Corporate Debtor was not possible, the CoC in its commercial wisdom decided to Liquidate the Corporate Debtor in its 3rd meeting dated 18.01.2020.

4.2 It was submitted that the CIRP and the Liquidation Proceedings were conducted as per the Code and the applicable regulations. The Applicant was a part of the SCC and was represented in the meetings by *Shri Mohammad Harun Chippa, SI, CGST, Bhilwara*. The properties of the Corporate Debtor were auctioned as per the decisions taken by the SCC. The Liquidator apprised the SCC of the

finalization of the sale of assets of the Corporate Debtor and the process undertaken for the distribution of funds in its third meeting dated 09.08.2021. Thereafter, the Applicant for the first time raised some queries concerning the E-auction proceedings *vide* its letter dated 20.09.2021, even though the Applicant being a member of the SCC was already aware of the procedure undertaken by the Liquidator for auctioning the properties of the Corporate Debtor. It was pointed out that the letter dated 20.09.2021 was sent more than a year after the date of the third E-auction i.e., 31.08.2020.

4.3 The Applicant has filed the present Application after the completion of the auction proceedings and disbursal of the amount among the stakeholders as per Section 53 of the Code. The instant Application has been filed emulating the Application bearing *I.A. No. 340/JPR/2020* filed by one of the operational creditors. Thus, the present Application has been filed with the malicious intention of vitiating the valid Liquidation process.

4.4 With regard to the violation of Regulation 33 (3) of the Liquidation Process, it was submitted that there is nothing on record to justify the allegation of collusion as contended by the Applicant. Further, collusion requires the existence of at least two parties. Thus, the allegation of collusion solely on the ground that the Financial Creditor bought the properties at the E-auction is misconceived. The

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compliance of Regulation 33 of the Liquidation Regulation as submitted by the Liquidator is reproduced below:-

REGULATION	PARTICULARS	COMPLIED (YES/NO)
33(2)	<i>The Liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-</i>	
	<i>(a) Releasing advertisements;</i>	Yes
	<i>(b) Preparing information sheets for the asset;</i>	Yes
	<i>(c) Preparing a notice of sale; and</i>	Yes
	<i>(d) Liaising with agents</i>	Yes
33(3)	<i>The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.</i>	Yes
33(4)	<i>The reserve price shall be the value of the asset arrived at in accordance with regulation 35.</i>	Yes
33(4A)	<i>Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.</i>	Yes
33(4B)	<i>Where an auction fails at a reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.</i>	Yes
33(5)	<i>The liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3); Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction</i>	Yes
33(6)	<i>The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.</i>	Yes
33(7)	<i>The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid, and receive confirmation of the acceptance of their bid online.</i>	<i>There is no such portal in existence yet, due to which liquidator used the services provided by M/s Claim- Bridge Technologies.</i>
33(8)	<i>If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interest of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.</i>	<i>Not Applicable in the wake of global pandemic</i>

33(9)	<i>An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.</i>	Yes
33(10)	<i>If the liquidation is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interest of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner</i>	Not Applicable
33(11)	<i>If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.</i>	Yes, hence conducted such auctions in compliance of Regulation 33 (4A)/(4B) of the Liquidation Process
33(12)	<i>On the close of the auction, the higher 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.</i>	Yes
33(13)	<i>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 shall be delivered to him in the manner specified in the terms of sale.</i>	Yes

4.5 It was submitted that Section 35 (1)(f) of the Code only precludes the Liquidator from selling the properties of the Corporate Debtor to a person who is not eligible to be a Resolution Applicant as per Section 29A of the Code. Since a financial creditor is not precluded from becoming a Resolution Applicant, no bar can be imposed upon a financial creditor to restrain its participation in the auction proceedings.

4.6 The Liquidator relied upon the following Judgments in support of its contentions:-

I. *Gulabchand Jain V/s Ramchandra D. Choudhary*

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- II. *ITO v/s Mewal Das (1976) 103 ITR 437 SC*
 III. *State Bank of India v/s M.J. James (2022) 2 SCC 301*

5. Respondent No. 2 submitted its Reply to the Application *vide* Diary No. 1523/2022 dated 18.05.2022 and denied the allegations levied against it. It was submitted that the Applicant participated in the 3rd CoC meeting wherein the CoC decided to Liquidate the Corporate Debtor. Further, the Applicant was also a part of the SCC and was aware of the E-auction proceedings undertaken by the Liquidator. Thus, the Applicant cannot challenge the Liquidation proceedings and the auction sale at this juncture when the Liquidation proceedings are about to conclude and the proceeds of the E-auction sale have already been distributed among the stakeholders.
6. Respondent No. 3 submitted its Reply *vide* Diary No. 1536/2022 dated 19.05.2022 stating that the E-auction proceedings were carried out in compliance with the Code and Regulation 33 of the Liquidation Regulations read with Schedule I. Respondent No. 3 participated in the third E-auction in pursuance of the public notice issued by the Liquidator. Further, Respondent No. 3 is a qualified bidder as it does not fall within the category of prohibited persons within Section 29A of the Code. Thus, the allegations of the Applicant against Respondent No. 3's participation in the E-auction proceedings are misconceived.
7. The Applicant filed rejoinders to the Replies filed by the Respondents *vide* Diary no. 2026/2022, 2027/2022, and 2028/20222 dated 11.07.2022

and refuted the averments made in the Replies and reiterated the contentions made in the Application.

8. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, and Written Submissions along with the documents enclosed therein.
9. To deal with the issue of premature initiation of the liquidation proceedings by the CoC, it will be germane to refer to the explanation of Section 33(2) of the Code that reads as follows:

“For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum”

10. The Hon’ble NCLAT was seized with the interpretation of the explanation of Section 33(2) in the case of *Sunil S. Kakkad v/s Atrium Infocom* 2020 SCC OnLine NCLAT 1160 and it held that:

“Thus, it is clear that the decision of CoC to liquidate the Corporate Debtor without taking any steps for Resolution of the Corporate Debtor is covered under explanation to sub-clause (2) of Section 33 of the I&B Code and the same being decision on commercial wisdom, is non-justiciable given the law laid by Hon’ble Supreme Court of India in case of K. Sashidhar (supra). Thus, it is clear that there is no illegality in the decision of CoC in liquidating the Corporate Debtor before taking any steps for inviting Expression of Interest for submission of Resolution Plan.”

This judgment has also been affirmed by the Hon’ble Apex Court in *Sunil S. Kakkad v/s Atrium Infocom Pvt. Ltd.* 2021 SCC OnLine SC 723.

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11. In the instant case, a bare perusal of the record will reveal that the Corporate Debtor ceased to be an operational entity since April 2002. In the background of the aforementioned fact, we are of the view that the CoC of the Corporate Debtor was well within its rights in initiating the Liquidation Proceedings before the completion of the CIRP period as prescribed under Section 12 of the Code. Thus, in light of the judicial pronouncement referred to above, we find no force in the argument of the Applicant concerning the wrongful initiation of the Liquidation Proceedings.

12. As far as the E-auction dated 31.08.2020 is concerned, the Applicant has challenged the same on the following grounds:-

12.1. The property was auctioned at an undervalued price and the reserve price of the property was wrongly reduced by the Liquidator in each subsequent e-auction.

12.2. The E-auction stands vitiated as Respondent No. 3 who is a financial creditor was the sole bidder in the E-auction dated 31.08.2020 and the property was sold to him at the reserve price.

12.3. The Liquidator conducted three back-to-back E-auctions within a span of one month, thereby, not affording proper opportunity to other interested parties to take part in the same. Further, the Auction Proceedings were completed in a hurried manner that too during the COVID-19 pandemic.

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13. A perusal of the records will reveal that the Liquidator/ Resolution professional appointed two registered valuers at the time of initiation of the CIRP in compliance with Regulation 27 R/w Regulation 35 of the CIRP Regulations. The details of the duly appointed registered valuers are as follows:

Sr. No.	Name of the Registered Valuer	Registration Number	Class of Assets
1	Mr. Anil Kumar Saxena	IBBI/RV/02/2019/10004	Land & Building
2	Mr. Dhiraj Jaiswal	IBBI/RV/02/2019/1406	Land & Building

14. The Liquidator filed the Asset Memorandum of the Corporate Debtor in compliance with Regulation 34 of the Liquidation Regulations vide Diary No. 648/2020 dated 27.07.2020. The valuation of the properties of the Corporate Debtor as contained in the Asset Memorandum is as follows:

Sr. No.	Particulars	Land & Building (leasehold)		Freehold land	
		Fair market value (In Rs.) (A)	Liquidation Value (In Rs.) (B)	Fair market value (In Rs.) (C)	Liquidation Value (In Rs.) (D)
1.	First Valuer	14,62,90,000	10,24,03,000	1,62,00,000	1,13,40,000
2.	Second Valuer	14,01,22,816	10,53,98,253	47,25,000	35,43,750
	Total	28,64,12,816	20,78,01,253	2,09,25,000	1,48,83,750
	Average value (Rs.)	14,32,06,408	10,39,00,626.5	1,04,62,500	74,41,875
	Total Average Market Value of land (Rs.) (A+C)	15,36,68,908/-			
	Total Average Liquidation Value of land (Rs.) (A+C)	11,13,42,501.5			

15. The Liquidator after receiving reports of the Registered Valuers arrived at the Market Value and the Liquidation Value of the Properties by taking an average of the valuation submitted by both the Valuers. Admittedly, the reserve price of the properties in the First Auction was 11,13,42,501.5

(Rupees Eleven Crores Thirteen Lakhs and Forty-Two Thousand and Five Hundred and One rupees and five paise Only) which is the average liquidation value of the properties as per the Asset Memorandum.

16. As far as the reduction of the reserve price in subsequent auctions is concerned, it will be apposite to refer to Para 1(4) of Schedule I of the Liquidation Regulations which is as follows:

“(4) The reserve price shall be the value of the asset arrived at in accordance with regulation 35

(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.”

17. In the present case, after the failure of the first E-auction dated 31.07.2020, the SCC reduced the reserve price of the properties by twenty-five percent and the next auction was scheduled for 18.08.2020. Subsequently, on account of the failure of the second auction, the reserve price of the properties was further reduced by ten percent. The details of the reduction in the reserve price undertaken during the E-auction proceedings are tabulated hereunder:-

<i>Sale Notice Date</i>	<i>Auction Date</i>	<i>Reserve Price (Rs.)</i>
<i>09.07.2020</i>	<i>31.07.2020</i>	<i>11,13,42,501.5</i>
<i>08.08.2020</i>	<i>18.08.2020</i>	<i>8,35,06,876.125</i>
<i>21.08.2020</i>	<i>31.08.2020</i>	<i>7,51,56,188.51</i>

18. From the above paragraph, it becomes apparent that the reduction in the reserve price of the assets of the Corporate Debtor was made in

accordance with Para 1(4) of Schedule I of the Liquidation Regulation. Thus, the argument concerning the sale of the assets of the Corporate Debtor at an undervalued price is untenable.

19. To address the averment concerning the participation of the Financial Creditor in the Auction Proceedings, it will be pertinent to refer to Section 35(1)(f) of the Code which provides that:

“35. Power and duties of liquidator

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following power and duties, namely:-

...

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified: Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.

20. Thus, any person who is not eligible to be a resolution applicant is precluded from participating in the auction of properties of the Corporate Debtor. Section 29A of the Code provides an exhaustive list of persons who are prohibited from becoming a resolution applicant. Since a financial creditor is not precluded from becoming a Resolution Applicant under Section 29A of the code, there exists no bar upon a financial creditor's participation in the auction proceedings. In the present Application, the Applicant has failed to substantiate its allegation concerning the ineligibility of Respondent No. 3 to participate in the

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auction proceedings. Further, there is nothing on record to suggest that Respondent No. 3 falls within the prohibited categories as provided under Section 29A of the Code to make him ineligible.

21. In so far as the carrying out of three back-to-back E-auctions within a span of one month is concerned, the Applicant has relied upon Para 1(1-D) and 1(1-E) of Schedule 1 of the Liquidation Regulation to contend that there has to be a gap of 21 days between issuance of the Auction Notice and the date of Auction. The discrepancy between the prescribed timeline and the timeline adopted by the liquidator has already been provided in Para 3.7 of the instant Order and for the sake of brevity is not reproduced here.
22. It will be relevant to refer to the Judgment of the Hon'ble NCLAT in the case of *Manjit Commercial LLP V/s SPM Auto Pvt. Ltd.* 2019 SCC OnLine NCLAT 1173 in which the Hon'ble Appellate Authority held that:

"8. In so far as the allegations of the Appellant with regard to reducing the time period is concerned, the Liquidator followed the procedures as contemplated in clause 3 of Schedule I of the Regulations, which provides that the Liquidator shall prepare the terms and conditions of sale, Regulation 2 of Schedule I and the Liquidator shall prepare a marketing strategy with the help of marketing Professionals, if required for sale of the Asset. The strategy may include releasing advertisement, preparing of information sheets for the asset, preparing a notice of sale and liaising with Agents. Moreover, in the code and in the liquidation Regulations, no time limit was specified for the auction process, other than mode of sale as prescribed in Schedule I of Liquidation Process Regulations, 2016. We do not find any merit in the allegation."

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23. A perusal of Para 1(1-D) and 1(1-E) of Schedule I of the Liquidation Regulation reveals that they were inserted by Amendment No. *IBBI/2022-23/GN/REG094*, dated 16.09.2022 which came into effect from 16.09.2022 i.e., after the conclusion of the auction proceedings in question. Moreover, as held in the aforementioned Judgment, at the time of the third E-auction Notice i.e. 21.05.2020, the Schedule did not contain any time limit for the auction process, thus, the aforesaid contention appears to be misconceived.

24. In so far as the issue of setting aside of the auction sale is concerned, the said issue is no longer *res integra*. The Hon'ble Supreme Court in the case of *Valji Khimji & Company v/s Official Liquidator* (2008) 9 SCC 299 has held that:

“11. It may be noted that auction-sale was done after adequate publicity in well-known newspapers. Hence, if anyone wanted to make a bid in the auction he should have participated in the said auction and make his bid... However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed except on very limited grounds like fraud, otherwise no auction-sale will ever be completed.”

25. In the case of *Manjeet Commercial LLP v/s SPM Auto Pvt. Ltd* 2019 SCC OnLine NCLAT 1173, the Hon'ble NCLAT observed that:

“11. However, the Appellant did not participate in the e-auction and now making vague allegations without any substantial grounds cannot be accepted. As per Regulation 44(1) of the Liquidation Process Regulations, 2016, the Liquidator shall liquidate the 'Corporate Debtor' within a period of two years. We are of the view that there should not be any unnecessary delay and protract the liquidation process for undue advantage of some individuals or group, which would adversely affect the liquidation process”

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26. In view of the Judgments referred above, it becomes clear that a confirmed auction sale can only be set aside in cases of material irregularity and fraud. Thus, to adjudicate upon the aforementioned contention it will be pertinent to refer to the terms and conditions of the third E-auction Notice dated 22.08.2020 which are as follows:-

26.1. The Earnest Money Deposit (EMD) of Rs. 15 Lakh shall be payable by the interested bidder through NEFT/RTGS/Demand Draft on or before 28th August, 2020 in the mentioned account.

26.2. Inspection of the property can be done on or before 29th August, 2020 from 11:00 A.M. to 5:00 P.M.

26.3. Any prospective bidder who is desirous of submitting the bid, is required to submit the bid application form, confidentiality and Non-disclosure undertaking, and requisite affidavits on or before 27th August, 2020.

27. In the present case, the Auction Notice dated 21.08.2020 was duly published in two Newspapers i.e., the Economic Times (English) and Virat Vaibhav (Hindi). Further, the Auction sale appears to be in conformity with Regulation 33 of the Liquidation Regulation. Further, the Liquidator complied with the procedure as contemplated in clause 3 of Schedule I read with Schedule I. Moreover, at the time of E-auction, no time limit was specified for the auction process and the brief timeline as provided in the auction notice dated 22.08.2020 cannot be considered as a

material irregularity to warrant the setting aside of the completed auction proceedings.

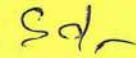
28. It will be pertinent to mention here that the successful bidder of the Auction i.e., Respondent No. 3, has already paid the consideration and the same has also been distributed among various stakeholders. Thus, in terms of Para 1(13) of the Schedule-I of the Liquidation Process, the sale stands completed. The aforesaid para of Schedule-I provides that:

“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.”

29. In the instant Application, the Applicant has failed to substantiate the allegations of fraud in the Liquidation proceedings and the E-auction proceedings. Further, we cannot lose sight of the fact that the Applicant was a member of the SCC of the Corporate Debtor. As per the minutes of the third SCC meeting dated 09.08.2021, the Applicant expressed dissatisfaction towards the disbursement of the amount as per Section 53 of the Code as it did not receive anything. Further, it was only after the third SCC meeting that the Applicant raised questions against the validity of the proceedings in its letter dated 20.09.2021
30. Thus, in view of the various judgments referred above and the fact that the sale has already been confirmed in favour of the successful bidder, we are of the opinion that the Appellant has not been able to show any material irregularity or fraud in the conduct of the E-auction proceedings.

Therefore we find no ground to interfere in the E-auction proceeding dated 31.08.2020.

In view of the aforementioned observations the I.A. bearing No. 68/JPR/2020 stands dismissed and disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**