

**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. 544/JPR/2023**  
**CP No. (IB)- 205/7/JPR/2019**

**IN THE MATTER OF:**

**Punjab National Bank**

...PETITIONER

**VERSUS**

**Atlas Alloy (India) Private Limited**

...RESPONDENT

**IA (IBC) No. 544/JPR/2023**

**MEMO OF PARTIES**

**Sanju Bansal**

R/o 1/43A, Champa Nagar, Beawar, Ajmer  
(Rajasthan)- 305901

...APPLICANT

**VERSUS**

**Shri Satyendra Prasad Khorania**

Liquidator of M/s Atlas Alloys (India)  
Private Limited R/o 402, Ok Plus, DP  
Metro, Opposite Metro Pillar No. 94 New  
Sanganer Road, Jaipur

...RESPONDENT

**FOR APPLICANT :** Avin Chhangani, Adv

**FOR RESPONDENT :** Amol Vyas, Adv.  
Satyendra Prasad Khorania, Liquidator

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**Order Pronounced On: 23.04.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The instant Application has been filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 by *Sanju Bansal* ('Applicant') against *Satyendra Prasad Khorania* ('Respondent'/ 'Liquidator'), the Liquidator of *M/s Atlas Alloys (India) Private Limited* ('Corporate Debtor'), seeking cancellation of the e-auction of the assets of the Corporate Debtor dated 06.09.2023 and initiation of fresh e-auction proceedings.
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. 205/7/JPR/2019 was filed by *Punjab National Bank* against the Corporate Debtor. The said application was admitted by this Adjudicating Authority *vide* its order dated 20.09.2019 and *Mr. Satyendra Prasad Khorania* was appointed as the Interim Resolution Professional ('IRP').

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- 2.2. The IRP constituted the Committee of Creditors ('CoC') and invited Expression of Interest ('EoI') for the submission of resolution plans. Since no resolution plan was received in pursuance of the EoI, the CoC in its 5<sup>th</sup> meeting dated 17.03.2020 decided to proceed with the liquidation of the Corporate Debtor. This Adjudicating Authority *vide* its order dated 02.03.2021 initiated the liquidation process of the Corporate Debtor and appointed the Respondent as the Liquidator of the Corporate Debtor as proposed by the CoC.
- 2.3. The Liquidator constituted the Stakeholders Consultation Committee ('SCC') in accordance with Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations'). The SCC passed the resolution for the sale of assets of the Corporate Debtor i.e., land and building situated at plot no. G-78, G-79, and part of plot no. G-80, Industrial Area, Beawar, Ajmer ('Subject properties'), on a lump sum lot basis via E-auction.
- 2.4. The Liquidator proceeded with the E-auction of the subject properties and conducted ten E-auctions for selling the properties as proposed by the SCC. While conducting the tenth E-auction,



the Liquidator issued a notice dated 09.08.2023 which was published on 10.08.2023 in two newspapers i.e., *the Economic Times* (English Newspaper) and *Danik Navjyoti* (Hindi Newspaper). In pursuance of the notice dated 10.08.2023, an E-auction was held on 06.09.2023 and the subject properties were sold to *M/s Novelty Textiles* for a consideration of Rs. 1,56,55,000/- (One Crore fifty-six lakh and fifty-five thousand rupees).

The present Application has been filed challenging the e-auction dated 06.09.2023.

3. The Applicant has filed the Application *vide* Diary No. 2395/2023 dated 04.10.2023. Also, Written Submissions were filed *vide* Diary No. 329 dated 05.02.2024. Both of these are being considered jointly as under:

- 3.1 The Applicant is an individual residing in Beawar (Rajasthan), engaged in the business of purchase and acquisition of businesses for the past twenty years. The Applicant approached the Liquidator in the month of July 2023 and expressed interest in acquiring all the assets of the Corporate Debtor. The Liquidator informed the Applicant that a public announcement concerning the E-auction will be made in the newspapers having wide

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circulation at the location of the registered office of the Corporate Debtor per Regulation 12(3) read with Schedule-I of the Liquidation Regulations.

3.2 The registered office of the Corporate Debtor as per the records of the Registrar of Companies ('RoC') and the MCA portal is at G-78-80, RIICO Industrial Area, Phase-I, Ajmer Road, Beawar (Rajasthan)- 305901. Thus, as per the applicable regulations and the assurance given by the Liquidator, the notice for E-auction should have been published in a newspaper having wide circulation in Beawar District.

3.3 In violation of Regulation 12(3) of the Liquidation Regulations read with Schedule-I, the Liquidator made a public announcement on 09.08.2023 for E-auction in *Dainik Navajyoti, kekri edition* ('Regional Newspaper'), published in *kekri* district only and *the Economics Times, Jaipur Edition* ('English Newspaper'), published in Jaipur only. It was submitted that *Beawar* is a separate district in Rajasthan and is at a distance of 110 KM from *kekri* which is a tehsil in *Ajmer* district. Further, *Jaipur* is also a separate district in *Rajasthan* and is approximately 200 KMs away from *Beawar*.

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3.4 Non-publication of the E-auction notice at the place of the registered office of the Corporate Debtor illegally curtailed the right of the Applicant and various other similarly situated persons to participate in the E-auction proceedings. Further, the non-publication of the E-auction notice in *Beawar* compromised the principle of maximisation of the value of the assets of the Corporate Debtor. Publication of the E-notice in *Beawar* would have resulted in extensive public participation resulting in healthy competition among the bidders thereby enhancing the value of the assets of the Corporate Debtor. Further, if the E-auction dated 06.09.2023 is set aside then the Applicant will offer a much higher price for the assets of the Corporate Debtor.

3.5 Without prejudice to the aforementioned arguments, it was submitted that the E-auction notice was published on 09.08.2023 and the E-auction was scheduled for 06.09.2023. Thus, there was a gap of less than 30 days between the date of issuance of the E-auction notice and the date of the E-auction. As per the judgment of the Hon'ble NCLAT in the cases of *Naren Seth v/s Sunrise Industries & others 2023 SCC OnLine NCLAT 1942* and *Marine Electricals (India) Limited v/s Sunrise Industries 2023 SCC*

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*OnLine NCLAT 2146*, a notice period of 30 days ought to be given between the date of issuance of public notice and the date of E-auction. Therefore, the E-auction dated 06.09.2023 is in contravention of the judgments of the Hon'ble NCLAT and should be set aside.

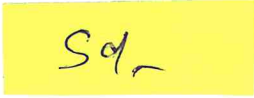
- 3.6 The Applicant relied upon the interim order dated 11.01.2024 in Company Appeal (AT) (Insolvency) No. 30 of 2024 titled *Jai Agarwal v/s Liquidator Satyendra Kumar Khurania* to contend that the Hon'ble NCLAT after taking note of the illegalities conducted in the E-auction by the Liquidator has directed that no further action shall be taken in pursuance of the E-auction dated 06.09.2023.
4. The Liquidator submitted the reply to the Application vide Diary No. 2940/2023 dated 12.12.2023 and made the following submissions:-
- 4.1 The Liquidator raised a preliminary objection concerning the locus standi of the Applicant to file the present Application. It was submitted that the Application has been filed with the malafide intention of delaying the proceedings. Further, the Application has become infructuous as the Liquidator has already sold the



properties of the Corporate Debtor, and the sale deed for the same has also been registered in favour of the successful bidder.

4.2 The Liquidator conducted the E-auction proceedings in accordance with the Liquidation Regulations, 2016. In compliance of Regulation 12(3) read with Schedule-I of the Liquidation Regulations, the Liquidator published the E-auction notice dated 10.08.2023 in the Regional Newspaper and the English Newspaper. The Liquidator denied the alleged interaction between the Applicant and him and stated that all the persons having any queries were directed to the IBBI websites wherein all the relevant information was uploaded.

4.3 The E-auction notice was published in the *Ajmer* edition of the Regional Newspaper. The Ajmer Edition of the Regional Newspaper had wide circulation in *Beawar* and *Kekri* and did not have any separate editions for both areas. The Regional newspaper consisted of pages dedicated to a particular city like *Beawar* or *Kekri* and the said page forms a part of the widely circulated *Ajmer* edition of the Regional Newspaper. Further, the publication of the E-auction notice on the page dedicated to *Kekri* Tehsil does not imply that the same would not be read by the





readers residing in *Beawar*. Moreover, it is for the editor to determine on which page an advertisement will be published.

4.4 The designation of Beawar as a separate district in the state of Rajasthan vide notification dated 05.08.2023 does not have any bearing on the publication made in the Regional Newspaper. Further, designation as a district does not imply that reputed newspapers would suddenly start their publication from the newly constituted district.

4.5 In relation to the publication made in the English newspaper it was submitted that only the Jaipur edition of the aforementioned newspaper is published in Rajasthan and is circulated in all the districts. Further, the English editions of all the widely circulated newspapers in Rajasthan are published from Jaipur, thus, the Liquidator had to publish the advertisement in a newspaper published from Jaipur.

4.6 In addition to the newspaper publications, the details of the E-auction were also available at the premises of the Subject Properties. Thus, if the applicant had any interest in participating in the auction, he could have visited the premises and obtained the necessary details about the E-auction.

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5. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, and Written Submissions along with the documents enclosed therein.
6. To deal with the controversy involved in the present Application it will be apposite to first refer to Regulation 12 (3) and relevant Paras of Schedule I of the Liquidation Regulations which are as follows:-

*“ 12. Public announcement by liquidator*

*(3) The announcement shall be published-*

*(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*

*(b) on the website, if any, of the corporate debtor; and*

*(c) on the website, if any, designated by the Board for this purpose.”*

*Schedule I*

*Mode of Sale*

*1. Auction*

*(1D) The liquidator shall provide at least fourteen days from issue of public notice for submissions of eligibility documents by prospective bidder.*

*(1E) The liquidator shall provide to qualified bidder at least seven days, for inspection or due diligence of assets under auction, from the date of declaration of qualified bidder.*

*(5) The liquidator shall issue a public notice of an auction in the manner specified in Regulation 12(3):*

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*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.”*

7. In the instant application, the Applicant has contended that the E-auction notice was issued in the *Kekri* edition of the Regional newspaper and the *Jaipur* edition of the English newspaper. Since the registered office of the Corporate Debtor is in *Beawar* district, the notices were issued in violation of Regulation 12 and Schedule I of the Liquidation Regulations.
8. As per Regulation 12 of the Liquidation Regulations, a public notice is required to be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office of the Corporate Debtor. In the instant case, the registered office of the Corporate Debtor is situated in *Beawar*. Thus, the E-auction for the properties of the Corporate Debtor was required to be published in newspapers having wide circulation in *Beawar*.
9. It is pertinent to note here that the qualification imposed by the legislation in its wisdom is limited to the circulation of the Newspaper and not its publication. Thus, it is possible that a newspaper is published in a separate town or district and yet has wide circulation in the targeted area.
10. In the instant case, the Liquidator published a notice in the *Ajmer* edition of the Regional newspaper and the *Jaipur* edition of the English

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newspaper. As far as the notice issued in the Regional Newspaper is concerned, it was published on the page dedicated to the Kekri Tehsil in the newspaper. A bare perusal of the page of the Regional Newspaper containing the notice of E-auction reveals that the said page is a part of the Ajmer edition of the Regional Newspaper. It will be pertinent to mention that the Regional Newspaper does not have any separate editions for *Beawar* and the Ajmer edition is circulated in the district of *Beawar*. Further, before the designation of *Beawar* as a separate district, it was a part of *Ajmer* District. Similarly, the English Newspaper is only published in *Jaipur* but that by itself does not indicate that it is not circulated in other districts of Rajasthan.

11. The grievance of the Appellant seems to arise from the fact that both the newspapers were published in districts other than *Beawar* where the registered office of the Corporate Debtor is located and thus, violative of Regulation 12(3) of the Liquidation Regulation. Such an interpretation of Regulation 12 (3) cannot be accepted, otherwise the properties located in areas not having a publication house can never be auctioned under the Code.
12. It will be pertinent to make a reference to the progress report filed by the Liquidator *vide* Diary No. 2258/2023 wherein the various efforts made by





the Liquidator and the marketing team are recorded. The Liquidator promoted the E-auction by circulating approximately 5000 pamphlets to all the nearby locations. Further, around 10 posters were placed at popular locations in the vicinity of the Subject Property.

13. We are of the opinion that the E-auction proceedings were conducted in compliance with Regulation 12 read with Schedule I of the Liquidation Process. The Auction Notice was duly published on 10.08.2023 in regional and English language newspapers having wide circulation at the location of the registered office of the Corporate Debtor and was duly publicized through other means as well. Further, the auction sale stands completed as provided in Para 13 of Schedule-I of the Liquidation Process and the sale deed for the auctioned properties has already been registered in favour of the successful bidder.
14. The law with regard to setting aside 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 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.”*

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15. 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 with the same.

In view of the aforementioned observations the I.A. bearing No. 544/JPR/2023 stands dismissed and disposed of.

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**