

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **18.04.2024** THROUGH VIDEO CONFERENCE

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**PRESENT:** HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : Punjab National Bank  
Vs  
RP of M/s Srivari Metal Works & 1 Anr

**MAIN PETITION NUMBER** : CP/IB/549/2017

**(IA/MA) APPLICATION NUMBERS**

Rst.Appl/10(CHE)/2023 in IA/347/IB/2021; IA/494(CHE)/2023

Rst.Appl/8(CHE)/2023 in IA/1173/IB/2020; IA/347/CHE/2021

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**ORDER**

Present: Ld. Counsel Shri. Varun Srinivasan for the Applicant.

Vide separate order announced in open court, the applications are disposed of with directions.

-Sd-

**[VENKATARAMAN SUBRAMANIAM]  
MEMBER (TECHNICAL)**

MG

-Sd-

**[SANJIV JAIN]  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

*In the matter of M/s. Sri Vari Metal Private Limited*

**Rst.Appl.No.8/2023 in IA/1173/2020 in CP/549/(IB)/2017**

*(filed under Section 52(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 11 & 49 of the NCLT Rules, 2016)*

**Punjab National Bank,**

Circle Sastra-Bangalore East,  
Raheja Towers, 26-27, M.G.Road,  
Bengaluru – 560 001.

... Applicant

Vs

**1. Mr. S.Rajagopal,**

Resolution Professional for  
M/s. Sri Vari Metal Private Limited (under Liquidation),  
11/108, 4<sup>th</sup> Street, Raja Annamalaipuram,  
Chennai – 600 028.

**2. Mr. Pratik Gaur,**

S/o. Mr. Pannalal Gaur,  
153/1, Amardeep Talkies Road,  
Opp. Naveen Beej Bhandar,  
Bansali, Raipur (CG) 492 001.

... Respondents

**Along with**

**Rst.Appl.No.10/2023 in IA/347/2021 in CP/549/(IB)/2017**

*(filed under Section 52(2) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 & 49 of  
the NCLT Rules, 2016)*

**Punjab National Bank,**

SASTRA Circle Office,  
Raheja Towers, M.G.Road,  
Bangalore,  
Formerly United Bank of India,  
Stressed Asset Recovery Management Branch, Bangalore,

1<sup>st</sup> Floor, Geetha Mansion,  
40, Kempe Gowda Road,  
Bangalore - 560 009.

... Applicant

Vs

**1. Mr. S.Rajagopal,**  
Resolution Professional for  
M/s. Sri Vari Metal Private Limited (under Liquidation),  
11/108, 4<sup>th</sup> Street, Raja Annamalaipuram,  
Chennai – 600 028.

**2.Mr. Pratik Gaur,**  
S/o. Mr. Pannalal Gaur,  
153/1, Amardeep Talkies Road,  
Opp. Naveen Beej Bhandar,  
Bansali, Raipur (CG) 492 001.

... Respondents

**Along with**

**IA/347/2021 IN CP/549/(IB)/2017**

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016*

**Punjab National Bank,**  
SASTRA Circle Office,  
Raheja Towers, M.G.Road,  
Bangalore,  
Formerly United Bank of India,  
Stressed Asset Recovery Management Branch, Bangalore,  
1<sup>st</sup> Floor, Geetha Mansion,  
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Vs

**1. Mr. S.Rajagopal,**  
Resolution Professional for  
M/s. Sri Vari Metal Private Limited (under Liquidation),  
11/108, 4<sup>th</sup> Street, Raja Annamalaipuram,  
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**2.Mr. Pratik Gaur,**  
S/o. Mr. Pannalal Gaur,  
153/1, Amardeep Talkies Road,  
Opp. Naveen Beej Bhandar,  
Bansali, Raipur (CG) 492 001.

... Respondents

**And**

**IA/494/2023 in IA/1173/2020 in CP/549/(IB)/2017**

*(filed under Section 52(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule  
11 & 49 of the NCLT Rules, 2016)*

**Punjab National Bank,**  
(Formerly United Bank of India, now amalgamated with PNB),  
Circle Sastra-Bangalore East,  
Raheja Towers, 26-27, M.G.Road,  
Bengaluru – 560 001.

... Applicant

Vs

**1. Mr. S.Rajagopal,**  
Resolution Professional for  
M/s. Sri Vari Metal Private Limited (under Liquidation),  
11/108, 4<sup>th</sup> Street, Raja Annamalaipuram,  
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**2.Mr. Pratik Gaur,**  
S/o. Mr. Pannalal Gaur,  
153/1, Amardeep Talkies Road,  
Opp. Naveen Beej Bhandar,  
Bansali, Raipur (CG) 492 001.

... Respondents

*Order pronounced on 18<sup>th</sup> April, 2024*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Liquidator*

*: Mr. B.Dhanaraj, Counsel*

*For Punjab National Bank*

*: Mr. Varun Srinivasan, Counsel*

*For successful auction purchaser*

*: Ms.A.Vidya, Counsel*

## COMMON ORDER

*(Heard through physical hearing)*

By this common order, we shall dispose of Rst.Appl.No.8/2023 in IA/1173/Che/2020, Rst.Appl.No.10/2023 in IA/347/Che/2021, IA/347/Che/2021 and IA/494/Che/2023 in IA/1173/Che/2020 as the issue directly and substantially in all the four applications are the same.

2. **Rst.Appl.No.8/2023 in IA/1173/Che/2020** has been filed by the Applicant, Punjab National Bank, seeking the following reliefs: -

*a. Restoring the order dated 13.02.2023 made in IA(IB) 1173 of 2020 in CP 549 (IB) 2017 and restore IA (IB) 1173 of 2020 in CP 549 (IB) 2017 on the file of this Tribunal and dispose of the same on merits:*

*b. Pass such further orders as may be just necessary in the facts and circumstances of the matter and thus render justice.*

3. **Rst.Appl.No.10/2023 in IA/347/Che/2021** has been filed by the Applicant seeking the following reliefs: -

*a. To pass suitable orders restoring the order dated 13.02.2023 and ordering restoration of application bearing IA/347/2021 in CP/549/IB/2017 to file;*

*b. To restrain the 1<sup>st</sup> Respondent from proceeding further with the alleged sale held on 03.07.2020 in favour of the 2<sup>nd</sup> Respondent; and*

*c. Pass such further orders as may be just necessary in the facts and circumstances of the matter and thus render justice.*

4. **IA/347/Che/2021** was filed by the Applicant seeking the following reliefs: -

- a. *Set aside the sale dated 03.07.2020 held in respect of the properties measuring 0.044 hectares in Khasra No. 235/94 and 238/65 in Raipura Village and 0.013 hectares in Khasra No. 240/20 in the name of the company in liquidation, measuring 0.84 hectares in Khasra No.1196 and 1197 in Mulle Village, 0.29 hectares in Khasra No. 1198 in Mulle Village, 0.22 hectares in Khasra No.1193/1 in Mulle Village and 0.31 hectares in Khasra No. 1192 in Mulle Village, PH No. 04, RIC Khurud District in the name of the company in liquidation, by R1 / Liquidator in favour of R2 / successful auction purchaser.*
- b. *Directing the Respondents to bear the cost of the entire proceedings and exclude the cost incurred for the alleged sale dated 03.07.2020 and the cost of the entire proceedings from the liquidation expenses.*
- c. *Directing R1 to forfeit the entire amount paid by R2 towards the alleged sale of the properties mentioned in prayer (a) and*
- d. *Pass such further orders as may be just necessary in the facts and circumstances of the matter and thus render justice.*

5. **IA/494/2023 in IA/1173/Che/2020** was filed by the Applicant seeking the following reliefs:

- a. *Restrain the 1<sup>st</sup> Respondent from proceeding further under the alleged sale dated 03.07.2020 held by the 1<sup>st</sup> Respondent in favour of the 2<sup>nd</sup> Respondent by issuing Sale Certificate, or delivering possession of the property etc.*
- b. *Pass such further orders as may be just necessary in the facts and circumstances of the matter and thus render justice.*

6. Briefly the facts which are relevant for disposal of the above applications are that on the request of M/s. Srivari Metal Works Pvt. Ltd, (the

Corporate Debtor in liquidation), the Applicant sanctioned a Term Loan and Cash Credit Facility to the tune of Rs.1 crore on 07.03.2005. The limits were renewed periodically and enhanced to Rs.1963.95 Lakhs. The Loans were secured by the movable assets and immovable properties belonging to the company and its guarantors. The company committed default in repayments of dues which made the applicant take steps under the SARFAESI Act on 05.08.2016. The Applicant took the possession of the assets on 21.10.2016, 18.11.2016 and 19.03.2017. Proceedings under Section 7 of IBC was also initiated against the Corporate Debtor vide order dated 09.01.2018. The CoC in the 4<sup>th</sup> meeting held on 05.10.2018 resolved to liquidate the company, which was allowed by this Tribunal vide order dated 05.12.2018.

7. Para 4 of the application contains the details of the secured assets of the Corporate Debtor in liquidation with the Applicant. The description of the property and name of the owner are extracted hereunder:

<b>S.No.</b>	<b>Description of property and name of the owner</b>
1	(i) Total extent of 1.71 acres in survey No. 49/A2C, 49/A2D, 50/A and 51/B1. (ii) 2.29 acres in survey No. 51/B1, 52/A, 52/B and 53/A. (iii) Total extent of 2.92 acres in survey No. 25/1, 48/2A and 592/A3 and (iv) 2.25 acres in survey No. 49/A2B, 49/A2E and 49/A2A situated

	at Byramangalam Village belonging to the company in liquidation.
2	Property measuring 570 sq. mtrs in survey no. 168 of Zuzuvadi village bearing Door No. E-12 SIDCO Industrial Estate belonging to Mrs. Vinoda Vidya Babu.
3	Property measuring 548.40 sq. mtrs in survey No.168 of Zuzuvadi Village bearing Door No. E-14 SIDCO Industrial Estate belonging to Mrs. Vinoda Vidya Babu.
4	House site measuring 4328 sq. ft in survey No.118/19, Hosur Village belonging to Mr. Govindan Vidya Babu (sold under SARFAESI Act and proceeds adjusted towards the loan account).
5	(i) Property measuring 0.84 hectares in Khasra No.1196 & 1197 in Mulle Village. (ii) Property measuring 0.29 hectares in Khasra No.1198 in Mulle Village belonging to the company in liquidation.
6	(i) Property measuring 0.22 hectares in Khasra No. 1193/1 in Mulle village. (ii) Property measuring 0.31 hectares in Khasra No. 1192 in Mulle Village belonging to the company in liquidation.
7	Property measuring 0.044 hectares or 4800 sq.ft in Khasra No.235/94 and 238/65 in Raipura Village and 0.013 hectares or 1350 sq.ft in Khasra No.240/20, thus totally measuring 6150 sq.ft belonging to the company in liquidation.
8	Movable assets: (i) Hypothecation of Stocks, raw materials, work in process, packing materials, finished goods, goods in transit and receivables, Book debts etc. (ii) Exclusive Charge on all the fixed assets / machinery of the company situated at the industrial shed at E-12 and E-14, SIDCO, Hosur, Tamil Nadu and (i) Survey No. 49/A2C, 49/A2D, 50/A and 51/B1 (ii) 2.29 acres in Survey Nos. 51/B1, 52/A, 52/B and 53/A, (iii) Total extent of 2.92 acres in Survey Nos. 25/1, 48/2A and 592/A3 and (iv) 2.25 acres in Survey Nos.



	49/A2B, 49/A2E and 49/A2A situated at Byramangalam Village, Karnataka.
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8. It is stated that since the order for liquidation, the Applicant had decided to stand outside the liquidation process and realize the secured assets. It therefore issued a sale notice dated 07.11.2019 bringing two assets i.e., the properties measuring 0.044 hectares in Khasra No. 235/94 and 238/65 in Raipura Village and 0.013 hectares in Khasra No. 240/20 in the name of the company in liquidation, measuring 0.84 hectares in Khasra No.1196 and 1197 in Mulle Village, 0.29 hectares in Khasra No. 1198 in Mulle Village, 0.22 hectares in Khasra No.1193/1 in Mulle Village and 0.31 hectares in Khasra No. 1192 in Mulle Village, PH No. 04, RIC Khurud District in the name of the company in liquidation, as per the table under Section 13(4) of the SARFAESI Act, which decision it had informed to the Liquidator / R1 on 07.11.2019. It is alleged that the Liquidator abusing his authority filed an application IA/1293/IB/2019 for stay of the operation of the sale notice dated 07.11.2019 and interfering with the possession of the properties brought for sale. The applicant on receipt of notice informed the Tribunal that the sale has not taken place for want of bidders. It also informed that the applicant has decided to stand outside the liquidation process. The Tribunal thereafter directed the

Liquidator to remove the records from the premises of the company and also directed the applicant to file the counter affidavit and posted the matter for 16.12.2019.

9. It is stated that due to the reasons one or the other, the application could not be taken till 18.12.2020, however the R1 conducted the sale in favour of R2. It is alleged the said sale is not only illegal but fraudulent as the applicant being the secured creditor never relinquished the security interest in favour of the liquidation estate. It is stated that the Form-D was filed by the applicant on 04.01.2019 and the amendment to Form-D under Section 18 of IBC came into effect from 25.07.2019 and as such by virtue of Section 36(3)(g) of IBC, a secured asset would become the part of the liquidation estate only if the secured creditor relinquishes the security interest over the asset. The proviso to Regulation 32 of IBBI Regulations, 2016 also provides that an asset subject to security interest shall not be sold by the Liquidator under Section 32 of the IBC. It is alleged that the Liquidator before putting the property to auction / sale did not inform the applicant nor took its consent and the applicant came to know this fact only on 30.06.2020. It is stated that on 30.06.2020 the Liquidator forwarded an Information Memorandum, corrigendum notice etc. It is stated that the intimation for expression of

interest and notice for sale through e-auction are of dated 19.06.2020 as per schedule stated in para 9, later, a corrigendum was issued on 20.06.2020 changing the schedule for the sale of assets giving the revised dates. It is alleged that there was no change either in date or the time prescribed in the sale notice dated 19.06.2020.

10. It is alleged that as per the invitation of expression of interest, the successful bidder was required to deposit 25% of the sale price within 24 hours from the issue of letter of acceptance of offer, and to deposit balance 75% on or before 15<sup>th</sup> day of issuing letter of acceptance after adjusting the EMD and in case of default within the stipulated period, the deposit as well as EMD shall be forfeited and the assets shall forthwith be sold again. In the present case the sale was allegedly held on 03.07.2020. The R2 / successful bidder deposited 25% of the bid amount only on 14.07.2020 i.e., not within 24 hours, letter of acceptance was issued on 21.07.2020 however, the R2 paid the 75% amount only on 17.08.2020 in piecemeal much beyond the date prescribed but the Liquidator did not forfeit the amount.

11. It is alleged that the Liquidator even did not consult the stakeholders consultation committee nor got the proper valuation of the property and the

alleged sale was conducted during the peak of pandemic. It is stated that the said sale is liable to be set aside for which the applicant had filed an IA/347/2021.

12. It is stated that in the meantime R2 filed IA/1173/2020 for holding the sale / e-auction as fair and proper seeking directions against the applicant to exclude the property and against the R1 / Liquidator to issue the sale certificate in favour of R2. It is stated that the applicant filed the reply to the said application which was partly heard and was posted for hearing on 15.12.2022. It is stated that though the Counsel for the applicant had appeared through online but due to technical snag, he could not properly represent the application and the application was adjourned to 07.02.2023. It is stated that the Panel Advocate of the applicant had appeared in the matter however the ID was registered in the name of the Junior Counsel Ms. Maria and in the cause list, only her name was reflected. It is stated that due to marriage Ms. Maria left the office and Ms. Ritika joined the office. She verified the cause list but did not find the name of the Panel Advocate and thus missed the case on 07.02.2023. It is stated that the application was posted for dismissal on 13.02.2023, however the proceedings of the hearing on 07.02.2023 were

updated on the website only on 14.02.2023. It is stated that even in the cause list for 13.02.2023 the name of the counsel of the applicant was mentioned as Ms. Maria, therefore the junior counsel again missed the hearing. It is stated that when the Panel Lawyer contacted the Liquidator, he found that the application was disposed of on 13.02.2023 granting liberty to the Liquidator to proceed in accordance with law.

13. It is stated that immediately the applicant applied for the certified copy and filed this application for recalling of the order dated 13.02.2023 passed in IA/1173/2020 and for restoration of the application for hearing and disposal on merits.

14. On getting notice of the application, R1 filed the reply stating that the order dated 15.12.2022 finds mention that the counsel had sought physical hearing in the matter and at their request, the matter was listed on 07.02.2023 for physical hearing. It is stated that parties were also supposed to check the details of the case in addition to the name of the Counsel. The applicant has not furnished any proof of updation of the order dated 07.02.2023 and 14.02.2023. It is alleged that the applicant hindered the Liquidator's effort for

sale and handover of the assets to the successful auction purchaser and as such the application is not maintainable.

15. We have heard Ld. Counsels for the parties and perused the record.

16. A perusal of record reveals that IA/347/2021 and IA/1173/2020 were listed for hearing on 07.02.2023. Due to non appearance of the applicant, the IAs were listed on 13.02.2023 for physical hearing / dismissal. Proceedings of 13.02.2023 show that none appeared for the applicant however, the Respondents were represented by their respective Counsels. Vide common order on the applications IA/217/2020, IA/227/2020, IA/231/2020, IA/347/CHE/2021, the applications were dismissed for non-prosecution as none appeared for the applicant despite having given last chance to the applicant to make representation vide order dated 07.02.2023. The application IA/1173/2020 was disposed of with the observations that the relief sought for in the present application does not arise for consideration because the reason for the Liquidator not issuing the sale certificate was on account of pendency of IA/217/2020, IA/227/2020, IA/231/2020, IA/347/CHE/2021, which the bank has not prosecuted for quite some time and on that day the above applications

were also dismissed. The Liquidator was directed to proceed in the matter in accordance with law.

17. The applicant thereafter moved the application for restoration vide Rst.Appl/10(Che)/2023 in IA/347/IB/2021 and Rst.Appl/8(Che)/2023 in IA/1173/2020.

18. During arguments vide proceedings dated 19.01.2024, Ld. Counsel for the applicant submitted that the bank has been actively considering the proposal and requested this Tribunal to direct the Liquidator to provide the supporting documents as to the expenses incurred / fees payable to the Liquidator. Undertaking was also given to handover the complete documents i.e., original documents including the sale certificates so that the process of transfer of property in the name of successful bidder may be completed.

19. The bank / applicant filed a report dated 02.03.2024, in IA/347/Che/2021 stating that during the course of hearing there were discussions regarding possibility of settling the matter, more particularly with respect to the application pertaining to the challenge of the sale made to the auction

purchaser. It is stated that without prejudice to the rights of the applicant, the applicant in principle is agreeable to withdraw the application pertaining to the challenge made as against the sale made on 03.07.2020 in favour of the auction purchaser for Rs.1.20 crores for the properties situated at Chhattisgarh, namely, IA/347(Che)/2021, IA/494(Che)/2023 in IA/1173(Che)/2020 subject to the following terms and conditions.

- a. That the Auction Purchaser is to withdraw all suits/applications filed against the Bank.
- b. That the full Auction amount of Rs.1.20 crores (Rupees One Crore and Twenty Lakhs) be released by the Liquidator immediately in favour of the Bank without deducting the liquidation expenses from the said amount.
- c. That the Liquidator immediately hands over possession of remaining properties of CD i.e., factory land and building along with machineries situated in various survey Numbers totally to the extent of 9.17 Acres of Bairamangalam Village of Denknikotta Taluk, Krishnagiri Dist, Tamilnadu, to the Bank. As the applicant has already requested on various occasions to relinquish the said property out of liquidation process.
- d. That as earlier expressed, the Liquidator has to submit all invoices, bills for our scrutiny & payment. Further, the CA certificate dated 22.02.2024 submitted by Liquidator does not have any UDIN Number without which authenticity of the CA certificate is in question.
- e. The Applicant is willing and ready to make payment towards the genuine & reasonable liquidation expenses as per regulations & guidelines, subject to the condition in the



interest of justice, equity and transparency in compliance with the Regulations.

- f. The Liquidator is to conduct an SCC meeting immediately, as requested earlier by the applicant to discuss various agendas as raised by the applicant in its various email.

20. IA/347/Che/2021 was contested by the Liquidator stating that the Applicant held 80.71% of the voting power in the CoC which failed to consider the sole resolution plan which did not make the mandatory requirements of an eligible resolution plan. The Applicant also voted in favour of the liquidation. It is stated that there are two Secured Creditors viz., UBI/PNB and SIDBI/ISARC who had security interest over some of the assets listed in the table. As per the claim form dated 02.01.2019, submitted by SIDBI/ISARC in respect of Item Nos. 1, 2 and 3, UBI/PNB ceded second charge by letter dated 28.09.2012 and confirmed creation of second charge by letter dated 16.10.2022. It is stated that Item No. 2 and 3 are in the name of erstwhile director and are not the part of the liquidation estate. The Items listed in row-8 covering movable assets and all plants and machinery in industrial sheds E-12, E14, and Byaramangala also form part of the liquidation estate and are subject to second/subordinate charge in favour of SIDBI/ISARC. The

Applicant is the sole secured creditor only in respect of Items 5, 6 and 7 in the table.

21. The Liquidator denied that the Applicant invoked its right to stand outside the liquidation process under Section 52 by issuing the sale notice dated 07.11.2019. A plain reading the notice will reveal that its decision was confined to Item No. 2 and 3 in the table which were in the personal names of the erstwhile directors and not the part of the liquidation estate. It is the own admission of the Applicant that the auction sale of Item 2 and 3 on 26.11.2019 failed. The Applicant claiming to be in possession of the liquidation assets by virtue of the possession notices dated 21.10.2016, 18.11.2016 and 19.03.2017 failed to handover the plant and machinery to the Liquidator though the secured creditor in possession of the said assets is duty bound to hand over the assets forming part of the liquidation estate to the Liquidator. In fact the Liquidator was not in actual possession of E-14 and E-12 and he vacated the first floor of part of E-14 on the direction of the Tribunal vide order dated 26.11.2019. It is alleged that the option to invoke to Section 52 of IBC was delayed by the Applicant beyond the mandatory period and is not maintainable. In fact EPFO proposed to sell the property E-14 and E-12 by

proclamation to recover the dues which he objected to enable the LP to demand removal of plant and machinery.

22. It is alleged that the Applicant exercised the option under Section 52 IBC on 07.11.2019 itself. The Regulation 21A was inserted by the notification dated 20.05.2019 with effect from 25.01.2019. Form-D was submitted by the Applicant on 04.01.2019 so reference to amendment to Form-D is irrelevant. It failed to intimate its decision to exercise option under Section 52 within reasonable time. The sale notice issued by PNB is nearly 4 months after 25.07.2019. The Liquidator periodically informed the Applicant by mails but he did not receive any response for 18 months until of these applications. It is stated that change in timeline falls within the discretionary power of the Liquidator. The sale notice was issued on 19.06.2020. Corrigendum was issued and there was a realization of Rs.1,20,34,000/- as against the Reserve price of Rs.87,50,000/- viz., 37% higher. Schedule I (12) permits a maximum of 90 days for the successful bidder to pay the balance amount of sale consideration and thus the relaxation given to the successful bidder was within the prescribed norms. It is alleged that it is not open to the Applicant to claim that the auction took place behind its back. In terms of regulation 37(1),

the secured creditor seeking to exercise the option under Section 52 is required to intimate the Liquidator the price at which it is proposed to realize which it failed. It is stated that fair value was arrived at in terms of Regulation 35(1).

23. Having considered the submissions made on behalf of the Applicant / Punjab National Bank in Rst.Appl.No.10/2023 in IA/347/2021, and considering the facts of the case and that the Applicant is willing to withdraw the application IA/347/2021, we **allow** the application **Rst.Appl.No.10/2023** in IA/347/2021 restore IA/347/2021 to its original number and permit withdrawal of IA/347/2021. Accordingly, **IA/347/2021** stands **dismissed as withdrawn**.

24. As regards Rst.Appl.No.8/2023 in IA/1173/2020, IA/1173/2020 was filed by the Successful Bidder not the Applicant / Punjab National Bank. Admittedly, Punjab National Bank was party to the application as Respondent No. 2 but the said application was disposed of with the observations that the relief sought for in the application does not arise for consideration because the liquidator has not issued the sale certificate yet on account of pendency of applications i.e. IA/217/2020, IA/227/2020, IA/231/2020 and IA/347/2021 filed by Punjab National Bank. It was observed that since the bank has not

prosecuted the above applications for quite some time and that the above applications have been dismissed vide order dated 13.02.2023, the Liquidator was directed to proceed in the matter in accordance with law, meaning thereby that the Liquidator could proceed after the e-auction as per law. The Applicant had moved an application IA/494/2023 in IA/1173/2020 for restraining the Liquidator from proceeding further under the alleged sale dated 03.07.2020 held by the Liquidator in favour of the Successful Bidder by issuing the sale certificate or delivering possession of the property etc. Since it has been submitted on behalf of the Applicant / Punjab National bank that Punjab National Bank has no objection as to the sale made by the Liquidator in favour of Respondent No. 2 / Successful Bidder and as prayed for withdrawal of IA/494/2023, the restoration as prayed for does not carry any significance. Hence **Rst.Appl.No.8/2023** stands **dismissed** with no orders as to cost and **IA/494/2023** stands **dismissed as withdrawn**.

25. A careful perusal of the reply/counter filed by the Liquidator would show that the liquidation in the present case was ordered on 05.12.2018. The Applicant was the member of the CoC when the sole resolution plan submitted by one Resolution Applicant was rejected as it did not meet the

mandatory requirements. It is true that the Applicant was the secured creditor in respect of the some of the immovable properties of the company in liquidation and the secured creditor in liquidation proceedings may realize the security interest instead relinquishing but for exercising this option, it was mandatory for it to inform the Liquidator of such security interest by identifying the assets in accordance with law and apply the proceeds to recover the debts due to it. If it does so, the amount of insolvency resolution process cost payable by the secured creditor shall be deducted from the realized proceeds. Where there is a surplus realized from the enforcement of a security interest, the secured creditor has to account for the same to the Liquidator. Similarly the proceeds are not sufficient to repay the debts owed to the secured creditor, he may claim in accordance with the priority of payments under Section 53 for such unpaid portion.

26. Regulation 21A provides that a secured creditor shall inform the Liquidator of its decision to relinquish its security interest in Form-D of schedule-II. If it does not intimate its decision within 30 days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation assets.

27. In the present case, the Applicant exercised its option under Section 52 of IBC on 07.11.2019 i.e., after about one year i.e., beyond the prescribed period of 30 days from the liquidation commencement date. The Form-D was submitted by the Applicant on 04.01.2019. It is pertinent to mention that the Applicant had claimed possession of the above properties by virtue of possession notices dated 21.10.2016, 18.11.2016 and 19.03.2017 before the initiation of CIRP against the Corporate Debtor but it failed to realize the dues under the SARFAESI proceedings since no bidder came to be the property. We are in agreement with the contention of the Liquidator that the Regulation 21A came into effect from 25.01.2019. The Form-D was submitted by the Applicant on 04.01.2019 so reference to the amendment to Form-D made by the Applicant is irrelevant. Further, the Applicant failed to intimate its decision to exercise option under Section 52 of IBC within the reasonable time. In this case, numerous correspondences were made by the Liquidator but the Applicant did not respond. We do find any material to draw an inference that the sale conducted by the Liquidator in favour of the 2<sup>nd</sup> Respondent was in a fraudulent manner and in collusion. The Liquidator has quoted the relevant provisions by virtue of which the payment can be accepted from the successful bidder within the period of 90 days from the date of auction. We

find that the Liquidator had considered the fair value in terms of Regulation 35(1) and complied with the Regulation 33(1). Further the sale consideration realized is 37% higher than the reserve price. We are of the view that due procedure was followed by the Respondent / Liquidator.

28. Considering the facts in totality, we permit the Applicant to withdraw the application pertaining to the challenge made as against the sale on 03.07.2020 in favour of the auction purchaser for the properties situated at Chhattisgarh i.e the applications IA/347(Che)/2021, IA/494(Che)/2023 in IA/1173(Che)/2020 filed by the Applicant unconditionally. Since the application IA/1173/2020 filed by the Successful Bidder has already been disposed of vide order dated 13.02.2023 with the directions to the Liquidator to proceed in the matter in accordance with the law, we hold that the e-auction dated 03.07.2020 conducted by the 1<sup>st</sup> Respondent by the Liquidator was in a fair and proper manner and thus direct the Applicant / Punjab National Bank to exclude these properties from the application Nos. 227 and 231 of 2020 made under Section 52 of IBC. We also direct the Liquidator to issue the sale certificates in respect of the above properties in favour of the Successful Auction Purchaser / Bidder, execute the necessary transfer



documents and handover the original title documents including the possession of the property to the Successful Auction Purchaser.

29. Since in the present case as submitted by the Successful Auction Purchaser, no suits / applications except the above are pending against the Applicant, we direct the Successful Auction Purchaser to withdraw all suits / applications pertaining to the auction sale of the above properties against the Bank.

30. The Liquidator is directed to take action as to the distribution as per Section 53 of IBC, 2016 after deducting the liquidation expenses to be paid by the Applicant. The Liquidator is also directed to maintain all the invoices / bills pertaining to the liquidation for its scrutiny & get the accounts audited from the Chartered Accountant having UDIN number.

31. The Liquidator is also directed to convene the SCC meeting immediately as requested to discuss the other agendas and complete the liquidation process within the extended timeline.

32. In terms of the above, the applications Rst.Appl.No.8/2023 in IA/1173/2020, Rst.Appl.No.10/2023 in IA/347/2021, IA/347/2021 and IA/494/2023 are **disposed of**.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)