

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
16-04-2024 AT 10:30 AM**

**CP(IB) No. 11/10/HDB/2017
AND
IA(IBC) 1810 & 1811/2023, IA(IBC) 316/2024 & IA (IBC) (Dissolution) 02/2024 in
CP(IB) No. 11/10/HDB/2017
u/s. 10 of IBC, 2016**

IN THE MATTER OF:

Kamineni Steels & Power India Pvt Ltd

...Petitioner

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 1810/2023

Orders pronounced. In the result, we find no merit in this application. **Hence, this application is dismissed. No Costs.**

IA(IBC) 1811/2023

Orders pronounced. In the result, we find no merit in this application. **Hence, this application is dismissed. No Costs.**

IA(IBC) 316/2024

Orders pronounced. In the result, we find no merit in this application. **Hence, this application is dismissed. No Costs.**

IA (IBC) (Dissolution) 02/2024

Learned Counsel Smt Mono Ranjani, for applicant present physically.

Mr Vatsa Kumar, Resolution Professional present physically.

Matter passed over.

Matter called again. Heard. **For orders on 10.05.2024.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**BEFORE THE HONBLE NATIONAL COMPANY LAW
TRIBUNAL. BENCH-1: AT HYDERABAD**

I.A No. 1810 of 2023

IN C.P(IB) No. 11/10/HDB/2017

**IN THE MATTER OF M/S, KAMINENI STEEL AND POWER (INDIA)
LIMITED**

BETWEEN:

Kamineni Educational Society,
Reg. Office at 102, Kanchanjunga Complex,
King Koti, Hyderabad, Telangana-500001
Represented by its Authorized Representative.

.....Applicant

AND

Mr. Racharla Ramakrishna Gupta,
Liquidator of M/s, Kamineni Steel & Power (India) Private Limited,
s/o. R. Nagabhushanam, aged 45 years,
office at: No. 7, Kanchanjunga Complex, King Koti, Hyderabad.

.....Respondent

Date of order: 16.04.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr.P.Vikram, Sr.Counsel assisted by

Ms.Praneetha, Counsel

For Respondent: Mr. Raja Shekar Rao Salavji, Counsel

Liquidator: Mr.K.Vasta Kumar

**PRE: BENCH
ORDER**

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy code, 2016 praying to Restrain the liquidator (i.e., the Respondent herein) from including the Property (as defined in Paragraph No. 1) in the liquidation estate of the Corporate Debtor and any other reliefs which this Hon'ble Tribunal deems fit and proper in the interest of justice.
2. It is averred that applicant is the absolute owner and possessor of land admeasuring 150 acres at Yellareddygudem Village, Narketpally Mandal, Nalgonda District, Telangana and the present dispute pertains to a portion of the aforementioned land property which admeasures Ac. 1-00 gts in Sy. No. 119, 120 and Ac. 5.16 gts in Sy. No. 795.

3. It is averred that the Corporate Debtor claims to be the owner and possessor of land admeasuring acres 53.00 situated in Sy. No. 115, 117 to 121 and 796 of Yellareddygudem Village, Narketpally Mandal, Nalgonda District, Telangana. Further averred that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order 10.02.2017 and subsequently an order for initiation of liquidation was passed on 26.10.2018 by this Hon'ble Tribunal.
4. It is averred that the Applicant herein purchased certain property admeasuring Ac. 1-00 gts. (located between the land owned by the Corporate Debtor and Nalgonda Highway) in Sy. No. 119, 120 vide sale deed dated 29.07.2008 (Document No. 8282 of 2008) from Smt. Pushpalatha and Acs. 5.16 gts in Sy. 795 was purchased vide sale deed dated 13.02.2007 (Document No. 2413 of 2007) and the Applicant herein has been in exclusive possession and enjoyment of both the properties till date.
5. It is averred that over the course of time, the Applicant constructed a compound wall in order to demarcate the Applicant's Property (at Sy. 119,120) and obtained permission from the concerned Gram

Panchayat for construction of a residential building vide File No. GP/12/2018 dated 15.05.2018.

6. It is averred that Respondent had sought for a survey to be conducted by the revenue authorities for demarcating the boundaries of the land belonging to the Applicant and the Corporate Debtor. In pursuance of the said application, on 28.02.2023, the mandal surveyor conducted a survey of the lands and submitted his report along with a sketch plan clearly demarcating the lands belonging to the Applicant and the Corporate Debtor which shows that the Property (at Sy. No. 119 and 120) is located between the Nalgonda Highway and property owned by the Corporate.
7. It is averred that even after receiving the report averred by the mandal surveyor, the Respondent herein tried attempted to interfere with the Property belonging to the Applicant by attempting to demolish the compound wall constructed by the Applicant herein.
8. It is averred that aggrieved by the actions of the Respondent continuously interfering in the Property, the applicant filed an injunction suit with respect to Sy. No. 119 and 120 through O.S. No. 35 of 2023 before Hon'ble Senior Civil Judge, Nalgonda against the

Respondent from interfering with the Property (at Sy. No. 119 and 120) and the suit is pending adjudication.

9. It is averred that during pendency of the adjudication of the aforementioned civil proceedings, the Respondent, on 14.09.2023, attempted to demolish the compound wall constructed by the Applicant (on Sy. 119 and 120). It is averred that due to the aforementioned act of the Respondent, the Applicant was constrained to file a complaint at Narketpally police station for attempting to trespass onto the Property (at Sy. 119 and 120) and attempting to dispossess the Applicant and illegally occupy with the aid of henchmen and goons.

10. It is averred that based on the misrepresentations made by the Respondent, the Divisional Panchayat Officer, Nalgonda issued a notice bearing no. 130/2023/B dated 21.09.2023 and Divisional Panchayat Officer conducted an enquiry/ inspection on 22.09.2023 and consequently Divisional Panchayat Officer in the said letter observed that the civil and corporate disputes between the Liquidator and the Applicant herein shall be settled before the competent authority/court of law.

11. It is averred that the Respondents herein had filed three applications before this Hon'ble this Hon'ble Tribunal seeking the following reliefs:

(a) Interlocutory Application No. 1476 of 2023: Seeking an extension of the liquidation period of the Corporate Debtor

(b) Interlocutory Application No. 1026 of 2023: Seeking a prayer to modify the order dated 09.06 2023 in I.A. No. 859 of 2023 wherein this Hon'ble Tribunal passed an order directing the liquidator (i.e., the Respondent herein) to issue a sale notice within a period of 15 days and subsequently, complete the process of the liquidation within a period of three (3) months.

(c) Interlocutory Application No. 991 of 2023: Seeking permission from this Hon'ble Tribunal to file suits on behalf of the Corporate Debtor before the competent court of law.

12. It is averred that the Applicant reliably came to know that the Respondent herein has contended before this Hon'ble Tribunal that there is encroachment in some land parcels in Sy. Nos. 119 and 120 allegedly belonging to the Corporate Debtor where a concrete wall has been built which has blocked access to the property of the

Corporate Debtor and owing to the same, the property/ land belonging to the Corporate Debtor is land- locked.

13.It is averred that the aforementioned land parcel in Sy. Nos. 119 is owned by the Applicant herein along with a land parcel in Sy. No. 120. The said land parcels are located between the land owned by the Corporate Debtor and the Nalgonda Highway in Sy. No. 119, 120 have been purchased vide sale deed dated 29.07.2008 (Document No. 8282 of 2008) from Smt. Pushpalatha and land admeasuring Ac. 5.16 gts. in Sy. 795, having purchased vide sale deed dated 13.02.2007 (Document No. 2413 of 2007).

14.It is averred that despite being aware of the above, the Respondent failed to bring the same to the attention of this Hon'ble Tribunal and has misrepresented before this Hon'ble Tribunal by contending that the land parcel in Sy. Nos. 119 belongs to the Corporate Debtor and there are encroachments (by this Applicant) on the said land parcel, due to which the remaining property/ land owned by the Corporate Debtor is rendered land-locked and as a result of misrepresentations of the Respondent and a report filed by the Respondent, this Hon'ble

Tribunal passed an order dated 25.09.2023 through which it observed and directed as follows:

"It is stated by the Ld. Liquidator that post 11.09.2023, the Gram Panchayat authorities where the Liquidation Estate is situated have been apprised of the rights of the Lenders who are the Mortgagees of the land where an authorized construction has come up in recent times and sought their assistance for removal of the same. Ld. Liquidator further submits that authorities have issued notices directing the 3rd party who is making unauthorized constructions to stop the constructions and therefore the constructions are now being stopped and action to demolish the construction is in contemplation by the authorities concerned. Therefore, in the light of the submission made by the Ld. RP we adjourn the matter by 10 days for filing report by the liquidator so as to report further developments

As can be seen from the sale deed that for the land in Sy. No. 795 a part of which is the subject property, the way is from west. Therefore, irrespective of the controversy if any regarding the Ingress and agrees to the property the liquidator is directed to ensure that appropriate steps are taken immediately to take physical possession of the property if not taken so far and protect the same. If need be, with the help of the security guards etc"

15. It is averred that based on the above order dt 25.09.2023 Respondent was directed to take physical possession of the Property (at Sy. No. 795) owned by the Applicant (a fact that has not been disputed by the Respondent herein) directly and adversely impacts the interests of the Applicant herein as Ac. 5.16 gts. in Sy. 795 is owned by the Applicant and the Corporate Debtor cannot make any claim of title, ownership or possession over this land.

16. It is averred that subsequently, this Hon'ble Tribunal on 16.10.2023 directed the liquidator to conduct fresh valuation of the assets of the Corporate Debtor and subsequently take necessary steps for conducting an auction. With the said observations, this Hon'ble Tribunal was dismissed I.A. No. 1476 of 2023 by extending the liquidation period for further four (4) weeks and I.A. No. 1026 of

2023. Further, this Hon'ble Tribunal directed the liquidator to place on record the documents pertaining to the suit filed by the Applicant herein and take necessary steps to contest the suit and adjourned the matter to 07.12. 2023.

17.It is averred that in view of the misrepresentations during the proceedings before this Hon'ble Tribunal, the Applicant is constrained to file the present application to protect its interest and Property and further shield itself from irreparable loss and damages with liberty to file additional documents in support of his claim.

Brief averments made by Respondent in his counter are as follows:

18. It is averred by the Respondent that the Applicant, who is masquerading as a third party and projecting that it has some genuine issue, is, in fact, a society promoted by the promoter of the corporate debtor. That apart, the access to the land of the corporate debtor, which the applicant is trying to cut off, is sold by the promoters of the applicant itself.

19.It is averred that in the present application, the erstwhile liquidator in person is made as a party and not the corporate debtor, which is under liquidation and the resent application has to go for not making the

necessary parties as parties. Further averred that the corporate debtor has substantial other properties other than the non-core land of 52 Acres 9 Guntas to which the applicant is trying to cut off access by creating litigation.

20. It is averred that during the liquidation process, the erstwhile liquidator visited the properties held by the corporate debtor and found that the applicant did some construction in the non-core land of the corporate debtor and to cross-check the boundaries, erstwhile liquidator had requested the Stakeholder Banks for (i) Memorandum of Deposit of Title Deeds and all documents listed therein (ii) Copy of maps clearly delineating the boundaries of all sale deeds and more particularly for Sale Deed Nos 6430,6433,6435,6436,6437, so that the specific issue of boundaries can be examined as prevailing at the time of creation of security.

21. It is averred that when the documents being relied by the applicant were verified, it was found that 2 sale deeds had been executed on 13.02.2007 and 29.07.2008, nine (9) sale deeds in favour of CD have been executed on 03.07.2010 and out of the nine(9) sale deeds, five(5) pertain to the Non-core land measuring 52.23 acres. Out of the 5 sale

deeds, four (4) sale deeds (ie Except Doc. No. 6433) mention the boundary on the West as Narketpally to Nalgonda Road.

The following table will give a broad picture of the details of the transaction of the said non-core land of the corporate debtor.

Doc No	Date	Executed by	Area (Ac. Gt)
6430	03.07.2010	K.Sridhar	7.18
6433	03.07.2010	K.Gayatri Devi	29.38
6435	03.07.2010	B.Ushasree	7.07
6436	03.07.2010	K.Suryanarayana	2.37
6437	03.07.2010	K.Suryanarayana	4.29

22.It is averred that the liquidator had taken out copies of Document Nos 2413 and 8282 from SRO records which is being relied on by applicant in establishing their right of the land abutting the Narketpally- Nalgonda Road and the said two pre-existing documents of 13.02.2007 and 29.07.2008 were not revealed by the common promoters of the applicant and the corporate debtor while offering the land of extant 52.23 acres as security to the financial creditors.

23.It is averred that the erstwhile liquidator, to cross-check the boundaries, had applied for a survey of the land by a Mandal Surveyor. A survey was conducted and the Mandal Surveyor furnished a survey report dated 20.04.2023. The report does not indicate the survey numbers of lands abutting main road or the lands as claimed by the applicant. The boundary of the corporate debtor land in Mandal Surveyor report is not in conformity to the boundary as mentioned in the 5 sale deeds in favour of the corporate debtor. The lands of the applicant are not demarcated and are not shown along with related survey nos. in the Mandal Surveyor report. The survey is wrong, incomplete and cannot be relied upon. The incumbent liquidator of the corporate debtor is seeking a re-survey by the District Surveyor Office.

24.It is averred that based on a survey report, which is contrary to the title deeds executed by the promoters of the applicant in favour of the corporate debtor, the applicant is trying to claim title. The applicants, unless they get a declaration of title and possession judgment from a competent court, would not be entitled to any kind of relief.

25.It is averred that the applicant claims that he is the owner and possessor of 150 acres of land but doesn't explain how only small extant (narrow strip) of land parcels are not contingent on the remaining portion of land. The said sale of land by the promoters to their related parties, if taken as true, would be contrary to all principles of the sale of land. The first principle is that no buyer buying a large extent of land would accept the same without access to the same. The second principle is that no seller would sell a strip of land to cut off access to the remaining extent of the land holding. It's no surprise that the buyers and sellers are all related parties. The applicants and the corporate debtor have common promoters and this application is designed to thwart the liquidation moving forward so that the applicant can somehow get back the corporate debtor's land.

26.It is averred that the Corporate Debtor is the owner of the land admeasuring Ac. 53.00 of land in Sy No. 115, 117 to 121 and 796 of Yellareddygudem, Narketpally Mandal, Nalgonda District, Telangana and Applicant is ignoring the fact that the promoters of the Applicant were managing the affairs Corporate Debtor until it went into CIRP.

27.It is averred that the Respondent is not accepting or denying the sale deeds but only disputing the boundaries given in the schedule. The contentions of the Applicant are made only to create litigation where none exists to stall the liquidation process. The title deeds of the Applicant clearly demonstrate that on the west side of the Corporate Debtor boundary lies Nalgonda Highway.

28.It is averred that the Applicant states that on 15.05.2018 that they had taken Gram Panchayat's permission to build compound wall, but the promoters of the Applicant being the Promoters of the Corporate Debtor are person who applied for CIRP and the same was admitted on 10-02-2017. That being the case, the Applicant to subvert the entire process initiated by the common promoters had taken the gram panchayat permission behind the back of the then Resolution Professional and this Hon'ble Adjudicating Authority. The compound wall constructed by the Applicant is on the west side of the land owned by the Corporate Debtor. In order to cancel the permission, the erstwhile liquidator had made submissions before the gram panchayat about the illegal construction of the compound wall on the property

of the corporate debtor. All this was brought to the notice of this Hon'ble Adjudicating Authority by filing a detailed report.

29.It is averred that the survey report given by the Mandal Surveyor failed to take into consideration the boundaries mentioned in the Sales Deeds and the existence of Narketpally Nalgonda Road on west side boundary of the land owned by Corporate Debtor and the survey was done in a very unscientific way, and apparently in collusion with the promoters of the Applicant and the Respondent is now seeking for re-survey of the lands by the District Surveyor.

30.It is averred that the land documents were brought to the notice that Shri K Sridhar, K Gayathri Devi, B Ushasree and K Suryanarayana (the common promoters of the Applicant and Corporate Debtor) who executed sale deed Nos. 6430, 6433, 6435, 6436, 6437 in favour of the Corporate Debtor, in which all documents except sale deed no 6433 clearly shows Narketpally, Nalgonda Road as the west side boundary. The erstwhile liquidator, after due process, only tried to enforce its right over the property. The same is also in line with the directions of this Hon'ble Adjudicating Authority in IA Nos. 1026/2023.

31.It is averred that erstwhile liquidator, in response had filed rejection of plaint, since the suits are contrary to Sec. 33(5) of the Code. That all the averments are facts on record and having no bearing on the rights of the Corporate Debtor and have been filed by the applicant only to delay the liquidation process to gain undue advantage and the applicant if bonafide, should have approached this Hon'ble Adjudicating Authority at the very first instance but has come now only to stall the liquidator from carrying the directions of this Hon'ble Adjudicating Authority.

32.The Respondent have filed synopsis reiterating the same facts as averred in the counter filed.

33.In the light of the context the point that emerges for our *consideration* is;

Whether the property described in paragraph-1 of the Application does not form part of the liquidation estate of the corporate debtor? If so, can the same be included in the liquidation estate of the corporate debtor?

34.We have heard Mr P.Vikram learned Sr.Counsel for the applicant and Learned Counsel Shri Rajashekar Rao Salvaji for Liquidator Shri K.Vasta Kumar. Perused the record and documents filed before this Tribunal.

Point

Whether the property described in paragraph-1 of the Application does not form part of the liquidation estate of the corporate debtor? If so, can the same be included in the liquidation estate of the corporate debtor?

35. According to the learned Sr. counsel for the Applicant, the property situate in Sy. No.119,120 admeasuring Ac.1-00 gts has been purchased by Applicant vide sale deed dated 29.07.2008 from Smt. Pushpalatha and similarly another extent of Acs.5.16 gts situated in Sy.No.795 also has been purchased by the applicant vide sale deed dated 13.02.2007 and the Applicant is in possession of the said properties.

36. Learned Sr. Counsel further states that aforementioned land parcel in Sy. Nos. 119 owned by the Applicant herein along with a land parcel in Sy. No. 120 is located between the land purchased vide sale deed dated 29.07.2008 (Document No. 8282 of 2008) by the Corporate Debtor situated in Sy. No. 119, 120 and the Nalgonda Highway, on its West. According to the Ld. Sr. Counsel, the Applicant constructed compound wall in order to demarcate the Applicants property and also obtained permission from the concerned Gram Panchayat, for construction of residential building therein.

37. While things stood thus, respondent through its erstwhile liquidator sought for survey of the subject properties by revenue authorities and thus tried to interfere with the property belonging to Applicant, and also by demolishing the compound wall. Hence the Applicant filed an injunction Suit in respect its property situated in Sy. No.119 and 120 vide, O.S.No.35 of 2023 before the Court of Hon'ble Senior Civil Judge, Nalgonda, against the respondent not to interfere with the applicant's property, supra, and the same is pending adjudication.

38. Ld. Sr. Counsel further states that as matter stood thus, based on the misrepresentations made by the respondent, the Divisional Panchayat Officer, Nalgonda issued a notice bearing no.130/2023/B dated 21.09.2023 stating that an enquiry will be conducted by the Divisional Panchayat Officer on 22.09.2023 at 10.AM, and after enquiry the Divisional Panchayat Officer stated that the civil and corporate disputes between liquidator and the Applicant shall be settled before appropriate forum. Hence, the present application is filed to protect the interest and property of the applicant.

39. The Ld. Liquidator, while refuting the contentions of the Applicant, at the outset submitted that the Applicants are none other than

promoters of the corporate debtor who are trying to delay the liquidation process to gain un due advantage. The liquidator further contended that the erstwhile liquidator visited the properties held by the corporate debtor and found that the applicant did some construction in the non-core land of the corporate debtor hence in order to cross-check the boundaries, the erstwhile liquidator had requested the stakeholder Banks for the copies of (i) Memorandum of Deposit of Title Deeds and all documents listed therein (ii) Copy of maps clearly delineating the boundaries of all sale deeds and more particularly for Sale Deed Nos 6430,6433,6435,6436,6437 and accordingly obtained the same. Ld. Liquidator further states that, a bare perusal of the said sale deeds except the sale deed bearing registration no 6433, clearly shows Narketpally, Nalgonda Road as the western boundary. It is further submitted that the erstwhile liquidator had applied for the survey of the subject land by Mandal Surveyor to check the boundaries, but the boundary of the Corporate debtor land as mentioned in the Mandal Surveyor Report is not in conformity to the boundaries as mentioned in the five registered sale

deeds, supra, executed in favour of corporate debtor. Therefore, the survey report is unacceptable.

40. According to the Liquidator, the Applicant is trying to encroach into the corporate debtor's property, which the erst while liquidator quelled, had opened another front by filing an injunction suit with false allegations.

41. Having heard learned counsel for both sides, and on perusal of the record, at the outset it is to be stated that the specific case of the applicant being that land which is now sought to be excluded from the liquidation estate of the corporate debtor is sandwiched between land of the corporate debtor and the Nalgonda Highway which admittedly, is the western boundary of the property purchased by the corporate debtor under the registered sale deeds bearing registered document numbers 6430,6433,6435,6436,6437 of the corporate debtor dated 29.07.2008 and 13.02.2007.

42. The genuineness of duly registered sale deeds, supra, remain unquestioned and in fact un questionable before this Tribunal. So much so, when the duly registered sale deeds of the corporate debtor clearly disclose the land purchased under the said sale deed with

specific measurements and boundaries, no oral evidence/contention contradicting the boundaries in the said registered sale deeds can be permitted under law. It is trite law that the boundaries shall prevail over extent. Therefore, the so called plea that in between land of the corporate debtor and its western boundary, the so called subject land of the Applicant is situate shall fail both under law and also on facts. That apart, for the first-time applicants herein tried to make some constructions in the subject property post initiation of liquidation proceedings against the corporate debtor, and no record worth has been filed to show that the applicant has been in possession of the subject land at any time prior or post initiation of CIRP against the corporate debtor. The liquidator also placed record to show that on the compliant by the present liquidator, the Gram Panchayat Authorities have issued show notice bearing no. 130/2023/B dated 21.09.2023 for demolition of the structure raised by the applicant. Moreover, the Applicant approached the civil court and it appears that so far no interim injunction has been granted in favor of the applicant.

43. That apart it is pertinent to note that the relief as sought in this Application is against an individual and not against the liquidator, as

can be seen from the description of the parties, which is impermissible under law. Hence on this ground alone this Application is liable to be dismissed.

44. Therefore, in the light of our discussions as above we are of the firm view that the petition is devoid of any merits and substance. The same is accordingly dismissed and disposed of.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

C.Bhargavi/Pavani

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
BENCH-1: AT HYDERABAD**

I.A.No. 1811 of 2023
In C.P (IB) No. 11/10/HDB/2017

IN THE MATTER OF M/S. KAMINENI STEEL AND POWER (INDIA) LIMITED

BETWEEN:

K. Suryanarayana
s/o. Sri. K. Subbaiah, aged 87 years
Occ: Business, r/o. H. No. 5-9-261/2
King Koti, Hyderabad

...Applicant

AND

Mr. Racharla Ramakrishna Gupta,
Liquidator of M/s. Kamineni Steel & Power (India) Private Limited,
s/o. R. Nagabhushanam, aged 45 years,
office at: No. 7, Kanchanjung Complex, King Koti, Hyderabad.

.... Respondent

Date of order: 16.04.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr.P.Vikram, Sr Counsel assisted by Ms.Praneetha, Counsel

For Respondent: Mr.Rajashekar Rao Salvaji, Counsel

for Mr.K.Vasta Kumar, liquidator

**PRE: BENCH
ORDER**

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy code, 2016 praying to Restrain the liquidator (i.e., the Respondent herein) from including the Property (as defined in Paragraph No. 1) in the liquidation estate of the Corporate Debtor and any other reliefs which this Hon'ble Tribunal deems fit and proper in this case.
2. It is averred that applicant is the absolute owner and possessor of land admeasuring Ac.1 gts at sy.no.118 of Yellareddy gudem Village, Narketpally Mandal, Nalgonda District, Telangana.
3. It is averred that the Corporate Debtor claims to be the owner and possessor of land admeasuring acres 53.00 situated in Sy. No. 115, 117 to 121 and 796 of Yellareddygudem Village, Narketpally Mandal, Nalgonda District, Telangana. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order 10.02.2017 and subsequently an order for initiation of liquidation was passed on 26.10.2018 by this Hon'ble Tribunal.
4. It is averred that late Smt. Kamineni Indira was the absolute owner and possessor of the Property having purchased the same from Sri Valiki Raju in pursuance of Registered Sale Deed dated 18.01.2010 bearing Document

No. 404 of 2010 and the same is mutated in the concerned Government Records in the name of Smt Kamineni Indira.

5. It is averred that the Applicant is the husband of Smt. Kamineni Indira who through her will dated 06.06.2022 bequeathed her properties in favour of the Applicant and her daughter. As per the said will, the Property herein also stood bequeathed to the Applicant and got the Property mutated in his name in the concerned Government records.
6. It is averred that the Applicant constructed a compound wall in order to demarcate the Property and to develop the said Property, obtained permission from the concerned Gram Panchayat for construction of a residential building vide File No. GP/13/2018 dated 15.05.2018.
7. It is averred that the Respondent had applied for a survey to be conducted by the revenue authorities for demarcating the boundaries of the land belonging to the Applicant and the Corporate Debtor and the mandal surveyor conducted a survey of the lands on 28.01.2023 and submitted his report along with a sketch plan demarcating the lands belonging to the Applicant and the Corporate Debtor which clearly shows that the Property is located between the Nalgonda Highway and property owned by the Corporate Debtor belongs to Applicant and the same was interfered by respondent and they tried to demolish the compound wall on 14.09.2023 constructed by the Applicant. Further averred that a compliant was lodged

by applicant in Narketpally police station for the said acts committed by Respondent.

8. It is averred that aggrieved by the actions of the Respondent of continuously interfering in the Property, the Applicant herein filed an injunction suit with respect to the Property through O.S. No. 36 of 2023 before Hon'ble Senior Civil Judge, Nalgonda against the Respondent from interfering with the Property and the suit is pending adjudication.
9. It is averred that on the misrepresentations made by the Respondent, the Divisional Panchayat Officer, Nalgonda issued a notice bearing No. 130/2023/B dated 21.09.2023 stating that an enquiry will be conducted by the Divisional Panchayat Officer on 22.09.2023 at 10:00 AM.
10. It is averred that based on the misrepresentations made by the Respondent, the Divisional Panchayat Officer, Nalgonda issued a notice bearing no. 130/2023/B dated 21.09.2023 and Divisional Panchayat Officer conducted an enquiry/ inspection on 22.09.2023 and consequently Divisional Panchayat Officer in the said letter observed that the civil and corporate disputes between the Liquidator and the Applicant herein shall be settled before the competent authority/court of law.
11. It is averred that on 21.09.2023, another letter was issued to the Applicant by the Gram Panchayat directing Applicant to renew requisite permissions and in reply the Respondent herein had averred to the Gram Panchayat that

the Applicant has initiated construction on land belonging to the Corporate Debtor after expiry of the permission. Further, on 22.09.2023, a reply letter was issued by the Applicant to the Gram Panchayat, the letter dated 21.09.2023 based on misrepresentations made by the Respondent and without providing an opportunity of hearing to the Applicant. The Gram Panchayat was informed that Applicant shall take necessary steps required under law to renew permission for construction of the Property. at the earliest and requested the authorities not take any coercive steps in furtherance to the notice dated 21.09.2023.

12.It is averred that Applicant has initiated necessary steps to renew the permission and subsequent to the enquiry/inspection of the Property on 22.09.2023 at 10:00 AM, the Divisional Panchayat Officer, Nalgonda averred a letter bearing ref. no 130/2023/B dated 22.09.2023 to the District Panchayat Officer. It is submitted that in the said letter, the Divisional Panchayat Officer observed that the civil and corporate disputes between the Applicant and the Respondent herein shall be settled before the competent authority/ court of law.

13.It is averred that the Respondent herein has filed an application before this Hon'ble Tribunal seeking the following relief:

"The Hon'ble Adjudicating Authority may be pleased to direct the of Police. Nalgonda and Station House Officer, Narketpally Police Station, Narketpally, Nalgonda District to assist the Liquidator and Stakeholders Consultation Committee on dismantling the

illegal compound wall including the structures constructed in Survey Nos. 118 & 119 in Yellareddyguda, Narketpally, Nalgonda District by Respondent No. 1 along with Respondent No. 2 which is subjecting to ingress of the Applicant's company"

14.It is averred that the Applicant herein is arrayed as Respondent No. 2 in the application and it has been misrepresented that the land under Sy. 118 has been encroached by the Applicant and the compound wall that was constructed is obstructing the access route from the Corporate Debtor's land to the public road is pending adjudication before this Hon'ble Tribunal.

15.It is reiterated that the Applicant herein has had exclusive possession and enjoyment of the Property till date and the compound wall constructed at the Property does not amount to any encroachment to the land of the Corporate Debtor has the Applicant herein has title to and right and interest in the Property and is entitled to erect constructions on the said Property, as he deems fit.

The averments in the Counter filed by the Respondent are as follows:

16.It is averred that the Applicant, is in fact, is the promoter of the corporate debtor. That apart, the access to the non-core land of 53 Acres of the corporate debtor, which the applicant is trying to cut off, is sold by the applicant itself.

17.It is averred that during the liquidation process, the erstwhile liquidator visited the properties held by the corporate debtor and found that the applicant did some construction in the non-core land of the corporate debtor. The liquidator, to cross-check the boundaries, had requested the Stakeholder Banks for (i) Memorandum of Deposit of Title Deeds and all documents listed therein (ii) Copy of maps clearly delineating the boundaries of all sale deeds and more particularly for Sale Deed Nos 6430,6433,6435,6436,6437, so that the specific issue of boundaries can be examined as prevailing at the time of creation of security.

18.It is averred that when the documents being relied by the applicant were verified, it was found that 1(one) sale deed had been executed on 18.01.2010. That nine(9) sale deeds in favour of CD have been executed on 03.07.2010. Of the nine (9) sale deeds, five(5) pertain to the Non-core land measuring 52.23 acres. Out of the 5 sale deeds, Four (4) sale deeds ie Except Doc. No. 6433) mention their boundary on the West as Narketpally to Nalgonda Road.

19.It is averred that erstwhile liquidator, on the bare perusal of the sale deeds, found that the encroachment had taken place within land defined by the boundary on the west side as contained in the sale deeds in favour of the corporate debtor and the liquidator had taken out copies of Document Nos. 404 from SRO records which is being relied on by applicant in establishing

their right of the land abutting the Narketpally- Nalgonda Road and cutting the access to the corporate debtor land.

20.It is averred that the pre-existing documents No. 404 dt. 18.01.2010 for the said land reportedly abutting the Narketpally Nalgonda Road mischievously were not revealed by the common promoters of the applicant and the corporate debtor while offering the land of extent 52.23 acres as security to the financial creditors.

21.It is averred that the erstwhile liquidator, to cross-check the boundaries, had applied for a survey of the land by a Mandal Surveyor. A survey was conducted and the Mandal Surveyor furnished a survey report dated 20.04.2023 but the report does not indicate the survey numbers of lands abutting main road or the lands as claimed by the applicant and the lands of the applicant are not demarcated and are not shown along with related survey no's in the Mandal surveyor report. The survey is wrong, incomplete and cannot be relied upon a re-survey by the District Surveyor Office is sought by the liquidator.

22.It is averred that the applicant claims that he is the owner and possessor of Ac. 1 gts.at sy.No.118 of yellareddygudem village, Narketpally Mandal, Nalgonda dist. but doesn't explain how only small extant in arrow strip of land parcels are not contingent on the remaining portion of land. Further averred that the first principle is that no buyer buying a large extent of land

would accept the same without access to the same. The second principle is that no seller would sell a strip of land to cut off access to the remaining extent of the land holding. It's no surprise that the buyers and sellers are all related parties as the applicant is the promoter of the corporate debtor.

23.The liquidator avers that Applicant is ignoring the fact that he is the promotor of the corporate debtor and was managing the affairs corporate debtor until it went into CIRP and land admeasuring Ac. 53.00 of land in Sy.No. 115, 117 to 121 and 796 of Yellareddygudem, Narketpally Mandal, Nalgonda District, Telangana belongs to the corporate debtor.

24.It is averred that the land documents were brought to the notice that Shri K Sridhar, K Gayathri Devi, B Ushasree and K Suryanarayana (the common promoters of the Applicant and Corporate debtor) who executed sale deed Nos. 6430, 6433, 6435, 6436, 6437 in favour of the Corporate debtor, in whacky all dates receipt, sole deed as 6433 clearly shows Narketpally Nalgonda Road as the west side boundary. The erstwhile liquidator, after due process, only tried to enforce its right over the property and the same is also in line with the directions of this Hon'ble Adjudicating Authority in IA No 1026/2023.

25.The Respondent has submitted Written submissions reiterating the same facts as averred in the counter.

26.It is averred that during the pendency of the above petition, the liquidator had issued a 6th sale notice dated 09.12.2023 for sale of assets of the corporate debtor and M/s Kalyan Steels Ltd was the successful auction purchaser and had paid the full amount of Rs.450,00,00,000/-(Rupees Four Hundred and Fifty Crores only) and the sale certificate issued on 10.02.2024 to the auction purchaser. Further averred that, now if the applicant has any grievance he has to approach civil court by way of declaration.

27.In the light of the context the point that emerges for our consideration is

Whether the liquidator can be restrained from including the property described in the Paragraph-1 of the Application in the liquidation estate of the corporate debtor?

28.We have heard Mr P.Vikram learned Sr.Counsel for the applicant and Learned Counsel Shri Rajashekar Rao Salvaji for Liquidator Shri K.Vasta Kumar. Perused the record and documents filed before this Tribunal.

Point

Whether the liquidator can be restrained from including the property described in the Paragraph-1 of the Application in the liquidation estate of the corporate debtor?

29. Before, we proceed with our discussion, we wish to refer to Section 36 of

I&B Code which is as below:

Section 36-Liquidation estate.

- (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.
- (2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.
- (3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—
 - (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
 - (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
 - (c) tangible assets, whether movable or immovable;
 - (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
 - (e) assets subject to the determination of ownership by the court or authority;
 - (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
 - (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
 - (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
 - (i) all proceeds of liquidation as and when they are realised.
- (4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—
 - (a) assets owned by a third party which are in possession of the corporate debtor, including—
 - (i) assets held in trust for any third party;
 - (ii) bailment contracts;
 - (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
 - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
 - (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
 - (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

30. Thus, it is clear from the above provision that, any property over which corporate debtor has ownership right shall in variably form part of the liquidation estate.

31. In so far as the case on hand is concerned, even according to the applicant the property that the Applicant's husband claimed to have been purchased under the registered sale deed dated 18.01.2010 bearing Document No. 404/2010 is sandwiched in between the land of the corporate debtor purchased under the registered sale deed dated 29.07.2008 and 13.02.2007 and National Highway which is admittedly is the western boundary of the property of the corporate debtor. The genuineness of the registered sale deeds, *supra*, of the corporate debtor is neither questioned nor questionable before this Tribunal. So much so, when the duly registered sale deeds of the corporate debtor indisputably disclose that the land purchased under the said sale deed contain specific measurements and boundaries, no oral evidence/contention *contradicting the boundaries* of the said registered sale deeds can be permitted under law. Moreover, it is trite law that the boundaries shall prevail over extent. Therefore, the so called plea that in between land of the corporate debtor and its western boundary, the so

subject land of the Applicant is situate shall fail both under law and also on facts.

32. That apart, even as per the applicant for the first-time the applicant herein tried to make some constructions in the subject property *post initiation* of liquidation proceedings against the corporate debtor, and no record worth has been filed to show that the applicant or its vendors are in possession of the subject land at any time prior or post initiation of CIRP against the corporate debtor. The liquidator also placed record to show that on the compliant by the present liquidator, the Gram Panchayat Authorities have issued show notice bearing no. 130/2023/B dated 21.09.2023 for demolition of the structure raised by the applicant. Admittedly, the Applicant approached the civil court and it appears that so far no interim injunction has been granted in favor of the applicant.

33. That a part it is pertinent to note that the relief sought in this Application has been is against an individual not against liquidator, as can be seen from the description of the parties. On this ground alone this Application is liable to be dismissed.

34. Therefore, in the light of our discussions as above we are of the firm view that the petition is devoid of any merits and substance. The same is accordingly dismissed and disposed of.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

C.Bhargavi/Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I AT HYDERABAD**

**IA. NO.316 OF 2024
IN
CP (IB) NO. 11/10/HDB/2017**

IN THE MATTER OF:

Maharashtra Seamless Limited,
Pipe Nagar, Village Sukeli, N.H.-17,
B. K. G Road, Raigad District, Maharashtra-402 126

... Applicant

VERSUS

1. Mr. Kallat Vatsa Kumar, Liquidator,
Kamineni Steel & Power India
Regn. no: IBBI/IPA-002/IP-N00922/2019-2020/12980,
Address: 8-2-248/A/5/16, Plot No.717,
Journalist Colony, Road No.2, Banjara Hills,
Hyderabad, Telangana – 500034.
2. M/s. Kalyani Steels Ltd
Represented by Mr. Anand Shirsat,
Deputy General manager Legal & HR
Mundhwa, Pune-411036 Maharashtra.
3. Kamineni Steel and Power India Limited,
"Kamineni", 4th Floor, King Koti, Hyderabad-500 016.

...Respondents

DATE OF ORDER: 16.04.2024

Corum:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For applicant : Mr.B.Mayur Reddy, Sr.Counsel assisted by
Mr. M. Pratheek Reddy , Counsel
For Respondent No.1 : Mr. Selvaji Raja Shekar Rao, Counsel
For Respondent No.2 : Ms. Shireen Sethna Baria, Counsel
Liquidator: Mr.K.Vatsa Kumar

PER :: BENCH

ORDER

1. This Application is filed by Maharashtra Seamless Limited, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rules 11 of the National Company Law Tribunal Rules, 2016 and other appropriate directions to stay the proceeding of auction/sale of the assets of the Corporate Debtor and inter alia explore the possibility of auctioning the Corporate Debtor as a going concern and seeking the following specific reliefs:
 - i. Declare the sale notice dated 09.12.2023 issued by Respondent No.1 as null and void.
 - ii. Declare the e-auction held on 05.01.2024 in furtherance of the sale notice dated 09.12.2023 issued by the Respondent No.1 is null and void.
 - iii. Direct Respondent No. 1 to get the valuation done for such group of assets and liabilities under the terms of Regulation 35 of the Liquidation Regulations.
 - iv. Direct Respondent No.1 to publish full details of the group of assets and liabilities by giving notice of at least 30 days to the prospective bidders.

v. Direct Respondent No.1 to endeavour to sell Respondent No.3 as a going concern before proceeding to sell the assets of Respondent No.3.

and interim relief to:

vi. Stay the sale of Respondent No. 3 to Respondent No. 2.

vii. And/or pass any such further order and/or direction that this Hon'ble Tribunal may deem fit.

2. Brief averments of the Applicant are as follows:

2.1. It is averred that the Maharashtra Seamless Limited (“MSL”), the Applicant herein, is a public listed company under Companies Act, 2013 bearing CIN L99999MH1988PLC080545 engaged in the business of manufacturing seamless pipes and tubes with the finest quality and wide product range using the world- renowned CPE technology. USTPL (which has amalgamated into MSL) had provided advances to Respondent No.3 partly against the Purchase Orders placed on Respondent No. 3 and partly without Purchase Orders for the supply of “Steel Round Cast Bars for Coupling Stock”.

2.2. It is averred that as per the terms and conditions of the Purchase Order, 100% advance was supposed to be paid to Respondent No. 3 at the time of placing the Purchase Orders and total admitted amount due from Respondent No. 3 to the Applicant is to the tune of INR 99,50,72,579.13 (Indian Rupees Ninety-Nine Crore Fifty Lakh Seventy-Two Thousand Five Hundred Seventy-Nine and Paise Thirteen only) which is acknowledged by Respondent no.3 to USTPL by way of balance confirmation dated 18.04.2016.

- 2.3. It is averred that Respondent No 3 underwent CIRP by virtue of an order dated 10.02.2017 passed by this Hon'ble Adjudicating Authority and on 01.06.2017, the erstwhile USTPL filed its claim in Form B before the Resolution Professional of the Respondent No. 3, for a total claim amount of Rs.99,50,72,579.13/- (Rupees Ninety-Nine Crore Fifty Lakh Seventy-Two Thousand Five Hundred Seventy-Nine and Paise Thirteen only).
- 2.4. It is averred that the Resolution Plan/One Time Settlement (OTS) proposal was submitted by the **Applicant**, which was said to have been approved by the Committee of Creditors. Thereafter, the Resolution Plan submitted by Respondent No. 3 was approved by the Tribunal vide order dated 27.11.2017 which was set aside by Hon'ble NCLAT vide order dated 06.09.2018 and directed Tribunal to initiate Liquidation proceedings in terms of Section 33 and Section 34 of IBC.
- 2.5. It is averred that R3 have filed an appeal before the Hon'ble Supreme Court in Civil Appeal No. 10673 of 2018 and upheld the NCLAT Order of liquidation on 05.02.2019.
- 2.6. It is averred that an order of liquidation was passed by this Hon'ble Adjudicating Authority on 26.10.2018 based on Apex court order and subsequent to the public announcement by the Erstwhile liquidator of Respondent No. 3, on 12.11.2018, USTPL submitted its claim in Form C before the said Liquidator in respect of its operational debt amounting to Rs.99,50,72,579.13/- which was kept in abeyance.

- 2.7. It is averred that USTP was, therefore, compelled to approach this Hon'ble Tribunal by way of an application bearing 1A No. 796/2020 praying for directions on the said Liquidator to admit its claim and the same was allowed by this Hon'ble Adjudicating Authority vide its order dated 14.07.2021 and directed the Erstwhile Liquidator to consider the claim filed by USTPL and USTPL has been inducted into the stakeholder consultation committee.
- 2.8. It is averred that the auction was not concluded in the first instance, the Erstwhile Liquidator, under the liquidation proceedings, had issued multiple sale notices resulting in the reduction of reserve prices. The first sale notice was dated 14.10.2019 and the reserve price was fixed at 610 crores. Further, the second sale notice (post the second revision) was dated 01.04.2020 and the reserve price was fixed at 460 crores. The third sale notice was dated 10.06.2020, the reserve price was fixed at 410 crores. The fourth sale notice was dated 26.07.2020, and the reserve price was fixed at 350 crores. The fifth notice (post the second revision) was dated 08.11.2022 and the reserve price was fixed at 330 crores (going concern) and 585.96 crores (listed as reserve price of the total value of the assets of Respondent No. 3).
- 2.9. It is averred that vide an order dated 08.11.2023 this Hon'ble Adjudicating Authority, in the overall interest of all the stakeholders of Respondent No. 3, decided to replace the Erstwhile Liquidator of Respondent No. 3 with Mr. Kallat Vatsa Kumar, the Respondent No. 1 herein and upon appointment the Respondent No.1 issued the 6th sale notice (which stated the reserve price to be 450 crores) and e-auction process document.

- 2.10. It is averred that Kalyani Ltd., Respondent No.2, emerged to be the successful bidder in the auction of Respondent No. 3, herein for an amount of Rs 450,00,00,000/- (Rupees four Hundred and Fifty Crores Only) pursuant to the letter by Kalyani Steels to NSEL dated 10.01.2023 and Respondent No.2 has accepted the said letter of intent on 10.01.2024.
- 2.11. It is averred that in auctioning for notice dated 09.12.2023 for Respondent No. 3, Respondent No. 1 overlooked fundamental principle of value maximization and both the sale notices and auctioning procedures should be reassessed to ensure adherence to the principles enshrined in the Insolvency and Bankruptcy Code, fostering transparency and competitiveness to optimize asset value for the benefit of creditors and stakeholders and the reserve price stated on the Sale Notice dated 09.12.2023 is in violation of Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

"Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 Liquidation Regulations") provides as follows:

"33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I

SCHEDULE 1

MODE OF SALE

(Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

1. AUCTION

(1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.....

(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.***

- 2.12. It is averred that Pursuant to Regulation 33, Clause 1 (4A), Schedule I of the Liquidation Regulations, it is stipulated that in the event of the first unsuccessful auction at the reserve price, the liquidator is empowered to diminish the reserve price by 25% of its assessed value. Furthermore, Clause 1 (4B), Schedule -1. specifies that any subsequent reduction shall not exceed 10%.
- 2.13. It is averred that the reserve price of the total value of assets was established at 585.96 crores in the 5th sale notice, in accordance with Regulation 33 of the Liquidation Regulations. Consequently, subsequent auctions should not exceed reduction in price more than ten percent, thereby, ensuring that the Reserve Price did not fall below 527.364 crores (585.96 minus 58.596) but in the sale notice dated 09.12.2023, decreased the Reserve Price to 450 crores from the initial 585.96 crores, constituting a substantial 23.2% reduction.
- 2.14. It is averred that apparently subsequent to the initial sale notice on 14.10.2019, which set the Reserve Price at 610 crores, the notice dated 28.01.2020 indicated a Reserve Price of 460 crores, reflecting an approximate 24% decrease under Regulation 33 Article 1(4A) and the recent sale notice dated 09.12.2023 witnessed Respondent No.1, in

contravention to Regulation 33 Clause 1(4B), reducing the Reserve Price to 450 crores from 585.96 crores, thereby illegally marking a substantial 23.2% reduction which notice is liable to be set aside, as it stands in violation of the applicable regulatory provisions. It is averred that there was No reasonable attempt to sell Respondent No. 3 as a Going Concern violates Regulation 32 of the Liquidation regulations.

- 2.15. The Applicant relied on the decisions of the Hon'ble Supreme Court of India and the National Company Law Appellate Tribunal have consistently ruled that the liquidator is duty-bound to make diligent efforts to facilitate the sale of the Corporate Debtor as a going concern and The Hon'ble Supreme Court in '***M/s. Innoventive Industries Ltd Vs. ICICI Bank and Anr., Civil Appeal Nos. 8337-8338 of 2017*** has observed as follows:

"From the viewpoint of creditors, a good realization can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realization is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay."

- 2.16. It is averred that The Hon'ble Supreme Court in ***ArcelorMittal India Private Limited' Vs. Satish Kumar Gupta and Others'*** (2019) 2 SCC 1 in paragraph 86, held that, -

"86. Given the fact.... However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into Liquidation We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If their resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. A reasonable and balance construction of this statute would therefore lead to

the result that, where a resolution plan is upheld by the appellate authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision-making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers."

2.17. Petitioners relied on the decision held by the Hon'ble Supreme Court in ***Swiss Ribbons Private Limited & Anr. Vs. "Union of India & Ors. (2019) 4 SCC 17 in paras 27 & 28*** has reiterated the same principle:

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme –Workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then cases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer liquidation, which is only availed of as a last resort if there no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern..

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the Corporate Debtor by protecting the it from its own management and from a corporate death by liquidation. The Code is thus

a beneficial legislation which puts the Corporate Debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

- 2.18. It is averred that no proper attempt has been to facilitate the sale of the Corporate Debtor as a going concern. Although the sale notices issued by the erstwhile liquidator proposes to sell the Corporate Debtor as a going concern, attempt whatsoever has been made for grouping of assets and liabilities of Corporate Debtor as entailed by Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 CIRP Regulations") and Regulation 32A of the Liquidation Process Regulations.
- 2.19. It is averred that despite being aware of the fact that no attempt has ever been made to sell the Corporate Debtor as a going concern, Respondent No.1 went ahead and issued the asset-wise sale notice. The aforesaid conduct of Respondent No.1 is inconsistent with the established legal principles articulated by the Apex court.
- 2.20. It is averred that the majority of the assets of Respondent No. 3 comprise 143.825 acres of land that was put for auction vide the aforesaid sale notice dated 09.12.2023. The said sale notice has been issued by Respondent No.1 based on valuation made by one of the

members of the stakeholders consultation committee of the Corporate Debtor but as per Regulation 35(2) of the Liquidation Process Regulations where a Liquidator is of the opinion that fresh valuation is required under the circumstances, he shall appoint two registered valuers to determine the realisable value of the assets or businesses of the Corporate Debtor.

"35. Valuation of assets or business intended to be sold-

(2) in cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

... ”

- 2.21. It is averred that the aforesaid acts and omission of Respondent No. 1 are in violation of the basic tenets of the Code and deserve to be reversed in the interest of Respondent No. 3 as well as all its stakeholders. It is further averred that the Applicant has never been given the opportunity to go through any of the valuation reports.
- 2.22. It is averred that on various occasions the Applicant has requested Respondent No.1 to supply them with the copies of the valuation reports and constrained to write a letter to the Respondent through its advocate on 29.01.2024, requesting copies of the valuation reports basis which Respondent No.1 has fixed the reserve price in the sale notice dated 09.12.2023. However, the Liquidator has neither responded to the said letter nor has he provided the Applicant with the copy of the valuation report basis which the reserve price has been fixed in the sale notice dated 09.12.2023.

2.23. Applicant relied on the decision held in ***Raj Singhania, Official Liquidator of Gontermann Peipers (India) Limited (In liquidation) v. Chinar Steel Segment Centre Pvt. Ltd. and Others, 2022 SCC OnLine NCLAT 4074***, Hon'ble NCLAT set aside the appeal challenging the order of NCLT, Kolkata which set aside the entire e- Auction process and directed the Liquidator to initiate fresh bidding process for sale of the Assets of 'Corporate Debtor'. The Hon'ble NCLAT held that,

“48. In any view of the matter, it is clear that the Appellant in Comp. App. (AT) (Ins.) No. 465/2022, committed a material irregularity which resulted in reduction of amount to be distributed among the Creditors and against the interest of the Committee of Creditors and so also failed to maximize the value of the 'Corporate Debtor. Though, Regulation 32A(4) is not mandatory. Consequently, the Order passed by the Adjudicating Authority is held to be in accordance with law. We find no ground to interfere with the well- considered Order of the Adjudicating Authority, warranting interference of this Tribunal.”

2.24. It is averred that the following errors are glaring:

- (i) Respondent No. 1 has made no reasonable attempt to sell Respondent No. 3 as a Going Concern.
- (ii) The change in reserve price in the 6th sale notice dated 09.12.2023 violates Regulation 33 of the Liquidation Regulations.
- (iii) The whole auction process suffers from constant acts of omissions by Respondent No. 1 indicating the procedural lapses of the liquidation proceedings.

iv) The liquidation proceedings have been improperly conducted causing severe detriment to the Applicant and the value maximization of Respondent No. 3.

3. The averments in the Counter filed by the 1st Respondent are as follows:

3.1 The Liquidator issued 5 sale notices and conducted 8 e-auctions during the Liquidation process:

- i. 1st sale notice with a reserve price of Rs.610 Crores
2nd sale notice @ Reserve price of Rs.460 Crores
- ii. 3rdsale notice @ Reserve price of Rs.410 Crores.
- iii. 4th sale notice @ Reserve price of Rs.350 Crores.
- iv. 5th sale notice @ Reserve price of Rs.330 Crores.

Except for the 4th Auction Notice, all other e-Auction notices failed due to non-participation of interested bidders. Under the 4th sale notice M/s Nimmagadda Surya Pradeep Biotech P Ltd participated in eAuction and was declared the successful bidder to acquire the CD as a going concern for a bid amount of Rs.351 Cr, having paid an EMD of Rs. 5 Crores. However, as the successful bidder failed to honor its commitments, this Hon'ble Adjudicating Authority through orders in IA#727/2022 and IA#114/2022 directed the erstwhile Liquidator to forfeit the EMD of Rs.5Cr and initiate a fresh bidding process.

3.2 It is averred that upon assuming the role, by the present Liquidator, K Vatsa Kumar, the 21st meeting of the SCC was held on 29.11.2023 where SCC members proposed the concept of conducting the sale in lots,

suggesting one lot comprising both assets (i.e., Core assets of Factory land, Building, Machinery, and Vehicles, and non-core assets of vacant land of 52.23 acres) and other lots containing said assets independently. Furthermore, they stated that the reserve price had gradually decreased over time, from Rs. 610 crores to Rs. 330 crores, and that this Hon'ble Adjudicating Authority recognized the intention of the SCC to re-evaluate the CD's Assets in the order dated 16.10.2023 in IA#1476/2023.

3.3 It is averred that the SCC got the valuation done for Land & Building and Plant & Machinery, and the valuation conducted by SCC indicates a higher distress sale value of Rs. 450.51 crore. They insisted on proceeding with a reserve price of Rs. 450 crores, aligning with the recent valuation initiated by the SCC. Further averred that as per Regulation 35(2) of IBBI Liquidation Process Regulations the valuation exercise needs to be undertaken by the Liquidator "where the liquidator is of the opinion that fresh valuation is required under the circumstances..." and in this case, the revaluation is proposed by the SCC.

3.4 It is averred that liquidator then filed the application IA#1907/2023 seeking a direction from this Hon'ble Adjudicating Authority regarding the Valuation to be relied upon (i.e., either the valuation carried out by Liquidator in June 2022 or the valuation carried out by SCC in November 2023) for fixing of the reserve price. And this Hon'ble Adjudicating Authority dismissed the application IA#1907/2023 with a direction to the Liquidator to proceed with valuation which has been approved by the SCC and on 05.01.2024 Auctions was conducted successfully, and M/s Kalyani Steels Limited was declared as the

successful bidder with a bid amount of Rs.450 Crores for Assets put together, excluding Securities & Financial assets.

3.5 It is averred that averments made by applicant in IV (12) under the head ‘Facts of the Case’ it is submitted that, to date, 6 sale notices have been issued and a total of 8 e-auctions were conducted during the liquidation process. However, there appears to be misunderstanding on part of the Applicant regarding the reserve price set for the 5th Auction Sale Notice is Rs. 330 Cr and NOT Rs.585.96 cr (326.67+224.07).

3.6 That the Reserve Price quoted to have been adopted as per the application:

Amount in Crores

Sale Notice	Dated	Reserve Price quoted to have been adopted as per the application	Reserve Price actually set as per the sales notices
First	12.10.2019	610.00	610
Second	27.01.2020	460.00	460
Third	10.06.2020	410.00	410
Fourth	26.07.2020	350.00	350
Fifth	08.11.2022	585.96	330 *
Sixth	09.12.2023	Not mentioned in IA	450 *

*** Reserve Price in the 5th& 6th (Last) Sale Notices:**

Particulars	Participants with EMD
Company as a whole	Nil
Total Land (143.825 acres) and Factory bldg + Plant and Machinery of 350000 MTPA Steel Billet Plant)	
Plant and Machinery of 350000 MTPA Steel Billet Plant)	
Non-core land of 52.225 Acres (Land locked)	
Vehicles	
Total Land (143.825 acres) and Factory bldg + Plant and Machinery of 350000 MTPA Steel Billet Plant)+ Vehicles	Kalyani Steels Limited.
Factory Land (91.60 acres) and Factory bldg + Plant and Machinery of 350000 MTPA Steel Billet Plant)+ Vehicles	
Non-core land of 52.225 Acres (Lan locked)	

Reserve Price set in 5th Sale Notice is indicated as below:

Sl.No.1: Rs. 330 cr for company as a going concern;

Sl.No.2: Rs. 326.67 cr (Total Land (143.825 acres) and Factory bldg + Plant and Machinery of 350000 MTPA Steel Billet Plant)

Sl.No.3: Rs. 224 cr -Plant and Machinery of 350000 MTPA Steel billet Plant

Sl.No.4: Rs.35 cr - Non-core land of 52.225 Acres (Land locked)

Sl.No.5: Rs. 22.25 Lakhs- Vehicles

“At Sl. No. 2 of the Advertisement if is clearly stated 'In the event of successful conclusion of e-auction for S No. 1, E- auction scheduled to be conducted for S No 2 to 5 shall stand cancelled without any further notice. In the event of successful. conclusion of e-auction for S. No. 2, e-auction for S No 3, 4 & 5 shall stand cancelled without any further notice. Also, In the event of successful conclusion of B- auction for S No. 3, e-auction for S. No. 5 shall stand cancelled without any further notice”

- 3.7 It is averred that the Reserve Price has been revised from Rs. 330 Cr to Rs. 450 Cr. This revision was carried out following a valuation conducted by SCC, involving two IBBI Empanelled Valuers for each asset class, as directed by this Hon'ble Adjudicating Authority through order dated 07.12.2023 in IA#1907/2023 and there is no violation of Regulation 33 of the IBBI: (Liquidation Regulations), 2016.
- 3.8 It is averred that the allegation by applicant under the heading 'No reasonable attempt to sell Respondent No.3 as a Going Concern, violating Regulation 32 of the Liquidation Regulations, is entirely without merit. Commencing on 26.10.2018, the Liquidation process has extended over more than 5 years, during which five Sale Notices were issued. The second notice underwent three timeline extensions. The initial four sale notices exclusively presented the Company as a going concern, while the fifth sale notice introduced the Company as a going concern along with other asset parcels. The Liquidation process, persistently offered as a going concern over the past 5 years, has not yielded success. In the absence of expressions of interest from bidders, the composition of the sale of assets as offered in the 6th Sale Notice was, therefore, a conscious decision of the Liquidator in consultation with the SCC in its 21st meeting.

- 3.9 Further asserted that the actions of the liquidator are fully compliant with the IBC code and its provisions. Regulation 32A(4) explicitly states, "The liquidator may sell the assets of the CD under clause e of Regulation 32 (i.e., the CD as a going concern) exclusively only at the first auction." Consequently, the accusation is wholly baseless, unfounded, and lacks substantiation.
- 3.10 It is averred that the liquidation process has extended for the past five years, during which persistent efforts to sell the assets as a going concern have proven unsuccessful. Given this lack of success, the Liquidator holds the view that a sale as a going concern may not be viable. Consequently, a decision has been made to abstain from selling under the specified clauses. With this decision in mind, the application of the grouping of assets and liabilities under Section 32A (2) is considered not applicable and the same was deliberated in the 21st SCC meeting and noted by SCC.
- 3.11 It is averred that the Reserve Price, determined based on a fresh valuation, has increased by 36.36% from Rs. 330 crore in the 5th e-Auction to the current Rs. 450 crore, as set in the 6th Sale Notice and there are no procedural lapses in the conduct of liquidation process and objective of value maximization has been achieved.
- 3.12 It is averred that the Applicant participated in the 21st and 22nd SCC meetings but did not express any opinions or objections regarding the issues raised in this application. The 6th Sale Notice was issued on 09.12.2023 and after keeping silent for months together the Applicant is approaching this Hon'ble Tribunal now, after two months, by twisting facts and engaging in misrepresentation, after the sale process has been concluded successfully. The successful auction purchaser(Kalyani

Steels Limited) paid full sale consideration of Rs.450,00,00,000/- (Rupees Four Hundred and Fifty Crores Only) along with applicable GST of Rs.54,72,00,000/-(Rupees Fifty-Four Crores and Seventy- Two Lakhs Only). The 1st Respondent, upon receiving the full sale consideration, had issued the Sale Certificate in favour of the purchaser on 10.02.2024 and also handed over original title deeds. The physical possession of the assets has also been handed over to the purchaser under a panchnama on 10.02.2024, The sale proceeds received in the auction have been distributed to secured financial creditors as per Sec. 53 of the Code.

3.13 Further averred that the Applicant had been part of SCC and actively participated in the liquidation process for months together is aware of all the events for very long time and the applicant failed to explain the reasons for waiting to file application until auction sale was successful.

4. The averments in the Counter filed by the 2nd Respondent are as follows:

4.1 It is averred that the allegations by Applicant are entirely without merit and ought to be rejected in limine and reiterated the similar averments as in Respondent no.1 counter apart from the below averments made.

4.2 It is averred that the 6th Sale Notice dated 9 December 2023 is not only compliant with Regulation 33. Clause 1 (4A & 4B), Schedule 1 of the Liquidation Regulations but in fact the Reserve Price of Rs. 450 crores are 30% higher than the Reserve Price in the 5th Sale Notice.

4.3 It is averred that in the first 4 Sale Notices Respondent No. 3 was put to sale as an on-going concern and only in the 5th and 6th Sale Notices that the Respondent No. 1/Liquidator has given the option of sale of

assets in view of the failure of the first 4 sale notices as 'on-going concern'. Thus, it is undeniably evident that the Liquidator had made all reasonable attempts to put the Respondent No. 3 for sale as on-going concern before putting the assets for sale as a last resort.

4.4 It is averred that the Applicant's allegation that the reserve price was fixed lower than the permitted reduction of 10% from the reserve price in the previous auction steps from the incorrect statement of fact in paragraph 19 of the Application that the reserve price in the 5 Sale Notice slated 10.12.2022 was Rs 585.96 crores. However, a proper reading of the 5th Sale notice makes its evident that Reserve Price for sale as on-going concern was fixed at Rs. 330 crores and the cumulative Reserve Price for 'sale of assets was fixed at Rs. 326.67 crores. The Applicant has made the obviously noticeable error of counting the price of the Point/Lot No. 3 & 4 twice to arrive at the alleged Reserve Price of Rs. 585.96 crores, in as much as the two Lots are included in and form a part and parcel of Point/Lot No. 2.

4.5 It is averred that from the minutes of the 21st SCC meeting, Respondent No. 1 was originally proposing to fix a reserve price of Rs. 316 crore after reduction on the reserve price of Rs. 330 crore which was fixed for the 5th Sale Notice further SCC had undertaken an independent valuation as permitted by the Hon'ble NCLT vide order dated 16th October 2023 based on which a higher reserve price of Rs. 450 crores was arrived at. Therefore, the auction sale conducted in terms of the 6 Sale Notice wherein the Answering Respondent has emerged as the successful bidder was carried out with utmost adherence to due process and in very much in the interest of value maximization for all stakeholders of Respondent No. 3, including the Applicant herein and

Respondent No. 1/ Liquidator has not violated Regulation 35(2) of the Liquidation Process Regulations. Further, on reading of Regulation 35(2) makes it clear that the requirement of fresh valuation reports is not mandatory but at the subjective discretion of the Liquidator.

4.6 It is also pertinent to highlight that the Applicant, being a member of the SCC and having full knowledge of the 6th Sale Notice dated 9th December 2023 and reserve price fixed therein, did not raise any objection whatsoever to the reserve price or method of sale (i.e., sale of assets as opposed to sale as a going concern) at any time during or after the meeting. This itself shows that the present Application is nothing but a blatant afterthought. The Applicant having not questioned or challenged the said Sale Notice at the relevant time i.e., prior to the e-auction conducted on 5th January 2024 wherein the Respondent No. 2 emerged as the Successful Bidder, the Applicant has acquiesced to decisions taken by Respondent No. 1 and the SCC and it not entitled to challenge the same today. The filing of the present application i.e., after the auction and payment of sale consideration by Respondent No. 2 is a serious abuse of law and as on date Respondent No. 2 has paid the entire sale consideration and Respondent No. 1/Liquidator has issued the Sale Certificate dated 10th February 2024 and has also handed over the original title deeds. The physical possession of the assets has also been handed over to Respondent No. 2 under the Panchama on 10th February, 2024 and other formalities as per law have been completed. Thus, it is submitted that the sale of assets of Respondent No. 3 has been completed under the Liquidation Process in compliance with applicable laws and regulations.

4.7 It is averred that that there is an increase of over 30% in the Reserved Price as fixed in 5 Sale Notice when compared to Reserved Price fixed in 6 Sale Notice i.e., from Rs. 330 Crore to Rs. 450 Crore.

4.8 Respondent no.2 averred it is settled position of law that the commercial wisdom of creditors is non- justiciable and cannot be evaluated by NCLT/NCLAT. In *Essar Steel India Limited Vs Satish Kumar Gupta (2020) 8 SCC 531*, Hon'ble Supreme Court has affirmed the key principle of the IBC that the CIRP is in the hands of the CoC, which in its commercial wisdom, has the right to decide how the insolvency is to be resolved. Neither does the IBC state that the Corporate Debtor is to be revived or liquidated, nor does it empower the NCLT/NCLAT with the jurisdiction or authority to evaluate the commercial decisions of the CoC. In the present case, SCC has itself agreed for revaluation of the assets, which was permitted by this Hon'ble Tribunal via order dated 7 December, 2023. The decision of SCC to conduct revaluation and further issue fresh sale notice shall assumed to be in the best interest and shall not be further questioned or evaluated.

5. A Rejoinder has been filed contradicting Reply in counter filed by 1st Respondent:

5.1 It is averred that Respondent No. 1 is trying to confuse this Hon'ble Adjudicating Authority by giving vague explanation pertaining to the reserve price stated in the 5th sale notice. As per Respondent No.1, the assets at S.No. 2 includes assets at S. No. 3 to 5 and Sl. No. 3 includes S. No. 5. From a simple reading of the descriptions of assets in the said notice, prima facie, it would appear to any prudent person that the

assets mentioned at S. Nos. 2, 3, 4, and 5 are different assets that together form the entire asset base of the Corporate Debtor. The aforesaid fact that the assets are separate gets clearer from the fact that the asset “Vehicles” appearing at S. No. 5 in the said 5th sale notice is not included either in description of asset at S. No. 2, 3 or 4. Therefore, Respondent No. 1’s submission that S. No. 2 includes S. No. 3 to 5 and S. No. 3 includes S. No. 5 is a blatantly false submission made with an intention to hide the fallacies in the said sale notice.

5.2 It is averred that Respondent further submits that “S. No.2 of the Advertisement it is clearly stated: In the event of successful conclusion of e-auction for S No. 1. E-auction scheduled to be conducted for S No. 2 to 5 shall stand cancelled without any further notice.” This is understandable since S. No. 1 envisages the sale of Company as a whole, therefore, in the event the company is sold as a whole, the question of asse-wise sale would not arise, which is further clarified by the use of word “OR” between S. No. 1 and 2. The said /Respondent further goes on to submit that “In the event of successful Conclusion of e-auction for S. No. 2. e-auction for S. No. 3, 4 & 5 shall stand cancelled without any further notice. Also, In the event of successful Conclusion of E-auction for S No 3, e-auction for S No. 5 shall stand cancelled without any further notice” if these statements are to be believed to be true, then the asset appearing at S.No.5 described as “Vehicles” would remain unsold since neither S.No.2 nor S.No.3 nor S. No. 4 include the “Vehicles” in their descriptions and the 5th sale notice is laden with errors and is ambiguous when it comes to what assets are proposed to be sold together or separately.

- 5.3 It is averred that even if it is assumed, without admitting, that the submission of Respondent No. 1 that “the Reserve Price of 5th Sale Notice is Rs. 330 cr and NOT Rs.585.96 cr” is correct, it is asseverated that the same is not clear form the said sale notice. It is further submitted that sale notice is the most important document basis which any prospective bidder decides whether or not they want to participate in the e-auction process, therefore, it goes without saying that such a sale notice ought to be clear and unambiguous and shall specifically and in unequivocal terms outline the assets that are proposed to be sold.
- 5.4 It is averred that Respondent No.1 did not attempt to sell the Corporate Debtor as a going concern and it is denied that the Applicant is inaccurately portraying that the Reserve Price has been reduced from 585.96 crores in the 5th Sale Notice to 450 crores in the 6 Sale Notice. Further averred that Liquidator has used the valuation report submitted by one of the members of the stakeholder consultation committee, whereas, as per Regulation 35(2) of 27/06/2010 Liquidation Process Regulations where a Liquidator is of the opinion that valuation is required under the circumstances, he shall appoint two registered valuers to determine the realisable value of the assets or businesses of the Corporate Debtor. It is averred that the Applicant was never given the opportunity to go through any of the valuation reports.
- 5.5 It is averred that there is no misunderstanding on the part of the Applicant regarding the reserve price set for the 5th Auction. And further denied that S. No. 1 includes S. No. 2 to 5; S. No. 2 includes S. No. 3 to 5 or that S. No. 3 includes S. No. 5 as alleged or at all and the Reserve Price of 5th Sale Notice is Rs. 330 cr and NOT Rs.585.96 cr

(326.67+224.07) or that it is being misunderstood and misrepresented by the applicant.

5.6 It is denied that this revision could have been carried out following a valuation conducted by SCC, involving two IBBI Empanelled Valuers for each asset class. It is reiterated that as per Regulation 35(2) of the Liquidation Regulations it was incumbent upon the liquidator to get the valuation done by two registered valuers and take SCC's advice on the same and not vice versa.

6. A Rejoinder has been filed contradicting Reply in counter filed by 2nd Respondent:

6.1 It is averred that the Respondent No.2 in connivance with Respondent No.1 is trying to confuse this Hon'ble Adjudicating Authority by giving vague explanation pertaining to the reserve price stated in the 5th and 6th sale notices. The aforesaid connivance is amply clear from the similar submissions made by the aforesaid Respondents.

6.2 It is stated that as per Respondent No.2, the assets at S.No.2 includes assets at S.No.3 to 5 and S.No.3 includes S.No. 5. From a simple reading of the descriptions of assets in the said notice, prima facie, it would appear to any prudent person that the assets mentioned at S.Nos. 2, 3, 4 and 5 are different assets that together from the entire asset base of the Corporate Debtor. The aforesaid fact that the assets are separate gets more clearer from the fact that the asset "Vehicles" appearing at S.No. 5 in the said 5th sale notice is not included either in description of asset at S.No. 2, 3 or 4.

- 6.3 It is further stated that sale notice is the most important document basis which any prospective bidder decides whether or not they want to participate in the e-auction process, therefore, it goes without saying that such a sale notice ought to be clear and unambiguous and shall specifically and in unequivocal terms outline the assets that are proposed to be sold.
- 6.4 It is further stated that Respondent No.2 through its counter is trying to portray as if it is the Applicant's case that no attempt was made to sell the Corporate Debtor as a going concern only in the 6th sale notice. The portrayal is only partly true, inasmuch as it is true that Respondent No.1 did not attempt to sell the Corporate Debtor as a going concern in the 6th sale notice, it is also the Applicant's case that no reasonable attempt to sell the Corporate Debtor as a going concern has ever been made even by the erstwhile liquidator.
- 6.5 It is stated that the contents of paragraphs 3(a) and (b), save what are matters of record, all allegations made therein are denied. It is denied that the reserve price in the 5th sale notice was Rs.330 Crores. It is denied that entire case of the Applicant rests on the allegations: (a) That the Reserve Price as stated in the 6 Sale Notice dated 9 December 2023 being Rs. 450 crores is allegedly in violation of Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"); or (b) that Respondent No. 2 has made no reasonable attempt to sell Respondent No. 3, the corporate debtor herein as a going concern which allegedly violates Regulations 32 (e) of the Liquidation Regulations. It submitted that the Applicant has filed this application based on various other grounds which are not being repeated here for the sake of brevity.

6.6 It is denied by the applicant that the 6th Sale Notice dated 9th December 2023 is not only compliant with Regulation 33, Clause 1 (4A & 4B), Schedule - 1 of the Liquidation Regulations but in fact the Reserve Price of Rs. 450 crores is 30% higher than the Reserve Price in the 5th Sale Notice. It is reiterated that 5th sale notice is laden with errors and is ambiguous when it comes to what assets are proposed to be sold together or separately. Further, the Reserve Price fixed in the 6th sale notice is on the basis of valuation reports that have not been the same. It is denied that on perusal of the Sale Notices, it is evident that out procured in the manner prescribed by law. Furthermore, the Applicant has never been provided with the valuation reports despite multiple requests for the same. It is denied that on perusal of the Sale Notices, it is evident that out of Six (6) Sale Notices issued by the Liquidator, the Respondent No. 3 was put to sale as an on-going concern in the first 4 Sale Notices dated 12th October 2019, 1st April 2020, 10th June 2020 & 26th July 2020. It is only in the 5th and 6th Sale Notices that the Respondent No. 1/Liquidator has given the option of sale of assets in view of the failure of the first 4 sale notices as 'on-going concern'. It is denied that the Liquidator had made any reasonable attempts to put the Respondent No. 3 for sale as on-going concern before putting the assets for sale as a last resort. It is reiterated that although 5 previous sale notices published by the erstwhile liquidator envisage sale of the Corporate Debtor as a going concern, no attempt has been made by the said liquidator for grouping of assets and liabilities of the Corporate Debtor as entailed by Regulation 39C of the CIRP Regulations and Regulation 32A of the Liquidation Process Regulations.

- 6.7 It is denied that the Applicant, being a member of the SCC and having full knowledge of the 6th Sale Notice dated 9th December 2023 and reserve price fixed therein, did not raise any objection whatsoever to the reserve price or method of sale (i.e., sale of assets as opposed to sale as a going concern) at any time during or after the meeting. It is denied that this itself shows that the present Application is nothing but a blatant afterthought. It is denied that the Applicant having not questioned or challenged the said Sale Notice at the relevant time i.e., prior to the e-auction conducted on 5th January 2024 wherein the Respondent No. 2 emerged as the Successful Bidder, the Applicant has acquiesced to decisions taken by Respondent No.1 and the SCC and it is not entitled to challenge the same today. It is reiterated that the Applicant had been requesting Respondent No.1 to provide the valuation reports basis which the reserve price had been arrived at, however, the said Respondent has not provided the same to the Applicant till date. It is only after exhausting all the ways to resolve the issue that the Applicant has filed the instant application within time. It is denied that the present application is contrary to facts and law, misconceived, devoid of merits and ought to be dismissed at the threshold as alleged or at all.
- 6.8 It is stated that the remaining contents of preliminary objections/submissions are reiterated. It is denied that the act of filing of this present application by the Applicant is devoid of any bona-fide reasons or the Applicant has not approached this Hon'ble Tribunal with clean hands.

7. Both Applicant and Respondent No.1 has submitted Written submissions reiterating the similar facts as averred in their petition, counters and rejoinders.
8. We have heard the Learned Sr. Counsel Mr.B.Mayur Reddy, assisted by Mr.M.Pratheek Reddy, for Applicant, Shri Rajasekhar Rao Salvaji, Ld. Counsel for Liquidator Shri K.Vasta Kumar, and Ms.Shireen Sethna Batia, Ld Counsel for R2. Perused the records filed.
9. In the light of above facts and circumstances of the case, the point that emerges for consideration of the Tribunal is:

POINT :

“Whether the E-Auction held on 05.01.2024 pursuant to the sale notice dated 09.12.2023 warrants interference by this Tribunal on the grounds raised in the application? If so, for what relief?”

10. Ld. senior counsel for the applicant submits that the respondent no.1/Liquidator has violated regulation 33 of IBBI (liquidation regulations), 2016 besides regulation 4A and 4B as mentioned in schedule 1 under regulation 33 of IBBI (liquidation regulations), 2016.
11. Ld. counsel further submits that as per the 5th sale notice reserve price of the total value of assets was rupees 585.96 crores. However, the respondent in the 6th sale notice dated 9/12/2023 reduced it to rupees 450 crores, thereby, reducing the reserve price by 23.2% which is against the provisions as contained in 4A, 4B of schedule 1 under regulation 33 of IBBI (liquidation regulations), 2016 which allows for a reduction of 10% only. Therefore, keeping in view the above, Ld. counsel contended that sale notice dated 9/12/2023 is liable to be set aside.

12. The Ld. counsel relied on and referred to following table filed at page 18 of the petition:

Amount in Crores

Sale Notice	Dated	Reserve Price
Sale notice 1	14.10.2019	610.00
Sale notice 2 (post the 2 nd Revision)	27.01.2020	460.00
Sale notice 3	10.06.2020	410.00
Sale notice 4	26.07.2020	350.00
Sale notice 5 (post the 2 nd Revision)	08.11.2022	330.00crores or / 585.96 crores
Sale notice 6	09.12.2023	450ores

13. Ld. counsel further submits that respondent no.1/Liquidator has not made proper attempt to sell the 3rd respondent as a going concern and thereby violating regulation 32 of (Liquidation regulations), 2016.
14. The learned counsel for the petitioner further submitted that said sale notice has been issued by Respondent No.1 based on valuation made by one of the members of the stakeholders consultation committee of the Corporate Debtor but as per Regulation 35(2) of the Liquidation Process Regulations where a Liquidator is of the opinion that fresh valuation is required under the circumstances, he shall appoint two registered valuers to determine the realisable value of the assets or businesses of the Corporate Debtor.

15. The Ld. counsel submitted that in view of these violations i.e, reduction of sale price by more than 10% in contravention to regulation 4A of schedule 1 of regulation 33 of (Liquidation regulations), 2016 and not making efforts to sell the CD as a going concern contravening regulation 32 of (Liquidation regulations), 2016, the sale notice is liable to be set aside.
16. Per contra, Ld. Counsel for liquidator submitted that the liquidator and SCC members in 21st meeting dated 29/11/2023 decided to sell the corporate debtor in lots as per regulation 32(d) instead of selling it as a going concern in view of the failure of earlier 5 sale proceedings of the corporate debtor as a going concern.
17. Learned counsel for respondent further submitted that, SCC got the valuation done as per orders dated 16.10.2023 in IA 1476/ ---- and the valuation indicated a higher distress sale value of rupees 450.51 crores. Keeping in view the valuation the SCC decided to proceed for next sale with a reserve price of Rs. 450.00 crores which is much higher than the earlier reserve price of Rs 330.00 crores. The learned counsel submitted that in a way this fresh valuation as per orders of this Tribunal has helped in maximising the value of corporate debtor by increasing the reserve price by Rs 120.00 crores.
18. Ld. Counsel further submits that liquidator filed IA 1907/2023 to seek direction to proceed with the valuation which has been approved by the SCC and this tribunal on 07/12/2023 directed liquidator to proceed with the valuation which has been approved by the SCC.
19. Accordingly, the sale notice was issued with the reserve price of rupees 450 crores and M/s Kalyani steels limited emerged as a successful bidder

with a bid amount of Rs. 450 crores for assets put together excluding securities and financial assets.

20. Ld. Counsel after giving a brief description proceeds further and submitted that the reserve price in the 6th sale notice is fixed at Rs.450 crores which is 36.36% higher than the reserve price of Rs 330.00 crores fixed in the earlier sale notice i.e., 5th sale notice. Therefore, there is no question of violation of regulation 4A and 4B of schedule 1 of regulation 33 of (Liquidation regulations), 2016 as the reserve price has been increased over the earlier reserve price instead of any reduction.
21. Ld. Counsel for respondent outrightly rejected the contention of petitioner and submitted that the reserve price in the 5th e-auction was fixed at rupees 330 crores and not rupees 585.96 crores as improperly projected by the petitioner before this tribunal. He further explained that there were 5 lots in the 5th e-auction: **Lot 1** being the **company as a going concern** for the reserve price of Rs.330 crores, **Lot 2** has **total land of 143.825 acres + factory building +plant and machinery of 350000 MTPA steel billet plant** with a reserve price of Rs. 326.67 crores, **lot 3** comprises of **plant and Machinery of 350000 MTPA steel billet plant** at a reserve price of Rs. 224 crores, **Lot 4** comprises of **non-core land of 52.225 Acres** (land locked) at a reserve price of Rs. 35 crores and **Lot 5** comprising **vehicles** at a reserve price of Rs. 22.25 Lakhs.
22. Learned counsel explained that lot 1 is inclusive of all the assets of the company as it is for the sale notice of company as a going concern and the other lots were offered as different combinations of assets to the bidders but they were already included in lot 1.

23. Therefore, the contention of the petitioner that 5th auction sale notice is for rupees 585.96 crores which is total of lot 2 and lot 3 is misconceived and misrepresentation of facts because plant and machinery is already included in lot 2 as well. Learned counsel further submitted that this issue has been amply clarified in condition no.2 of the sale notice which clearly states that *“In the event of successful conclusion of e-auction for S No. 1, E- auction scheduled to be conducted for S No 2 to 5 shall stand cancelled without any further notice. In the event of successful. conclusion of e-auction for S. No. 2, e-auction for S No 3, 4 & 5 shall stand cancelled without any further notice. Also, In the event of successful conclusion of B- auction for S No. 3, e-auction for S. No. 5 shall stand cancelled without any further notice”*.
24. The learned counsel further submitted that the petitioner is a participant in the SCC meetings but did not raise any objections at that point of time and he is raising all these objections now when the sale process is already concluded and physical possession of the assets has also been handed over to the purchaser and the sale proceeds received in the auction have been distributed to financial creditors as per section 53 of the code.
25. Ld. counsel firmly asserted that the actions of liquidator are fully complying with IBC code and its provisions. Regulation 32 of (Liquidation regulations), 2016 has been fully complied as the first sale and few other sales were notified as “sale on a going concern basis” and only when the assets could not be sold as a going concern basis for 5 attempts the decision was taken by liquidator and SCC to sell it as per regulation 32(d) i.e. sale of assets in parcels.

26. The learned counsel contended that this application is liable to be rejected outrightly as it is based on false representations and wrong notions.

27. Before we proceed and decide on the point, we reproduce herein below Regulation 32 and 32A regulation 4 of schedule 1 under regulation 33 of (Liquidation Regulations), 2016.

Regulation 32 : Sale of Assets, etc.

The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*
- (f) the business(s) of the corporate debtor as a going concern: Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]*

32A. Sale as a going concern.

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under subregulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.

"33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I

SCHEDULE 1

MODE OF SALE

(Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

1. AUCTION

(1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein

.....

(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."

28. A bare perusal of the regulation 32 and 32A abundantly makes it clear that where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses. In the instant case SCC on first and other few occasions recommended sale as a going concern and liquidator notified the sale as per recommendation of SCC but on 6th occasion the liquidator and SCC decided to go for sale of assets under clause (d) of regulation 32 i.e. sale of *assets* in parcels so much so the sale of CD as a going concern is not mandatory.
29. Therefore, in the light of what is stated above, we decide that decision taken by liquidator and SCC to go for asset-based sale and consequently issue of

sale notice by liquidator on the same line does not involve any contravention of regulation 32 and 32A *supra*.

30. We have carefully perused the 5th sale notice and we are not at all in doubt that the sale in respect of lot 1 as a going concern includes all the assets of the company and the other lots are subsets of this lot 1. When we carefully perused lot 2 and lot 3, we find that lot 3 is subset of lot 2, therefore, arriving reserve price after adding reserve prices of these two lots for the purpose of reserve price of e-auction sale is nothing but an effort to mislead the tribunal. Furthermore, logically when reserve price of Company as a going concern (Lot 1) is only Rs 330.00 crores, how the prices of different assets sold in different lots can be Rs 585.96 crores which comes to 1.77 times of the reserve price of lot 1 i.e. company as a going concern.

31. We perused the minutes of the 21st meeting of the stake holder's consultation committee of the CD held on 29/11/2023 and observed that a threadbare discussion has taken place in the said meeting to consider the revised valuation report for fixing the reserve price. The relevant extract of the said deliberations are reproduced here under.

"The member banks pointed out that IA 1476 the Hon'ble NCLT in its orders dated 16.10.2023 has stated as follows:

SCC intends to go for fresh valuation of the Liquidation Estate and thereafter go for piece meal sale by segregating the disputed and undisputed portions of the liquidation estate. This exercise requires at least three weeks' time to complete. In the light of the representation and enabling the SCC to proceed with the proposal, the liquidation period is extended by four weeks from 16.10.2023. Meanwhile, the liquidator is directed to take immediate steps for the removal of the encroachments which are already noted in our previous proceedings and complete the liquidation process as expeditiously as possible"

In view of the contents of the order, they stated that NCLT approval is there for valuation by SCC and the Liquidator should proceed with e-auction reserve price as Rs. 450 cr arrived at in the valuation got done by the SCC.

The Liquidator conveyed that 5 Auctions have been held with reserve price of Rs. 610 cr, Rs. 460 cr, Rs. 410 cr, Rs. 350 cr and Rs. 330 cr-and all auctions were unsuccessful.

The last auction at Rs. 330 cr was done with different lots of (i) Company as Going Concern (ii) Entire land, Building, Machinery (iii) Plant and Machinery alone (iv) Non-core land of 52.225 acres (v) Vehicles. This auction too failed. In this scenario, there is no point in enhancing the reserve price.

Further, the liquidator also conveyed that there is also no provision in the code or Regulations wherein SCC can take up a valuation exercise and insist on Liquidator to factor in the value arrived therein to fix reserve price. Instead, the reserve price need to be fixed on basis of valuation got done by the Liquidator as per provisions of the code. The endeavour of stakeholders should be to encourage and bring in competition which will ensure proper price discovery rather than keeping a higher threshold arrived at on basis of valuation in deviation to provisions of code. The Liquidator reiterated that the reserve price be kept at Rs. 316 cr and sale notice issued on 01.12.2023 with timelines indicated.

However, there was strong uniform consensus amongst all stakeholder banks that Liquidator should not go ahead with the proposal of sale with reserve price of Rs. 316 cr. For the same, they relied upon NCLT order dated 16.10.2023 and advised Liquidator to file an IA and seek direction from Hon'ble NCLT.

The Liquidator agreed to file IA and conveyed that issue of sale notice is being deferred till NCLT hearing / direction in the matter.”

32. Accordingly, IA no.1907/2023 was filed and liquidator was directed by this Tribunal to proceed with the valuation which has been approved by the SCC.

33. In the light of our discussion as above, we hold that the e-auction held on 05/01/2024 pursuant to sale notice dt 09.12.2023 is in accordance with law as such the same does not warrant any interference of this tribunal. The point is decided accordingly.

34. Hence the petition is liable to be dismissed. Accordingly, the same is hereby dismissed however without costs.

SD

Charan Singh
Member (Technical)

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Chennu Bhargavi