

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 858 of 2024

IN THE MATTER OF:

S P Construction

...Appellant

Versus

Narendra Kumar Sharma

...Respondent

Present:

**For Appellant : Mr. Ashish Kumar Pandey, Mr. Vedant Sharma
and Mr. Yashwant Singh, Advocates.**

For Respondent : CS Gaurav Joshi, for Liquidator.

O R D E R
(Hybrid Mode)

22.11.2024: Heard Counsel for the Appellant and Learned Counsel Mr. Gaurav Joshi appearing for the Liquidator.

2. Counsel for the Appellant has submitted that Additional Affidavit has been e-filed on 11.11.2024. Physical Copy has also been handed over to the Court.

3. This Appeal has been filed challenging the Order passed by the Adjudicating Authority dated 11.12.2023 in IA 626/2022. IA was filed by the Appellant praying for following reliefs:

“a) setting aside the cancellation of sale certificate issued by the Respondent on 13.01.2022;

b) Appointment of a local commissioner to verify the machinery mentioned under the tender document and as per valuation report annexed to the application;

c) Grant Stay on auction going to be conducted on 08.02.2022 by the liquidator; and

d) Direct the Liquidator to refund the EMD amount of Rs.58.10 Lacs deposited by the auction purchaser along with 12 % interest.”

4. The Liquidation Proceedings against the Corporate Debtor commenced by an Order passed by the Adjudicating Authority on 16.09.2020 and

06.11.2020. The Liquidator published Sale Notice for reserve price on 12.08.2021 fixing sale price of 6.50. No bids came hence another e-Auction Notice was issued. The Appellant submitted its e-bid in pursuance of Sale Notice 12.09.2021. EMD amount was also deposited by the Appellant of Rs.58.10 Lakhs. E-Auction was conducted on 17.09.2021 and the Appellant highest bid of Rs.5,81,00,000/- was accepted. On 18.09.2021, Appellant was declared as Successful Bidder by email and thereafter Appellant made further payment of Rs. 58.10 Lakhs as 2nd instalment. On 08.11.2021, Liquidator has also issued a Sale Certificate to the Appellant. The Appellant however did not make the payment within the time allowed. The Liquidator issued a show cause Notice on 04.12.2021 asking the Appellant to pay the balance amount with interest on or before 11.12.2021, however the balance was not paid and the Liquidator cancelled the Sale Certificate. Aggrieved by the cancellation of Sale Certificate the I.A. was filed by the Appellant before the Adjudicating Authority being I.A. No. 626/2024 which came to be rejected by the Impugned Order.

5. Learned Counsel for the Appellant challenging the Order submits that Letter of Intent (LoI) was never issued which was one of the terms and conditions in the e-bid documents and further even the Sale Certificate which was issued by the Appellant also provided in Clause 9 that LoI be issued. LoI having not been issued, the Liquidator could not have forfeited the EMD and cancelled the Sale Certificate.

6. Learned Counsel for the Liquidator opposing the submissions of the Counsel for the Appellant contends that more than three opportunities were given to the Appellant to pay the balance amount in which the Appellant

failed. It is submitted that Sale Certificate was already issued on the receipt of EMD and further payment of Rs.58.10 Lakhs and the Appellant having not paid the amount, Liquidator had no option except to cancel the Sale Certificate and forfeit the EMD.

7. We have considered the submissions of Counsel for the Parties and perused the record.

8. The bid document itself contemplated for payment of the entire sale consideration within the time period which also contained the Clauses for default of Successful Bidder in making the payment.

9. The submission which has been pressed by the Counsel for the Appellant that no LoI was issued by the Appellant. Appellant was asked to file the email which was issued by Liquidator on 18.09.2021 which email is to the following effect:

“Kind Attn: Mr. Shashipal Kumawat, Proprietor M/s. SP Construction

Please refer to your participation in the e-bidding process of Plant & Machinery of Vallabh Steel West Private Limited, Property ID 01516, through e.auction.co.in on 17-09-2021.

I hereby confirm that your bid at Rs. 5,81,00,000.00 (Rupees Five Crores Eighty One Lacs only) plus GST @ 18%, Reserve Price was successful.

Accordingly, the undersigned hereby declare you as the successful bidder, as per BID Document.

You are hereby advised to follow the terms & conditions of the BID Document sent to you, copy attached herewith for your records.

You are hereby advised to visit the office of undersigned on any suitable date, next week, for further discussion on balance payment and timeline to remove the Plant & Machinery from the site.

Please confirm the receipt of this email.

Thanks

N.K. Sharma

Liquidator- VSWPL”

10. The Liquidator on the next date i.e., next date of the sale, e-Auction held on 17.09.2021 has been communicated that Appellant is a Successful Bidder and he was asked to follow the terms and conditions of the bid document. It is also on the record that Appellant made further payment of Rs. 58.10 Lakhs as 2nd instalment and the sale certificate was issued thereafter by the Liquidator.

11. Learned Counsel for the Appellant contends that Sale Certificate also contained the Clause 9 which provided for issuance of LoI. He has referred to Clause 9, which is to the following effect:

“9. As per Clause 12 of Terms & Conditions of E-Auction the purchaser shall have to deposit the balance sale consideration within 60 days of Letter of Intent, payments made after 60 days shall attract interest at the rate of 12% per annum. The sale shall stand cancelled if the payment is not received within 60 days and forfeiture of amount already paid, and the property may be offered to second highest bidder or put to re-auction and the defaulting bidder shall have no claim/right whatsoever in respect of property/asset/amount, whatsoever.”

12. In the present case, admittedly the Sale Certificate was issued to the Successful Bidder, after issuance of Sale Certificate on 08.11.2021, we fail to see any relevance of LoI which was referred to in Clause 9. Under the Liquidation Regulation 2016, there is a statutory requirement of payment of bid amount within 90 days.

13. The submission of the Appellant that he was never intimated that he has to make the payment of 90 days cannot be accepted. The bid document as well as Regulation clearly provided for payment. Appellant having failed to

make the payment of the balance amount. Liquidator did not commit any error in forfeiting the EMD and cancelling the Sale Certificate. The amount of Rs.58.10 Lakhs which was paid after e-Auction has already been refunded to the Appellant.

14. We thus are of the view that there is no ground to interfere with the Impugned Order.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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