

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM Nos.3 to 5

Item No.3 – **IA/272(MP)2022**

Item No.4 – **IA/273(MP)2022**

Item No.5 – **IA/6(MP)2023**

IN

TP 182 of 2019 [CP(IB) 591 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Hira International Ltd

V/s

Girdharilal Sugar & Allied Industries Ltd

.....Applicant

.....Respondent

Order delivered on 25/01/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/272(MP)2022, IA/273(MP)2022 & IA/6(MP)2023

These cases are fixed for pronouncement of the order.

The common order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)

ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

**IA/272(MP)2022, IA/273(MP)2022 &
IA/6(MP)2023 in IA/273(MP)2022**
in
TP 182 of 2019 [CP(IB) 591 of 2019]

IA/272(MP)2022

(An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 and of the National Company Law Tribunal Rules, 2016.)

Labhanshi Multitrade Pvt Ltd

CIN: U93000MP2017WC044465,
Office: 206, Sonam Plaza,
Chitawad Road, Sajan Nagar,
Indore, (MP)- 452001
Email: singhal.anoop346@gmail.com

.....Applicant

Versus

Amresh Shukla

Liquidator,

M/s Girdharilal Sugar and Allied
Industries Limited
Office- F-05, Jaideep Complex,
112, Zone-II, M.P. Nagar,
Bhopal, Madhya Pradesh- 462001
Email- cirp.girdharilal@gmail.com

.....Respondent/Liquidator

IA/273(MP)2022

(An application under Section 35(2) of the Insolvency and Bankruptcy Code, 2016 r/w Regulations 31A & 32A of IBBI (Liquidation Process) Regulations, 2016.

Amresh Shukla

Liquidator,

M/s Girdharilal Sugar and Allied
Industries Limited
Office- F-05, Jaideep Complex,
112, Zone-II, M.P. Nagar,
Bhopal, Madhya Pradesh- 462001
Email-cirp.girdharilal@gmail.com

.....Applicant

Versus

Canara Bank Ltd

Circle Office Branch
Block-3, 5th Floor, Paryavaas Bhavan,
Arera Hills, Jail Road, Bhopal, M.P.
Email-cb4878@canarabank.com

.....Respondent No.1

Swan Finance Limited

802, NRK Business Park,
Vijaynagar Square, A.B. Road,
Indore, M.P. 452010
Email-cs@swanfinance.co.in

.....Respondent No.2

Oyster Exim Private Limited

201, Starlit Tower, Yeshwant
Niwas Road, Indore, M.P. 452001
Email-oystergroupfinance@gmail.com

.....Respondent No.3

Anand Joshi

41, Shri Royal Krishna,
Emerald Heights, Indore, M.P.
Email-anandrjoshi911@gmail.com

.....Respondent No.4

Radheshyam Jaiswal

Representative of Workers,
12B, Ward No. 19, Ram Chandra Nagar,
Dewas, M.P.
Email-jaiswalbindu90@gmail.com

.....Respondent No.5

Commercial Tax Department

CTO-Indore,
Kibe Compound, 131-138,
13A, Chhawani Road, Behind Madumilan
Takies, Murai, Mohalla, Chhoti Gwaltoli,
Indore, M.P. 452001

.....Respondent No.6

Krishnayan Milk Product,

39/1, Opposite Laxmi Bai Anaj Mandi,
Bangada Road, Indore, M.P.
Email- shirishyadav111@gmail.com

.....Respondent No.7

M/s Radheshyam Dairy,

Proprietor Mr. Tilaknarayan Purohit,
F-6/8, Industrial Area, Pologround,
Sanwer Road, Indore, M.P.
Email-kartik.purohit66@gmail.com

.....Respondent No.8

IA/6(MP)2023 in IA/273(MP)2022

(An application under Section 35(2) of the Insolvency and Bankruptcy Code, 2016 r/w Regulations 31A & 32A of IBBI (Liquidation Process) Regulations, 2016.

Labhanshi Multitrade Pvt Ltd

CIN: U93000MP2017WC044465,
Office: 206, Sonam Plaza
Chitawad Road, Sajan Nagar,
Indore (MP)- 452001
Email: singhal.anoop346@gmail.com

.....Applicant

Versus

Amresh Shukla

Liquidator,

M/s Girdharilal Sugar and Allied
Industries Limited Office
Office: F-05, Jaideep Complex,
112, Zone-II, M.P. Nagar,
Bhopal, Madhya Pradesh- 462001
Email-cirp.girdharilal@gmail.com

.....Respondent/Liquidator

In the main matter of: TP 182 of 2019 [CP(IB) 591 of 2019]

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Hira International Limited

Regd Off: 147, Tukoganj Road,
Dewas, Madhya Pradesh-455001

.....Operational Creditor

Versus

**M/s Girdharilal Sugar and Allied
Industries Limited**

CIN: U15311MP2010PLC024222
Regd Off:45/47-A, Industrial
Area No. 1, A.B. Road, Dewas,
Madhya Pradesh-455001

.....Corporate Debtor

Order pronounced on: 25-01-2024

Coram: P. Mohan Raj, Hon'ble Member (J)

Kaushalendra Kumar Singh, Hon'ble Member (T)

Appearance:

For the Labhanshi
Multitrade Pvt. Ltd

: Ld. Sr. Adv. Mr. Navin Pahwa (Online)
Ld. Adv. Mr. Rohit Dubey (Physical) a.w
Ld. Adv. Mr. Sandeep Pandey (Physical)
(applicant in **IA 272/2022 & IA 6/2023**)

For the Commercial Tax Dept : Ld. PCA Ms. Teena Saraswat Pandey (Online)
(R-6 in IA 273 of 2022)

For the Liquidator : Ld. Sr. Adv. Mr. Sukumar Pattjoshi (Online) a.w.
Mr. Amresh Shukla (in-person) (Online)
(applicant in **IA 273 of 2022**, respondent in
IA 272 of 2022)

For the Canara Bank : Ld. Adv. Mr. Hitesh Sachar (Online)
(R-1 in IA 273 of 2022)

For M/s Radheshyam Dairy : Ld. Sr. Adv. Mr. Krishnendu Datta (Online)
(R-8 in IA 273 of 2022)

ORDER**IA/272(MP)2022, IA/273(MP)2022 & IA/6(MP)2023**

1. The **IA/272(MP)2022** is filed by Labhanshi Multitrade Pvt Ltd seeking direction to the liquidator to award the private sale of the corporate debtor in the favour of the applicant and in the alternative to cancel the private sale being conducted by the liquidator and direct him to proceed for fresh sale of the corporate debtor through public auction or in a properly strategized and systematic private sale and also seeking certain other reliefs in that context whereas **IA/273(MP)2022** has been filed by the liquidator Mr. Amresh Shukla for taking on record the decision of the liquidator different from the SCC in the matter of private sale and to pass an order to declare respondent No. 8 M/s Radheshyam Dairy being H-1 as successful bidder/buyer of the corporate debtor M/s Girdharilal Sugar & Allied Industries Ltd by way of private sale. The application **IA/6(MP)2023** has been filed by the Labhanshi Multitrade Pvt Ltd as a demurrer application to the IA 273 of 2022 seeking urgent relief by staying the effect of private sale of the assets of the corporate debtor as done by the liquidator and to prepone the hearing of IA 272 of 2022.

2. These are the interconnected applications in the matter of proceedings under the IBC in the case of M/s Girdharilal Sugar & Allied Industries Ltd and, therefore, the same have been taken up together and a common order is being passed in all these matters. Before we proceed to discuss the facts of the case and issue involved in the matters, we would place it on record that in pursuance of the application IA 6 of 2023, this Adjudicating Authority vide its order dated 06.01.2023 had already directed the liquidator not to take any further steps in respect of private sale, as has been done by him in the matter and had taken up the matter in IA 273 of 2022 as well as IA 272 of 2022 for hearing.

3. Briefly the background facts of the case are that the corporate debtor was admitted under the Corporate Insolvency Resolution Process ("CIRP") vide order dated 17.08.2021 on an application filed under Section 9 of the

IBC, 2016 by the operational creditor M/s Hira International Ltd in TP 182 of 2019[CP(IB)591 of 2019). Further vide order dated 21.01.2022 the IRP Mr. Ashish Kanodia was replaced by Mr. Amresh Shukla as a Resolution Professional. The CoC in its 11th meeting held on 27.05.2022 decided to initiate the liquidation of the corporate debtor and in pursuance thereof this Adjudicating Authority vide order dated 05.08.2022 had ordered to initiate the liquidation proceedings under Section 33(2) of the IBC and had appointed Mr. Amresh Shukla as a liquidator. Following that, the liquidator published an E-auction notice on 10.11.2022 for the sale of the assets of corporate debtor as a going concern. Reserve price was kept at Rs. 13.44 lakh. However, in the process, all the prospective applicants namely Samyak International Ltd, Umang Enterprises, Crown Steels, Labhanshi Agritech Pvt Ltd who had submitted their bid application were considered disqualified on the ground such as that they failed to submit the evidence of sources of liquid funds available with them to meet the reserve price. Thereafter, the liquidator proceeded with the private sale considering the E-auction to sale the corporate debtor as a going concern has failed as none of the bidders were eligible as qualified bidder. Thereupon the liquidator made a public announcement in two newspapers namely Times of India (in English) & Raj express (in Hindi) on 30.11.2022 for the sale of corporate debtor as a going concern by way of private sale and finally declared M/s Radheshyam Dairy as H-1 bidder (having offered Rs. 15.91 crore), whereas the SCC was in favour of Labhanshi Multitrade Pvt Ltd, H-2 bidder (having offered Rs. 15.71 crore).

4. We have heard the learned senior counsel Mr. Navin Pahwa, appearing for the Labhanshi Multitrade Pvt Ltd, learned senior counsel Mr. Sukumar Pattjoshi appearing for the liquidator, learned senior counsel Mr. Krishnendu Datta appearing for M/s Radheshyam Dairy, learned counsel Mr. Hitesh Sachar appearing for the Canara Bank (One of the member of SCC) and learned PCA Ms. Teena Saraswat Pandey appearing for the Commercial Tax Department (another member of the SCC).

5. During hearing in the matter, the learned senior counsel Mr. Navin Pahwa referred to the pleadings as made by the applicant Labhanshi Multitrade Pvt Ltd in its application IA 272 of 2022 and made his submissions thereon. The same are summarized here as under: -

- (i) The applicant Labhanshi Multitrade Pvt Ltd has filed an IA 272 of 2022 challenging the manner in which liquidator has convened the corporate debtor's sale process (*inter alia* unlawfully evading public auction, improperly/unfairly conducting private sale to benefit M/s Radheshyam Dairy, not acting in accordance with the decision of the Stakeholders Consultation Committee). The application seeks cancellation of private sale and award of the corporate debtor to the applicant as per the SCC's commercial wisdom.
- (ii) The Liquidator on 09.11.2022, for the first time, made public announcement for sale of corporate debtor as going concern through E- auction Under this auction, the reserve price of the corporate debtor as going concern was fixed at INR 13,44,40,584/- , last date of submission of eligibility documents was 24.11.2022, date of declaration of qualified bidder was 26.11.2022 and date of auction was 07.12.2022. The liquidator had put "eligibility under Section 29A" as the only eligibility condition for a bidder under the public auction. (Copy of public announcement has been attached at page No. 17 and process document at page No. 20 of IA 272).
- (iii) Eight (8) interested bidders (including Labhanshi Agritech Pvt Ltd), submitted their respective Expression of Interest ('EOI') alongwith eligibility documents to the Liquidator. Upon receipt of the EOI and eligibility documents from the interested bidders, the Liquidator sought for certain documents and those documents were provided to the Liquidator (at least by the Labhanshi Agritech). However, owing to certain reasons best known to the Liquidator' it had an intention of selling the Corporate Debtor only in private sale and to surpass the ordinary requirement of public auction. For some

or other baseless and frivolous reasons the Liquidator declared all the eight interested bidders to be ineligible. The Liquidator vide its e-mail dated 26.11.2022 informed the Labhanshi Agritech few baseless reasons for not declaring Labhanshi Agritech as a qualified bidder. For the Labhanshi Agritech, the Liquidator alleged as under:

“Availability of liquid funds to infuse in corporate debtor is not established and SCC members found that you already had previous dealing/nexus with suspended management of Girdharilal Sugar and Allied Industries Limited on that there is concern therefore you are not treated as a qualified bidder by the SCC members”. (Copy of E-mail dated 26.11.2022 has been attached at page No. 19 of IA 272).

(iv) That the Liquidator in undue haste and in an arbitrary manner precluded all bidders from the E- auction process with an intent of forcing the process to become unsuccessful. As basis the disclosure made by the Liquidator in the public announcement dated 29.11.2022, on 26.11.2022 itself the Liquidator in 3rd meeting of SCC submitted to have disqualified all bidders and induced the SCC to proceed with sale through private sale.

(v) The regulation 33 of the IBBI (Liquidation Process) Regulations, 2016 mandates the Liquidator to ordinarily sell the assets of the corporate debtor through an auction. The sale through private sale, by its very nature, has been kept as a mode to be used in last resort where sale by auction is not possible. However, the Liquidator with a motive to make undue gains from privately contacted bidders, deliberately didn't allow the public auction to occur (by illegally disqualifying all the bidders) and in undue haste proceeded for the private sale, which was not warranted in case of the instant liquidation at this juncture. The private sale as a mode of sale is meant for a situation when the auction gets failed, and not for the situation when the Liquidator by its illicit actions didn't let the auction to take place at all, like the present case. The Liquidator also ignored the provision of Schedule 1 (1) (b) of the IBBI (Liquidation

Process) Regulations that provide that the Liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.

(vi) On 29.11.2022, the Liquidator issued public announcement for sale of corporate debtor under private sale. Wherein not a single eligibility criteria was fixed, moreover the Liquidator even permitted the participants of auction (who were disqualified by the Liquidator) to participate in the private sale. (Reference can be found in the 5th page of 4th SCC minutes in point b, attached at page 36 of IA 273).

(vii) On 02.12.2022, the applicant (Labhanshi Multitrade Pvt Ltd) submitted its interest in acquiring the corporate debtor under going concern and also submitted an offer of INR 14.51 crore which was later on enhanced to INR 15.71 crore after further discussions. As per the Liquidator, the SCC in its 6th meeting of SCC held on 14.12.2022 declared the applicant to be the successful bidder, however, the Liquidator declared another bidder M/s Radheshyam Dairy as successful bidder. On 16.12.2022, the Liquidator vide e-mail informed the applicant that the SCC has decided in favour of the applicant while the Liquidator wishes to award the corporate debtor to another bidder M/s Radheshyam Dairy. The Liquidator also informed that the decision as to award of the corporate debtor are subject to approval from this Hon'ble NCLT Indore Bench.

(viii) The Clause 2 under Schedule 1 of IBBI (Liquidation Process) Regulations, 2016 mandate the Liquidator to conduct the private sale by preparing a strategy and in the manner specified in the terms of sale. In the instant case, no strategy was formulated by the Liquidator. Never a resolution regarding approving any strategy was passed by the SCC. The only place where there is a mention of manner of private sale is a discussion mentioned in the minutes of the SCC dated 29.11.2022, that also only conveys that the Liquidator

can sell the assets in any manner & procedure as he deems fit. If the Liquidator believes this to be a strategy, then the problems with this strategy were that: It was a compact and brief strategy that left everything to the discretion of the Liquidator. The Liquidator had kept within him an unchecked and absolute opportunity to pick and choose amongst the bidders the person with whom he has his comfort and then provide additional support to the said bidder (of disclosing bids of others, permitting submission of quotes even after deadlines, etc.), giving preference over other bidders. The Liquidator by inviting bid proposals and multiple revisions thereof from all the bidders on its e-mail, not in a sealed envelope and not from all at a same time, had made the process become a mockery. In this process confidentially, fair treatment and transparency everything was at stake.

(ix) It has also been laid down by Hon'ble NCLAT in *Rimjhim Ispat Limited V. Jindal stainless Limited* [Company Appeal (AT) (Insolvency) No. 1212 of 2022], that even in private sale the standards and norms of transparency, fairness and responsibility should be adopted without any qualification or reservation and all prospective bidders should get sufficient opportunity. But, in the instant case the Liquidator discriminated and proceeded arbitrarily by, (1) blatantly favouring one bidder in oppose to the SCC (i.e. when SCC has decided to award the corporate debtor to the applicant); and (2) even after informing the applicant that award of corporate debtor is to be determined by the Adjudicating Authority, proceeded with demanding payments from the bidder whom Liquidator favours i.e. M/s Radheshyam Dairy (the other bidder).

(x) The liquidator didn't take prior approval of the Ld. Adjudicating Authority before proceeding with private sale, as he was required to do in view of the Regulation 33 of the IBBI (Liquidation Process) Regulations. The proviso to sub-regulation (2) clearly specify that a

Liquidator can proceed for a private sale only after taking prior approval from the Ld. Adjudicating Authority.

(xi) The public auction didn't occur. It was not the case where a public auction had got failed. In the event of non-receipt of qualified bidders, the Liquidator should have ordinarily [as per Regulation 33(1)] proceeded for holding second option. The Liquidator's case didn't fall under the exceptions under sub-regulation (2). But the Liquidator went ahead with doing the private sale, without prior approval of the Ld. Adjudicating Authority.

(xii) The Schedule 1(1)(b) of the IBBI (Liquidation Process) Regulations clearly specify that, "the liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period." But the Liquidator went ahead with the private sale even when the public auction had not failed.

(xiii) It has been clearly held by Hon'ble NCLT Principal Bench, New Delhi in Alchemist Asset Reconstruction Co. Ltd. Vs Moser Beer India Limited [C.P. (I.B.) 378 (PB)/2019 in CA- 769(PB)2019], that even in proceeding with private sale on ground of "the asset being sold in private sale at a price higher than the reserve price of a failed auction", the Liquidator has to take prior approval from the Adjudicating Authority. However, the Liquidator deliberately failed to honour the same.

(xiv) Upon blatantly proceeding with the private sale without any approvals from the Ld. Adjudicating Authority and after finalising one bidder, the Liquidator filed an application (IA No. 273 of 2022) before the Ld. Adjudicating Authority seeking approval of the sale. This act of the Liquidator was again a mockery. When he chose not to take a prior approval from Ld. Adjudicating Authority (for which mandatory provisions were in effect), then for what he had now approached after

finalising the bidder. The Third mockery done by the Liquidator was that, at one instance he does a private sale without prior approval, at the same instance he files an application for sanction of the finalized bidder and again at the same instance proceeds towards completion of sale by taking the consideration.

(xv) Another blatant violation done by the Liquidator is that: The Liquidator in its email dated 16.12.2022 specifically stated that the sale and award of corporate debtor will only become final after order from Ld. Adjudicating Authority in this regard. The Liquidator himself moved IA No 273 of 2022 which is pending before the Ld. Adjudicating Authority, but in ignorance of all this and in order to create mockery of the entire process the Liquidator inspite of his written commitment of seeking order from the Ld. Adjudicating Authority and in lack of any such order from the Ld. Adjudicating Authority, proceeded with sale of the corporate debtor in favour of one bidder (i.e. M/s Radhesyam Dairy).

(xvi) In the unfair and arbitrary approach, the Liquidator only required the bidder whom he had finalised to pay the consideration and not the Applicant who is the bidder whom the SCC has finalized.

(xvii) The Liquidator has acted in ignorance of the mandatory requirement under the Code of Conduct specified under the IBBI (insolvency Professional) Regulations, 2016. The Liquidator has been deliberately influencing the decision or the work of the creditors so as to make undue gains for himself (by privately dealing with M/s Radhesyam Dairy) and also made acts to cause undue preference for M/s Radhesyam Dairy even in oppose to the opinion of SCC.

(xviii) That Liquidator crossed all limits of biasness, when he annexed a forged and fabricated document alongwith its IA No. 273 of 2022, In its IA the Liquidator annexed a document at page No. 64, that is the bid proposal of M/s Radheshyam Dairy printed on letter head with date of 08.12.2022 mentioned on it. The Liquidator has

annexed this document to merely with an intention to show that M/s Radheshyam Dairy had submitted its bid of INR 15.91 crores on 08.12.2022 itself (before the applicant submitted its bid on 14.12.2022) and it is not the case where the Liquidator had disclosed applicant's bid dated 14.12.2022 to M/s Radheshyam Dairy. Now, when we see the minutes of 5th SCC meeting that was held on 12.12.2022, at page 46-47 of the IA, it is clearly written that the Liquidator informed the SCC that he highest bid he is in receipt of is of a person who is ready to increase the bid to INR 14.7 crores. When the minutes are seen, it shows the blatant attempt of the Liquidator in fabricated and submitting false document (with pre-date) merely to favour M/s Radheshyam Dairy.

(xix) The SCC in its 6th meeting of SCC held on 14.12.2022 declared the Applicant to be the successful bidder. However, the Liquidator chose not to honor the decision of the SCC and went ahead with declaring another bidder M/s Radheshyam Dairy as successful bidder. The Liquidator entirely ignored the interests and commercial wisdom of the SCC and didn't record any reasons for differentiating with the decision of the SCC, for malafide reasons best known to itself. On 16.12.2022, the Liquidator vide e-mail informed the Applicant that the SCC has decided in favour of the Applicant out of there commercial wisdom, while the Liquidator wishes to award the corporate debtor to another bidder M/s Radheshyam Dairy. The Liquidator also informed that the decision as to award of the corporate debtor are subject to approval from Ld. Adjudicating Authority.

(xx) The Liquidator, in the private sale process acted in oppose to the SCC, without recording the reasons in its minutes and moreover it also failed to report the same to the Adjudicating Authority and the Board within the prescribed time period, as mandatorily required under the Regulation 31A(10) of the IBBI (Liquidation Process) Regulations. It was only after the Applicant filed the IA No. 272 of

2022 before the Adjudicating Authority against the Liquidator, bringing forth all the illegalities being done by the Liquidator, the Liquidator chose to report the same to the Adjudicating Authority vide its IA No. 273 of 2022.

(xxi) That, reliance can be placed on the judgement of Hon'ble Supreme Court in EVA Agro Feeds Private Limited v. Punjab National Bank [Civil Appeal No. 7906 of 2021 in which it was held that merely because Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction or prevent it to get complete. Reliance can also be placed on the judgement of Hon'ble NCLAT in Rimjhim Ispat Limited v. Jindal Stainless Limited [Company Appeal (AT) (Insolvency) No. 1212 of 2022], which was a similar case where the private sale had a condition that sale will become final only after order of NCLT, it was held that in private sale with such condition until the sale is confirmed by the NCLT any higher bid raised by any person after confirmation of sale by Liquidator can be accepted. [ref: condition of requiring NCLT approval there at page 85 in IA 272 of 2022; higher offer of the Applicant there at page 102 of the IA 6 of 2023].

(xxii) That, in view of the above the Applicant humbly prays before this Hon'ble Tribunal to cancel the sale done by the Liquidator and direct the Liquidator to grant the sale of the corporate debtor to the Applicant at INR 18.31 crores, apart from other reliefs prayed for in IA No. 272 of 2022.

6. Learned PCA Ms. Teena Saraswat Pandey appearing for the Commercial Tax Department submitted that CTO-Indore is one of the SCC member being representative for Government Department but the various relevant SCC meeting were conducted so hurriedly that it was attended all the time only by one of the SCC members Canara Bank. She also pointed out that the notice to call for the meeting of the SCC on 14.12.2022 at 4:30 pm for negotiation with the various bidders was sent to the various members of the SCC in the morning hours on that day only and that way

the various other SCC members including the Government Department were precluded from attending the meeting. She also submitted that the Commercial Tax Department has also filed IA 158 of 2023 against the decision of the liquidator onto their claim for being admitted in entirety and for categorising them as a secure creditor in view of the decision of the Hon'ble Supreme Court in the case of Rainbow Papers and that the same is pending for decision of this Adjudicating Authority. She also stated that various irregularities have been committed by the liquidator pointed out by the Commercial Tax Department in that application.

7. Learned senior counsel Mr. Sukumar Pattjoshi appearing for the liquidator as well as the liquidator present-in-person (through video conferencing) referred to E-auction process document publication, the SCC minutes whereby the prospective bidders in the E-auction process were disqualified, the decision of the SCC for going ahead through private sale, public announcement for private sale and the relevant minutes reflecting the process of bidding and negotiations to arrive at H-1 bidder. The learned senior counsel Mr. Sukumar Joshi also referred to the relevant provisions of Section 35(2) of the IBC and also the regulations 31A, 32 & 32A (liquidation regulation) together with Schedule-I of mode of sale explaining therewith the procedure to be adopted by the liquidator on sale of assets through an auction or by means of private sale and strongly defended the action decision taken by the liquidator.

8. Learned senior counsel Mr. Krishnendu Datta appearing for M/s Radheshyam Dairy had drawn our attention onto the various prayers as made by the applicant Labhanshi Multitrade Pvt Ltd in its application in IA 272 of 2022 and objected to the pleadings made by the applicant for cancellation of the process of private sale.

9. We have taken note of the submissions so made by the learned counsels appearing for the various parties as stated hereinabove and also have perused the relevant records & minutes of the meetings etc. We also note that the public announcement for the E-auction of the corporate debtor was made by way of advertisement on 10.11.2022. The E-auction

process document containing details of assets only, E-auction bid form, declaration and undertaking form, general terms and conditions and online auction sales were made available through website <https://ncltauction.auctiontiger.net>. Last date for submission of eligibility document was 24.11.2022, date of declaration of qualified bidder was 26.11.2022, last date for inspection: 03.12.2022, last date for EMD: 5.12.2022 and date of auction was fixed on 07.12.2022. The E-auction was to be conducted “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER THERE IS” and “NON-RECOURSE BASIS” through approved service provider M/s E-Procurement Technologies Ltd (auctiontiger). As per the auction process document, the ineligibility criteria set out in Section 29A of IBC was only provided. For that purpose, the prospective applicants were to file an affidavit and undertaking as provided in Annexure-I (i) to make disclosure of eligibility under Section 29A and declaration for submitting bids for E-auction. Apart from the criterion of Section 29A, no other criterion for eligibility has been prescribed therein.

10. However, as could be noted from the minutes of 3rd SCC meeting, that was held on 26.11.2022 at Canara Bank circle office, the liquidator had informed SCC that 8 persons namely, Ambik Milk and Milk Products, Chinar Steels, Samyak International Ltd, Umang Enterprises, Crown Steels, Aamir Vora, Pawan Shree Food International Pvt Ltd and Labhanshi Agritech Pvt Ltd had shown their interest in E-auction; that out of those 8 interested parties, only 4 namely Samyak International Ltd, Umang Enterprises, Crown Steels and Labhanshi Agritech Pvt Ltd had submitted their bid application forms. As could be further noted from the said minutes, none of these interested parties were found eligible as a qualified bidder on the ground that none of them had submitted the evidence of sources of liquid fund available with them to meet the reserve price. It is also stated therein that Samyak International Ltd, Umang Enterprises, Crown Steels were not in manufacturing activity; Umang Enterprises and Crown Steels are into trading of old and sick units and dismantling of old plant and machineries. As regards Labhanshi Agritech Pvt Ltd, it was stated

that the said company had taken the assets of the Premier Proteins Ltd, a sister concern of the corporate debtor; and that secured financial creditor had found that there is a previous connection/dealings between the suspended management and Labhanshi Agritech Pvt Ltd and that creates concern; that Labhanshi Agritech Pvt Ltd also claimed assets of PPL as their assets by filing a separate interlocutory application (IA 185 of 2022).

11. The minutes of 4th SCC meeting that was held on 29.11.2022, records that first E-auction has failed since no one was found eligible to be a qualified bidder; and that the SCC decided by 100% majority of the members present in meeting that since first E-auction had failed, the liquidator should try to sale the corporate debtor in private sale/treaty. As per the minute, the liquidator was to publish the notice in the newspapers for inviting the interested parties to take part in the private sale; and that those prospective buyers who had shown their interest but not found eligible in the first E-auction, can also participate in the private sale. Accordingly, advertisement was made in the two newspapers Times of India & Raj Express on 30.11.2022 for the sale of the corporate debtor by way of private sale. Then as per the minutes of 5th SCC meeting held on 12.12.2022, the liquidator had shared with SCC that certain prospective buyers had approached him for sale of corporate debtor pursuant to the public announcement made in the newspaper; thus it was decided therein that the liquidator should give preference to the buyer offering maximum upfront amount in the month of December, 2022 and ready to make the payment of remaining amount within one month thereafter. Following that on the next date i.e. 13.11.2022, one of the SCC members namely Canara Bank vide their email dated 13.11.2022 directed the liquidator to convene a meeting of the SCC on 14.12.2022 for deliberations and obtaining final offers from all the prospective bidders for private sale of the corporate debtor. Thereupon the liquidator vide his email dated 14.12.2022 that was sent at 8:45 am requested all the SCC members to join the meeting at Canara Bank circle office Bhopal on the same day at 4:30 pm. As per the minutes of the 6th SCC meeting that was held on that very day i.e.

14.12.2022 at 4:30 pm, following strategy of negotiations with buyers was decided :

- (i) “Eligible buyers who has given highest offer with better terms of payment before negotiation will be picked up as a base of negotiation.
- (ii) Other top four prospective buyers will be picked up for negotiations and they will be asked to enhance their offer and match the figures of highest initial offer and surpass it.
- (iii) Initial highest offerer will be asked if wants to beyond the offer given by other top four prospective buyer.
- (iv) Prospective buyer who gives payment terms of 50% of offer amount before 25.12.2022 and balance in shortest possible time will be given preference.
- (v) Prospective buyer who has given highest value with better terms of payment will be declared as a successful buyer.
- (vi) Prospective buyers who are not present in the meeting will be asked to make offer over phone calls from the meeting room.
- (vii) Name of the highest bidder/offerer shall not be disclosed and only figures will be disclosed to the prospective buyers during negotiations to enhance their offer.
- (viii) Prospective buyer not present physically will be called over phone calls”.

The said minutes also records that the liquidator informed to the SCC that he has given three reminders to the prospective bidder of the first E-auction also for giving their final offers through email and that public announcement of private sale was published in the newspapers as well as website of the corporate debtor; and that in response thereof eleven offers were received from the prospective buyers till the start of that meeting. The liquidator also informed to the SCC that out of those eleven offers, following top five were to be taken up for negotiations: -

- (i) Bombay Traders-Rs.15.75 crores with no payment terms.
- (ii) Radheshyam Dairy-Rs. 15.01 crores with payment terms of 25% in two-day time+25% before 25.12.2022 and balance 50% in 60 days.
- (iii) Adarsh Agro-Rs. 15.00 crores with payment terms of 20% upfront 80% in three months.
- (iv) Labhanshi Multitrade Pvt Ltd-Rs.14.60 crores and payment terms of 25% in two days+ 15% by 12.12.2022 and balance 60% by 15.02.2023.
- (v) New Engicon Pvt Ltd-14.56 crores with payment terms 25% two-days +25% within two-days of order +50% after 30 days.

The minutes also records that the liquidator informed the SCC that the offer of Bombay Traders came through email just before start of meeting without KYC, profile, payment terms and that no contact details was given by that party except email ID from where email was received; and in that context it was decided that before finalization, this party would be asked to give information/final offer with payment terms. Then the 'minutes' further records states that the negotiation was started, the terms on the above and this was narrated to all the prospective buyers when they were called upon to enhance their offer. The details of negotiations as recorded in the 'minutes' are as under: -

- (i) New Engicon Pvt; Ltd terms and conditions narrated to them, highest figure informed, and were asked to enhance their offer. They refused to enhance their offer and said that offer given is final, i.e. Rs. 14.56: crores-25% in 2 days + 25% in 2 days of order + 50% after 30 days.
- (ii) Labhanshi Multitrade Pvt Lt: terms and conditions narrated to them, highest figure informed. They wish to purchase corporate debtor ongoing concern basis. After details discussions and negotiations, they have given their final offer at 15.71 crores with payment terms of Rs. 4 crores upfront

within 48 hours on acceptance of offer+ Rs 3 crores by 27.12.2022 and balance 8.71 crores before 15.02.2023.

- (iii) Aadarsh Agro: terms and conditions narrated to them, highest figure informed. They have not enhanced their offer so offer given by them is final, i.e. Rs. 15.00 crores and payment terms 20% upfront and 80% in three months' time.
- (iv) Radheshyam Dairy: terms and conditions narrated to them, highest figure informed. They offered to purchase the corporate debtor ongoing concern basis. After negotiations they have given their final offer at Rs. 15.91 crores with payment terms of 25% on 16.12.2022 + next 25% before 25.12.2022 and remaining 50% in 60 days' time.
- (v) Bombay Traders: he has been asked over email to give their details and enhance offer with payment terms since SCC meeting is going on within 10 minutes. No response comes from their side. Details about this parties were also discussed in SCC meeting. It is informed to SCC by the Canara Bank that their manger knows this party and he is trying this party over phone call to give price but no one lifted the phone calls. Since no details given in email for contact and email not responded, nothing about the buyer is known barring email ID from that offer comes, it is decided by the SCC that offer of Bombay Traders should be rejected and then its offer is rejected.

Then based upon those negotiations M/s Radheshyam Dairy was taken as the highest bidder. The details in this regard as recorded in the minutes are as under: -

- (i) H-1 Bidder/buyer is Radheshyam Dairy-Rs. 15.91 crores-25% by 16.12.2022+25% before 25.12.2022 and balance 50% in 60 days' time.
- (ii) H-2 bidder/buyer's is Labhanshi Multitrade Pvt Ltd-Rs. 15.71 crores-4crores within 48 hours on acceptance of offer+3crores by 27.12.2022 and balance 8.71 crores before 15.02.2023.

- (iii) H-3 bidder/buyer is Aadarsh Agro-15.00 crores-20% upfront and 80% in 3 months.
- (iv) New Engicon Pvt. Ltd-Rs. 14.56 crore-25% in 2 days+25% in 2 days of order+50% after 30 days.

As per that minutes the liquidator declared Radheshyam Dairy H-1 bidder/buyer as successful bidder whereas SCC considered Labhanshi Multitrade Pvt Ltd, H-2 bidder/buyer as a successful bidder.

12. On a careful consideration of the facts as stated hereinabove we note that the liquidator has conducted the process in consultation with only one SCC member namely Canara Bank. The meetings were conducted by giving a very short notice to the other members. The result was that the other members could not take part into any of such meetings. We also note that there are two mode of sales as provided in regulation 33 of the IBBI (Liquidation Process) Regulations-(1) through an auction, (2) by means of private sale. The manner in which the liquidator is to conduct such sales are specified in schedule-I thereof. A careful reading of the provisions of Section 33 together with the method as provided in schedule-I clearly requires that the liquidator will have to ordinarily sale the assets of the corporate debtor through a public auction as specified in schedule-I. In the facts of the case, we find that the liquidator has not made a genuine attempt for sale through E-auction (public auction) as provided in schedule-I. As per the process document the ineligibility criterion for the bidders in first auction was only on account of provisions of Section 29A. The conditions on which all the bidders were declared disqualified was not mentioned in the process document. The decision of the liquidator, even on the basis of the consultation with the SCC member Canara Bank, is not in the manner as provided under the relevant regulations.

13. Nevertheless, we find that while proceeding for private sale, the liquidator had made an announcement by placing advertisement in the newspapers and also sending emails to all those prospective bidders of first E-auction also. But then we find that process has also been done in undue haste without giving due opportunities to the other members of the SCC to

attend the meetings which were held for consultation purposes and this was so because the meetings were conducted by giving a very short notice. We note that for the final meeting which was held on 14.12.2022 for negotiation with the bidders, the notices to the members of the SCCs were issued on that day morning itself by email at 8:45, am the meeting was scheduled at Bhopal whereas one of the SCC members namely Commercial Tax Department which is represented through CTO was based at Indore could not be expected to attend such important meeting in such a short time. Similar could be situations for the other members of the SCC. Not only that we also note that in the process of negotiations, when M/s Radheshyam Dairy had exercised its offer to Rs. 15.91 crore, further opportunities to the other bidders particularly Labhanshi Multitrade Pvt Ltd was not given. During the hearing of the matters we had specifically asked the liquidator, who was present and also his counsel as to whether the final offer of Rs. 15.91 crore given by M/s Radheshyam Dairy was shared with Labhanshi Multitrade Pvt Ltd to ascertain if they wanted to give any higher offer. To this liquidator submitted that he did inform to Labhanshi Multitrade Pvt Ltd but they did not make any higher offer whereas on the other side learned senior counsel Mr. Navin Pahwa submitted that no such opportunity was given to the Labhanshi Multitrade Pvt Ltd and that the figure of Rs. 15.91 crore was never informed to them on the day when negotiation had happened. We also find that there is no mention of it in the relevant minutes.

14. We further note that following that negotiations that was made with the bidders on 14.12.2022, the liquidator by his email dated 16.12.2022 informed Labhanshi Multitrade Pvt Ltd his decision for declaring M/s Radheshyam Dairy H-1 bidder as a successful bidder. In the same e-mail it has also been stated that the SCC had finalized Labhanshi Multitrade Pvt Ltd, H-2 bidder as per their commercial wisdom and then a remark is made in bold letters that “decisions are subject to approval from the Hon’ble Adjudicating Authority of NCLT Indore Bench”. We also note that vide email dated 19.12.2022, Labhanshi Multitrade Pvt Ltd enquired with liquidator

the status of NCLT's decision on acquisition of the corporate debtor and also proposed to make first tranche of payment and also enquired by when the liquidator would clear by confusion regarding buyer in the said private sale. By that email they also offered for increasing their offer by negotiation with liquidator and SCC. This mail is placed on record at page 28 of the petition in IA 6 of 2023. Then from the email dated 20.12.2022 which is placed at page 99 of the petition in IA 6 of 2023, it is noted that the liquidator had informed the IBBI and proposed to the Registry NCLT Indore to taking on record the reasons for decision other than what is advised by the SCC. The email to Registrar is sent at registrar.ind@gmail.com whereas email ID of the Deputy Registrar in NCLT regeistrar-ind@nclt.gov.in. In the background of these facts the Labhanshi Multitrade Pvt Ltd filed their IA 272 of 2022 whereas the liquidator filed its application IA 273 of 2022. We also note that as per the email dated 17.12.2022 to the liquidator, M/s Radheshyam Dairy had made part payment on 16.12.2022. It is also noted that vide email dated 26.12.2022 addressed to the liquidator, the Labhanshi Multitrade Pvt Ltd, with reference to its earlier email dated 19.12.2022, offered Rs. 18.31 crores also towards sale of the corporate debtor (placed at page 102 of the IA 6 of 2023). But then again while the IA 273 of 2022 filed by the liquidator has remained pending for decision, the liquidator vide its email dated 30.12.2022 informed all the stakeholders, bidders including Labhanshi Multitrade Pvt Ltd that the deals have already been finalized and successful bidder (i.e. Radheshyam Dairy) proprietor Tilak Narayan Purohit) have been announced by the liquidator. We also note that later, in 7th SCC meeting the Canara Bank acting as sole representative in the SCC meetings, had also concerned to with the decision of the liquidator for finalizing successful bidder in the favour of M/s Radheshyam Dairy too.

15. All these goes to show that the process had not been transparent. In the facts of the case, we would have cancelled the entire process and ordered for the afresh process by way of E-auction. But keeping in view the fact that while resorting to the process of private sale, the liquidator had at

least made the public announcement by way of advertisement in the newspapers and had also informed all those prospective buyers who were declared by him as ineligible in the process of first E-auction, we looked into if even this process is done in the transparent manner. We find that herein too, the liquidator not only had acted in undue haste but had also not given fair chance to the other bidders particularly Labhanshi Multitrade Pvt Ltd for bidding and offer higher amount, if any, over and above Rs. 15.91 crore offered by Radheshyam Dairy. We also take note of the fact that a lot of time has already been gone into process of the liquidation and the litigation thereof. Therefore, considering the facts in totality we are of the view that end of justice would be achieved if the bidding is again ordered between two parties namely Radheshyam Dairy and Labhanshi Multitrade Pvt Ltd. For this purpose, we direct the liquidator to call for a meeting of the SCC giving notice at least five days prior to the date of meeting so that other SCC members could also attend the said meeting for further negotiations and bidding by the aforesaid two parties. The liquidator will also ensure that the notice is delivered either by hand or by post and email to the CTO-Indore in the office of Commercial Tax Department and a copy is also sent to the learned PCA Ms. Teena Saraswat Pandey appearing for the Commercial Tax Department so that in turn she could also intimate the Commercial Tax Department. The bidding between the said two parties then to be done in the presence and with consultation with the members of the SCC and accordingly the liquidator is directed to finalize the successful bidder in the liquidation process.

16. With these directions, all the three IAs i.e. **IA/272(MP)2022, IA/273(MP)2022 & IA/6(MP)2023** stand **disposed of**.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)