NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

IA No.1051/2024
in
Company Appeal (AT) (CH) (Ins) No.387/2024
(IA No.1053/2024)

In the matter of:

Nimmagadda Surya Pradeep Bio-Tech Pvt. Ltd.
Through its director
R/o Plot No. 1046 at Road No. 52,
Jubilee Hills, Hyderabad - 500034 **… Appellants**
V
1. Kamineni Steels & Power India Pvt. Ltd.
Represented by Mr. K. Vatsa Kumar, Ld Liquidator
Kamineni, 4th Floor, King Koti, Hyderabad-500001
Mail:kvkumar.ip@gmail.com

2. Indian Bank
Represented by Mr. S.S Sudhakara Rao,
Stressed Assets Management Branch,
5-1-679, Surabhi Arcade, Bank Street,
Koti Hyderabad-500001, Telengana, India. **...Respondents**

Present :

For Appellant : Ms. Mahalakshmi Pavani, Senior Advocate
For Mr. Anjani Kumar Mishra, Mr. Javed Lateef &
Mr. Neeleshwar Pavani, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No.187/2022
(IA Nos.432, 435, 433 & 434/2022)

In the matter of:

Nimmagadda Surya Pradeep Bio Tech Pvt. Ltd.
R/o Plot No. 1046 at Road No. 52,
Jubilee Hills, Hyderabad – 500 034 **… Appellant**
V
1. Kamineni Steel & Power India Pvt. Ltd.
Represented by Mr. Racharla Ramakrishna Gupta, Liquidator
Kamineni, 4th Floor, King Koti,
Hyderabad - 500 016.

2. JM Financial Asset Reconstruction Company Ltd.
Represented by its Authorised Signatory,
Having its registered office at
7th Floor, Cnergy,Appasaheb Marathe Marg,
Prabhadevi, Mumbai - 400 025. ...Respondents

Present :

For Appellant : Mr. P. Raj Kumar Jhabakh, Advocate
For Respondents : Mr. Abishek Anand & Mr. Karan Kohli, Advocates, For R2

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

These are two company appeals, since being common, in facts, are being taken up together. In Company Appeal (AT) (CH) (Ins) 387/2024, challenge is being put to Impugned Order dated 10.05.2024, which was rendered by the Hon'ble NCLT, Hyderabad Bench in IA (Dissolution) No. 02/2024 in CP (IB) No. 11/10/HDB/2017, by virtue of which Ld. NCLT ordered dissolution of the Corporate Debtor (CD) M/s. 1. Kamineni Steel & Power India Private Limited and discharged the liquidator. The connected appeal, being **Company Appeal (AT) (CH) (Ins) No.187/2022**, arises from the final Judgment and Order dated 18.04.2022 which was passed by the Hon'ble NCLT, Hyderabad Bench in IA (IBC) No. 727/2021 and IA (IBC) No. 114/2022, as preferred in **CP (IB) No. 11/10/HDB/2017**, by virtue of which the prayer of the Appellant to grant extension of time to pay the balance amount of Rs. 346 Crores and to direct the liquidator not to forfeit the Earnest Money Deposit (EMD) of Rs. 5 Crores paid by him was rejected and the liquidator was directed to invoke the EMD and to start the bidding process afresh and to complete the liquidation process in 6 months.

2. In these two appeals, the subject matter is related to the process of the Corporate Insolvency Resolution Process (CIRP) which was carried as against the Corporate Debtor M/s. Kamineni Steels & Power India Private Limited, being the Corporate Debtor. For the purposes of brevity, and owing to the fact, that the stage at which we are considering the controversy, is at the stage where the Corporate Debtor has already been put to dissolution, we would not be dealing with, all the factual aspects, that would have otherwise required consideration, because the order of the CIRP, the order of the liquidation, and ultimately the order of dissolution all have attained its finality, and they may not require a detailed scrutiny by us while delivering this Judgment.

3. The short controversy, which would be required to be considered by us, in the instant company appeal, would be limited to the extent as to whether the Appellant herein, being determined as to be a successful bidder in the liquidation proceedings and having apparently defaulted in the remittance of the amount which was the settled due to be paid under the terms and conditions of the tender document, could be granted any leverage by way of an extension of time period to pay the amount, beyond the time period stipulated under the tender document. It will also be needed to considered as to whether, as prayed by the Ld. Counsel for the Appellants, that in case it is not possible to grant an extension of time to deposit the amount due to be paid under the tender document by the Appellant,

who had been determined to be the successful bidder, the Earnest Money Deposit (EMD) remitted by him can be returned back to him as now the subsequent sale process has been completed and settled in favour of a third person, at a higher price than, the price at which the same was awarded to him.

4. It is not in dispute that, because of the failure on the part of the Appellant to deposit the amount as per the tender document, after having been determined to be a successful bidder, within the time slot provided under it, originally as per the tender document and subsequently through grant of extensions, the liquidator was directed to start the bidding process afresh and the said process, resulting in the settlement of the bid, in favour of a third person, at a higher price, has attained finality and that as of now the Appellant is only alternatively pressing for refund of the Earnest Money Deposit remitted by them under the fourth e-auction carried out by the Respondent (liquidator).

5. Brief facts, which would be relevant, are hereby being narrated chronologically. They are as follows:-

i. On 10.02.2017, the Corporate Debtor was admitted into the CIRP proceedings as it stood initiated against the corporate Debtor in a proceeding drawn under Section 10 of I & B Code.

ii. The Resolution Plans were invited, and in the said process, the Corporate Debtor too had submitted the resolution plan which was approved by Ld. NCLT on 27.11.2017.

iii. As against the order of approval of the resolution plan on 27.11.2017, the appeals were preferred before the Hon'ble NCLAT and they were taken up together and adjudicated by the common Judgment of 06.09.2018.

iv. By a common judgment dated 06.09.2018, the Ld. NCLAT remitted the matter back to the Ld. Adjudicating Authority, with the direction to initiate the liquidation proceedings of the Corporate Debtor, in terms of the provisions contained under Section 33 to be read with Section 34 of the I & B code.

v. Aggrieved against the Judgment of the Ld. NCLAT dated 06.09.2018, appeal was filed before the Hon'ble Apex Court, which dismissed it, by a Judgment of 13.10.2018, resulting in affirmation of the direction of the Hon'ble NCLAT, directing the Adjudicating Authority to initiate the liquidation proceedings of the Corporate Debtor.

vi. Accordingly, the Adjudicating Authority initiated liquidation proceedings of CD by ordering the liquidation of the CD and, appointing Mr. Racharla Ramkrishna Gupta as liquidator to carry out the liquidation process.

vii. The process of liquidation was notified, to the stakeholders intimating about the commencement of the liquidation process by issuance of public announcements on 30.10.2018 as it was carried, in the two newspapers namely, "The Hindu" (English) and "Sakshi" (Telugu-vernacular language) newspaper. In accordance with the compliance of the provisions contained under Section 33 (1)(a)(ii) of the Code to be read with Regulation 12 of (IBBI) Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the claims were invited from the stakeholders which was directed to be submitted on or before 25.11.2018.

viii. In continuation to the process of invitation of the claims, the liquidator had meticulously verified the claims submitted in accordance with the stipulations intended by Regulation 30 of the (liquidation process) regulations and had compiled the list of stakeholders, and the same was filed before the Ld. Tribunal on 05.01.2019.

ix. Owing to certain shortcomings and discrepancies, though not very vital in nature, which could have at all affected the liquidation process at all, the list of stakeholders was modified for the first time on 27.05.2020. This aspect of modification of the list of stakeholders on 27.05.2020, will not have any bearing on the instant appeal, which relates to grant of extension of time to the Appellant to deposit the bid amount, which he has not been able to do, despite a number of extensions given.

x. The liquidator, on 26.07.2020 had invited an Expression of Interest, by carrying out the publication in the Business Standard (English) and Namaste Telangana (Telugu) newspaper on 27.07.2020, in adherence to the stipulations contemplated under Regulation 14 (3) of the Code, inviting bids from the prospective bidders to purchase the assets of the Corporate Debtor, which was under liquidation as a going concern.

xi. The invitation of bids by the publication made on 27.07.2020, in fact, was for the fourth time the bids were invited after three earlier sale notices issued on 14.10.2019, 27.01.2020 and 10.06.2020, aiming to sell the CD as going concern had failed.

xii. For bids thus invited by the publication of 27.07.2020, the liquidator had fixed 23.08.2020, as the last date for submission of Expression of Interest.

xiii. In the fourth e-auctioning process as referred to above, only one successful bid of Rs.351 Crores (Three Hundered and Fifty One Crores) was received and that was from the Appellant on 26.08.2020.

xiv. As against the reserve price of Rs. 350 Crores fixed, the Appellant had offered the bid of Rs.351 Crores (Three Hundered and Fifty One Crores) and being the highest bidder, was declared as to be the successful bidder. The bid offered by the Appellant on 26.08.2020 was accepted and the letter of intent was issued by the liquidator to the Appellant on 28.08.2020.

xv. As per stipulations, of the bid document and the letter of intent issued, the Appellant was required to pay the bid amount of Rs. 351 Crores in full within a period of 90 days from the date of Letter of Intent, that is, on or before 26.11.2020. The Appellant had already paid Rs. 5 Crores as EMD along with submission of bid and thus he had to pay the balance of Rs. 346 Crores on or before 24.11.2020.

xvi. The aforesaid Letter of Intent further stipulated, that in the event, the conditions for remittance of an amount due under the terms and conditions as expressed in the Letter of Intent issued on 28.08.2020, by the liquidator are not followed, the bid would be cancelled, which would result in forfeiture of the Earnest Money Deposit (EMD). The said stipulation was contained in the communication made by the liquidator on 28.08.2020 to the present Appellant particularly that as contained in para 11 of the said communication which provided for the forfeiture clause. Relevant para 11 is extracted hereunder: -

> *11. In the event you are found to have made any misrepresentation, wrongful disclosure or misleading declaration of eligibility, this Letter of Intent may be revoked and on account of such revocation you shall have no right under this Letter of Intent and the Earnest Money and other monies deposited will be forfeited."*

Thus, according to the stipulations of the Letter of Intent (LoI) issued in favour of the Appellant on 28.08.2020, the Appellant was required to pay the balance amount of Rs.346 Crores (Three Hundred and Forty-Six Crores) which is the balance amount for the sale of the Corporate Debtor, as a going concern, on or before 24.11.2020.

xvii. Admittedly the appellant had defaulted, and was unable to keep up with the commitment made by the Appellant, in depositing the amount within the period of 90 days i.e. on or before 24.11.2020. The fact of having committed the default is admitted.

xviii. The Appellant had first filed an application IA No. 1062/2020, seeking an extension of time of 90 days w.e.f 24.11.2020 to 24.02.2021 to deposit the amount under the bid document, on the ground, that owing to the COVID-19 situation, he was unable to deposit the balance amount within the time provided. The Stakeholder Consultation Committee (SCC), in response, had granted time up to 25.03.2021, stating thereby that failing such, EMD of Rs. 5 Crore will be forfeited. Subsequently as no payment from the Appellant was forth coming, Stakeholder Consultation Committee (SCC) on 28.05.2021 decided to forfeit the Earnest Money Deposit (EMD) and to conduct fresh auction.

xix. The appellant in response, filed, yet another interlocutory application being IA No. 260/2021, before the Ld. Adjudicating

Authority, seeking a direction for the liquidator not to proceed with the cancellation of the bid dated 26.08.2020 not to forfeit the EMD and to refrain from calling a fresh bid for the sale of the Corporate Debtor till, the disposal of IA No. 260/2021, Ld. NCLT, moved by his prayers, had granted him opportunity to prove his bonafide by paying a portion of the balance on six occasions, that is, on 16.06.2021, 14.07.2021, 25.08.2021, 07.10.2021, 21.01.2022 and 01.03.2022, Despite such opportunity given and despite of the extensions being granted, the admitted fact is, that the Appellant, was unable to deposit the amount and there was an admitted default, despite the extensions granted for depositing the amount under the Letter of Intent (LoI).

xx. We have to bear in mind, that the auction was confirmed as back as on 26.08.2020. The amount was to be deposited within 90 days. The extensions were granted by the Hon'ble NCLT, but despite of the extensions and assurance extended, the amount was not deposited. Instead, the Appellant filed yet another IA being IA No. 114/2022 for extension of time to deposit the amount till 28.02.2022, stating that they are not seeking reduction or re-negotiation of the settlement made in the confirmation of the bid made on 26.08.2020, but that they want only to be granted an extension of time to deposit the amount. Finally the aforesaid request made by the Appellant for extension of time to deposit the amount through IA No. 727/2021 and IA No. 114/2022, were rejected by the Ld. Tribunal by the Impugned Order dated 18.04.2022.

xxi. It has also been brought to the knowledge of this Tribunal that, on account of default in making the payment despite of grant of extension of time and despite giving an undertaking to Ld. NCLT to make payment, the Respondent liquidator on 25.08.2021 had cancelled the sale of the Corporate Debtor to the Appellants with immediate effect and had forfeited the EMD amount of Rs.5 Crores as per clause 11 of Letter of Intent issued by him even after the cancellation of the sale on 25.08.2021, the Appellant vide his communications of 17.09.2021, 07.10.2021, 29.11.2021, and by filing IA No. 260/2021 & IA No. 727/2021, had been consistently seeking extension of time to deposit the amount and the last extension which was sought for, was for the periods from 30.11.2021 to 30.01.2022 and from 31.01.2022 to 28.02.2022 to deposit the amount under the affirmation of the auction. But the said extension of time to deposit as sought by IA No. 727/2021, as filed on 29.11.2021 and by IA No. 114/2022 couldn't have been granted, because admittedly according to the Appellant, the sale as made in favour of the Appellant by the affirmation of auction on 26.08.2020, was cancelled on 25.08.2021, and after the cancellation of the sale, there could not have been any extension of time for, remittance of the amount, and that too, when the order of cancellation of sale was within the canons of bid documents.

xxii. But still the Hon'ble NCLT on 01.03.2022, had granted an extension of two week's time on account of the memorandum filed by the Appellant along with the documents requesting for extension of ten working days, pleading that certain amount, was being mobilized from the foreign investors, that it was under process and that certain time period would be needed to get it cleared by the Financial Investment Unit (FIU) by the Reserve Bank of India.

xxiii. After giving sufficient chances to the Appellant to remit the amount, finally Ld. NCLT, on 18.04.2022 passed the Impugned Order, dismissing IA No. 727/2021 and IA No. 114/2022 filed by the Appellant, by a common order, and directing the liquidator to forfeit the EMD amount of Rs.5 Crore to start the bidding process afresh, so as to complete the whole process within a period of 6 months thereafter.

xxiv. Aggrieved against the said order, and faced with the threat of fresh bidding process, the Appellant herein preferred the appeal being CA No. 387/2024, by e-filing the same on 09.06.2024, but failed to get an interim under in his favour. During the intervening period the change of the liquidator was effected vide order passed on IA No.

1637/2023 dated 08.11.2023, appointing Mr. Kallat Vatsa Kumar as a liquidator, upon assuming the role of the liquidator, on 08.11.2023, Mr. Kallat Vatsa Kumar took official custody of the assets of Corporate Debtor assets through execution of a Panchnama on 16.11.2023, received the possession of the original title deeds, along with the other relevant documents on 17.11.2023 and took steps to conduct the sale bidding process afresh.

xxv. Further, in compliance of the Hon'ble NCLT's Order dated 18.04.2022, which is the order under challenge in the instant appeals, the liquidator issued the sixth sale notice on 09.12.2023. Pursuant to this, Expressions of Interest were received, for parcel 1, from M/s. Kalyani Steels limited, and for parcel 3 from M/s. Mahidhara projects limited. Both the proposed Applicants qualified to be as an eligible bidder; the e-auction took place on 05.01.2024 and ultimately Kalyani Steels limited with a bid amount of Rs.450 Crores (Four Hundered and Fifty Crores) was declared as to be the successful bidder. Consequently, the liquidator issued a Letter of Intent on 08.01.2024, which was duly accepted by the Ld. Adjudicating Authority holding M/s. Kalyani Steel's limited, as to be the successful bidder with a quoted bid price of Rs.450 Crores (Four Hundered and Fifty Crores) which was much higher than to the earlier bid price of Rs.351 Crores (Three Hundered and Fifty One Crores) offered by the Appellant.

xxvi. It is Appellant's own case, that the subsequent successful bidder, M/s. Kalyani Steels Limited had remitted the entire sale consideration of Rs.450 Crores, after deducting the applicable TDS on 07.02.2024, including the EMD of Rs.23 Crores. It is further an admitted case that consequent to, the Kalyani Steel Limited having been declared, as to be a successful bidder, in the sixth sale notice as issued on 09.12.2023 in compliance of the Ld. NCLT's order. The sale certificate has been issued on 10.02.2024, and the entire assets have been handed over to Kalyani Steel Limited and that a final report in regards thereto has been submitted, on 08.03.2024.

xxvii. Lastly, after submission of the final report filed on 08.03.2024, IA (Dissolution) No.2/2024, filed before the Hon'ble NCLT by the liquidator, seeking dissolution of M/s. Kamineni Steels & Power India Private Limited (Corporate Debtor) under Section 54 (1) of I & B Code, was allowed, vide order dated 10.05.2024.

6. This matter has been heard at length today and it was a persistent argument of the Ld. Counsel for the Appellant, to grant them an extension to deposit the amount which they have defaulted in pursuance of the 4th e-auction process which was affirmed in their favour as back as on 26.08.2020.

7. Let us be very precise and clear that, owing to the subsequent development which had taken place and which has been detailed herein above, where a right has now been crystallized in favour of M/s. Kalyani Steels limited, with the 6th e-auction process having been confirmed in their favour, and after the sale certificate having been issued on 10.02.2024, it will not be the appropriate stage at which the clock could be permitted to be put back, in favour of the Appellant by permitting him to deposit the amount in the extended period, which they have failed to do a number of times despite numerous opportunities given as detailed in para 5 above resulting in non-compliance of clause 11 of the confirmation of bid as made on 26.08.2020. Hence, we make it clear, that the plea of extension of time made by the Appellant cannot be considered, and be granted because of the following:-

(a) The bid of the Appellant has been cancelled and it has not been challenged
(b) The Appellant violated terms of the bid conditions
(c) Subsequent sale of the Corporate Debtor (CD) as a going concern has been confirmed and the sale consideration which was of much higher amount has been accepted
(d) This subsequent sale is fully paid for, still valid and remains unchallenged.

8. The Respondents' Counsels have argued, that in the light of the various judgments which have been rendered by the principal bench as well as, by the

Hon'ble Apex Court, 90 days period to deposit the balance amount in a bidding process is sacrosanct and it cannot be permitted to be extended, under any given set of circumstances. They have further contended that the extension of time to deposit the amount cannot be granted as a matter of right or in due course, because the direction to deposit the bid amount within a time frame, has been mandated in order to attach bonafides to the bidder, who is ultimately declared as to be a successful bidder for sale of the assets of the Corporate Debtor and that the stipulation to deposit Earnest Money Deposit (EMD) in order to participate in the bidding process is to attach a sanctity to the participation so that the entire auctioning process may not be made as a farcical exercise.

9. We yet again make it clear, that there cannot be any dispute with regards to the argument extended by the Ld. Counsel for the Respondent, that there cannot be an extension of any period beyond the given 90 days for depositing the amount, after having been declared as to be a successful bidder, because that it defeats the very purpose and objective of the auction proceedings to find a bonafide purchaser.

10. Faced with this scenario, the Ld. Counsel for the Appellant, has ultimately confined herself to the plea of securing, the relief for refund of the EMD amount of Rs.5 Crores, which the Appellant had deposited, at the time of submission of the bid document.

11. The Ld. Counsel for the Appellant, having now confined the argument limited to the extent of the refund of the EMD amount, as deposited by the Appellant has submitted that though there exists a forfeiture clause in the bid document, this Appellate Tribunal should consider the aspect from a very wider perspective that, when the auction proceedings were initiated and the Appellant was declared as to be the successful bidder on 26.08.2020, when he was mandated to comply with the conditions to deposit the money within 90 days, that is on or before 24.11.2020, coupled with the extensions granted by the Hon'ble NCLT for depositing the amount, which lasted upto 15.02.2022, the entire process, ever since the affirmation of sale in favour of the Appellant declaring him as to be the successful bidder was conducted during the COVID-19 period, which was an unforeseen and exceptional situation. He has pleaded, that he was not able to make an arrangement for the funds due to financial crunch faced by him and due to the restrictions imposed by Covid pandemic and hence he could not deposit the amount within the prescribed time frame, that he had tried to mobilize the required investment from the foreign investors, and that it got obstructed because of the procedural issues faced from the Financial Investment Unit (FIU), of the Reserve Bank of India, whose clearance was needed to bring the money to India and this obstruction was caused partly due to Covid restrictions because he could not liaise with them properly and that owing to the lack of clearance, by the Financial Investment Unit (FIU), the amount could not be infused to be deposited and as such, he should not be faulted with for lack of efforts and that he being a

bonafide purchaser, at least the earnest money, which he has deposited, deserves to be refunded back to him because his inability to deposit the required amount was on account of *force majeure* conditions prevailing at that time.

12. The Ld. Counsel for Appellants has further submitted, that refund of the earnest money as deposited by them, will not at all prejudice the rights of the Respondent, owing to the fact that in the subsequent bidding process that is, the 6^{th} e-auction the bid has been affirmed at Rs.450 Crores (Four Hundred and Fifty Crores) which is much higher, to the one offered by the Appellant, at the stage of 4^{th} bidding process, as held on 23.08.2020, when his bid was accepted for a tune of Rs.351 Crores (Three Hundred and Fifty One Crores) and therefore, the refund of the earnest money, will not at all result into any financial loss, to the Respondents for the reason that, they have already been paid Rs.450 Crores (Four Hundered and Fifty Crores) in full, from the successful bidder, M/s. Kalyani Steels Limited. Accordingly she has contended that the amount of the earnest money deposited by the Appellant in 4^{th} e-auction process, may at least permitted to be refunded back, especially in view of the situation which prevailed at the time when the Appellant has participated in the bidding process which was not a situation which was ever conceived of, at any point of time, because of which he was unable to deposit the required amount as during, the COVID-19 pandemic the economy not only of India, but also of the entire world had suffered and that, in view of the above, the EMD should not be permitted to be forfeited to the detriment to his interest for no fault of his. For the aforesaid purpose referred to

the ***Judgment as reported in 2021 SCC Online SC page 3340 in the matter of Alisha Khan vs Indian Bank (Allahabad Bank) and others***, where the Hon'ble Apex Court had considered that, owing to the situation prevailing due to Covid-19, the earnest money should not be permitted to be forfeited, where a subsequent fresh auction has taken place and the property has been sold at a higher price. In the aforesaid judgment, the Hon'ble Apex Court has observed that, a reasonable attitude has to be adopted and after withholding a reasonable amount by way of deduction from EMD amount, the balance EMD is required to be refunded back. The relevant observations which has been made by the Hon'ble Apex Court as contained in Para 3 & 4 of the Judgment is extracted hereunder:-

> *"3. Having gone though the impugned judgment and orders passed by the High Court, we are of the opinion that the High Court ought to have allowed the refund of the amount deposited being 25% of the auction sale consideration. Considering the fact that though initially the appellant deposited 25% of the auction sale consideration, however, subsequently she could not deposit balance 75% due to COVID-19 pandemic. It is required to be noted that subsequently the fresh auction has taken place and the property has been sold. It is not the case of the respondents that in the subsequent sale, lesser amount is received. Thus, as such, there is no loss caused to the respondents.*
>
> *4. Considering the aforesaid facts and circumstances, we allow these appeals and set aside the order of forfeiture of 25% of the amount of auction sale consideration and direct the respondent Bank to refund/return the amount earlier deposited by the appellant, deposited as the part auction sale consideration (minus 50,000/- towards the expenditure which were required to be incurred by the respondent Bank for*

conducting the fresh auction) within a period of four weeks from today."

13. This argument of the Ld. Counsel for the Appellant appears to be reasonable. It cannot be ruled out, that inability of the Appellant to deposit the amount, as it has been explained in the different Interlocutory Application preferred by him and the grounds taken by him in the appeal, for the reasons, which are beyond his control;

14. Accordingly, we come to the following conclusion:

a) Because the entire auctioning process was being conducted during the COVID-19 situation, the Appellant, despite his best efforts to mobilize the required amount and to deposit the same as stipulated under the award by attracting foreign investors, was unable to do so because of the inordinate time taken by the Financial Investment Unit (FIU) of RBI to process the case as per their regulations in relation to investment in India by foreign investors.

b) The Appellant had made all genuine efforts to deposit the amount, but he could not do so despite of extensions granted, because of the factors outside his control. Hence, he should not be saddled with the forfeiture of the entire EMD amount, which has been deposited by him as part of contract. As such taking a pragmatic view, and particularly in the light of the Judgment, of Alisha Khan, of (Supra), we hereby think it apt and fair that, in order to balance the equities without adversely affecting the interest of any of the parties to the appeal, 25% of the Rs.5 Crores of EMD deposited by the Appellant, i.e. Rs.1,25,00,000/- (One Crore Twenty Five Lakhs) is to be retained and the balance 75% of the EMD amount i.e. Rs.3,75,00,000/- (Three Crores Seventy Five Lakhs) is to be refunded back to the Appellant, within one month from the date of service of the certified copy of this Judgment.

c) The aforesaid Judgment is exclusively to balance the equity, owing to the COVID-19 situation and will not carry a precedence in future on an issue of the forfeiture of an amount, under a bidding document.

15. Subject to the aforesaid, the appeal would partially stand allowed, qua the aforesaid relief pertaining to the refund of Earnest Money Deposit (EMD) only, as provided under clause (c) referred above, and that in so far it relates to the other reliefs prayed for, the 'Appeal' would stand 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

16/12/2024
SN/TM/MS