NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 255-257 of 2025

[Arising out of the Impugned Order dated 20.12.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, in I.A. (IB) No. 447/KB/2024, I.A. (IB) No. 586/KB/2024 and I.A. (IB) No. 995/KB/2024 in C.P. (IB) No. 23/KB/2019]

In the matter of:

Orissa Alloy Steel Private Limited,
a company within the meaning of the
Companies Act, 2013, holding
CIN U27320WB2019PTC234383 and
having its registered office at Room No. 3B,
1 Garstin Place, Kolkata, West Bengal 700001

...Appellant

Versus

1. **S M Steels and Power Limited,**
   having its registered office at
   Block - DP-5, Tower-I, 5th Floor, Unit - 504,
   Sector - 5, Salt Lake, Kolkata,
   West Bengal - 700091
   Email address as legal_smn@smgroup.co.in

   .... Respondent No.1

2. **Pankaj Dhanuka**
   Liquidator of Corporate Power Limited,
   having registration number as
   IBBI/IPA-001/IP-P01205/ 2018-2019/11911
   and having office at
   Deloitte India Insolvency Professionals LLP,
   13 Floor, Building Omega, Bengal Intelligent Park,
   Block EP & GP, Sector V, Salt Lake City,
   West Bengal 700091
   Email address as pankajdhanuka@gmail.com and
   incplip@deloitte.com

   .... Respondent No.2

3. **Assets Care and Reconstruction Enterprise Limited,**
   a company within the meaning of the
   Companies Act, 2013 having its registered office at
   14th Floor, EROS Corporate Tower, Nehru Place,
   New Delhi - 110 019
   Email address as acre.arc@acreindia.in

   .... Respondent No.3

Present:

For Appellant :Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vaibhav Gaggar, Mr. Diwakar Maheshwari, Mr. Shounak Mitra, Mr. Saikat Sarkar, Mr. Shreyas Edupuganti, Mr. Zulfiqar Ali and Mr. Saptarshi Mandal, Advocates.

For Respondent : Mr. Dhruv Mehta and Mr. Krishnendu Datta Sr. Advocates with Mr. Anand Varma, Mr. Kaustubh Prakash, Ms. Prachi Bhatia and Ms. Alina Merin Mathew, Advocates.

Shri Niranjan Reddy, Sr. Advocate, Mr. Ashim Sood, Mr. Abhishek Swaroop, Mr. Anupam Prakash, Ms. Bhawana Sharma, Ms. Kirti Talreja for Respondent No.1 (RP).

Mr. Shyam Mehta, Sr. Advocate with Mr. Udit Mendiratta, Mr. Shivkrit Rai, Ms. Apeksha Singh, Advocates for Respondent No.1 (SMSPL)

WITH

Company Appeal (AT) (Insolvency) No. 214-216 of 2025

[Arising out of the Impugned Order dated 20.12.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, in I.A. (IB) No. 447/KB/2024, I.A. (IB) No. 586/KB/2024 and I.A. (IB) No. 995/KB/2024 in C.P. (IB) No. 23/KB/2019]

In the matter of:

S M Steels and Power Limited,
Registered Office: Block-DP-5, Tower-I,
5th Floor, Unit- 504, Sector-5, Salt Lake,
Kolkata, West Bengal – 700091
Email: smn@smgroup.co.in

…Appellant

Versus

1. **Pankaj Dhanuka**
   Liquidator of Corporate Power Limited,
   having registration number as
   IBBI/IPA-001/IP-P01205/ 2018-2019/11911
   Office: Deloitte India Insolvency Professionals LLP,
   13th Floor, Building Omega, Bengal Intelligent Park,
   Block EP & GP, Sector V, Salt Lake City,
   West Bengal 700091
   Email: pankajdhanuka@gmail.com and

incplip@deloitte.com

.... Respondent No.1

2. Assets Care and Reconstruction Enterprise Limited,
Registered office at: 14th Floor, EROS Corporate Tower,
Nehru Place, New Delhi - 110019
Email: acre.arc@acreindia.in

.... Respondent No.2

3. Orissa Alloy Steel Private Limited
Registered Office: at Room No 3B,
1 Garstin Place, Kolkata,
West Bengal - 700001
Email: alloy. rashmi@gmail.com

.... Respondent No.3

Present:

For Appellant :Mr. Dhruv Mehta and Mr. Krishnendu Datta Sr. Advocates with Mr. Anand Varma, Mr. Kaustubh Prakash, Ms. Prachi Bhatia and Ms. Alina Merin Mathew, Advocates.

For Respondent :Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vaibhav Gaggar, Mr. Diwakar Maheshwari, Mr. Shounak Mitra, Mr. Saikat Sarkar, Mr. Shreyas Edupuganti, Mr. Zulfiqar Ali and Mr. Saptarshi Mandal, Advocates.

Mr. Abhishek Swaroop, Mr. Anupam Prakash, Ms. Kirti Talreja for Respondent No.1 (RP).

Mr. Shyam Mehta, Sr. Advocate with Mr. Udit Mendiratta, Mr. Shivkrit Rai, Ms. Apeksha Singh, Advocates for Respondent No.1 (SMSPL)

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present is a set of two appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) which arises out of the Order dated 20.12.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court-

I) in I.A. (IB) No. 447/KB/2024, I.A. (IB) No. 586/KB/2024 and I.A. (IB) No. 995/KB/2024 in C.P. (IB) No. 23/KB/2019. By the impugned order, the Adjudicating Authority has disallowed IA No. 447 filed by the Liquidator by directing the Liquidator to issue fresh Swiss Challenge Notice in the private sale of the assets of the Corporate Debtor with the bid of OASPL as the anchor bid and EMD fixed on standard norms. IA Nos. 586 and 995 of 2024 filed by SMSPL has been disposed of on the above terms. Aggrieved by the impugned order, two separate appeals have been preferred by Orissa Alloy Steel Pvt. Ltd. (**"OASPL"** in short) and **SM Steels and Power Limited** ("**SMSPL**" in short).

2. Since the facts in both the appeals are common, we would like notice the relevant facts which are necessary to decide both the appeals conjointly which are as under:

- On 19.03.2020, Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('**CIRP**' in short).
- On 08.10.2021, the Adjudicating Authority directed liquidation of Corporate Debtor and appointed the liquidator.
- The Stakeholders' Consultation Committee ('**SCC**' in short) was constituted with the following composition: i) ARCIL holding 60.65%, ii) REC Limited holding 19.55%, iii) Indian Bank holding 5.37%, iv) PNB holding 4.52%, v) Union Bank of India holding 7.92%, and vi) LIC holding 1.99%.
- On 31.12.2021, the Liquidator issued a public notice announcing the auction for the sale of Corporate Debtor as a going concern with a reserve

price of Rs. 770 crores and an Earnest Money Deposit ('**EMD**' in short) set at 10% of the reserve price. Nine rounds of auction was conducted unsuccessfully between 31.12.2021 and 15.01.2024 in all of which the EMD was maintained at 10% of the reserve price. None of the auction sales fructified.

- On 01.12.2023, J Kumar Developers Limited ('**JKDL**' in short) has also submitted a private sale offer of Rs.290 crores to the Liquidator for the acquisition of Corporate Debtor. The said offer was not accepted, as it was substantially lower than the reserve price of Rs. 361.62 crores fixed in the last failed auction.
- On 21.12.2023, Liquidator caused publication of eighth notice for the auction at a reserve price of Rs. 325.07 crores in which OASPL submitted the EoI but did not participate in the auction finding the reserve price for auction higher than OASPL's own valuation of Corporate Debtor.
- On 15.01.2024, Liquidator caused publication of the ninth notice for the auction for Rs. 292.91 crores in which OASPL submitted its EoI but did not participate in this auction conducted on 09.02.2024.
- On 19.02.2024, OASPL submitted an offer to acquire the business of Corporate Debtor as a going concern through private sale for Rs. 250 crores along with an EMD of 10%. The offer letter was circulated by email on 19.02.2024 at 1:53 pm and on the same date at 2:51 pm, the Liquidator informed OASPL that in the 19th meeting of the SCC scheduled for 20.02.2024, their offer would be discussed.

- In the 19th SCC meeting held on 20.02.2024, negotiations took place between the SCC and the representatives of OASPL wherein OASPL was requested to revise its offer to Rs 265 Cr.; make EMD of Rs 150 Cr. and participate in an auction process to be held by way of Swiss Challenge Process where OASPL would be the 'anchor bidder' with the right to match any higher bid. OASPL agreed to the above stipulations of the SCC. OASPL requested that physical possession of the plant be handed over upon full payment of the sale consideration without waiting for the Adjudicating Authority approval which however was not agreed to.
- The SCC members in 19th meeting voted in favour of OASPL's bid with 80.33% majority. The voting line was kept open for REC which needed internal approval in order to cast the vote.
- OASPL requested permission to submit the EMD in the form of a bank guarantee.
- On 22.02.2024, the Liquidator after SCC consultation issued a public notice which was published in various newspapers announcing a Swiss Challenge auction for the sale of Corporate Debtor as a going concern on a private sale basis with OASPL's offer of Rs. 265 crores serving as the anchor bid and an EMD of Rs. 150 crores. The Liquidator also shared the format of the bank guarantee with OASPL following which EMD was deposited in two tranches on 23.02.2024 and 26.02.2024.
- In terms of the public announcement of 22.02.2024, the Swiss Challenge process and terms of sale were to be governed by the Process Document. The last date for submission of eligibility documents was 27.02.2024. The

last date for payment of the EMD of Rs. 150 Cr. was 29.02.2024 by 12:00 pm. Bids and EMDs were to be submitted as per the format prescribed in the Process Document. The date for submission of competitive bids was fixed as 05.03.2024.

- On 24.02.2024, Liquidator filed IA No. 447/KB/2024 before the Adjudicating Authority seeking permission to conduct the sale of Corporate Debtor by means of private sale under Regulation 33(2)(d) of the Liquidation Process Regulations ("**LPR**" in short) to the successful bidder through the Swiss Challenge process.
- 8 bidders expressed preliminary interest for participating in the Swiss Challenge process. Out of 8, only 2 bidders submitted their eligibility documents, However, none of the bidders submitted their bid.
- On 29.02.2024, JKDL issued a legal notice to the SCC raising the objections that the Swiss Challenge process was not conducted in a fair manner and that the EMD amount of Rs. 150 crores was excessive and structured to favour OASPL. JKDL also requested an opportunity to participate in the sale process.
- On 04.03.2024, the SCC in its 20th meeting discussed the legal notice issued by JKDL. ACRE as SCC member observed that since JKDL had not participated in the process, no extension could be granted. The SCC members unanimously decided not to extend the timelines for JKDL and declined its request to participate in the Swiss Challenge process.
- On 05.03.2024, the scheduled date for competitive bidding under the Swiss Challenge auction process, no bids were received. Consequently, the

private sale process of the Corporate Debtor was concluded with OASPL's anchor bid emerging as the winning bid. OASPL was approved as the successful bidder with a majority vote of 80.33%.

- On 06.03.2024, the Liquidator issued a Letter of Intent (**LOI**) in favour of OASPL, subject to approval by the Adjudicating Authority. The LoI was unconditionally accepted by OASPL.
- Ten days after conclusion of the Swiss Challenge Process, on 16.03.2024, SMSPL sent a letter and an email to the Liquidator expressing its interest for participating in the private sale process and willingness to submit a higher bid. SMSPL also requested that its EoI be considered for participation in the sale of the Corporate Debtor as a going concern on an "as is where is" basis.
- Within two days of sending its offer to the Liquidator, on 18.03.2024, SMSPL filed IA No. 586/KB/2024, before the Adjudicating Authority seeking the following reliefs:

    i. A direction to the Liquidator to accept the EOI submitted by SMSPL;

    ii. A direction to the Liquidator to conduct a bid auction process for the private sale of Corporate Debtor as a going concern on an "as is where is" basis;

    iii. A stay on the auction conducted on 05.03.2024;

    iv. A stay on the execution of the LOI issued pursuant to the auction held on 05.03.2024;

v. Cancellation of any sale confirmation or sale certificate issued in furtherance of the auction held on 05.03.2024; and, in the alternative,

vi. Setting aside of the Public Announcement dated 22.02.2024 issued by the Liquidator.

- On 22.03.2024, SMSPL issued a letter to the Liquidator offering Rs 300.20 Cr. as its initial bid along with an EMD of 10%. SMSPL further clarified that its offer was however for a public auction and not for a private sale under the Swiss Challenge process and requested for participation on the above terms.
- On 26.03.2024, the Liquidator convened the 21st meeting of the SCC. While ACRE observed that as was decided not to reopen the process on a similar offer received from JKDL earlier, it was suggested the process should not deviate as an LOI has already been issued. The representative of REC noted that since an offer of Rs. 300 crores had been received from SMSPL which is a higher amount, they could be allowed to participate if they agreed to match the payment terms and submit the EMD as per terms of the private sale. Indian Bank also supported giving one opportunity to participate since the offer was 10% higher than OASPL's bid since Adjudicating Authority had not yet approved the private sale conducted on Swiss Challenge process. Ultimately, the proposal to reopen the sale to consider SMSPL's offer was rejected by a 75.08% majority by SCC.
- On 27.03.2024, SMSPL issued a letter to the Liquidator alleging violation of Regulation 33(3) of the LPR and other irregularities in the conduct of

Swiss Challenge based private auction of Corporate Debtor. SMSPL claimed that the significant beneficial owner of OASPL and CIMMCO which had 60% of the security receipt holders of the Trust created by ACRE, belonged to the same group of entities which demonstrated collusion.

- On 04.04.2024, SMSPL issued a notice to the Liquidator to annul/quash the public announcement and LOI in favour of OASPL in view of the collusion since 60% of the stake of creditors in the Corporate Debtor had been acquired by Rashmi Group of which OASPL was a group entity.
- On 11.04.2024, Liquidator emailed SMSPL denying violation of the Liquidation Process Regulations and sought clarifications from OASPL and ACRE on the allegations levelled by SMSPL.
- On 14.04.2024, OASPL responded to the allegations made by SMSPL and denied the allegation of collusion between them and ACRE.
- On 15.04.2024, ACRE also responded by denying the allegations of collusion made by SMSPL.
- On 17.04.2024, Liquidator sent email to SMSPL stating that he was making inquiries into the allegations of collusion.
- On 19.04.2024, SMSPL sent an email to the Liquidator, inter alia, calling upon the Liquidator to immediately suspend the entire Swiss Challenge private sale process until the disposal of IA 586, alleging that the private sale process was tainted.
- On 21.04.2024, a Legal Notice was issued by SMSPL to ACRE and its directors for fraudulent assignment of debt from Asset Reconstruction

Company (India) Limited ("ARCIL") in relation to Corporate Debtor on 05.02.2024. On 21.04.2024 SMSPL also wrote to Liquidator regarding collusion and fraud committed by Rashmi Group through ACRE in the liquidation sale of Corporate Debtor. It was alleged that the successful bidder OASPL was a part of Rashmi Group. It was also alleged that CIMMCO and ACRE are owned, controlled and promoted by the Patwari family who are promoters of Rashmi Group.

- On 24.04.2024, SMSPL submitted before the Adjudicating Authority that they are willing to deposit the EMD of Rs. 150 Cr. subject to conversion of the ongoing private sale into a public auction.
- On 09.05.2024, SMSPL filed IA No. 995/KB/2024, inter alia, seeking the setting aside of the public announcement dated 22.02.2024 and the LOI dated 06.03.2024 issued in favour of OASPL, removal of Liquidator of the Corporate Debtor and restraining ACRE, OASPL, and other Rashmi Group entities from participating in the liquidation process of the Corporate Debtor.
- On 14.05.2024, SMSPL also created an FD of Rs.150 Crores towards EMD since Liquidator did not provide SMSPL with the format for Bank guarantee as was requested on 08.05.2024.
- On 20.12.2024, the Impugned Order was passed dismissing IA No. 447 of 2024 filed by the Liquidator setting aside the auction sale conducted by the Liquidator without obtaining prior approval of the Adjudicating Authority. Directions were also issued to the liquidator to conduct a fresh

Swiss Challenge process with EMD to be fixed as per standard norms retaining OASPL as the Anchor Bidder. IA Nos. 586 and 995 of 2024 were disposed of in light of the above directions.

- Aggrieved by the common impugned order, two Appeals have been preferred by OASPL and SMSPL.

3. Making his submissions on behalf of the Orissa Alloy Steel Pvt. Ltd. (**"OASPL"** in short), Shri Abhijeet Sinha, Ld. Sr. Counsel submitted that the resolution process of the Corporate Debtor having failed, liquidation proceedings commenced by an order from the Adjudicating Authority dated 08.10.2021. Following the appointment of the Liquidator, nine Auction Notices had been issued between 31.12.2021 to 15.01.2024, none of which had fructified. OASPL made an offer for acquisition of the Corporate Debtor as a going concern on private sale basis on 19.02.2024 for a consideration of Rs 250 Cr. with EMD of 10%. During the 19th SCC meeting held on 20.02.2024, negotiations took place between the SCC and the OASPL pursuant to which the OASPL had revised their offer price from Rs 250 Cr. to Rs 265 Cr., which was marginally higher than the estimated reserve price of the Corporate Debtor in the event the 10th auction would have been held. The SCC accepted the offer of the OASPL and thereafter proposed to conduct an e-auction for the sale of the Corporate Debtor as a going concern by way of a Swiss Challenge Mechanism with the OASPL offer as anchor bid. The OASPL had therefore submitted the EMD of Rs 150 Cr. in two tranches on 23.02.2024 and 26.02.2024. A Public Announcement date 21.02.2024 was issued by the Liquidator inviting bids for sale of the Corporate Debtor as a going

concern by way of SCM. The Liquidator had also reached out to several players in the steel industries to participate in the SCM to enable value maximisation. The Liquidator had also filed an IA No. 447 of 2024 before the Adjudicating Authority on 24.02.2024 seeking permission of the Adjudicating Authority to conduct the private sale through SCM with the OASPL's offer as the anchor bid. On 06.03.2024, a LOI was issued by the Liquidator to the OASPL as successful bidder which was made subject to approval of the Adjudicating Authority. However, before the Adjudicating Authority could take any decision on IA No. 447 of 2024, the SMSPL had filed IA No. 586 of 2024 seeking directions of the Adjudicating Authority for acceptance of its EoI and for permission to participate in the private sale process of the Corporate Debtor though the time-lines as mentioned in the Public Announcement had already expired. At this stage SMSPL did not challenge the decision of the SCC to go for private sale. Subsequently SMSPL filed another IA No. 995 of 2024 on 10.05.2024 seeking the setting aside of the LoI issued in favour of the OASPL and inter alia sought directions for conducting a fresh auction or fresh private sale of the Corporate Debtor besides raising allegations of fraud and collusion between OASPL, ACRE and the Rashmi group and injunction on their further participation in the liquidation process and removal of Liquidator.

4. It has been contended by OASPL that the auction process had started on 31.12.2021 when the 1st Auction Notice was issued with a reserve price of Rs 770 Cr. The 9th Auction Notice was issued three years later on 15.01.2024 with reserve price dropping to Rs 292.91 Cr. which also proved abortive as no bids were received. At this stage OASPL had agreed to acquire the Corporate Debtor

as a going concern on a private sale basis for Rs 265 Cr. which figure was nominally above the approximate reserve price of the Corporate Debtor (Rs 262.80 Cr.) in the event of the 10th attempt made to auction the Corporate Debtor. Further the OASPL had also demonstrated their bonafide by agreeing to deposit an EMD amount of Rs 150 Cr. Further, the OASPL had also agreed to the proposal of the SCC to conduct an e-auction for the sale of the Corporate Debtor by way of Swiss Challenge process for enabling value maximisation. The Liquidator had also approached several industry captains to participate in the bids.

5. Asserting that the OASPL was a bonafide bidder, it was submitted that they had subscribed to the private sale by Swiss Challenge process which had been adopted by the SCC in the exercise of its commercial wisdom to maximise the value of the assets of the Corporate Debtor. The decision of the SCC to proceed with the Swiss Challenge process with their offer price of Rs 265 Cr. and EMD of Rs 150 Cr. by way of BG had been approved by the SCC with 99.92% voting. The process by which OASPL was chosen as the anchor bidder and the ensuing Swiss Challenge auction process had attained finality. The directions for the issue of a fresh public announcement would only lead to further delays in the completion of the liquidation process which would diminish the value of the assets of the Corporate Debtor but also prejudice their interests as the EMD amount submitted by them had been kept on hold for long. In such circumstances, when there was no ostensible reason to restart a process which has attained finality, the annulment of the legally concluded Swiss Challenge

process by the Adjudicating Authority was an action taken beyond their jurisdiction which was impermissible in law.

6. When SMSPL had neither participated either in the nine auctions conducted earlier nor took part in the private sale process which was published in well-known newspapers having wide circulation, they had no locus to interfere in the private sale process at this belated stage. SMSPL had neither made any EMD nor given any bid offer which clearly indicates that SMSPL was an opportunistic litigant. When SMSPL as a commercial party did not come forward and act within the timelines mentioned in such public announcement, such a party cannot be allowed to challenge the legally concluded liquidation sale process. It was therefore contended that their applications have been erroneously allowed by the Adjudicating Authority which goes against the timeliness of the liquidation proceedings as mandated by Regulation 44 of LPR. It was emphatically asserted that though the locus of SMSPL had been questioned, the Adjudicating Authority without returning any findings on this aspect merely observed that SMSPL was a "lazy bidder" when in fact they were not even a bidder.

7. Submission was pressed that the Adjudicating Authority also committed an error in holding that the Liquidator had conducted the liquidation proceedings by compressing the timelines to favour the OASPL. It was submitted that the timelines were decided by the SCC after due deliberations and had been made known in the public announcement and Process Document. When nine rounds of auction had not been fruitful, there was nothing wrong on the part of the Liquidator to take expeditious steps towards early conclusion of the sale.

This has been wrongly portrayed as favouritism being shown by the Liquidator towards OASPL by dubbing their bonafide action to expedite the liquidation as working with "supersonic speed". The Adjudicating Authority had also committed an error in holding that the timelines which were actually required to be followed in public auction was applicable in the present private sale simply because Swiss Challenge process had been adopted. It was also contended that the Clauses 1(1C) and 1(1D) of Schedule-I under Regulation 33 of LPR was applicable only for sale of a Corporate Debtor by an auction and cannot be applied to a private sale for which a well prescribed procedure under Clause 2 of Schedule-I under Regulation 33 of LPR was applicable.

8. It was also contended by the OASPL that the allegations of collusion between OASPL and ACRE as made out by SMSPL was baseless and done with the intention of diverting attention from their failure to submit EoI within the timelines prescribed in the Public Announcement. Given that ACRE did not control the requisite majority votes in SCC to make its decision binding on the SCC and that the other 40% creditors in SCC had voted in favour of OASPL offer, there was no cogent ground to prove any collusion or malpractice in the private sale process. The decision to choose OASPL as the anchor bidder was made by following a fair process. It was contended that the private sale having been conducted by following the Swiss Challenge process proves fairness of the process that selected them as the successful bidder. When all members of the SCC had approved the offer made by OASPL pursuant to which the Swiss Challenge process was held there could be no question of defrauding anyone's rights. Further, the Liquidator had approached more than 300 entities to

participate in the auction which validates the transparency of the process undertaken. It was submitted that OASPL and ACRE were held by distinct and separate shareholders. The issue of related party raised by the SMSPL lacked basis since OASPL was neither a related party of the Corporate Debtor nor was it related to the Liquidator and hence the applicability of proviso to Regulation 33(2) of the LPR did not arise. The Adjudicating Authority despite holding that any inference on any collusion between OASPL, Liquidator and ACRE cannot be undertaken in a summary proceeding, yet it has made unwarranted observations on the alleged nexus amongst them. It was also contended that the Adjudicating Authority had transgressed into the commercial wisdom of the SCC in holding that the EMD of Rs 150 Cr. was restrictive and arbitrary since this had been decided by the SCC by requisite majority to eliminate non-serious bidders.

9. Making submissions on behalf of the Liquidator, Shri Niranjan Reddy Ld. Sr. Counsel submitted that the Liquidator had submitted IA No. 447 of 2024 under Regulation 33(2)(d) of the LPR seeking permission of the Adjudicating Authority on the conduct of the sale of Corporate Debtor by means of a private sale to the successful bidder through a Swiss Challenge Process with the offer of OASPL as the anchor bid. Stating that the Adjudicating Authority had disallowed the IA No. 447 of 2024 for private sale with a direction to conduct a fresh Swiss Challenge Process while considering the bid of OASPL as the anchor bid with EMD as per standard norms, it was submitted that the Liquidator was willing to expeditiously complete the liquidation process in compliance to the directions given by the Adjudicating Authority in the impugned order. It was submitted that

the Liquidator has not challenged the impugned order in view of value maximisation and timely conclusion of the liquidation process. The impugned order has not caused any prejudice to either SMSPL or OASPL as it still gives them opportunity to participate in the private sale process.

10. It was submitted that the manner in which the Liquidator had conducted the private sale process in question, the integrity of the Liquidator cannot be questioned nor any aspersions could be cast on the Liquidator on their conduct since his actions have to seen in the background of the fact that the liquidation process has been unsuccessful till date with nine failed public auctions and multiple failed private sale negotiations.

11. It is further the case of the Liquidator that the entire sale process was conducted in consultation with SCC. The Liquidator did not act unilaterally but had acted after prior consultation with the members of the SCC at every stage of the process, in accordance with the provisions of Regulation 33(2) read with Regulation 31A (9) of the LPR. The approval of the bid of OASPL as anchor bid was approved by the SCC members with 80.33% vote-share on 20.02.2024 and later by 99.92% vote-share on 02.03.2024. The decision to issue LoI to OASPL and to reject the participation of JKDL was also approved by the SCC members with 80.33% vote-share on 04.03.2024 and later by 99.92% vote-share on 16.03.2024. The decision to reject SMSPL conditional offer to participate in the sale process was declined by the SCC in 21st meeting on 26.03.2024 by 99.92% vote-share. Similarly, the members of SCC during the 22nd SCC meeting held on 22.04.2024 had expressed their satisfaction with the Liquidator's conclusion that he had no reason to believe that there was no collusion between ACRE and

OASPL. Further, it was contended that it would be wrong to say that ACRE had been steering and maneuvering the sale process on its own to the detriment of others. It was pointed out that while the minimum voting percentage of the SCC that was required to advise the Liquidator is 66%, pertinently, ACRE has a voting share of 60.65% which is less than the required 66%. Clearly, though ACRE has a significant voting share in the SCC, it could not and did not decide or resolve or advise on its own without the support of the other SCC members.

12. On the allegation that truncated timelines had been drawn up, it was stated that the LPR at Schedule-I for private sale does not provide for timelines and that timelines were to be decided in consultation with the SCC. Since the SCC had exercised its wisdom on the time-lines, it was non-justiciable and not open to question. It was also denied that the Process Document was issued belatedly since the eight bidders who had evinced interest in the Swiss Challenge and had sought the Process Document had been provided the same and no complaints had been received from them. Moreover, none of these bidders had sought additional time which shows that there was no ground to complain about truncated timeline. Even the decision to have EMD of Rs 150 Cr. was unanimously decided by the SCC. There was no violation of Clause 2 Schedule-I of Regulation 33 of LPR, as the Liquidator had reached out to 300 prospective bidders besides issuing nation-wide public announcement and conducted Swiss Challenge in the interest of fair play, competitive bidding and value maximisation.

13. It was also contended that the requirement of prior permission for private sale had also been met as for this purpose IA No. 447 of 2024 had been filed by

the Liquidator before the Adjudicating Authority immediately after issue of public announcement. It was also pointed out that this requirement of prior permission needs to be interpreted meaningfully in a manner which allows initiation of the process of sale as long as the approval of the Adjudicating Authority is obtained prior to conclusion of the sale process. The Liquidator also denied all allegations of collusion and stated that there was not sufficient material on record which would have acted as "reason to believe" that there was collusion in terms of Regulation 33(3) of LPR. It was also added that SMSPL was drawing a wrong parallel of Regulation 33(3) of LPR with Section 29A of IBC. It was asserted that it is not the case that the alleged ultimate beneficial owners were related to the promoters of the Corporate Debtor. The Liquidator had done sufficient scrutiny and analysis on the issue of collusion and since it was not convinced that there was sufficient ground of collusion, it did not file any report before the Adjudicating Authority but had nevertheless kept the Adjudicating Authority apprised in the matter in the context of detailed deliberations which had happened in the 22nd SCC meeting.

14. Making submissions on behalf of ACRE, it was submitted by Shri Shyam Mehta, Ld. Sr. Counsel that ACRE was a separate and independent legal entity and was not influenced by any third-party entity. ACRE, being the trustee of a Trust retained sole decision-making authority regarding the resolution process of the assets assigned to it in terms of the Trust Deed. It had been vested with all powers, authorities and discretion to take all actions with regard to liquidation of any borrower and receipt of proceeds from the sale of the assets in liquidation. That ACRE had been doing their due diligence and taking decisions

in the exercise of commercial wisdom, it was submitted that ACRE had pointed out that the offer of OASPL was below the reserve price if discounted by 10% as compared to the last failed e-auction. Had ACRE acted in a manner which was to unduly help OASPL in the auction, ACRE would also not have proposed further negotiation of commercials with OASPL. It is because of the stand taken by ACRE that the other members of the SCC also prevailed upon OASPL to increase the amount of EMD to ensure the seriousness of OASPL. Further, it is pertinent to note that when the Liquidator requested SCC members to reconsider whether Swiss Challenge is to be followed or the revised offer given by OASPL could be straightway put for e-voting, it is ACRE which had insisted on running a Swiss Challenge. This shows that ACRE was always looking at maximization of asset value and fair price discovery. It was also pointed out that when the OASPL's negotiated offer of Rs 265 Cr. including EMD of Rs 150 Cr. was approved, the same was done with 80.33% majority which showed that SCC members other than ACRE were also in favour of the negotiated offer. Moreover, when the 21st meeting of SCC took place and the SCC members approved the offer of OASPL without running any fresh sale process, this decision was taken by SCC with 99.92% voting rights. Thus, it is clear that the decisions of the SCC were being taken unanimously and not by the ACRE alone. Even now though the impugned order has set aside the private sale in favour of OASPL, the very fact that ACRE has not challenged the impugned order shows that the allegations of collusion between ACRE and OASPL is baseless, unfounded and unsubstantiated.

15. It was emphatically asserted that SMSPL had failed to participate in the private sale through Swiss Challenge and that having submitted their offer after the declaration of OASPL as successful bidder, the SMSPL was only trying to delay and derail the liquidation process. Be that as it may, the SCC did consider the offer made by SMSPL in the 21st meeting in the interest of maximization of value realization. The IA No. 586 of 2024 of SMSPL had also been opposed not by ACRE alone but by all SCC members in exercise of the commercial wisdom which was fuelled by the grounds that SMSPL had never participated in the previous nine e-auction or in the private sale process; that SMSPL had never expressed any interest in the Swiss Challenge Process; that no payment terms had been provided in the offer put forth by SMSPL; that there was no good ground to deviate from private sale when LoI had already been issued to OASPL whose offer had been accepted and approved as per Process Document and EMD amount of Rs 150 Cr. had been received. The SCC members had given an opportunity to SMSPL to deposit the EMD of Rs 150 Cr. which SMSPL was unwilling to extend. It was submitted that the liquidation process should not be delayed and ACRE was ready and willing to abide by any order passed by this Tribunal with the request that the minimum reserved price be maintained at Rs 265 Cr.

16. Making their submissions, Shri Dhruv Mehta and Shri Krishnendu Datta, Ld. Sr. Counsels on behalf of the SMSPL submitted that the Adjudicating Authority has passed a well-reasoned judgment while dismissing IA No. 447 of 2024 which had been filed by the Liquidator seeking approval of private sale of the Corporate Debtor to the successful bidder through the Swiss Challenge

Process. The Adjudicating Authority had also rightly set aside the Public Notice for private sale dated 21.02.2024 which had been published on 22.02.2024. However, the impugned order erred in retaining anchor bidder status of OASPL, for not restraining Rashmi Group from the auction process and in not replacing the Liquidator despite apparent collusion with ACRE and OASPL.

17. It was submitted that the Regulation 33(2)(d) of the LPR mandated prior permission of the Adjudicating Authority to sell assets of the Corporate Debtor by means of private sale. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***Bhavik Bhimjyani Vs. Uday Vinodchandra Shah in CA (AT) (Ins) No. 1584 of 2023.*** It was submitted that the Liquidator had not obtained prior permission from the Adjudicating Authority as required under Regulation 33(2)(d) before initiating the process of private sale. In the present case, permission was sought after issue of Public Announcement of Swiss Challenge process on 22.04.2024 and after concluding the Swiss Challenge process. The impugned judgment had correctly held that in the present case since the entire process of selection of anchor bidder, conclusion of Swiss Challenge process and issue of LOI to OASPL had been carried out by the Liquidator without prior permission of the Adjudicating Authority tantamount to putting a fait accompli situation before the Adjudicating Authority which militates against the Regulation 33(2)(d) of LPR.

18. Submission has been pressed that the LPR mandates that auction should be undertaken in a transparent manner which could lead to maximization of value realization. In the present case, the entire process of conduct of auction was shrouded in opacity. It did not provide reasonable and sufficient time to

potential bidders to understand the terms and condition of the auction. No sufficient opportunity was given for inspection and evaluation of the assets which came in the way of fruitful participation in the auction process. All this did not help in maximizing the turnout of prospective bidders. The Public Notice issued on 22.02.2024 had kept the last date of submission of eligibility documents as 27.02.2024 allowing a window of only six days as against a stipulated time of 14 days as per Regulation 33 Schedule-I (1D) of LPR. As against 7 days provided for inspection of assets under auction, only 5 days was provided thereby violating Regulation 33 Schedule-I (1E) of LPR. Even the period of 10 days provided for deposit of EMD under Schedule-I (1F) of LPR was curtailed to 8 days. Even the EMD amount was fixed at Rs 150 Cr. was high pitched while Regulation 33 Schedule-I (3) of LPR provided that EMD shall not exceed 10% of the reserve price. This curtailment of time period in all stages of the sale process created a situation which was not conducive for heightened participation of bidders. It was contended that when there was a violation of mandatory timelines and conditionality prescribed in Part-I of Schedule-I of LPR, it was sufficient ground for the Adjudicating Authority to not permit such private sale.

19. Apart from the compression in the time period for conduct of auction, the manner in which the process documents were made available also appeared to be tailor-made to help OASPL and to keep potential bidders out of the fray. The entire sale process was pushed at a break-neck speed to facilitate acquisition in favour of the OASPL without real competitive bidding. The process document by keeping a steep EMD had put unreasonable terms and conditions which

dissuaded genuine bidders. The proposal to conduct the private sale by Swiss Challenge process was to create an illusion for better price discovery. When the procedure being adopted was meant to favour one bidder in an arbitrary and malafide manner, the Adjudicating Authority could always prevent such private sale. Since, the entire sale process was vitiated by fraud and collusion, the Adjudicating Authority had rightly set aside the private sale.

20. The entire process of auction has been opaque and restrictive. The interested bidders were not even given access to the Process Document and were expected to submit bids and provide EMD of Rs 150 Cr. within an extremely brief period. While it is the Process Document which specified the documents which required to be made available to the Liquidator along with the date for such compliance, the Process Document was dated 29.02.2024 while the last date of submission of eligibility documents was 27.02.2024. This would have precluded genuine bidders from submitting their bids. This goes to show that the Process Documents were prepared in a manner that other prospective bidders would not be able to meet the timelines for submission of eligibility documents and the EMD deposit. The Liquidator had systematically diluted competition in the auction process.

21. Elaborating next on the collusion aspect which vitiated the sale process, it was submitted that the Rashmi Group through OASPL and ACRE was trying to acquire the Corporate Debtor as a going concern. The Liquidator had orchestrated a mechanism with object to ensure that one Rashmi Group through OASPL acquires the Corporate Debtor as a going concern. This was achieved by

the Rashmi Group funding ACRE which was a member in the SCC to gain control in the SCC and create a bias to ensure undue advantage to the OASPL.

22. It was submitted that ACRE being a majority stakeholder in the SCC abused its position to influence other stakeholders. This is evident from the fact that the ACRE prevailed upon the other SCC members in rejecting the offer of JKDL by not allowing them extension of timeline in submitting their bid. The 21st meeting held on 26.03.2024 of the SCC also rejected the initial offer of Rs 300 Cr. made by SMSPL for enabling them to participate in the auction process after grant of timeline extension and permission to conduct Public Auction as it would have risked OASPL. It was only because of the insistence of REC and Indian Bank which made the SCC agree to allow opportunity to SMSPL to participate in the interest of value maximization but even at that stage ACRE with a view to stymie the effective participation of SMSPL insisted that SMSPL can participate without any change in the terms and conditions which included EMD deposit of Rs 150 Cr. which was highly arbitrary and restrictive. ACRE was thus clearly taking advantage of its influential position in SCC in connivance with the Liquidator.

23. It was submitted that the Liquidator cannot absolve himself of his responsibilities by merely taking refuge under the guise of a majority SCC decision which was being used as a smokescreen to legitimize decisions induced by fraud and reject higher offers of JKDL and SMSPL. In the present case, the conduct of Liquidator revealed a clear pattern of collusion with the Rashmi Group. This was antithetical to the value maximization objective of the IBC and reflected preferential treatment of one bidder. This collusion negatively impacted other

bidders including the SMSPL due to unachievable timelines and illegal EMD conditions.

24. Elaborating on the issue of collusion between OASPL and ACRE, it was submitted that though SMSPL had sent communications to the Liquidator on 22.03.2023, 27.03.2024, 04.02.2024, 19.02.2024 and 21.02.2024, the Liquidator did not submit any report to the Adjudicating Authority while Regulation 33(3) of the LPR which clearly mandates the need to seek appropriate orders against the colluding parties. It was submitted that Regulation 33(3) of LPR clearly provides that when a Liquidator finds that the auction suffers from any kind of collusion, the Liquidator is required to approach the Adjudicating Authority for appropriate orders to ensure fair auction process and maximum price discovery. Though there was adequate evidence and reasons for the Liquidator to believe that there was collusion since SMSPL had provided sufficient material yet no action was taken by the Liquidator to furnish a report to the Adjudicating Authority as he was acting in cahoots with ACRE and OASPL.

25. The SMSPL has contended that because of the spectre of serious fraud and collusion being perpetrated they had filed IA No. 995 of 2024. It was submitted that SMSPL had sent e-mails to the OASPL, the Liquidator and ACRE raising concerns of fraud and collusion amongst them. However, though the Liquidator had stated that steps had been initiated to check and verify this allegation, it did not comply to the requirements of Regulation 33(3) of LPR which mandates submissions of report to the Adjudicating Authority in such circumstances. Inspite of overwhelming evidence of collusion between ACRE and OASPL, the Liquidator did not conduct his own independent inspection to form his opinion

but relied on responses from ACRE and OASPL. The decision of the Liquidator not to file report despite having sufficient material on record was irrational and biased. The Liquidator in the present matter failed to discharge his duties by not submitting a detailed and comprehensive report to the Adjudicating Authority under Regulation 33(3) of the LPR. Even the Adjudicating Authority despite receipt of cogent evidence demonstrating collusion between ACRE which was a member of the SCC and OASPL did not look into the collusion aspect only on the ground that the exercise would be a 'half baked' exercise in summary jurisdiction.

26. Having heard the Ld. Counsels for all the parties and perused the records carefully we find that the facts and issues in both the Appeals overlap. We propose to return our composite findings and for this purpose have outlined the following issues for our consideration:

(i) Whether SMSPL can be said to have locus to have filed the IA No. 586 of 2024 before the Adjudicating Authority;

(ii) Whether the timelines for the private sale of the assets of the Corporate Debtor fixed by the Liquidator was reasonable enough to facilitate wider and optimal participation of bidders;

(iii) Whether the Process Document was issued in a manner which only put the OASPL in an advantageous position in submitting its bid while acting as an impediment to the other bidders;

(iv) Whether the Liquidator was required to obtain "prior permission" of the Adjudicating Authority for the conduct of the private sale and if so whether the

requirements of prior permission had been met by the Liquidator in terms of Regulation 33(2)(d) of the LPR; and

(v) Whether there were sufficient material on record for the Liquidator to have "reasons to believe" that there was collusion between the ACRE and the OASPL so as not to proceed with the private sale.

27. Coming to the first issue framed by us on the locus of SMSPL to file this appeal, we would like to first notice the views of OASPL, ACRE and the Liquidator who have all contended that SMSPL did not have locus to maintain IA No. 586 of 2024 before the Adjudicating Authority or pursue the present appeal before this Tribunal. It is their case that the Adjudicating Authority failed to look into the unexplained and inordinate delay on the part of the SMSPL in offering to participate in the private sale process. It was also added that the Liquidator in consultation with the SCC in terms of Schedule-I Regulation 33 of LPR relating to private sale had also prepared a strategy to approach interested buyers. A nationwide public announcement had been made through newspapers having sizable circulation public announcement regarding the Swiss Challenge process. Steps were also taken to reach out to 300 prospective bidders. Further after conduct of the Swiss Challenge process, OASPL was declared as successful bidder. SMSPL, for the very first time, evinced their interest to participate in the bidding process for private sale of the Corporate Debtor on 16.03.2024 which was 10 days after the conclusion of the Swiss Challenge process. Even at that stage, SMSPL neither gave any EMD nor any bid offer which clearly indicates that SMSPL was an opportunistic litigant. When SMSPL did not come forward and act within the timelines mentioned in such public announcement, a

commercial party like SMSPL cannot take the frivolous plea of being unaware of newspaper pronouncement. In support of their contention, reliance has been placed on the judgment of Hon'ble High Court of Calcutta in ***Subir Ghosh Vs State of West Bengal & Ors., 2020 SCC OnLine Cal 2213*** wherein it has been held that a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever. It was also emphatically asserted that the liquidation process is to be concluded within the timelines prescribed thereunder. In the instant case when the liquidation process of the Corporate Debtor was going on since 2021 and a definite and conclusive stage was in sight for the first time, the private sale process could not have been allowed to be disturbed by the Adjudicating Authority by a negligent party like SMSPL. Assailing the impugned order, it is contended that the Adjudicating Authority has only observed SMSPL to be a "lazy bidder" and a "9 to 5 operator" but has not chosen to return any findings on their locus to participate.

28. Coming to our analysis, we are cognisant of the ratio laid down by the ***Subir Ghosh judgment*** that a party who has not participated in the bidding process cannot challenge a sale process which stands concluded. Be that as it may, the applicability of this ratio would depend on the fact situation of each case. We notice that OASPL and ACRE have vehemently contended that this was a case where a frivolous and non-participant party was trying to force entry into an already concluded private sale process and derail the liquidation proceedings. When we look at the unfolding of events, in the present case, we find that the Liquidator had completed the private sale process but the permission of the

Adjudicating Authority still remained to be obtained for conclusion of the sale. SMSPL had clearly intervened before the sale was confirmed by the Adjudicating Authority.

29. When we look at the sequence of events in the present case, we find that an e-mail on behalf of SMSPL had been sent on 16.03.2024 to the Liquidator to be allowed to participate in the private sale process of the Corporate Debtor alongwith willingness to submit a bid higher than the highest bid which had been received in the auction process held on 05.03.2024 in the interest of maximization of the value of assets. SMSPL had also sought from the Liquidator the Process Document as well as the details for furnishing of the EMD to enable them to participate in the sale process of the Corporate Debtor as a going concern on an "as is where is basis." Another letter had been issued on 22.03.2024 to all the members of the SCC by SMSPL in which it was stressed that the reserve price of OASPL was undervalued as the thermal power plants under construction were already at advanced stage. The SMSPL also offered an initial bid amount of Rs 300.20 Cr. which amount was clearly above the reserve price set by the Liquidator in the public announcement notice of 22.02.2024, though of course this offer was made with two pre-conditions in that the sale be conducted by public auction and EMD kept at 10%.

30. It is also pertinent to note that the 21st SCC meeting held on 26.03.2024 had also taken up for discussion the proposal which had been received from SMSPL on 22.03.2024 with an initial bid offer of Rs 300.20 Cr. It is also pertinent to add that during the deliberations in the 21st SCC meeting, two members-REC and Indian Bank of the SCC had taken a view that SMSPL could be provided a

chance to participate in the current Swiss Challenge Process. The Indian Bank had also taken note of the fact that since the Swiss Challenge cum private sale process had not yet been approved by the Adjudicating Authority, the SMSPL should be allowed to participate in the current private sale process. The relevant excerpts of the 21st SCC is extracted below:

> ***Meeting of the Twenty First Meeting of the Stakeholders Consultation Committee ("SCC") of Corporate Power Limited on 26.03.2024.***
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> ....
>
> ***Agenda 6: To discuss on the application filled by S M Steels and Power Limited i.e. IA No. 586 of 2024 and way forward.***
>
> *Update on the sale process:*
>
> ....
>
> *It has been further contended that the public announcement made by the Liquidator for the private sale was in gross violation of Schedule I of the Liquidation Regulations, for it did not provide sufficient time to the prospective bidders for submission of eligibility documents and for conduct of their due-diligence process. SMSPL has also annexed the letter dated 16.03.2024 which was addressed by it to the Liquidator with a request to accept its expression of interest for participation in the private sale process.*
>
> ....
>
> *As per the directions of the Hon'ble NCLT, the Liquidator is required to file a reply to the said application within one week (from March 21, 2024) and the matter is scheduled to be listed for hearing on April 16, 2024, when other batch matters are also listed.*
>
> *Further, vide letter dated March 22, 2024, addressed to the SCC members, SMSPL has provided an initial bid offer of INR 300.20 crores. Other terms of their offer are as under:*
>
> - *EMD of 10% of the offer price of INR 300.20 crores*
> - *Offer is valid for e-auction process and not for private sale under Swiss Challenge*
>
> *The Liquidator, in the interest of maximisation of value realisation for the SCC members, sought views of the SCC members regarding consideration of the offer from SMSPL and the way forward in the sale process of the Corporate Debtor.*
>
> ……

The Liquidator then put before the SCC members the agenda for discussion on the decision to be taken by the SCC members for whether an opportunity shall be given to SMSPL and other interested participants. The Liquidator requested the SCC members to share their views/votes about the offer. Further, the Liquidator sought views of the SCC members whether fresh public auction shall be conducted upon request of the SMSPL to allow them to participate in such fresh auction process.

In response, all the SCC members denied for the fresh sale process. Additionally, representatives of REC and Indian Bank mentioned that an opportunity to participate in existing sale process can be given to SMSPL subject to them agreeing to the terms and conditions like EMD amount, payment terms, etc. of existing private sale process.

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The representative of REC stated that we have received the offer from SMSPL for a price of INR 300.20 Crore along with 10% EMD, Considering the offer, we can provide a chance to SMSPL to participate in the current Swiss Challenge process. The Liquidator clarified to the SCC members and REC that the present offer from SMSPL mentions about cancelling the private sale process and conducting a new sale process through e-auction. SMSPL also informed that they will not participate in the current private sale process and the amount of the EMD offered by SMSPL is less than the EMD amount sought in the concluded private sale process. The Liquidator further clarified that the SMSPL has not sought further time to participate in the current private sale rather requesting to participate in fresh auction process. Also, in case the timeline of the private sale offer is extended, the amount of EMD proposed by the SMSPL will not match with the existing private sale process. In view of the above clarification, REC mentioned that in Case SMSPL is willing to match the payment terms and to pay the EMD amount as per the private sale process, then they may be allowed time to participate in the present process and not in any fresh e-auction process.

The Liquidator confirmed his understanding that REC is interested in giving a chance to the SMSPL if they are willing to pay an equivalent EMD amount as per the private sale process and agree to participate in the private sale process rather than an e-auction process. On this note, the Liquidator also requested REC to discuss the time-period that can be allowed if the SCC decides to re-open the private sale process.

.....

The Liquidator thereafter sought views from Indian Bank. Indian Bank mentioned that as per the last process, the value given by OASPL was

less than the last failed e-auction reserve price, however all the stakeholders agreed to the proposal as it was expected to be completed by March 31, 2024. But currently, since the Hon'ble NCLT has not yet approved the Swiss challenge cum private sale process, it will not be completed by the given timeline. Therefore, considering the same, one opportunity may be given to SMSPL as their offer is more than 10% higher as compared to the last offer accepted from OASPL. He further added that the timelines should be maintained and since the Swiss challenge cum private sale process has not been approved, we should allow them to participate in the current private sale process.

....

In summary, ACRE, Union Bank, PNB and LIC said opined not to allow SMSPL to participate at this stage or 26 conduct fresh e-auctions but to proceed with reopen the current private sale process through Swiss challenge mechanism offer. On the other hand, REC and Indian Bank mentioned that they were in favour of extending the timelines to Include them in the current private sale process, thereby allowing SMSPL to participate in the same, but with a condition of submitting the EMD of 150 crores instead of 10% of their offer, and to follow the timelines as per the current private sale process. However, both REC and Indian Bank were also not in favour of cancelling the current private sale process and reinitiating a fresh e-auction.

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Voting agenda

To approve whether the SCC should consider including discuss and negotiate as per its discretion, the new offer submitted by SMSPL to the members of the SCC on March 22, 2024, and to re-open the sale process of the Corporate Debtor.
Result (based on the voting of the members attending the SCC meeting): Rejected with 75.08% vote against the agenda item.

(Emphasis supplied)

It becomes clear from a perusal of the above minutes that the proposal of SMSPL had grabbed the attention of some of the SCC members in light of the fact that the offer was more than that of OASPL and that the Adjudicating Authority not having given its permission to the private sale, there was still room for SMSPL to be given an opportunity. Further, SCC was also made aware by the Liquidator

that the complaint of SMSPL was that sufficient time was not provided to the prospective bidders for submission of eligibility documents.

31. When we look at the pleadings of SMSPL in IA No. 586 of 2024, we find that the SMSPL had reiterated that the public announcement made by the Liquidator did not provide sufficient time to the prospective bidders for submission of eligibility documents and for conduct of due diligence processes. At para 21 of IA 586, the SMSPL had clearly pointed out the other violations of the LPR which had been made at the time of issue of Public Announcement. The relevant para is as extracted below:

"21. On further perusal and examination of the contents of the Public Announcement, the Applicant has come to learn that the said public announcement is in gross violation of the Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 for the following reasons: -

a. *In accordance with Clause 1 (1D) of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator shall provide at least 14 (fourteen days) from issue of public notice for submission of eligibility documents by prospective bidder. However, in the present case the Respondent has only given 6 (six days) for submission of eligibility documents;*
b. *In accordance with Clause 1 (1E) of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator shall provide to qualified bidder at least seven days, for inspection or due diligence of assets under auction, from the date of declaration of qualified bidder. However, in the present case, the Respondent has only given 5 days' time for inspection or due diligence."*

32. It is also pertinent to note that no material has been placed on record to show that SMSPL had been approached by the Liquidator inviting them to participate in the private sale process. It is also clear that SMSPL had not only offered a bid higher than the reserve price but was also seeking information on

the manner of deposit of the Bank Guarantee towards EMD. SMSPL had contemporaneously also pointed out that the compressed timelines in the Public Announcement was a hindrance in the participation of prospective bidders including them. The curtailment of time period in submission of documents and in the conduct of due diligence of assets coupled with a restrictive EMD had posed as a hurdle in their participation as a bidder. Apart from the compression in the time period for conduct of auction, non-availability of time to submit eligibility documents had been weighing heavily on the SMSPL which had purportedly kept them out of the fray.

33. We have gone through the issue of compressed timelines and issues relating to opacity in the bid process due to delayed publication of the Process Document in the succeeding paragraphs and find that these constituted germane grounds to feel aggrieved. When similar constraints were raised by SMSPL in IA No. 586 of 2024 in seeking the intervention of the Adjudicating Authority to gain a foothold in the private sale bid, the Adjudicating Authority did not commit any error in entertaining IA No. 586 of 2024. Particularly so because though the Liquidator had completed the sale process, the prior permission of the Adjudicating Authority was still pending as mandated by Regulation 33(2)(d) of LPR.

34. To answer the above question at para 26(i) above, we are of the considered view that the Adjudicating Authority did not commit any infirmity in entertaining I.A. No. 586 of 2024 filed by the SMSPL.

35. We now proceed to deal with issues at para 26(ii) and (iii) as to whether the Process Document governing the private sale process including the timelines

set for the private sale of the assets of the Corporate Debtor facilitated or stymied wider and optimal participation of bidders. Since both the issues are inter-related, we propose to take them up together.

36. It is the contention of the SMSPL that the entire process of private sale through the Swiss Challenge process has been opaque and restrictive. The interested bidders were not even given timely access to the Process Document which governed the modalities of the private sale. Moreover, the bidders were expected to submit eligibility documents by 27.03.2024 when they were unaware of what documents are to be submitted. Bidders were also expected to provide EMD of Rs 150 Cr. literally within hours. This led to a situation where genuine bidders were faced with an insurmountable hurdle in filing their eligibility documents and depositing the EMD within a highly abridged time period made available to them. It is also vehemently contended by SMSPL that timelines laid down in Schedule 1 under Regulation 33 of LPR for auction have not been followed though Swiss Challenge process was adopted in this case.

37. Per contra, it is the contention of the Liquidator that with nine auctions having failed, further delay would have depleted the value of the assets and hence time was of essence. Further, in a private sale, no timelines have been provided and the flexibility has been left to the commercial wisdom of the SCC. It was contended that it was misplaced to contend by SMSPL that the timelines of auction as laid down in Schedule 1 under Regulation 33 of LPR was applicable in this case.

38. For better appreciation of the issue at hand, we may have a look at the relevant provisions of the public announcement made on 22.03.2024 which is as under:

PUBLIC ANNOUNCEMENT

Invitation for submission of bids under Swiss Challenge Process for participation in the private sale process for the Corporate Power Limited as a going concern on an "as is where is basis"

	Relevant Particular	
12.	*Mode of Sale*	*The mode of sale is a Swiss Challenge process (as per the Process document) under Private Sale as per meaning under the Code and Liquidation Process Regulations.*
13.	*Manner of Obtaining the Process Document*	*The detailed terms and conditions of the sale process are set out in the Process Document, which can be obtained by the bidders by sending an email request at incplip@deloitte.com*
14.	*Last Date for Submission Of Eligibility Documents*	*27 February 2024*
15.	*Last Date submission of EMD*	*29 February 2024*
16.	*Last Date of Bid*	*05 March 2024*
17.	*Manner of Submitting Bid*	*Interested parties must send in their bid and the EMD Strictly as per format and documents as set specifically under the Process Document and Earnest Money Deposit ("EMD") of Rs. 150 Crores (Indian Rupee One Fifty Lakh Crores only).*

Broad Process:

....

2. Interested persons must place a bid higher than the Anchor Bid Price of Rs.265 Crores ("Anchor Bid Price") ensuring a minimum incremental amount Rs.1 crore only ("Incremental Amount") with and EMD of Rs. 150 Crores as per process as per the schedule set out above. The detailed terms and conditions relating to EMD (Such as adjustment/ refund/forfeiture etc.) are contained under the Process Document.

We find that the public announcement laid down certain timelines of the private sale through the Swiss challenge. The last date which had been fixed for submission of eligibility and other related documents was 27.02.2024. The last date for submission of EMD was fixed at 12:00 noon of 29.02.2024. The date of bidding was 05.03.2024.

39. We first come to the issue of applicability of the timelines laid down in Schedule 1 under Regulation 33 of LPR which has been raised by SMSPL in the present case. It cannot be denied that reasonable time should have been offered at each of the stages of the said private sale. Be that as it may, we would like to add that the claim of SMSPL that the timelines laid down in Schedule 1 under Regulation 33 of LPR for auction was applicable in this case is misplaced. Schedule 1 under Regulation 33 of LPR pertaining to Auction is not applicable to private sale for which separate procedures had been prescribed under Clause 2 Schedule 1 under Regulation 33 of LPR.

40. It was equally misplaced on the part of the Adjudicating Authority to hold that since the SCC had decided to conduct a Swiss Challenge Process, the character of the private sale had changed to public auction and therefore the timelines and conditions that apply to a public auction should have been

applicable in this case also. Clause 12 of the public announcement and Clause 2.7 of the Process Document in the instant case clearly postulated the mode of sale of the Corporate Debtor as a going concern through Swiss Challenge Process under private sale as per meaning under the IBC and LPR. When we look at the Schedule-I of the Regulation 33 of LRP which is entitled as "Mode of Sale", it becomes clear that it is compartmentalized into two parts. The first part is distinctly nomenclated as "1. AUCTION" which depicts the manner in which an asset is to be sold by the Liquidator by way of auction. The second part has been nomenclated as "2. PRIVATE SALE" which outlines the manner in which an asset is to be sold through private sale by the Liquidator. There is no mention of any hybrid-sale mechanism. In such circumstances, we are not inclined to agree with the Adjudicating Authority that in the present facts of the case since the features of both auction and private sale are interwoven, the timelines otherwise applicable to a public auction should also have been applicable because the private sale is being conducted by adopting the Swiss Challenge Process. The timelines provided under Schedule-I for "auction" cannot be transposed in the case of "private sale".

41. We now come to the issue of opacity in the manner the Swiss Challenge process was conducted. The Public Announcement at Clause 12 stipulated that the terms of sale would be as per the Process Document and Clause 13 stipulated that the detailed terms and conditions of the sale process was to be set out in the Process Document. Further, Clause 17 of the said announcement also stipulated that the prospective bidders were to send their bid and the EMD strictly in the format as set out under the Process Document.

42. Thus, from the Public Announcement, it becomes clear that the Process Document was to be the foundational document governing the conduct of the private sale. At this stage, therefore it is relevant for us to notice the Process Document. The relevant provisions of the Process Document are as reproduced below:

Private and confidential

SWISS CHALLENGE PROCESS DOCUMENT
For SALE OF CORPORATE POWER LIMITED AS A GOING CONCERN

Dated: February 29, 2024

NOTARY

Issued by Pankaj Dhanuka, Liquidator for Corporate Power Limited
Insolvency Professional - Regn. No: IBBI/IPA-001/IP-P01205/2018-2019/11911

Registered Address: FE 328, Sector 3, Salt Lake City, Kolkata, West Bengal 700106

IBBI Registered email – pankajdhanuka@gmail.com;
Communication email: bscpllp@deloitte.com

7. SCHEDULE & STAGES OF SWISS CHALLENGE PROCESS

7.1 The following schedule shall apply to the Sale Process and shall be read in context of the terms and conditions set out hereunder. The schedule or a part thereof may be extended /advanced / modified /

altered / waived by the Liquidator through issuance of communication / an amendment or addendum to the Process Document:

S. No	***Event***	***Indicative Date***	
		In case Bid(s) is received under the Swiss Challenge Process	***In case no Bid(s) is received under the Swiss Challenge Process***
1.	***Public Announcement for Swiss Challenge Process*** *The Liquidator shall issue a public announcement inviting bidders to better the bid/ offer of Anchor Bidder, as per process set out in the Process Document including any amendments, if any.*	*February 22, 2024*	*February 22, 2024*
2.	***Last date for submission of Eligibility Documents*** *Pursuant to public announcement, bidders are required to submit a duly executed affidavit under Section 29A and other documents as per the Process Document.*	*February 27, 2024*	*February 27, 2024*
3.	*Last date for payment of EMD*	*February 29, 2024 (till 12:00 pm)*	*February 29, 2024 (till 12:00 pm)*
4.	***Intimation to Qualified Bidders*** *Basis the EMD and other requisite documents received, the Liquidator shall intimate the Qualified Bidders of*	*February 29, 2024*	-

	their selection as the Qualified Bidders.		
5.	*Last date for due diligence including Site visits and seeking clarifications*	*March 4, 2024*	-
6.	*Last date for submission of Bid ("Bid Submission Date"*	*March 4, 2024*	-
7.	*Announcement of the H1 Bidder*	*March 4, 2024*	-
8.	*Competitive Bidding Date*	*March 5, 2024*	-
9.	*Declaration of Successful Bidder based on SCC consultation and Issuance of Lol*	*March 6, 2024*	*February 28, 2024 (in case no eligibility documents are received) Or March 1, 2024 (in case no EMD is received)*

....

Notes:

1. The Liquidator will be filing an application before the Hon'ble NCLT, Kolkata Bench ***("Adjudicating Authority")*** *in accordance with Regulation 33(2) of the Liquidation Regulations, seeking prior approval of the private sale of the Corporate Debtor as a going concern and the entire private sale process shall be subject to grant of such approval by the Adjudicating Authority* ***("NCLT Approval Order").***

....

9. SWISS CHALLENGE PROCESS STAGES

....

9.2 Submission of Eligibility Documents

9.2.1 All Bidders shall, on or prior to February 27, 2024 ("Document Submission Date") submit the following documents to the Liquidator ("Eligibility Documents"):

9.2.1.1 Cover Letter as per the format in Annexure A;

9.2.1.2 Confidentiality Undertaking as per the format in Annexure B;

9.2.1.3 Affidavit under Section 29A as per the format in Annexure C;

9.2.1.4 Bidder Undertaking as per the format in Annexure D;

9.2.1.5 Authorization for Information Request as per the format in Annexure E;

9.2.1.6 Board Resolution as per the format in Annexure F;

9.2.1.7 Power of Attorney as per the format in Annexure G;

9.2.18 Documents relating to Financial stability and source/ proof of funds.

9.2 Each Bidder is required to submit the Eligibility Documents as provided in Clause 9.2 herein. It is clarified that participation on the Competitive Bidding Date is subject to the Eligibility Documents and the Bid documents being submitted materially in the same formats as provided in this Process Document to the satisfaction of the Liquidator and the Bid is backed by the EMD as described under Clause 9.3.

....

9.3 Payment of EMD

9.3.1 Every Bidder shall, prior to 12:00 pm of February 29, 2024, provide a non-interest bearing adjustable Earnest Money Deposit equivalent to INR 150,00,00.000 (Indian Rupees One Hundred and Fifty Crores only), in the following manner.

43. It is significant to note that the Process Document was issued on 29.02.2024. This date of publication is significant as this document was published after the timeline for submission of eligibility documents was over while this document was to contain the list, format and other relevant information on the eligibility criteria. On a pointed query made by this Bench as to whether the date of 29.04.2024 appearing on the Process document was true, an oral explanation was offered by the Ld. Counsel of the Liquidator that the Process Document had been issued on time and the revised version was dated 29.02.2024. However, we find this to be a rather sketchy explanation as no other Process Document bearing any date prior to 29.02.2024 is found on record. Further, the fact that the Process Document was dated 29.02.2024 is also reinforced by the own admission of the Liquidator in the Reply Affidavit in Appeal No.214-216 at para 11(xiii) which is extracted below:

"(xiii) In addition to the issuance of the Public Announcement, the Liquidator also reached out to about 300 potential bidders and invited

them to participate in the said private sale of the Corporate Debtor. Further, the said private sale was to be governed by the terms of the process document dated 29.02.2024 ("Process Document").

Copies of the e-mails dated 23.02.2024 sent by the Liquidator to the potential bidders are annexed herewith and marked as Annexure R-4 (Colly)."

44. It is clear that the Process Document enlisted the documents which were required to be made available to the Liquidator by the bidders before submitting their bids. The list of eligibility documents were eight in number as provided in Clause 9.2. The Process Document was dated 29.02.2024 while the last date of submission of these eligibility documents as per public announcement was 27.02.2024. It can well be surmised that bidders would not have been aware of the eight eligibility documents which were required to be submitted by 27.02.2024 as the Process document which listed out the eligibility documents was published after 27.02.2024. It is apparent therefore that the Process Document was asking the bidders for submission of eligibility documents by 27.02.2024 when they were made aware of the requisite eligibility documents on 29.02.2024. Thus, the last date to submit eligibility documents had lapsed even before the bidders were made aware of the list of documents that they had to submit. This was tantamount to asking the bidders to perform an insuperable task.

45. The Process Document which was the governing document which detailed each and every step in the sale process was itself not made available, it clearly made the entire private sale process a farcical exercise. When the Process Document itself was not in place, the timelines which were inserted in the public announcement had been rendered redundant, meaningless and otiose. We have

come to the irresistible conclusion that the Process Document was prepared in a manner that other prospective bidders were not able to meet the timelines for submission of eligibility documents and make the EMD deposit thus preventing prospective bidders to participate in the right earnest.

46. This brings us to the terms and conditions relating to EMD which as per the public announcement were to be stipulated in the Process Document. In terms of Clause 9.3 of the Process Document, the last date for submission of EMD was 12 noon on 29.02.2024 which happened to be the very date on which the Process Document was published. When the Process Document itself was printed on 29.02.2024, which document indicated the manner in which the EMD was to be submitted which was either by Bank Guarantee or by RTGS or by way of Demand Draft, it was an extremely short period of time to cough up an amount as huge as Rs 150 Cr. by noon time of the same date. This clearly is not a case of an abridged or truncated timeline but an illusory timeline to be met. Even the EMD amount fixed at Rs 150 Cr. was high pitched as in terms of Regulation 33 Schedule-I (3) of LPR provides for EMD not to exceed 10% of the reserve price. Even though Regulation 33 Schedule-I (3) of LPR is applicable for auction sale and not for private sale, yet it is commonsensical that EMD should be reasonable for a steep EMD would disincentivize genuine bidders from participating. We have no reason to disbelieve that this would have propelled a situation which would have made it practically impossible for bidders to have deposited such a huge amount of EMD within hours. In contrast, OASPL as the anchor bidder had already been allowed to pay the EMD in the form of Bank Guarantee even prior to the Process Document having been published.

47. Merely because 9 rounds of e-auction had not yielded any fruitful results and considerable time had already been lost in the process, that cannot be a ground to allow the sale process to be concluded when the other bidders have been denied reasonable amount of time to file their bid. Time is of essence in a liquidation proceeding but this argument cannot be stretched to outlandish and irrational proportions. The manner in which the private sale was conducted instead of creating a conducive climate for maximum participation by bidders had actually crippled the participative rights of the bidders. It therefore appears that the entire Swiss Challenge process was being conducted in a manner which created an extraordinary situation where none others could participate effectively.

48. Conduct of time bound and efficient liquidation does not amount to giving liberty to the SCC or the Liquidator to draw up a timeline which was humanly impossible to comply with. While we have no quarrel with the proposition laid down in ***R.K Industries Vs HR Commercials Pvt. Ltd. (2024) 4 SCC 166*** by the Hon'ble Supreme Court that the timelines approved by the SCC members is an exercise of their commercial wisdom and hence non-justiciable, that does not equip the SCC to suggest impractical timelines which in the present case stood expired even before the timeline was set into motion. There is an onerous responsibility on the liquidator to exercise his oversight that unreasonable time-lines does not preclude other bidders. The manner in which the sale process has been concluded without giving time to other bidders to participate can be said to have vitiated the private sale.

49. The statutory provision of IBC and LPR mandates that auction should be undertaken in a transparent manner which could lead to maximization of value realization from the sale for the benefit of creditors/stakeholders. In the present case, the Process Document did not provide reasonable or provide sufficient time to potential bidders to understand the terms and condition of the auction and sufficient opportunity for due diligence for inspection and evaluation of the assets to enable fruitful and productive participation in the auction process. In the present case, the entire process of conduct of auction was shrouded in opacity.

50. Thus, to answer these two questions, we find that the manner in which the private sale process was conducted, it stamped out meaningful participation of bidders which in turn impeded procuring the highest possible price which is in the best public interest. The Process Document instead of providing a level playing field to all potential bidders and paving way for maximisation of assets, it precluded genuine bidders from submitting their bids. Instead of giving equal opportunity to all intending bidders to compete to procure the highest value, the Process Document was a handicap for the potential bidders.

51. This now brings us to question number (iv) framed by us at para 26 above as to whether the Liquidator was required to obtain "prior permission" of the Adjudicating Authority for the conduct of the private sale and if so whether the requirements of prior permission had been met by the Liquidator in terms of Regulation 33(2)(d) of the LPR

52. It is the case of SMSPL that Regulation 33(2)(d) of the LPR mandated prior permission of the Adjudicating Authority to sell assets of the Corporate Debtor

by means of private sale. It was contended that except in two cases of private sale viz. when the asset of the Corporate Debtor was perishable or likely to deteriorate in value if not immediately sold, which admittedly are not applicable to the facts of the present case, Regulation 33(2)(d) stipulated that prior permission of the Adjudicating Authority was required not only on the conclusion of the sale bid but also with respect to the manner in which such sale was to be conducted. However, in the present case, the Liquidator had approached the Adjudicating Authority by filing IA No. 447 of 2024 on 25.02.2024, which date was after completing the issue of the Public Announcement for conduct of the private sale by when the entire process of selection of anchor bidder and decision of modalities of the private sale by Swiss Challenge process had been completed by the Liquidator without prior permission of the Adjudicating Authority. It was contended that the Adjudicating Authority had correctly held that this tantamount to putting a fait accompli situation before the Adjudicating Authority as it detracted from the requirement of "prior permission" contemplated in Regulation 33(2)(d) of LPR. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***R.K Industries judgement supra*** and this Tribunal in ***Bhavik judgement supra*** which clearly laid down the need of prior permission of the Adjudicating Authority for conduct of private sale under Regulation 33(2)(d) of LPR.

53. Per contra, it was contended on behalf of the Liquidator that he had correctly filed IA No. 447 of 2024 seeking permission of the Adjudicating Authority on 24.02.2024 immediately after the issue of public announcement. The public announcement and the Process Document also made it clear that no

sale was going to be concluded prior to permission having been received from the Adjudicating Authority. Even the LoI which had been issued to OASPL by the Liquidator spelt out that the same was subject to the approval of the Adjudicating Authority. It was therefore asserted that the Liquidator had not violated the provisions of Regulation 33(2)(d) of LPR in any manner. It was pointed out that the ratio of this Tribunal in ***Bhavik case*** was not applicable since the facts in that case were clearly distinguishable. In the ***Bhavik case,*** there was no consultation done by the Liquidator with the SCC members; the newspaper circulation was suspicious; the government valuation reports had pointed out the under-valuation of assets, and there was related party intervention besides no proper conduct of auction rounds.

54. Echoing similar arguments, OASPL also assailed the findings of the Adjudicating Authority and contended that the Liquidator was not required to seek prior permission of the Adjudicating Authority before commencement of the private sale in terms of Regulation 33(2)(d) of the LPR. Since the Liquidator had categorically mentioned in the LoI issued to OASPL that the sale would be subject to the approval of the Adjudicating Authority, this was sufficient compliance in terms of Regulation 33(2)(d) of the LPR.

55. At this stage we may extract Regulation 33 of the LPR which is as reproduced below:

> **Regulation 33: Mode of sale.**
>
> **33.** *(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.*
>
> *(2) The liquidator may sell the assets of the corporate debtor by means of private sale only after prior consultation with the consultation*

committee under regulation 31-A, in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately; or

*(c) ****

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

When we look at Regulation 33(1) of LPR, we notice that sale by auction is the preferred and accepted mode for conduct of liquidation proceeding under IBC. Sub Regulation 2 of Regulation 33 of LRP however caters to private sale and this clearly stipulates that for a private sale to be carried out, the Liquidator has to undertake "prior consultation" of the SCC. Such a private sale is to be conducted by the Liquidator with prior consultation with the SCC only when the asset is perishable or is degradable in value. In all other cases of private sale, in terms of Sub Regulation 2(d), the "prior permission" of the Adjudicating Authority is required to be obtained for a private sale.

56. We are also guided by the judicial precedent laid down by the Hon'ble Supreme Court in ***R.K Industries judgement supra*** the relevant paras of which are as reproduced below:

> *"56. When it comes to the mode of sale of the assets of the corporate debtor, whether immovable or movable and other actionable claims, Regulation 33 of the Liquidation Regulations comes into play and states that ordinarily, the liquidator will sell the said assets through auction, as specified in Schedule I(1). Sub-section (2) of Section 33 IBC gives an option to the liquidator to sell the assets of the corporate debtor through a private sale, in the manner set out in Schedule I(2). Regulation 33 of the Liquidation Regulations is couched in a language which shows that ample latitude has been given to the liquidator, who may "ordinarily" sell the assets through auction thereby meaning that in peculiar facts and circumstances, the liquidator may directly go in for a private sale. To avoid the pitfalls of disposing of the assets by conducting a private sale for the pittance, Regulation 33 has prescribed some stringent conditions that the liquidator is under an obligation to comply. The said preconditions are that: (i) the asset is perishable; (ii) the asset is likely to deteriorate in value significantly if not sold immediately; (iii) the asset is sold at a higher price than the reserved price of the failed auction; and (iv) the adjudicating authority (NCLT) must grant prior permission for such a sale. The proviso appended to Regulation 33(2) of the Liquidation Regulations places yet another embargo to the effect that when the liquidator intends to sell the assets of the corporate debtor by way of a private sale to a related party of the corporate debtor, his relative party or any professional appointed by him, it is mandatory to obtain prior permission of the adjudicating authority (NCLT). Even the mode of sale has been regulated under the Liquidation Regulations for both, a public auction and a private sale. All the above dos and don'ts have been inserted to protect the assets of the corporate debtor and safeguard the interest of the stakeholders.*
>
> *57. It is a matter of record that in the instant case, following the mandate of Regulation 33(1) of the Liquidation Regulations, Respondent 2 liquidator took steps to sell the assets of the corporate debtor through the e-auction process not once or twice, but on five separate occasions. On each of the said occasion, efforts were made by Respondent 2 liquidator to conduct a consolidated sale of the assets of the corporate debtor, but with no fruitful results. Faced with the said situation,*

Respondent 2 liquidator approached the adjudicating authority (NCLT) in terms of Section 35(1)(n) IBC read with Regulation 33(2) of the Liquidation Regulations for seeking permission to sell the assets of the corporate debtor through private sale. Only after due permission was granted, did Respondent 2 liquidator approach the stakeholders for consultation. In the meeting held on 28-1-2021, the stakeholders resolved that the prospective bidders, who wished to participate in the private sale of the Dahej material, be encouraged to do so by adopting the Swiss Challenge Process. Pertinently, the first stage of the said process requires selection of an anchor bidder; the second stage entails inviting prospective bidders to submit their bids against the reserve price offered by the anchor bidder. At the third stage, the anchor bidder gets one chance to exercise the RoFR against the H1 bidder by placing a bid higher than the H1 bid. In the event the anchor bidder fails to exercise the RoFR, the said right stands extinguished and H1 bidder would then be declared as successful."

When we look at the above judgement, we find that the Hon'ble Apex Court has laid down that there is need of "prior permission" not only for private sale but highlights that there is "*yet another embargo*" of "prior permission" which is to be sought in case of sale to a related party. Furthermore, the intention of having this stringent condition to protect the assets of the corporate debtor and the interests of the stakeholders has also been emphasized.

57. The ratio of the above judgement has been adopted in the judgment of this Tribunal in ***Bhavik judgment supra*** which is also reproduced below for easy reference.

"95. From the above statutory provisions, it can be noticed that private sale can be resorted to only in the condition when either the asset is perishable or asset is likely to deteriorate or asset is sold at a higher price than the reserve price of a failed auction or the prior permission of the Adjudicating Authority has been obtained for such sale. We find that no such condition exists in this case.

96. We need to note the Regulations are mandatory in nature. Regulation 33 (1) mandates that the Liquidator "shall ordinarily sell the assets of

the corporate debtor through an auction in the manner specified in Schedule I". A private sale is meant to be an exception, allowed only in specific circumstances enumerated in Regulation 33 (2). In the present case, the Liquidator deviated from the normal auction route without any legitimate justification. Regulation 33 (2) (d) mandates prior permission from the NCLT in case the Liquidator intends to approach buyers for a private sale. Prior permission for private sale from the Adjudicating Authority implies prior to approaching and negotiating with buyers. Further prior permission is all the more required in case sale of assets is intended to be made to a related party. In the present facts, no prior permission from the Tribunal was taken by the Liquidator as is required under Regulation 33 of the Code. The Liquidator filed IA No. 1577 of 2021 after agreeing to an undervalued price and after accepting a deposit from the related party. Admittedly, in the present case, the buyer and creditor is the same person and is directly affected by the bar under Regulation 33 (3). Permitting an application seeking prior permission for private sale is not a mere formality and the NCLT ought to have considered the mandatory parameters of Regulation 33 before permitting such sale, which is missing in the Impugned Order. In the present case, Application appears to be an empty formality.

....

125. On the contrary the Liquidator claims that the judgments are based upon auction conducted by the Liquidator. The Liquidator had sought to auction the property and, subsequently, when the auctions failed, the Liquidator proceeded to conduct a private sale thereof in compliance with Regulation 33 of the Liquidation Regulations. As such, the principles of sale laid down in the judgments relied herein above are as valid and applicable to the present matter. We have gone through all the judgments placed before us. We do not find any judgments which support the case of liquidation proceedings of similar nature of private sale. We find that all these judgments relate to public auction. The auction which has been resorted to by the Liquidator is by way of private sale, on which no judgment has been cited. Therefore, the facts of the present case are distinguishable. The present case is being governed by statutory provision under Regulation 33 of Liquidation Regulations. As noted earlier by us, these Regulations are mandatory and it is necessary that they are followed scrupulously. It is also necessary for transparency and also ensuring maximisation of recovery. We note that this is missing in the present case. We also note that the Impugned Order has not delved into the issue of Regulation 33."

When we look at the above judgement of this Tribunal, we find that that the obligation of the Liquidator to obtain "prior permission" has been emphasized as not a mere formality but necessary to be followed scrupulously.

58. While acknowledging the need to obtain "prior permission", it was canvassed by the learned counsel for the Liquidator that the words "prior permission" cannot be construed in a dogmatic and a pedantic manner but should be meaningfully applied. It was pointed out that "prior permission" of the Adjudicating Authority was required only in such conditions when the Liquidator was taking recourse to private sale on his own initiative. In the present case, since the private sale process and the manner of its conduct was extensively deliberated at the level of the stakeholders in the SCC, a more flexible interpretation has to be applied to the expression of "prior permission". Moreover, there was no substantive material prior to the stage of issuing public announcement on which the prior permission of the Adjudicating Authority could be solicited. Subjecting the process to obtaining any sort of prior permission would have delayed the process significantly and become counterproductive to the objectives of value maximization and time bound completion of the sale process.

59. We are however not persuaded to accept this construct of artificial distinction which has been created by the Liquidator that "prior permission" would only be required in a situation where private sale was being undertaken by the Liquidator on his own initiative and not when it has been so done by the Liquidator on the behest of SCC. We also find that it is a highly hyper-technical stand taken by the Liquidator.

60. The expression used in Regulation 33(2)(d) of the LPR is "prior permission". When the word "prior" has been prefixed to the word "permission", it removes all ambiguity that this permission cannot mean post facto approval or be interchangeably used with ex-post facto approval. The use of the word "prior" prefixed to "permission" makes it clear that the word "prior" has to be given its full effect. The LPR being in the nature of subordinate legislation, they have an enforceable value and merits scrupulous compliance. The use of the word 'prior' in LPR has to be accorded due importance and cannot be obliterated or disregarded. That being so, it is implicit, that the Liquidator has to obtain the permission of the Adjudicating Authority on conduct of private sale before terms and conditions of the private sale are set up. On the other hand, we find that in the present case by the time the Liquidator had filed IA 447 of 2024 before the Adjudicating Authority, all preliminary steps on the manner of conduct of the private sale stood firmed up.

61. It clearly meant that liquidator should have obtained prior permission of the Adjudicating Authority to the terms and conditions of the private sale rather than thrust on the Adjudicating Authority the outcome of the concluded process. Such conduct would render the impact of word "prior" meaningless. The Adjudicating Authority has not been given an opportunity to apply its mind with regard to the private sale of the Corporate Debtor and the mode and manner of such sale. In the facts of this case, the Adjudicating Authority has not committed any infirmity in holding that the Liquidator has presented before the Adjudicating Authority a fait accompli with regard to approval of the private sale.

62. Furthermore, when we look at the facts of the present case, we find that OASPL was retained as the anchor bidder with reserve price of Rs 265 Cr. at a time when this bid amount was less than the last failed auction price of Rs 292 Cr. Noticing this anomalous situation, clarification was sought by Indian Bank in the 19th SCC meeting as to whether private sale process could be undertaken when the private sale offer was below the last failed auction response. Since the private sale is often conducted in a more informal, flexible and lax setting, there is a more heightened need of oversight particularly when price discovery was weighing on the mind of two creditors in the SCC. The purpose of the LPR governing private sale contemplating the need for "prior permission" of Adjudicating Authority is to obviate the scope of anti-competitive bidding and any nefarious practices in the terms and conditions of private sale. The intent behind obtaining prior permission for such private sale is to ensure that the Adjudicating Authority is satisfied of the transparency in the private sale process and to ensure accountability of the Liquidator.

63. To answer this question, we are of the considered view that the connotation of the expression "prior permission" would unambiguously mean seeking authorization before an act is carried out in contrast to seeking authorization for an action after it has already been concluded or parallelly/contemporaneously sought while in the process of being concluded. The liquidator was required to obtain prior permission from the Adjudicating Authority before proceeding with the private sale transaction, which not having been done, to our minds, tantamount to an infraction of the LPR.

64. This brings us to the last question as to whether there were sufficient material on record for the Liquidator to have "reasons to believe" that there was collusion between the ACRE and the OASPL which could have impelled him not to proceed with the private sale.

65. Elaborating on the collusion aspect, it was submitted by SMSPL that the Rashmi Group through OASPL was trying to acquire the Corporate Debtor as a going concern. Rashmi Group had been passively monitoring the auction process. When it realized that another prospective bidder-JKDL had proposed an offer of Rs 290 Cr. after the failed 7th auction, the Rashmi Group spurred into action to gain control of the SCC to hijack the liquidation process. For this purpose, ACRE was made to execute an Assignment Agreement dated 05.02.2024 with ARCIL for which ACRE was funded by CIMMCO which was a group company of the Rashmi Group. For this funding, CIMMCO in turn had received money from Rashmi Metaliks Ltd. and Orissa Metaliks Pvt. Ltd. which it transferred to ACRE amounting to Rs 148.25 Cr. which was utilized as assignment consideration paid by ACRE to ARCIL. Upon execution of the Assignment Agreement, ACRE became the majority voting share member of the SCC with 60.65% vote share. It was added that CIMMCO as the 60% security receipt holder in the Trust Fund of ACRE and OASPL have the same beneficial owner which was allegedly the Rashmi Group. Thus, by funding and effecting assignment of the debt of the Corporate Debtor in favour of ACRE, the Rashmi Group defacto stepped into the driver's seat in the SCC as ACRE had 60% voting share member on the SCC. OASPL which was a Rashmi Group entity and ACRE

colluded to acquire the Corporate Debtor as a going concern on a private sale basis.

66. To buttress their contention that there was collusion between OASPL, ACRE and the Liquidator, it is the contention of SMSPL that the private sale proposal of OASPL dated 19.02.2024 was placed immediately on 20.02.2024 before the SCC for its consideration which agreed for private sale with a restrictive EMD being more than 50% of the reserve price and making OASPL as anchor bidder. It was submitted that ACRE being a majority stakeholder in the SCC abused its position to influence other stakeholders. The ACRE prevailed upon the other SCC members in the 20th SCC meeting to reject the private sale offer of JKDL by not allowing extension of timeline. The 21st SCC meeting held on 26.03.2024 of the SCC also rejected the initial offer of Rs 300 Cr. made by SMSPL for participation in the sale process with grant of timeline extension and permission to conduct Public Auction. The decision of REC and Indian Bank to allow opportunity to SMSPL to participate in the interest of value maximization was also thwarted at the insistence of ACRE that SMSPL be allowed to participate, however, without any change in the terms and conditions which included EMD deposit of Rs 150 Cr.

67. It was submitted that though SMSPL had sent communications to the Liquidator on the issue of collusion between OASPL and ACRE, on 22.03.2023, 27.03.2024, 04.02.2024, 19.02.2024 and 21.02.2024, the Liquidator did not submit any report to the Adjudicating Authority while Regulation 33(3) of the LPR clearly mandates the need to seek appropriate orders against the colluding parties. It was submitted that Regulation 33(3) of LPR clearly provides that when

a Liquidator finds that the auction suffers from any kind of collusion, the Liquidator is required to approach the Adjudicating Authority for appropriate orders to ensure fair auction process and maximum price discovery. However, in the present case, inspite of clear evidence staring at the face, the Liquidator failed to provide any report to the Adjudicating Authority. There was adequate evidence and reasons for the Liquidator to believe that there was collusion since SMSPL had provided sufficient material showing nexus of the Rashmi Group in the backdoor hijacking of the SCC proceedings.

68. Refuting the allegations of collusion levelled by SMSPL, it was submitted by ACRE that in the 19th meeting of the SCC, the Liquidator had clarified to the SCC members that OASPL formed a part of the Rashmi Group. Hence, there was nothing which was kept hidden from the other members of the SCC in this regard. It was submitted that they had replied to the Liquidator by way of their letter dated 15.04.2024 that Security Receipts issued are an instrument of investment which can be freely subscribed by any Qualified Buyer under SARFAESI Act which is not disqualified under Section 29A of the IBC. In any case, the vote share of the ACRE was limited to 60.65% while the bid of the OASPL was near unanimously accepted by SCC members with 99.92% voting rights. The entire sale process was conducted in a fair manner under the aegis of the Liquidator in accordance with the provisions under the IBC and based on consultation with all the members of the SCC. The terms and conditions of the private sale through Swiss Challenge including the amount of EMD was carefully deliberated and considered by all the members of the SCC, which are credible banks and financial institutions. It is also amply clear from the minutes of the

19th, 20th, 21st and 22nd meetings of the SCC members that ACRE has not influenced or pressurized or coerced any SCC members in any manner and all decisions were taken by the SCC after extensive deliberations. Therefore, it cannot be alleged that the process was conducted to favor one bidder over other bidders.

69. Submission was pressed that the allegation of fraud has to be substantiated with robust evidence which has not been done. SMSPL has failed to establish how ACRE and OASPL have colluded to make purported financial gains or have caused other stakeholders any such purported loss. It is denied that any stakeholder of the Corporate Debtor has been deprived of the rightful value of the Corporate Debtor or that ACRE has hindered any competition in the auction process or has acted with a premeditated object to ensure that the Corporate Debtor is acquired by the Rashmi Group at a cheaper price. It is therefore SMSPL which is under a burden to prove that the actions undertaken by the alleged colluding parties were specifically intended to confer an unfair advantage on one party and place another party in a disadvantageous position through improper or unfair means.

70. The allegations of collusion between the parties, particularly ACRE and OASPL was also denied by the Liquidator stoutly and stressed that mere commonality of interest is not sufficient to establish collusion. There has to be evidence that the parties had colluded to engage in anti-competitive behavior. In any case, ACRE did not control the requisite majority votes in SCC to make any of its decision binding on the SCC. The other 40% creditors in SCC had a decisive say and they had joined into vote in favour of OASPL offer. The decision to choose

OASPL as the anchor bidder was made by following a fair process in accordance with the prescribed LPR. It was contended that the sale having been based on Swiss Challenge Mechanism, it was a public auction which proves fairness of the process. The Liquidator had acted in compliance with the provisions of the IBC and the LPR and with due consultation with the members of the SCC of the Corporate Debtor. It was further reiterated that the decision to consider OASPL as the anchor bidder; to run the Swiss Challenge process; and subsequent issuance of LoI to OASPL had all been approved by near unanimous voting share of the SCC. Even the requirement of EMD of Rs. 150 Cr. was unanimously suggested by the members of the SCC to attract sincere and serious bidders and to complete the sale process in the shortest possible timeline. Moreover, in a private sale under Schedule I of the Liquidation Regulations the term of sales are negotiated and, therefore, there was no illegality or irregularity with respect to the quantum of EMD sought for the proposed private sale process. In any event, the Liquidator received eight expressions of interest pursuant to the public announcement dated 22.02.2024 and not one of them complained about the quantum of EMD sought.

71. It was also added that the entire proposed private sale process was made subject to the grant of approval from Adjudicating Authority which was also clearly stated in the public announcement and the Process document. Even the LoI issued to OASPL on 06.03.2024 did not mark the consummation of sale as it categorically mentioned that same was subject to the grant of approval from Adjudicating Authority under Regulation 33(2)(c) of the Liquidation Regulations.

When there was no defrauding or trampling of rights or interest of a third party, the allegation of collusion doesn't stand.

72. It is the case of the Liquidator that the meaning of the term "collusion" as interpreted by various judicial fora, collusion means a secret agreement for a fraudulent purpose or a secret or dishonest arrangement in fraud of the rights of another. It is a deceitful agreement between two or more persons for some evil purpose, such as to defraud a third person of his rights. Equally, the 'reason to believe' must be based on material on record. None of the above ingredients have come to light in the case at hand. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***State of Goa Vs. Colfax Laboratories Ltd. in (2004) 9 SCC 1175*** wherein it has been held that for collusion to be established there should be evidence of a secret or dishonest agreement or arrangement with a fraudulent purpose of defrauding a third person of his rights. No cogent material has been brought on record by SMSPL to prove any collusion or malpractice in the auction process.

73. It was stated that the letters dated 27.03.2024 and 04.04.2024 alleging collusion received from SMSPL were duly shared with SCC on 16.04.2024. Response had also been elicited on these communications which was received from OASPL on 11.04.2024 and 14.02.2024 and ACRE on 15.04.2024. The responses received from ACRE and OASPL with respect to allegations of collusion levelled by SMSPL were also shared by the Liquidator with the members of the SCC which was discussed and deliberated during the 22nd meeting of the SCC held on 22.04.2024. Given that SMSPL's communications failed to disclose any material or reason to believe that OASPL had colluded with

other creditors and given further that the maximisation of the value of the assets have been achieved through a fair public process, there was no need to conduct any inquiry on the collusion aspect. The Liquidator was of the opinion that no such situation has arisen for submission of a report with the Adjudicating Authority seeking appropriate orders against the purported colluding parties.

74. To come to our analysis, before proceeding further, it is relevant to take notice of the Regulation 33(3) of LPR which is as reproduced below:

> *"3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyer of the 'corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties"*

75. The above Sub Regulation 3 of Regulation 33 of LPR clearly stipulates that the Liquidator should have "reason to believe" that there is collusion and not to merely harbour reasons to suspect. The belief must be held in good faith and cannot be predicated on unsubstantiated doubts. The expression "reason to believe" would imply that it must be based on material on the record. We are inclined to agree with the Liquidator that only when he had "reason to believe", which reason should have been substantiated by material available on record depicting collusion, that as Liquidator he was prohibited from proceeding with the sale.

76. In the present case, we are inclined to agree with the Liquidator that even if ultimate beneficiaries of OASPL and ACRE happened to be common, the allegation of collusion falls as ACRE did not control the requisite majority in SCC. ACRE controlled only 60.65% of SCC votes which was short of the required

majority of 66%. That 40% creditors in SCC in addition to ACRE also voted in favour of OASPL shows that there was no foul play on the part of ACRE and OASPL.

77. When we look at the sequence of events in the present case, we find that the letters dated 27.03.2024 and 04.04.2024 alleging collusion received from SMSPL were duly shared with SCC on 16.04.2024. Response had also been elicited on these communications which was received from OASPL on 11.04.2024 and 14.02.2024 and ACRE on 15.04.2024. The responses received from ACRE and OASPL with respect to allegations of collusion levelled by SMSPL were also shared by the Liquidator with the members of the SCC. Furthermore, during the 22nd SCC meeting held on 22.04.2024, the allegations regarding collusion between OASPL and ACRE and the Liquidator's response were extensively discussed and deliberated by the Liquidator and the members of the SCC. The Liquidator, inter alia, informed the SCC members that having perused and analysed the contents of the letters dated 27.03.2024 and 04.04.2024 received from SMSPL and the corresponding responses received, from OASPL on 11.04.2024 and 14.04.2024 and from ACRE on 15.04.2024, as well as the applicable legal position, the Liquidator had no reason to believe that there was a collusion between ACRE and OASPL in terms of Regulation 33(3) of the Liquidation Regulations. The SCC members noted the same without further observations.

78. We therefore find that the Liquidator had lived up to his responsibilities as he had put to notice both OASPL and ACRE on the allegations of collusion made against them by SMSPL. Their respective responses were also obtained

which was thereafter placed before the SCC members. The clarifications offered by OASPL and ACRE had been discussed at length in the 22nd SCC meeting and the same was also brought on record before the Adjudicating Authority. Nothing more was required to be done by the Liquidator.

79. We also agree that the ratio laid down in ***Colfax Laboratories judgement supra*** supports the cause of the Liquidator. To prove an illegal collusive agreement, it needs evidence of coordinated actions or communication between all members of the SCC that restricted competition which has not been proved. Merely having common ultimate beneficial owner would not attract the consequences of Regulation 33(3) unless any collusion can be found between the parties on the basis of facts and material on record.

80. Though ACRE has a significant voting share in the SCC, it could not decide on its own without the support of the other SCC members. In the case at hand, the SCC has taken near unanimous decision in approving the revised private sale offer of OASPL to be anchor bid in the proposed Swiss challenge by voting percentage of 99.92%. The SCC had also rejected the request of one JKDL to extend the timelines of private sale for it to participate by voting percentage of 99.92%. The SCC had also advised the Liquidator to continue with the current private sale without conducting any fresh e-auction as requested by SMSPL by voting percentage of 99.92% and decided not to allow SMSPL to participate in the private sale process of the Corporate Debtor by 75.08%. Clearly, none of the above decisions were solely made by ACRE and no amount of the intention to collude would have had any effect if the remaining members of the SCC decided otherwise. Nothing has been placed on record that ACRE had defrauded, coaxed,

misled or coerced the remaining members of the SCC to toe its line as each of the other members were separate and distinct entities having their own independent and respective management and decision makers which comprised of public sector banks/financial institutions. Moreover, even if the ultimate beneficial owners of the SR holder of ACRE Trust with respect to the debt of the Corporate Debtor and OASPL were the same, the same is not barred under the IBC or the Liquidation Regulations.

81. To answer the above question, we are of the considered view that the allegation of SMSPL regarding collusion between OASPL and ACRE or any foul play on the part of the Liquidator abetting such a collusion lacks sufficient basis.

82. Having answered the four questions which we have framed for our consideration, by applying those findings, broadly speaking, we have arrived at the considered view that the earlier auctions having consistently failed inspite of making repeated attempts, the SCC had decided to opt for private sale by employing Swiss Challenge process, which decision being a collective business decision of the SCC cannot be questioned. However, the manner in which the private sale was conducted sans the prior permission of the Adjudicating Authority has been the bone of contention which has been exacerbated by the prima facie evidence of the lack of easy and timely access amongst potential bidders to the Process Document which was supposed to guide and govern the entire sale process. Further seen from the viewpoint of transparency which is the key to the conduct of any fair, objective and successful auction process, the marked absence of reasonable and optimal timelines being made available to the bidders in the present case creates room for serious doubts that this would have

come in the way of their doing due diligence and hindering their effective participation. The unusually high EMD and an unusually abbreviated timespan given to deposit the EMD is no less glaring and that this had a debilitating impact on the turn-out of bidders cannot be ruled out. A logical corollary of the dismal participation of bidders is the dent on the maximisation of the value of assets which hits at the roots of the objectives of the IBC. In fine, we do not countenance the manner in which the entire private sale was being conducted since the time the public announcement was made on 22.02.2024.

83. In view of the above discussions, we do not find any infirmity with the impugned order to the extent that the public notice dated 22.02.2024 has been set aside; that the private sale has been approved with directions to issue fresh notice in two national dailies and one vernacular newspaper and that EMD for the purpose of private sale shall be fixed in a manner so as to meet the requirement of reasonableness. Accordingly, we issue the further following directions:

(i) The Adjudicating Authority having already given approval for the liquidation of the assets of the Corporate Debtor by private sale, this is a clear permission in terms of Regulation 33(2)(d) of the Liquidation Process Regulations.

(ii) We direct the Liquidator to take further steps towards restarting the process of private sale and completing the liquidation proceedings within a period of 60 days from the date of this judgment.

(iii) The private sale process may be kept open for all eligible prospective bidders including OASPL and SMSPL.

(iv) The EMD amount may be kept at 10% of the reserve price towards maximising participation. The reserve price for the private sale process shall be retained at Rs 265 Cr.

(v) Both the Appeals are disposed of in the above terms. IAs, if any, pending are also disposed of.

Parties may bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 06.11.2025

Abdul