2024 INSC 659

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9059-9061 OF 2022

V.S. PALANIVEL .... APPELLANT

Versus

P. SRIRAM, CS, LIQUIDATOR, ETC. .... RESPONDENTS

J U D G M E N T

HIMA KOHLI, J.

A. BACKDROP

1. The appellant - V.S. Palanivel (shareholder/former Managing Director of M/s Sri Lakshmi Hotel Private Limited) has filed the present appeals against the judgment and order dated 16th September, 2022, passed by the National Company Law Appellate Tribunal, Chennai Bench[1] in three Company Appeals[2] preferred by him. The details of the said Company Appeals are (i) Company Appeal No. 336 of 2021 (subject matter of Civil Appeal No. 9059 of 2022) filed against the common judgment dated 17th November, 2021 passed by the National Company Law Tribunal, Chennai Bench[3] rejecting an application[4]

[1] In short 'Tribunal'
[2] Company Appeal (AT) (CH) (Ins} No. 336 of 2021; Company Appeal (AT) (CH) (Ins) No. 339 of 2021 and Company Appeal (AT) (CH) (Ins) No. 343 of 2022
[3] In short 'Adjudicating Authority'
[4] MA No. 120 of 2020

moved by the appellant praying *inter alia* that directions be issued to the Liquidator, Sri Lakshmi Hotel Private Limited to stall all proceedings in respect of the e-auction conducted by him on 23rd December, 2019, to work on an alternative manner of dividing the property put to auction and sell only a part of the land and for grant of sufficient time to make payment to the financial creditor. (ii) Company Appeal No. 339 of 2021 (subject matter of Civil Appeal No. 9060 of 2022) arose from the common order dated 17th November, 2021 passed by the Adjudicating Authority on an Interim Application[5] seeking recall of its order dated 05th May, 2020 passed on an application[6] filed by the appellant. (iii) Company Appeal No. 343 of 2021 (subject matter of Civil Appeal No. 9061 of 2022) filed by the appellant on 27th October, 2021 under Section 61 of the Insolvency and Bankruptcy Code, 2016[7] against order dated 05th May, 2020 passed by the Adjudicating Authority allowing an application moved by the successful bidder, M/s KMC Speciality Hospitals (India) Limited[8] for extension of time to deposit the balance sale consideration after the Central/State lockdown was lifted. All the aforesaid appeals were dismissed by the Tribunal under the impugned judgment and order dated 16th September, 2022.

2. It may be noted at the outset that Civil Appeal No. 9059 of 2022 does not survive inasmuch as the auction proceedings have already been concluded and upon the Auction Purchaser depositing the sale amount, the Liquidator has executed a Sale Deed in its

[5] IA SR No. 944 of 2020 on 25th September, 2020
[6] IA 335 of 2020 in MA/689/2019 in CP/1140/IB/2018
[7] In short 'IBC'
[8] In short 'Auction Purchaser'

favour. Therefore, the scope of the present judgment is confined to Civil Appeals No. 9060 and 9061 of 2022.

B. SEQUENCE OF EVENTS

3. The facts of the case lie in a narrow compass. Sri Lakshmi Hotels Private Limited[9], a family held concern having four shareholders namely, the appellant herein, his wife, his son and his daughter-in-law purchased an immovable property[10] at Tiruchirappalli measuring 67,533 sq. ft. The company started running a hotel and a bar from the said premises. In the year 2006, the company took a loan from a financial creditor to the tune of ₹1,57,25,000/- (Rupees One crore fifty seven lakh twenty five thousand only). When disputes arose between the company and the financial creditor, the latter invoked the arbitration clause governing the parties. The Arbitral Tribunal passed an award on 27th December, 2014, for a sum of ₹ 2,21,08,244/- (Rupees Two crore twenty one lakh eight thousand two hundred and forty four only) in favour of the financial creditor along with interest at the rate of 24 % per annum from the date of claim petition till the date of realisation. The company challenged the said award[11] under Section 34 of the Arbitration and Conciliation Act, 1996, but the said petition was dismissed by the High Court of Madras *vide* order dated 16th November, 2017[11].

4. On non-payment of the amounts awarded under the Arbitral Award, the financial creditor filed an application[12] under Section 7 of the IBC before the Adjudicating Authority

[9] In short 'company/Corporate Debtor'
[10] situated at Old No. 3A, New No. 27, Alexandria Road, Cantonment, Tiruchirappalli-620001
[11] Original Petition No.137 of 2015
[12] CP/1140/(IB)/CB/2018

for initiating corporate insolvency resolution process against the company. The said petition was admitted on 28th February, 2019 and the respondent No. 2 was appointed as an Interim Resolution Professional[13]. Later on, he was confirmed as a Resolution Professional and finally, as a Liquidator. As per the records, no resolution plan for revival of the Corporate Debtor was received and the Committee of Creditors[14] recommended that the company be liquidated. The said recommendations were accepted by the Adjudicating Authority, *vide* order dated 17th July, 2019.

5. Pursuant to the above, the Liquidator engaged two Registered Valuers to give an estimate of the valuation of the subject property. The Valuers submitted their Reports as follows:

S.No.	Name of the Valuer	Tax Value	Liquidation Value
1.	Ms. Vijayalakshmi	Rs.48,03,00,000	Rs.40,82,57,000
2.	Mr. R.S. Babu Rajendran	Rs.48,48,00,000	Rs.38,00,00,000
	Average Liquidation Value for the purpose of E- auction Upset Price		**Rs.39,41,28,500**

Based on the above Reports, the Liquidator arrived at the average value of the subject property, i.e., ₹39,41,28,500/- (Rupees Thirty nine crore forty one lakh twenty eight thousand five hundred only) and scheduled an auction on 25th November, 2019, with a reserve price set at the above figure. *Vide* letter dated 08th November, 2019, the appellant objected to fixation of the reserve price. The Liquidator replied to the said communication and turned down his objections. He also requested the appellant to nominate a person in the Stakeholders Committee, which the appellant failed to do.

[13] In short 'IRP'
[14] In short 'CoC'

6. When the Liquidator did not receive any bid in the first auction, he published a notice scheduling a second auction on 23rd December, 2019. This time, the reserve price was reduced by 25% i.e. it came down from ₹ 39,41,28,500/- (Rupees Thirty nine crore forty one lakh twenty eight thousand five hundred only) to ₹ 29,55,96,375/- (Rupees Twenty nine crore, fifty five lakh ninety six thousand three hundred and seventy five only). M/s KMC Speciality Hospitals (India) Limited was the sole bidder in the second auction process and on depositing an earnest amount of ₹ 2,95,59,698/- (Rupees Two crore ninety five lakh fifty nine thousand six hundred and ninety eight only), it emerged as the successful bidder.

7. In terms of Rule 12 of Schedule-I under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016[15], the successful bidder was required to pay the balance sale consideration within 90 days from the date of demand. The Liquidator despatched a letter dated 24th December, 2019 to the Auction Purchaser demanding the balance sale amount. Though arguments were initially advanced on behalf of the appellant that the period of 90 days for paying the balance amount ought to be reckoned from 24th December, 2019 and not from 26th December, 2019, the date on which the Auction Purchaser received the communication from the Liquidator, later on the said plea was not seriously pressed. If one takes the outer limit for calculating the period of 90 days for the Auction Purchaser to pay the balance sale consideration reckoned from 26th December, 2019, the date when the Auction Purchaser

[15] IBBI Regulations, 2016

received the letter despatched by the Liquidator, the said period would have expired on 25th March, 2020. It is not in dispute that the balance sale consideration was not paid by the Auction Purchaser within the period of 90 days. The said amount was paid only on 24th August, 2020.

8. The appellant filed a Miscellaneous Application[4] before the Adjudicating Authority for setting aside the auction proceedings. The said application was dismissed by the Adjudicating Authority, *vide* common order dated 17th November, 2021. In the meantime, due to the onset of the Covid-19 pandemic, Government of India imposed a countrywide lockdown on 25th March, 2020. On 22nd April, 2020, the Auction Purchaser moved an application[6] before the Adjudicating Authority for extension of time for making payment of the balance sale consideration. Besides taking the plea of the onset of Covid 19 pandemic, one of the grounds taken by the Auction Purchaser for extension of time was that the Income Tax Authority had passed an order attaching the auctioned property. The said application was allowed by the Adjudicating Authority3, *vide* order dated 05th May, 2020 and the time granted for depositing the balance sale consideration was deferred till the lockdown was lifted by the Central Government/State Government, respectively.

9. Dissatisfied with the aforesaid order, the appellant filed a Company Appeal[16], after 19 months, on 27th October, 2021. Well before that, the Auction Purchaser paid the balance sale consideration in respect of the auctioned property on 24th August, 2020 and a Sale Deed was executed by the Liquidator in favour of the Auction Purchaser on 28th August,

[16] Company Appeal (AT) (INS) No. 334 of 2021

2020. One month after completion of the sale transaction, the appellant filed an application on 25th September, 2020[5], seeking recall of the order dated 05th May, 2020, passed by the Adjudicating Authority and challenging the execution of the Sale Deed. By virtue of the common order dated 17th November, 2021, the Adjudicating Authority dismissed both the applications filed by the appellant, one for stalling the e-auction that was conducted on 23rd December, 2019[4] and the other for setting aside the Sale Deed dated 28th August, 2020. The said orders were carried in appeal by the appellant before the Tribunal. *Vide* common judgment and order dated 16th September, 2022, the Tribunal dismissed the appeals filed by the appellant, giving rise to the present appeals.

C. ARGUMENTS ADVANCED ON BEHALF OF THE APPELLANT

10. Mr. P. Chidambaram, learned Senior advocate appearing for the appellant submitted that the Tribunal failed to appreciate that the auction conducted by the Liquidator was in violation of the provisions of the IBBI Regulations, 2016 particularly, Regulation 31A that requires a Liquidator to constitute a Stakeholders' Consultation Committee and Regulation 33 that prescribes the mode of sale of the assets of the Corporate Debtor through an auction in the manner specified in Schedule I. Relying on the decision in ***C.N. Paramasivam and Another v. Sunrise Plaza through Partner and Others***[17]***,*** it has been contended that Schedule I, Rule 12 of the IBBI Regulations, 2016 is mandatory and any non-compliance thereof should result in cancellation of the sale. The decision in ***Sharif-ud-din v. Abdul Gani Lone***[18] was cited by learned counsel to make a point that when the

[17] (2013) 9 SCC 460
[18] (1980) 1 SCC 403

rule provides a consequence for failure to comply, then it ought to be treated as mandatory and not directory in character. It was argued that having regard to the mandatory character of the regulations, the Tribunal has erred in failing to appreciate that the Auction Purchaser could neither have sought extension of time to deposit the balance sale consideration nor could such an indulgence have been granted to it. Dovetailed to the above, is the submission that the Liquidator was selective in applying the amended provisions of the IBBI Regulations, 2016, based on a Circular dated 26th August, 2019.

11. The second submission made by learned senior counsel appearing for the appellant was that the Tribunal ought not to have concurred with the Adjudicating Authority to hold that the extension granted to the Auction Purchaser to deposit the balance sale consideration on account of the Covid-19 lockdown, was valid. It was submitted that since banks were functioning during that time, the Auction Purchaser had all the opportunity to deposit the balance sale consideration. Therefore, it had no defence for not making the payment on time. It was further submitted that the order passed by the this Court and relied on by the Auction Purchaser in ***GPR Power Solutions Pvt. Ltd. v. Supriyo Chaudhuri***[19], as also the order dated 02nd March, 2020 and the order dated 12th May, 2020 passed in Civil Appeal No. 1902 of 2020[20], could not have enured to its benefit for the reason that the said orders applied to filing of petitions, applications, suits, appeals or other proceedings within the prescribed period of limitation. Citing the decision in ***Sagufa Ahmed v. Upper Assam Polywood Products Pvt. Ltd.***[21] learned senior counsel

[19] (2021) 17 SCC 312
[20] Union Bank of India v. Rajat Infrastructure Pvt. Ltd. and Others
[21] (2021) 2 SCC 317

submitted that the order passed by this Court on 23rd March, 2020 in *Suo Moto* Writ Petition (Civil) No. 3/2020, was only intended for the benefit of vigilant litigants who were prevented from initiating proceedings within the period of limitation due to the pandemic and the lockdown. The Auction Purchaser was not a litigant before the Court and could not have availed of the said order. The Auction Purchaser was neither required to approach the Adjudicating Authority, nor to file any petition before the Tribunal for remitting the balance sale consideration.

12. It was next canvassed on behalf of the appellant that the order of attachment by the Income Tax Authorities in respect of the auctioned property is an irrelevant consideration insofar as it relates to deposit of the balance sale consideration by the Auction Purchaser within 90 days. Alluding to the terms and conditions of the auction, learned counsel argued that the e-auction was conducted on an '*As Is Where Is*' basis and clause 12 of the said Notice of auction clearly stated that the sale would be subject to the IBC and the IBBI Regulations, 2016. Therefore, the Auction Purchaser cannot be heard to state that it was unaware of the Income Tax attachment order. Having bid for the subject property and agreed to the condition that the balance sale amount had to be deposited within 90 days, the Auction Purchaser was under an obligation to comply with the terms of the auction and on failure to do so, the Liquidator ought to have cancelled the sale instead of accommodating the Auction Purchaser.

13. Lastly, learned counsel submitted that even assuming that the last date for making the payment towards the balance sale consideration was 25th March, 2020, as was urged by the other side, the period of limitation would have recommenced on 23rd July, 2020,

since the Liquidator had moved an application[22] seeking exclusion of the period between 23rd March, 2020 and 23rd July, 2020. In view of the above, there was no justification for the Auction Purchaser to have made the payment on 24th August, 2020 i.e. after a period of one month reckoned from the date when the exclusion period had ended.

D. ARGUMENTS ADVANCED BY LEARNED SENIOR COUNSEL FOR THE AUCTION PURCHASER

14. Rebutting the submissions made by learned counsel for the appellant, Mr. Arvind Datar, Senior Advocate appearing for the Auction Purchaser submitted that the time to complete all actions under the IBC stood extended from 15th March, 2020 onwards in view of the Covid-19 circulars and orders passed by this Court in the *Suo Motu* Writ Petition[23] initiated by this Court read in conjunction with Regulation 47A of IBBI Regulations, 2016. Therefore, there was no default on the part of the Auction Purchaser in making payment of the balance sale consideration at a later date. Referring to the decision of this Court in ***GPR Power Solutions Private Limited*** *(supra)* learned senior counsel submitted that the extension orders were applied by this Court even to submissions of claims by creditors to the resolution professionals. For this reason, it would be erroneous to state that extension could apply only to litigants before courts and Tribunals, as sought to be urged by the other side. The decisions in ***Standard Surfa Chem India Private Limited v. Kishore Gopal Somani***[24] *and* ***Prakash Chandra Kapoor v. Vijay Kumar Iyer***[25] were cited by learned

[22] IA No. 202 of 2021 in CP/1140/IB/20181.
[23] Suo Motu Writ Petition (C) No.3 of 2020 in 'Cognizance for Extension of Limitation, In Re', reported as (2020) 19 SCC 10
[24] 2022 SCC Online NCLAT 305
[25] 2021 SCC Online NCLAT 622

counsel to argue that timelines prescribed under the IBBI Regulations, 2016 are directory and not mandatory in character. Learned counsel submitted that reliance placed by the appellant on ***C.N. Paramasivam*** *(supra)* to contend that the timeline of 90 days is absolute, is misplaced for the reason that the provisions governing the Debt Recovery Tribunal[26] and the Adjudicating Authority are not *pari materia.* Learned senior counsel submitted that unlike DRT's, Adjudicating Authority has special inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016[27]. Furthermore, even in cases initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act[28], this Court had granted extension to an Auction Purchaser to deposit the balance sale consideration in view of the Covid-19 lockdown situation. For this, learned senior counsel referred to the order dated 12th May, 2020[29] passed by this Court in ***Union Bank of India v. Rajat Infrastructure Private Limited and Others***[30]. Similarly, he submitted that the ***Sagufa Ahmed*** case *(supra)* referred to on behalf of the appellant, cannot apply to the facts of the instant case for the reason that in the captioned case, the timeline for filing an appeal before the Tribunal had expired before 15th March, 2020, which was not so here as the timeline for the Auction Purchaser to deposit the balance sale consideration had expired after declaration of the COVID-19 lockdown by the Government of India on 22nd March, 2020.

[26] For short 'DRT'
[27] For short 'NCLT Rules, 2016'
[28] For short 'SARFAESI Act'
[29] Order dated 12th May, 2020 passed in Civil Appeal No.1902 of 2020
[30] 2020 SCC Online SC 1491

15. Learned senior counsel clarified that the Auction Purchaser had applied to the Liquidator on 28th February, 2020, for extension of time to deposit the balance sale consideration after the Income Tax attachment orders were lifted. The Liquidator responded to the said communication only on 02nd April, 2020 stating that he did not have the powers to extend the time and for which, an application would have to be moved before the Adjudicating Authority after it resumed functioning partially. For purposes of clarification, it may be noted that Adjudicating Authority had issued a notification that it would hear only urgent matters between 16th March, 2020 and 27th March, 2020. On 22nd March, 2020, the Adjudicating Authority announced closure in the light of the lockdown and it was clarified that liquidation matters would not be considered as urgent. The Auction Purchaser filed an application[31] before the Adjudicating Authority seeking extension of time. *Vide* order dated 5th May, 2020, the Adjudicating Authority allowed the said application and granted extension of time to the Auction Purchaser to deposit the balance sale consideration. It is submitted that the appellant did not take any steps to prefer an appeal against the aforesaid order within the period prescribed in Section 61 of the IBC. Instead, after the entire sale transaction was completed, the appellant filed an application for review, which was dismissed by the Adjudicating Authority. After waiting for 15 months, the appellant filed an appeal on 27th October, 2021. Even at that stage, the appellant did not seek any interim orders before the Adjudicating Authority or the Tribunal. As a result, the Auction Purchaser proceeded to construct a 200-bed Mother and child hospital at the

[31] IA No. 335/IB/2020 in MA No.689 of 2019 in CP No./1140/IB/CB/2018

auctioned property after demolishing the existing building on which a sum of ₹1,70,00,000/- (Rupees One crore and seventy lakhs only) has been invested. The said hospital is now complete and fully functional and is stated to cater to the needs of seven surrounding districts in the area.

16. Coming next to the submission made on behalf of the appellant that the order of attachment issued by the Income Tax authorities in respect of the auctioned property is not a relevant consideration when it came to depositing the balance sale consideration by the Auction Purchaser within 90 days, learned senior counsel for the Auction Purchaser sought to urge that sale of properties that are the subject matter of Income Tax attachment orders, must be treated on a different footing. Such sale transactions cannot be completed because of the bar placed under the Income Tax Act, 1961[32]. A specific reference in this regard has been made to Sections 222 and 281 read with Rule 48 Part-III, Schedule 2 of the IT Act. Several decisions of the Adjudicating Authority[33] have been cited by the learned senior counsel to canvass that in such circumstances, the Liquidator has no option but to approach the Adjudicating Authority for appropriate directions. Even in the present case, the Liquidator had to move an application before the Adjudicating Authority for appropriate directions. The said application was allowed on 10th February, 2020. However, the order passed on 10th February, 2020 was received by the Liquidator only on

[32] For short 'IT Act'

[33] ***BMM Ispat Ltd. v. Ramdas Ispat***, 2019 SCC Online NCLT 21322, ***Allahabad Bank v. Biotor***, 2019 SCC Online NCLT 26716, ***Sanjay Kr. Agarwal v. Tax Recovery Officer***, 2019 SCC Online NCLT 28888, ***Abhudaya Coop. Bank v. Shivkripa***, 2020 SCC Online NCLT, 11935, ***UBI v. Guruashish Construction***, 2020 SCC Online NCLT 14829, ***Ashok Kr. Dewan v. AC of IT***, 2021 SCC Online 4368, ***Mauritius Commercial Bank v. Varun Corporation***, 2021 SCC Online NCLT 6814, ***Milind Kasodekar v. P. Mahajan***, 2021 SCC Online NCLT 11616.

14th May, 2020. Due to several hindrances on account of the COVID-19 situation, the actual attachment of the subject property was lifted only on 27th August, 2020. Just a few days before that, the Auction Purchaser deposited the balance sale consideration on 24th August, 2020 and the sale transaction was finally completed on 28th August, 2020.

17. Countering the submission made on behalf of the appellant that Clause 12 of Schedule I under Regulation 33 of the IBBI Regulations, 2016 requires the successful bidder to pay the balance sale consideration within 90 days from the date of the demand which timeline could not be extended, learned senior counsel for the Auction Purchaser argued that the time limit fixed under Rule 12 of Schedule I has to be read in conjunction with Rule 13 of the IBBI Regulations, 2016 and in cases of attachment, the full amount has to be paid simultaneously with the completion and execution of the Sale Deed. In the present case, the said steps could be taken only after the attachment was lifted by the Income Tax authorities.

18. Learned senior counsel relied on ***Pioneer Urban Land and Infrastructure Limited and Another v. Union of India and Others***[34] and ***Prakash Chandra Kapoor and Another v. Vijay Kumar Iyer and Another***[35], to contend that the model timeline for the liquidation process contemplated under Regulation 47 of the IBBI Regulations, 2016 for completing the liquidation process, are only directory in nature.

19. Learned senior counsel for the Auction Purchaser concluded by highlighting the conduct of the appellant and stated that he had repeatedly failed to pay the monies due;

[34] (2019) 8 SCC 416
[35] 2021 SCC Online NCLAT 622

he attempted to stall the auction process; he refused to remove the bar operating from the subject premises and police assistance had to be taken to take over physical possession of the subject property. Therefore, concurrent findings returned by the Adjudicating Authority and the Tribunal being well reasoned, do not deserve interference. Lastly, learned counsel submitted that without prejudice to the above submission, in the event this Court is of the opinion that the provisions of Rule 12 of Schedule I of the IBBI Regulations, 2016 are mandatory and the Adjudicating Authority was not empowered to extend the timelines for paying the balance sale consideration, then this Court may exercise its powers under Article 142 of the Constitution of India to do complete justice but the auction sale may not be set aside.

E. ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT NO.1 - LIQUIDATOR

20. Mr. C.U. Singh, Senior Advocate appearing on behalf of the respondent No.1 - Liquidator supported the arguments advanced by learned senior counsel for the Auction Purchaser. He submitted that the appellant has made unfounded allegations regarding valuation of the subject property at ₹39,41,28,500/- (Rupees Thirty nine crore forty one lakh twenty eight thousand and five hundred only). The said allegations were responded to by the Liquidator, *vide* letter dated 15th November, 2019 clearly stating *inter alia* that the reserve price was based on the average liquidation value arrived at by the registered Valuers. Contradicting the claim of the appellant that the subject property ought to have been valued at ₹1,00,00,00,000/- (Rupees One hundred crore only), it was submitted that no bidder had stepped forward to participate in the auction even with the reserve price of

₹39,41,00,000/- (Rupees Thirty nine crore and forty one lakh only). Reference was made to Regulation 33 read with para 4A of the Schedule I to the IBBI Regulations, 2016 to state that the second auction was conducted on 23rd December, 2019 with a permissible reduction of 25% in the reserve price that was set at ₹29,95,96,375/- (Rupees Twenty nine crore ninety five lakh ninety six thousand three hundred and seventy five only). This fact was duly intimated to the appellant who too could have made efforts to get a better bid for the subject property, but he didn't take any such step.

21. Refuting the submission made by the other side that the auction was conducted by the Liquidator without constituting a Stakeholders' Consultation Committee, learned counsel submitted that there was no such requirement at the relevant point in time, which position has been clarified in the Explanation appended to Section 31A, that was inserted in the Regulations, *vide* Notification dated 25th July, 2019. In the present case, the liquidation process had commenced earlier to issuance of the said Notification. Further, the Tribunal has clarified that the amendment to Rule 12 of Schedule I under Regulation 33 of the IBBI Regulations, 2016 made by virtue of the same Notification would apply to pending liquidation process[36]. Learned senior counsel submitted that in any event, such an objection was taken by the appellant for the first time in the recall application filed by him on 25th September, 2020 by which date, the entire process of sale stood concluded. It was submitted that the appellant is estopped from taking such an objection for the reason

[36] Reliance has been placed ***In the matter of Sundaresh Bhat***, 2021 SCC Online NCLAT 624

that despite repeated requests made to him by the Liquidator to nominate a person in the Stakeholders' Consultation Committee, he had not done so.

22. Learned senior counsel for the Liquidator submitted that the COVID-19 pandemic had caused an extraordinary disruption leading to a nationwide lockdown from 20th March, 2020 onwards. The Auction Purchaser had moved an application for extension of time to deposit the balance sale consideration, which was duly allowed by the Adjudicating Authority, *vide* order dated 5th May, 2020, extending the time until the lifting of the lockdown by the Centre/State Government. The balance sale consideration was deposited by the Auction Purchaser on 24th August, 2020. On receiving the said amount, the Liquidator had settled the outstanding claim of the Income Tax Department on 27th August, 2020 whereafter, the Income Tax attachment was lifted and the Liquidator executed and registered the Sale Deed in favour of the Auction Purchaser on 28th August, 2020. It was pointed out that the appellant decided to challenge the order dated 5th May, 2020 passed by the Adjudicating Authority, 14 months after the Sale Deed was executed and registered in favour of the Auction Purchaser, which shows his non-seriousness. Further, learned counsel cited the decision in ***Pioneer Urban Land and Infrastructure Limited and Another v. Union of India and Others***[37], wherein it has been held that the timeline prescribed in Sections 7(5), 9(5) and 10 (4) of the IBC are directory and not mandatory in character.

[37] (2019) 8 SCC 216

23. Learned counsel for the Liquidator supported the submissions made on behalf of the Auction Purchaser on the aspect of extension of the period of limitation and submitted that the expressions "*litigation*" and "*litigant*" appearing in the *Suo Moto* Writ petition must be given the widest import so as to cover all proceedings, including liquidation proceedings. In the absence of any explicit bar, the said order would also apply to the auction process conducted in liquidation proceedings carried out under the IBC more so, when the Liquidator has been held to be a *quasi judicial* authority by this Court in ***Swiss Ribbons (P) Ltd. and Another v. Union of India and Another***[38]. Reliance has also been placed on ***GPR Power Solutions Pvt. Ltd.*** *(supra)* to urge that exclusion of time on account of the COVID-19 pandemic was allowed even in cases where claims were to be filed before the resolution professionals.

F. REJOINDER ARGUMENTS ON BEHALF OF THE APPELLANT

24. In his rejoinder arguments, learned counsel for the appellant sought to distinguish the judgments of this Court relied on by the other side including in the case of ***Yashowanta Narayan Dixit v. Orient Insurance Company Limited***[39] and the orders passed on 2nd March, 2020 and 12th May, 2020 in Civil Appeal No. 1902 of 2020. Relying on the decision in ***Union Bank of India v. Rajat Infrastructure Private Limited and Others***[40], learned counsel submitted that this Court had noted that under Rule 9 (4) of the Security Interest (Enforcement) Rules, 2002[41], the balance of the purchase price payable had to be paid in

[38] (2019) 4 SCC 17
[39] (2022) 15 SCC 569
[40] (2023) 10 SCC 232
[41] For short 'SIE Rules, 2002'

the said case on or before the fifteenth day of the confirmation of sale and even if a liberal construction is given to the said sub-Rule, and the orders passed by the Court from time to time, the time to deposit the balance amount with interest could extend only upto 30th April, 2022 and no further extension of time could have been granted thereafter. This Court has also observed that Article 142 of the Constitution of India cannot be used to depart from the substantive law. It was submitted that even if the Auction Purchaser was permitted to take the benefit of the order dated 17th November, 2021 passed by the Adjudicating Authority, it could take the last date for deposit upto 23rd July, 2020 whereas, the Auction Purchaser did not deposit the balance sale consideration till 24th August, 2020.

25. Coming next to the submission made by learned senior counsel for the respondents that model timelines for the liquidation process under Regulation 47 of the IBBI Regulations, 2016 are directory in character and not mandatory, learned senior counsel for the appellant submitted that the decisions cited by the respondents to substantiate the said submission, are distinguishable on facts. It was contended that this Court has itself held in ***Pioneer Urban Land and Infrastructure Limited*** *(supra)* that the timelines mentioned in Sections 7(5), 9(5) and 10(4) of the IBC are directory in nature because they do not provide for any consequence if the period so mentioned is exceeded. However, the word used in Rule 12 of Schedule I under Regulation 33 of the IBBI Regulations, 2016 is *"shall".* The second *proviso* under Rule 12 provides for a consequence that in the event the amount is not paid within 90 days, the sale shall be cancelled. The decision in the case of ***Prakash Chandra Kapoor*** *(supra)* is also sought to be distinguished on the same grounds. Learned senior counsel submitted that in all the Rules under Schedule I, except

for Rule 11, the word "*shall*" has been used and it has been held in ***Vidarbha Industries Power Limited v. Axis Bank Limited***[42], that if one provision uses the word "*may*", and another provision uses the word *"shall"*, then wherever the word *"shall"* has been used, will have to be treated as mandatory. Applying the said principle to the instant case, it was mandatory for the Auction Purchaser to have deposited the balance sale consideration in respect of the auctioned property within 90 days and at the outer date, on or before 23rd of July, 2020 when the period of the lockdown had come to an end.

26. As for the submission made by the Auction Purchaser that the Income Tax attachment was lifted only on 27th August, 2020 and therefore, there was no occasion for it to have paid the balance sale consideration before the attachment was lifted, learned senior counsel for the appellant submitted that the Adjudicating Authority had passed an order on 10th February, 2020, directing the Income Tax Department to lift the attachment and the said order having been pronounced in open court, ought to have been in the knowledge of the respondents who cannot take a plea that the said order was communicated to them much later and therefore, they were oblivious thereto. It was further argued that the amount attached by the Income Tax Department was actually paid on 3rd August, 2020, from out of the earnest money deposited by the Auction Purchaser. While the Income Tax Department passed an order lifting the attachment in respect of the subject property only on 27th August, 2020, the Auction Purchaser did not wait until then to pay the balance amount. The balance sale consideration was deposited by the Auction

[42] (2022) 8 SCC 352

Purchaser through RTGS on 24th August, 2020, which was three days before the date the Income Tax Department passed the order on 27th August, 2020. That being the position, the balance amount could have easily been paid by the Auction Purchaser in a similar manner (through RTGS) on or before 25th March, 2020, on the expiry of the period of 90 days, which it miserably failed to do.

27. Refuting the plea taken by the Auction Purchaser that under Section 281 of the IT Act, a sale shall be treated as void against any claim by the Income Tax Department which was a reason offered by it not to have paid the balance amount, learned counsel for the appellant submitted that such a plea is baseless inasmuch as the Auction Purchaser could have paid the balance amount by obtaining prior permission from the assessing officer. The Income Tax attachment did not stand in the way of payment of the balance sale consideration. A distinction was sought to be drawn between the expression 'payment of sale consideration' and 'execution of sale deed'. The attention of the Court was also drawn to the letter dated 9th December, 2019 issued by the Liquidator to the Auction Purchaser in response to its communication dated 9th December, 2019 well before the date of auction, seeking a clarification. The Liquidator had clearly stated that the subject property was being sold under the IBC and the Income Tax Department could not have a priority in claim. In any case, the income tax dues were limited to a sum of ₹2,44,00,000/- crores (Rupees Two crore and forty four lakhs only) and the said amount could have been deposited with the Income Tax Department from out of the sale proceeds. It was on the basis of the aforesaid clarification furnished by the Liquidator that the Auction Purchaser had participated in the auction process and once having succeeded in the bid, it was under an

obligation to deposit the balance sale consideration within 90 days from the date of the auction.

28. Questioning the stand taken by the respondents that Regulation 31A that requires constitution of a Stakeholders' Consultation Committee by the Liquidator to advise on matters specified in the said Regulation, including sale of assets under Regulation 32, manner of sale, reserved price, amount of earnest money deposit, etc., was amended w.e.f. 25th July, 2019 and the Explanation in Regulation 31A made the said Regulation prospective, learned senior counsel for the appellant argued that the Liquidator could not have had the foresight to know that such an Explanation would be appended to Regulation 31A much later, *vide* Notification dated 28th April, 2022. In other words, as the said Regulation stood in the year 2019, it was incumbent for the Liquidator to have constituted the Stakeholders' Consultation Committee and the explanation now offered, is a sheer afterthought.

29. Another argument advanced is that if it is assumed that the Auction Purchaser could take refuge of the order dated 23rd March, 2020 passed by this Court in the *Suo Moto* Writ Petition on account of the lockdown due to the Covid-19 pandemic read with Regulation 47A of the IBBI Regulations, 2016, in the light of the order dated 17th November, 2021 passed by the Adjudicating Authority, the last date for making the deposit by the Auction Purchaser could be extended upto 23rd July, 2020 and not beyond that.

30. Learned senior counsel concluded by vehemently contesting the submission made by the other side that the appellant's conduct showed that he was obstructing the liquidation process. He sought to distinguish the judgment in ***Bombay Mercantile***

Corporative Bank Limited v. U.P. Gun House and Others[43] cited by the other side on facts and submitted that *vide* order dated 5th December, 2023, that this Court had passed in the present Appeals, the Auction Purchaser was restrained from creating any third-party rights. It was argued that had the sale been cancelled under Rule 12, second *proviso* to Schedule I under Regulation 33 of the IBBI Regulations, 2016 and the subject property put to auction once again, there was a strong possibility that the same would have fetched a much higher amount. But due to the casual manner in which the respondents have conducted themselves, the appellant and the shareholders have lost the valuable property and suffered a huge loss. Without prejudice to the submission made above, learned counsel submitted that should the Court be inclined to accept the pleas taken by the respondents in opposition to the appeals, then it would only be fair to direct the Auction Purchaser to compensate the appellant for the loss of the value of the property which was assessed by the registered Valuers in the year 2019, at ₹48,00,00,000/- (Rupees Forty eight crores only).

G. DISCUSSION AND ANALYSIS

31. This Court has given its thoughtful consideration to the arguments advanced by learned counsel for the parties, perused the records and the judgments cited on both sides. We shall now deal with the contentions raised by learned counsel for the appellant *ad seriatim.*

[43] (2024) 3 SCC 517

32. COVID-19 PANDEMIC AND ITS IMPACT ON LIMITATION

32.1 The ball was set rolling on the Notice for sale of assets issued by the Liquidator for conducting the e-auction of the land and building owned by the Corporate Debtor that declared the reserve price of the subject property as ₹29,55,96,375/- (Rupees Twenty nine crore fifty five lakh ninety six thousand three hundred and seventy five only). The intending bidders were required to deposit 10 per cent of the reserve price as earnest money amount which came to ₹ 2,95,59,638/- (Rupees Two crore ninety five lakh fifty nine thousand six hundred and thirty eight only). Some of the relevant terms and conditions of the e-auction are extracted below:

> "1. E-Auction will be conducted on "AS IS WHERE IS", "AS IS WHAT IS" and "WHATEVER THERE IS BASIS" through approved service provider M/S E-Procurement Technologies Limited (Auction Tiger).
> 2. The intending bidders, prior to submitting their bid, should make their independent inquiries and inspect the property at their own expenses and satisfy themselves. ….
> xxxx
> 8. The EMD of the Successful Bidder shall be retained towards part sale consideration and The EMD of unsuccessful bidders shall be refunded. The EMD shall not bear any interest. The Liquidator will issue a Letter of Intent (LOD) to the Succes Bidder and the Successful Bidder shall have to deposit the balance amount (Successful Bid Amount-Ex Amount) within 90 on issuance of the LOI by the Liquidator Provided that payments made after thirty days shall attract interest at the rate of 12%. Default in deposit of the balance amount by the successful bidder within the time limit as mentioned in the LOI would entail forfeiture of the 10% of the amount deposited (EMD) by the Successful Bidder.
> xxxxx
> 10. The Liquidator has the absolute right to accept or reject any or all offer(s) or adjourn/postpone/cancel the e-Auction or withdraw any property or portion thereof from the auction proceeding at any stage without assigning any reason thereof.
> xxxxx
> 12. The sale shall be subject to provisions of Insolvency and bankruptcy code 2016 and regulations made thereunder.
> xxxxx"

32.2 The e-auction of the subject property took place on 23rd December, 2019. Going by the Notice for sale issued by the Liquidator, the period of 90 days available to the

Auction Purchaser to deposit the balance sale consideration, if reckoned from 24th December, 2019, the date when the Liquidator informed that it was the successful bidder, would have expired on 23rd March, 2020. However, the Letter of Intent[44] issued by the Liquidator on 24th December, 2019, was received by the Auction Purchaser on 26th December, 2019. The period of 90 days reckoned from 26th December, 2019 would have expired on 25th March, 2020. Admittedly, the balance sale consideration was not paid by the Auction Purchaser within the aforesaid timeline. The said amount was deposited by the Auction Purchaser through RTGS only on 24th August, 2020.

32.3 For explaining the delay in depositing the balance sale consideration, the Auction Purchaser has sought to take shelter of the order dated 23rd March, 2020, passed by this Court in the *Suo Moto* Writ Petition wherein it was directed as under:

> **Order**
>
> "1. This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covm-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).
>
> 2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals d across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by this Court in present proceedings.
>
> 3. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all courts/tribunals and authorities.
>
> 4. This order may be brought to the notice of all the High Courts for being communicated to all subordinate courts/tribunals within their respective jurisdiction…."

[44] In short 'LOI'

32.4 For the sake of completion, we may note that the aforesaid *Suo Moto* Writ Petition was disposed of *vide* order dated 08th March, 2021. The operative para of the said order is extracted below:

> "*1*. … We are of the opinion that the order dated 23-3-2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.
>
> *2*. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:
>
> *2.1*. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.
>
> *2.2*. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.
>
> *2.3*. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (*b*) and (*c*) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
>
> *2.4*. The Government of India shall amend the guidelines for containment zones, to state:
>
> 'Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time-bound applications, including for legal purposes, and educational and job-related requirements.'
>
> *3*. The suo motu writ petition is disposed of accordingly."

32.5 The Auction Purchaser has also invoked Regulation 47A of the IBBI Regulations, 2016, that was inserted on 20th April, 2020 and made effective from 17th April, 2020[45]. Regulation 47A provides for exclusion of the period of lockdown and reads as under :

> **"Exclusion of period of lockdown**
>
> **47A**. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be

[45] Vide Notification No. IBBI/2020- 21/GN/REG059 dated 20.04.2020

> counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process."

32.6 It is evident from a perusal of Regulation 47A, that the benefit of the said regulation was made available not only for initiation of any litigation, but also for computation of the timeline for completing any task in connection with a liquidation process that could not be completed on account of declaration of the lockdown. We are not inclined to accept the submission made on behalf of the appellant that the word *'Litigants'* used in the order dated 23rd March, 2020 passed in the *Suo Moto* Writ Petition ought to be given a narrow interpretation so as to exclude a party like the Auction Purchaser herein as *stricto sensu,* it was not a litigant who was required to file any petition/application/suit/appeal or other proceeding before any Court/Tribunal/Authority within the period of limitation prescribed under a general law of limitation or under the special laws. It must be emphasised that a judgment can neither be read like a Statute nor can the expressions used in a judgment be assigned a narrow meaning or curtailed. In the larger contextual background of the Covid-19 breakout, a liberal interpretation would have to be adopted and the Auction Purchaser would be entitled to the benefit of the order dated 23rd March, 2020 read with Regulation 47A of the IBBI Regulations, 2016. The appellant cannot be heard to state that when the entire country was engulfed by the Covid-19 pandemic and a countrywide lockdown was imposed on 25th March, 2020 that was extended from time to time, the Auction Purchaser ought to have deposited the balance sale consideration within the stipulated 90 days. In such a situation, a lenient view would have to be taken by the Court.

32.7 The factual matrix of the case also needs to be kept in mind. The Covid-19 pandemic had broken out in the month of March, 2020. A curfew was clamped by the Central Government on 22nd March, 2020, restricting the movement of the public. The Adjudicating Authority had issued a notification that only urgent matters would be taken up between 16th March, 2020 and 27th March, 2020. Before completion of the aforesaid period, the Central Government had declared a nationwide lockdown for 21 days till 14th April, 2020, which period was subsequently extended till 03rd May, 2020. In this backdrop, came the order of this Court on 23rd March, 2020 extending the period of limitation w.e.f. 15th March, 2020 till further orders, which order was extended from time to time. The Governing Board of the Insolvency and Bankruptcy Board of India also decided on 17th April, 2020 to amend the IBBI Regulations, 2016 due to nationwide lockdown and incorporated Regulation 47A.

32.8 On 28th February, 2020, the Auction Purchaser approached the Liquidator for seeking extension of time to deposit the balance sale consideration. It was stated that the balance sale consideration would be paid on the date of registration of the subject property and a request was made not to levy any interest. On 02nd April, 2020, the Liquidator informed the Auction Purchaser that he was not empowered to relax the timelines for depositing the balance sale consideration and it ought to approach the Adjudicating Authority for appropriate relief. In view of the aforesaid response received from the Liquidator, the Auction Purchaser filed an application before the Adjudicating Authority on

22nd April 2020[46], seeking extension of the time for making payment of the balance sale consideration on various grounds that included a plea that there was an income tax attachment order in respect of the subject property and the Covid-19 pandemic had caused a lot of disruption. It was this application that was allowed by the Adjudicating Authority *vide* order dated 05th May, 2020 granting the Auction Purchaser time to pay the balance sale consideration until the Central Government/State Government lifted the lockdown.

32.9 In ***GPR Power Solutions*** *(supra),* a case cited by learned counsel for the Auction Purchaser, the appellant therein was a creditor of the Corporate Debtor who filed a belated claim under Regulation 7of the IBBI Regulations, 2016 which was rejected by the Resolution Professional on the ground of delay. The said delay was neither condoned by the Adjudicating Authority nor by the Tribunal. Both the orders were overturned by this Court in the light of the orders passed in the *Suo Moto* Writ Petition. We decline to draw a distinction between the appellant in the captioned case and the Auction Purchaser herein on a plea that the Auction Purchaser was not required to file any petition/application/ suit/appeal or other proceeding that was circumscribed by period of limitation. The spirit of the order passed in the *Suo Moto* Writ Petition was to overcome the challenges thrown by the lockdown clamped down on account of the Covid-19 pandemic. In our opinion, such an order would also extend to any action required to be taken in respect of a liquidation process, as contemplated in Regulation 47A of the IBBI Regulations, 2016.

[46] MA/335/2020 in MA/689/2019 in CP/1140/2018

32.10 The decision in ***Sagufa Ahmed*** *(supra)* relied on by learned counsel for the appellant to urge that the Auction Purchaser cannot claim the benefit of the order passed by this Court on 23rd March, 2020, is distinguishable on facts. In the said case, the statutory period of 45 days available to the appellant therein to prefer an appeal against an order passed by the Adjudicating Authority had expired on 02nd February, 2020 and the additional period of 45 days that could have been condoned by the Tribunal by virtue of the *proviso* to Section 421(3) of the Companies Act, 2013 had expired on 18th March, 2020 whereas the appeal was actually preferred on 20th July, 2020. Noting that the lockdown was imposed on 24th March, 2020 and there was no impediment for the appellant in the aforesaid case to have filed the appeal before 18th March, 2020, this Court had refused to permit the party to take refuge of the order dated 23rd March, 2020, passed in the *Suo Moto* Writ Petition and had opined that the said order was intended to benefit those who were vigilant about their rights.

32.11 The decision in ***Rajat Infrastructure Private Limited*** *(supra)* alluded to by learned senior counsel for the appellant is also based on its own peculiar facts where successive applications were moved by the applicant – Auction Purchaser therein for extension of time to pay the balance sale price of the subject property. Despite a long rope given by the Court by granting enlargement of time, the applicant kept on dragging its feet and committing defaults. In view of the aforesaid conduct, the Court referred to sub-rule (4) and (6) of Rule 9 of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest (Enforcement) Rules 2002[47] that prescribes time of sale, issue of sale certificate and delivery of possession and observed that even if a liberal construction is given to the said sub–rules, in view of successive orders passed by the Court on applications moved by the applicant – Auction Purchasers, it was not permissible to extend the timeline under the substantive statutory provisions dealing with the subject. The facts of the present case being on a different footing, the appellant cannot take advantage of the aforesaid decision.

32.12 In the present case, as noticed above, the period of 90 days for depositing the balance sale consideration had expired just after the crucial date, i.e., 23rd March, 2020. We do not find any merit in the submission made by the appellant that the Tribunal ought not to have accepted the view taken by the Adjudicating Authority that Covid-19 lockdown was a valid reason for extension of time to deposit the balance sale consideration.

33. ALLEGATIONS REGARDING UNDER-VALUATION OF THE SUBJECT PROPERTY

33.1 The contention of the learned senior counsel for the appellant is that the Liquidator ought not to have auctioned the subject property by fixing a reserve price below the valuation submitted by the Registered valuers. To consider the said submission, it is necessary to examine the scheme of the IBBI Regulation, 2016 that applies to the Corporate Insolvency Resolution Process. Chapter VI of the Regulations titled '*Realisation of Assets'* includes a list of regulations relating to sale of assets (Regulation 32), sale of a Corporate debtor as a going concern (Regulation 32A), mode of sale (Regulation 33),

[47] SARFAESI Rules, 2002

preparation of an asset memorandum (Regulation 34), valuation of assets or businesses intended to be sold (Regulation 35), preparation of the Asset Sale Report (Regulation 36), realization of security interest by secured creditor (Regulation 37), assignment of not readily realizable assets (Regulation 37A), distribution of unsold assets (Regulation 38), recovery of monies due (Regulation 39) and realization of uncalled capital/unpaid capital contribution (Regulation 40). It can be seen that all the aforesaid regulations that fall under Chapter VI, are primarily concerned with realization of assets and the Liquidator has been tasked with several duties related to the said realization.

33.2 Regulation 33 stipulates that a Liquidator shall ordinarily sell the assets of the Corporate Debtor through an auction in the manner specified in Schedule I. Regulation 35 permits the Liquidator to appoint two Registered valuers to determine the realizable value of the assets or businesses listed in Regulation 32. On the Registered Valuers conducting a physical verification of the assets of the Corporate Debtor and submitting the estimate of the realizable value of the asset/business, the average of the two estimates received are to be taken as the value of the asset/business. It was in the light of the said Regulations that the Liquidator herein had engaged two Registered Valuers to give an estimate of the valuation of the subject property and the average of the two estimates was fixed by him at ₹39,41,28,500/- (Rupees Thirty nine crore forty one lakh twenty eight thousand five hundred only) for purposes of conducting the e-auction.

33.3 The objection taken by the appellant to the Liquidator slashing the reserve price by 25 per cent and bringing it down to ₹ 29,55,96,375/- (Rupees Twenty nine crore, fifty five

lakhs ninety six thousand three hundred seventy five only), is answered in Rule 4A of Schedule I under Regulation 33 of the IBBI Regulations, 2016, that states as follows:

> "(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction."

33.4 Admittedly, in the first round of the Notice for sale through e-auction published by the Liquidator on 25th November, 2019, he did not receive any bid. As a result, the Liquidator reduced the reserve price of the subject property by 25 per cent to conduct a second auction on 23rd December, 2019 wherein the Auction Purchaser was declared as the successful bidder. In our view, the Liquidator cannot be faulted for having exercised the discretion vested in him under Rule 4A of Schedule I when the auction scheduled earlier, did not bear any positive result. In fact, Rule 4B empowers the Liquidator to reduce the reserve price fixed under Rule 4A for subsequent auctions with a rider that the price shall not be reduced to more than 10 per cent at a time. The said eventuality did not arise in the present case since the Auction Purchaser was declared as the successful bidder in the second round of auction.

33.5 If the appellant was so confident that the subject property would have fetched a much higher price, nothing precluded him from identifying a bidder who was willing to offer a better price. In fact, such a suggestion was made by the Liquidator in his reply dated 15th November, 2019 to the objection taken by the appellant to the estimated value of the subject property in his letter dated 8th November, 2019. The Liquidator had stated that *"If you are confident enough that the property may fetch for more than Rs. 100.00 Crores you are at liberty to bring the proposed buyers and ask them to participate in the bidding*

process." Again, the Liquidator wrote a letter dated 27th November, 2019 to the appellant suggesting that ask eligible parties willing to offer a better price to participate in the auction process. The appellant did not follow up after that.

33.6 Therefore, the appellant cannot be permitted to argue that since the tax value of the subject property was estimated by the Registered Valuers at above ₹ 48 crores, the Liquidator ought not to have fixed the reserve price at ₹39,41,28,500/- (Rupees Thirty nine crore forty one lakh twenty eight thousand five hundred only) for the simple reason that though the reports of the Registered Valuers mentioned the tax value of the subject property at a little above ₹ 48 crores, but the liquidation value in both the reports was much lower and the Liquidator arrived at the average of the two estimated liquidation values to fix the reserve price of the subject property.

34. NON-CONSTITUTION OF A STAKEHOLDERS CONSULTATION COMMITTEE AND ITS EFFECT

34.1 It has been argued that the Liquidator has violated Regulation 31A of the IBBI Regulations, 2016 that requires him to constitute a Stakeholders' Consultation Committee. For purposes of ready-reference, Regulation 31A is reproduced below:

> "**31A. Stakeholders' consultation committee.**
> (1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-
> (a) appointment of professionals and their remuneration under regulation 7;
> (b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:
> Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.
> xxxxx
> (5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

> xxxxx
> (8) The liquidator shall place the recommendation of committee of creditors made under subregulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.
> (9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.
> (10) The advice of the consultation committee shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.

34.2 Regulation 31A that was inserted on the amendment of the IBBI Regulations, 2016 by virtue of the Notification[48] dated 25th July, 2019, requires a Liquidator to constitute a Stakeholders' Consultation Committee within a period of sixty days from the date of commencement of the liquidation process. The Stakeholders' Consultation Committee is to be drawn from the list of stakeholders on a category-wise basis, as prescribed under Regulation 31. The purpose of constituting a Stakeholders' Consultation Committee is to advice the Liquidator on matters relating to appointment of professionals and their renumeration as also in relation to sale of assets under Regulation 32. However, it was observed by this Court in ***R.K. Industries (Unit-II) LLP v. H.R. Commercials Private Limited and Others***[49], that the advice offered by the Stakeholders' Consultation Committee is not binding on the Liquidator. The safeguard provided in the Regulation is that if the Liquidator arrives at a decision which is at variance with the advice given by the Stakeholders' Consultation Committee, he must record in writing reasons for doing so and

[48] No. IBBI/2019-20/GN/REG047
[49] (2024) 4 SCC 166

mention it in the next progress report. We may usefully extract the following para of the captioned case:

> **"55.** On a conjoint reading of the aforesaid provisions of IBC and the Liquidation Regulations, it is evident that the liquidator is authorised to sell the immovable and movable property of the corporate debtor in liquidation through a public auction or a private contract, either collectively, or in a piecemeal manner. The underlying object of the statute is to protect and preserve the assets of the corporate debtor in liquidation and proceed to sell them at the best possible price. Towards this object, the provisions of IBC have empowered the liquidator to go in for a public auction or a private contract as a mode of sale. Besides reporting the progress made, the liquidator can also apply to the adjudicating authority (NCLT) for appropriate orders and directions considered necessary for liquidation of the corporate debtor. The liquidator is permitted to consult the stakeholders who are entitled to distribution of the sale proceeds. However, the proviso to Section 35(2) IBC makes it clear that the opinion of the stakeholders would not be binding on the liquidator. Regulation 8 of the Liquidation Regulations refers to the consultative process with the stakeholders, as specified in Section 35(2) IBC and states that they shall extend all necessary assistance and cooperation to the liquidator for completing the liquidation process. Regulation 31-A has introduced a stakeholders' Consultation Committee that may advise the liquidator regarding sale of the assets of the corporate debtor and must be furnished all relevant information to provide such advice. Though the advice offered is not binding on the liquidator, he must give reason in writing for acting against such advice."

34.3 By virtue of the Notification dated 28th April, 2022, an Explanation was appended at the foot of Regulation 31A which clarifies that the requirement of constituting a Stakeholders' Consultation Committee shall apply only to those liquidation processes that were to commence on/after the date of commencement of the IBBI Regulation, 2016. In the present case, the liquidation process in respect of the company had commenced on 17th July, 2019 and therefore, the submission made by the appellant that the Liquidator has breached Regulation 31A of the IBBI Regulations, 2016 by not constituting a Stakeholders' Consultation Committee, is devoid of merits. Even otherwise, the appellant cannot have a grouse on this count because the record reveals that the Liquidator had sent a reply on 15th November, 2019 to a written objection taken by the appellant on the

Valuation reports submitted by the Registered Valuers on 08th November, 2019, wherein, it was stated that neither he nor the other ex-Directors of the company had responded to the Liquidator's suggestion for calling a meeting of the CoC. Despite this, neither the appellant nor the other ex-Directors of the company took any step to depute a person from amongst them to be a part of the Stakeholders' Consultation Committee. In view of the aforesaid facts, the objection taken by the appellant that the Liquidator has breached Regulation 31A, does not hold any water. Nor is the Court inclined to examine the submission made at the instance of the appellant that in the absence of any explanation appended to Regulation 31A as it stood before 25th July, 2019, it was incumbent for the Liquidator to have constituted a Stakeholders' Consultation Committee in view of his own conduct noticed above. Further, such an objection was taken for the first time at the stage the appellant filed a recall application before Adjudicating Authority on 25th September, 2020 by which time the entire sale transaction was over.

35. ALLEGATION OF VIOLTION OF REGULATION 33 OF THE IBBI REGULATIONS, 2016 AND ITS EFFECT

35.1 The appellant has raised serious objections regarding violation of Regulation 33 of the IBBI Regulation, 2016 by the Liquidator. Regulation 33 that deals with the mode of sale of assets has already been extracted above. Schedule I under Regulation 33 lays down the manner in which the assets of the Corporate Debtor are to be sold by the Liquidator. Schedule I is sub-divided into two segments, the first part deals with sale of an asset through auction and the manner in which such a sale shall be conducted by the Liquidator

and the second part deals with private sales. The relevant clauses of Schedule I for purposes of the present discussion are as follows:

> **"SCHEDULE I**
> **MODE OF SALE**
> (Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)
> **1. AUCTION**
> (1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.
> xxxxx
> (3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.
> xxxxx
> (6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.
> xxxxx
> **(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:**
> **Provided that payments made after thirty days shall attract interest at the rate of 12%.**
> **Provided further that the sale shall be cancelled if the payment is not received within ninety days.**
> **(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.**
>
> (emphasis added)

35.2 Originally, Rule 12 read as follows :

> "(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within fifteen days of the date when he is invited to provide the balance sale consideration. On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale."

Vide notification dated 25th July, 2019[50], two Rules were carved out from Rule 12, i.e., Rule 12 and Rule 13 that have been extracted above.

[50] Notification No.IBBI/2019-20/GN/REG.047

35.3 It is the submission of learned senior counsel for the appellant that Rule 12, Schedule I as above, is mandatory and non-adherence to the timelines set down in the said rule would result in cancellation of the sale. It has been argued that the period of 90 days available to the Auction Purchaser to provide the balance sale consideration had expired on 25th March, 2020. The first *proviso* to Rule 12 stipulates that if the payment is made after 30 days, then the successful bidder would have to pay interest on the amount payable at the rate of 12 per cent. The second *proviso* to Rule 12 stipulates the outer limit for payment and states that if the payment is not received within 90 days, then the sale shall stand cancelled.

35.4 To test the argument advanced by learned counsel for the appellant that the word used in Rule 12 of Schedule I is *"shall"* and not *"may"* and therefore, the prescriptions laid down in Rule 12 ought to be treated as mandatory and not directory in character, we may usefully refer to the observations made in ***Sharif-ud-din*** *(supra)* where a distinction was drawn between a mandatory rule and a directory rule in the following words:

> **"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted.** Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: **The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted.** If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to

> be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. **A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.**"
>
> (emphasis added)

35.5 This Court was called upon to interpret the expression *"may"* used in Section 7(5)(a) of the IBC *vis-a-via* the expression "shall" deployed in Section 9(5)(a), in ***Vidarbha Industries Power Limited*** *(supra),* and it was held thus:

> "63. The meaning and intention of Section 7(5)(*a*) IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.
> **64. Ordinarily the word "may" is directory. The expression "may admit" confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.**
> 65. It is well settled that the first and foremost principle of interpretation of a statute is the rule of literal interpretation, as held by this Court in ***Lalita Kumari* v. *State of U.P.*** [(2014) 2 SCC 1, para 14 : (2014) 1 SCC (Cri) 524] If Section 7(5)(*a*) IBC is construed literally the provision must be held to confer a discretion on the adjudicating authority (NCLT).
> xxxx
> **74.** Sub-section (5) of Section 9 IBC provides that the adjudicating authority (NCLT) shall, within 14 days of the receipt of an application of an operational creditor under sub-section (2) of Section 9, admit the application and communicate the decision to the operational creditor and the corporate debtor, provided, the conditions stipulated in clauses (*a*) to (*e*) of Section 9(5)(*i*) IBC are satisfied. The adjudicating authority (NCLT) must reject the application of the operational creditor in the circumstances specified in clauses (*a*) to (*e*) of Section 9(5)(*ii*) IBC.
> **75. Significantly, the legislature has in its wisdom used the word "may" in Section 7(5)(*a*) IBC in respect of an application for CIRP initiated by a financial creditor against a corporate debtor but has used the expression "shall" in the otherwise almost identical provision of Section 9(5) IBC relating to the initiation of CIRP by an operational creditor.**

> **76. The fact that the legislature used "may" in Section 7(5)(*a*) IBC but a different word, that is, "shall" in the otherwise almost identical provision of Section 9(5)(*a*) shows that "may" and "shall" in the two provisions are intended to convey a different meaning. It is apparent that the legislature intended Section 9(5)(*a*) IBC to be mandatory and Section 7(5)(*a*) IBC to be discretionary.** An application of an operational creditor for initiation of CIRP under Section 9(2) IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice have been delivered to the corporate debtor by the operational creditor and no notice of dispute has been received by the operational creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor."
>
> (emphasis added)

35.6 In ***C.N. Paramasivan*** *(supra),* one of the questions that fell for consideration before this court was whether the phrase "*as far as possible*" used in Recovery of Debts due to Banks and Financial Institutions Act, 1993[51] that contemplates certain provisions of the Income Tax Act to apply with the modification to the amount due under the Debt Recovery Act instead of the Income Tax Act, referring the Rule 57 of the Income Tax Rules which mandates deposit of 25 per cent of the purchase amount of an immovable property by a purchaser and contemplates the consequence of resale in such a default of deposit, this Court held thus:

> **"27.** There is nothing in the provisions of Section 29 of the RDDB Act or the scheme of the Rules under the Income Tax Act to suggest that a discretion wider than what is explained above was meant to be conferred upon the Recovery Officer under Section 29 of the RDDB Act or Rule 57 of the Income Tax Rules which reads as under:
>
> "**57.*Deposit by purchaser and resale in default***.—(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.
>
> (2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property."
>
> **It is clear from a plain reading of the above that the provision is mandatory in character. The use of the word "shall" is**

[51] In short Debt Recovery Act, 1993

both textually and contextually indicative of the making of the deposit of the amount being a mandatory requirement.

28. The provisions of Rules 57 and 58 of the Income Tax Rules have their equivalent in Order 21 Rules 84, 85 and 86 CPC which are *pari materia* in language, sweep and effect and have been held to be mandatory by this Court in ***Manilal Mohanlal Shah* v. *Sardar Sayed Ahmed Sayed Mahmad*** [AIR 1954 SC 349] in the following words: (AIR pp. 351-52, paras 8-9 & 11)

> "*8.* The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is, however, mandatory … (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property … (Rule 86).
>
> *9.* … **These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the Rules, there is no sale in the eye of the law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.**
>
> ***
>
> *11.* **Having examined the language of the relevant Rules and the judicial decisions bearing upon the subject we are of the opinion that the provisions of the Rules requiring the deposit of 25% of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all.** The Rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25% of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these Rules, there can be no question of material irregularity in the conduct of the sale. **Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity.** The very fact that the court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of the law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all."

29. Relying on ***Manilal Mohanlal case*** [AIR 1954 SC 349] Rules 84, 85 and 86 of Order 21 were also held to be mandatory in ***Sardara Singh* v. *Sardara Singh*** [(1990) 4 SCC 90]. Similarly in ***Balram* v. *Ilam Singh*** [(1996) 5 SCC 705] this Court reiterated the legal position in the following words: (SCC p. 711, para 7)

> "*7.* … it was clearly held [in ***Manilal Mohanlal*** [AIR 1954 SC 349]] that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to

> be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected."
>
> **30.** We may also refer to the decisions of this Court in ***Rao Mahmood Ahmad Khan* v. *Ranbir Singh*** [1995 Supp (4) SCC275],***Gangabai Gopaldas Mohata* v. *Fulchand*** [(1997) 10 SCC 387] , ***Himadri Coke & Petro Ltd.* v. *Soneko Developers (P) Ltd.*** [(2005) 12 SCC 364] and ***Shilpa Shares and Securities* v. *National Coop. Bank Ltd.*** [(2007) 12 SCC 165] , wherein the same position has been taken.
>
> **31. In the light of the above we see no reason to hold that Rules 57 and 58 of the Income Tax Rules are anything but mandatory in nature, so that a breach of the requirements under those Rules will render the auction non est in the eye of the law."**
>
> (emphasis added)

35.7 In ***State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti***[52]**,** referring to Section 34(5) of the Arbitration and Conciliation Act, 1996, this Court has held that the absence of any consequences for infraction of a procedural provision implies that such a provision ought to be interpreted to be directory and not mandatory. Following are the observations made in the captioned decision :

> **"19.** It will thus be seen that Section 34(5) does not deal with the power of the Court to condone the non-compliance thereof. It is imperative to note that the provision is procedural, the object behind which is to dispose of applications under Section 34 expeditiously. One must remember the wise observation contained in *Kailash* [***Kailash* v. *Nanhku***, (2005) 4 SCC 480] , where the object of such a provision is only to expedite the hearing and not to scuttle the same. All rules of procedure are the handmaids of justice and if, in advancing the cause of justice, it is made clear that such provision should be construed as directory, then so be it.
>
> xxxx
>
> **21. Section 80, though a procedural provision, has been held to be mandatory as it is conceived in public interest, the public purpose underlying it being the advancement of justice by giving the Government the opportunity to scrutinise and take immediate action to settle a just claim without driving the person who has issued a notice having to institute a suit involving considerable expenditure and delay. This is to be contrasted with Section 34(5), also a procedural provision, the infraction of which leads to no consequence. To construe such a provision as being mandatory would defeat the advancement of justice as it would provide the consequence of dismissing an application filed without adhering to the requirements of Section 34(5), thereby scuttling the process of justice by burying the element of fairness**."
>
> (emphasis added)

[52] (2018) 9 SCC 472

35.8 It can be discerned from the aforesaid discussion that when the law prescribes that a certain act has to be done in a particular manner for a party to acquire a right, then it ought to be treated as mandatory in character more so, when the Statute prescribes a consequence for failure to comply with the requirements laid down.

35.9 The words *"may"* and *"shall"* used in different provisions of Schedule I of the IBBI Regulations, 2016 go to show that the legislature intended to ascribe different meanings to the said words depending on the steps required to be taken by the Liquidator for the sale of the assets of a Corporate Debtor. A perusal of the Rules under Schedule I demonstrate that a play in the joints has been given to the Liquidator only in particular circumstances relating to the sale of an asset through auction. Wherever the underlying intention is to maximize realization from the sale of assets, discretion has been vested in the Liquidator to sell the asset through auction in the best interest of the creditors, but not otherwise. For the rest of the steps towards sale of an asset, the mandate of the Statute is in the affirmative. In other words, a particular step if prescribed, is necessarily required to be taken by the Liquidator in the manner prescribed in the Rules under Schedule I. He is not left with any discretion to condone the delay.

35.10 When broken down, Rule 12 states that (a) the highest bidder in an auction shall be called upon to provide the balance sale consideration within 90 days from the date of such a demand; (b) any payments made after 30 days from such a demand shall attract interest at the rate of 12 per cent; (c) if the payment is not received within the period of 90 days, the sale shall be cancelled. The word *'shall'* has been used thrice in Rule 12. Coming

next to Rule 13, the same states that (a) the sale shall stand completed on the payment of the full amount; (b) the Liquidator shall execute a sale certificate/sale deed to transfer such an asset(s); (c) the asset(s) shall be delivered in the manner prescribed in terms of the sale. The word *"shall"* has again been used thrice in Rule 13. It is noticed that except for Rules 4A, 4B, 8 and Rule 11A where the word *"may"* has been used and it vests a discretion in the Liquidator to reduce the reserve price more than once and conduct multiple rounds of auctions with the purpose of maximizing realization from the sale of assets in the best interest of the creditors, in the remaining Rules, the word *"shall"* features prominently and without an exception. But that is not to say that wherever the word *"shall"* has been used in the Rules under Schedule I, it attains a mandatory nature. The Rule could still be construed as purely procedural if its infraction does not entail any serious or prejudicial consequence. Much will depend on the connotation and the textual context of the Rule.

35.11 In view of the analysis undertaken above, Rule 12 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator. To that extent, there is substance in the submission made on behalf of the appellant that since the second proviso under Rule 12 contemplates a consequence of cancellation of the auction on non-payment of the balance sale consideration within 90 days, the Liquidator was not empowered to extend the timeline.

35.12 Reliance placed by learned counsel for the Liquidator on the decision in ***Pioneer Urban Land and Infrastructure Limited and Another v. Union of India and Others***[53] to contend that the timeline prescribed under Schedule 1 of the IBBI Regulations 2016 are directory and not mandatory in character, is misplaced. The said decision holds that timelines available to operational creditors under the IBC are directory and not mandatory because no consequence is provided if the period is not extended or after the extension expires and it is in this context that the following observations have been made:

> **"58.** This Court, while dealing with timelines provided qua operational creditors, in ***Surendra Trading Co.*** **[*Surendra Trading Co.* v. *Juggilal Kamlapat Jute Mills Co. Ltd.***, (2017) 16 SCC 143 : (2018) 2 SCC (Civ) 730] , held that the timelines contained in the provisos to Sections 7(5), 9(5) and 10(4) of the Code are all directory and not mandatory. This is for the obvious reason that no consequence is provided if the periods so mentioned are exceeded. Though this decision is not in the context of the 14-day period provided by Section 7(4), we are of the view that this judgment would apply squarely on all fours so that the period of 14 days given to NCLT for decision under Section 7(4) would be directory. We are conscious of the fact that under Section 64(1) of the Code, NCLT President or the Chairperson of Nclat may, after taking into account reasons by NCLT or Nclat for exceeding the period mentioned by statute, extend the period of 14 days by a period not exceeding 10 days. We may note that even this provision is directory, in that no consequence is provided either if the period is not extended, or after the extension expires. This is also for the good reason that an act of the court cannot harm the litigant before it. Unfortunately, both NCLT and Nclat do not have sufficient members to deal with the flood of applications and appeals that is before them. The time taken in the queue by applicants who knock at their doors cannot, for no fault of theirs, be put against them."

35.13 Nor can the decisions of the Tribunal in ***Standard Surfa Chem India Private Limited*** *(supra) and* ***Prakash Chandra Kapoor*** *(supra)* referred to by learned senior counsel for the Liquidator, be read in favour of the respondents. A sweeping observation that all the timelines prescribed in Regulation 47 are directory, is impermissible. The consequences of non-compliance of the specific rule would have to be individually

[53] (2019) 8 SCC 416

examined to decide as to whether the said rule has a directory flavour or is mandatory in character.

35.14 In the present case, records reveal that when the Auction Purchaser had approached the Liquidator seeking extension of time to deposit the balance sale consideration. The Liquidator had rightly expressed his inability to do so and indicated that such a power vests only in the Adjudicating Authority. On receiving the aforesaid response, the Auction Purchaser did take steps to move the Adjudicating Authority for seeking extension of time for making the payments. It is a matter of record that the said application was allowed by the Adjudicating Authority on 5th May, 2020 and time was granted to the Auction Purchaser to pay the balance sale consideration on the Central Government/State Government lifting the lockdown. The aforesaid order dated 5th May, 2020, was passed by the Adjudicating Authority in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016 which states as follows :

> "**Rule 11 of NCLT Rules, 2016**
> **Inherent Powers** - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."

35.15 The aforesaid Rule is not to be read in isolation but in conjunction with Section 35 of the IBC that deals with the powers and duties of the Liquidator and states that the Liquidator shall have the powers and duties specified in clauses (a) to (o) of sub-section 1 including the power to sell an immovable/movable property of the Corporate Debtor in liquation by public auction/private sale as per clause (f), subject to the directions of the NCLT. Pertinently, it has been observed in ***Arun Kumar Jagatramka v. Jindal Steel and***

Power Limited[54] that "*the Liquidator exercises several functions which are quasi-judicial in nature and character. Section 35(1) itself enunciated that the powers and duties which are entrusted to the Liquidator are "subject to the directions of the Adjudicating Authority". The Liquidator, in other words, exercises functions which have been made amenable to the jurisdiction of NCLT, acting as the Adjudicating Authority…..*".

35.16 In the facts of the present case, the Adjudicating Authority exercised statutory powers under Section 35 of the IBC read with its inherent powers under Rule 11 of the NCLT Rules, 2016 for extending the time to deposit the balance sale consideration on sufficient cause being shown, i.e., in view of the countrywide lockdown due to the Covid-19 pandemic. This latitude that was given in the aforesaid extraordinary circumstances to meet the ends of justice, cannot be faulted.

36. IMPACT OF THE ATTACHMENT ORDER BY THE INCOME TAX AUTHORITIES ON THE SALE OF THE AUCTIONED PROPERTY

36.1 All things even, having held that there was sufficient reason to grant extension of time to the Auction Purchaser to deposit the balance sale consideration in terms of orders passed by this Court in the *Suo Moto* Writ Petition read with the provisions of Regulation 47A of the IBBI Regulations, 2016, and having regard to the view expressed above that the Adjudicating Authority was empowered in law to extend the time on sufficient cause being shown, the matter ought to have rested there. But there is something more to be said in this case that revolves around the arguments advanced by learned counsel for the

[54] (Refer Para 81) (2021) 7 SCC 474

appellant regarding the import of the order of attachment issued by the Income Tax Authorities in respect of the auctioned property and its effect.

36.2 It has been strenuously argued by learned senior counsel for the appellant that the attachment order could not be used as an excuse by the Auction Purchaser for belatedly depositing the balance sale consideration. The terms and conditions of the Notice of Sale as extracted in this judgement go to show that the Liquidator had declared that e-auction of the subject property was being conducted on an "AS IS WHERE IS", "AS IS WHAT IS" and "WHATEVER THERE IS" basis. It was further clarified that the intending bidders must undertake their own independent inquiries, inspect the subject property and satisfy themselves before submitting their bids.

36.3 The fact that the Auction Purchaser was aware of the income tax attachment order in respect of the subject property is borne out from the correspondence exchanged by it with the Liquidator, that forms a part of the records. On certain queries being raised by the Auction Purchaser, the Liquidator had replied, *vide* letter dated 9th December, 2019 and stated that :

> "if the property is sold under IBC, income tax will not have any priority claim and the property can be registered with NCLT order, apart from this the Income tax dues are very less hence it can also be paid out of the proceeds and no objection can be taken."

In a subsequent letter dated 17th December, 2019 addressed by the Auction Purchaser to the Liquidator, which was well before the date the auction was scheduled, among other issues raised, one of the requests made to the Liquidator was to ensure that the income tax attachment/prohibitory order on the subject property is lifted by the Income Tax

Department. In his reply dated 19th December, 2019 to the aforesaid letter, the Liquidator had informed the Auction Purchaser that:

> " 3. As regards to the Income Tax attachment/prohibitory order passed. I would like to clarify that Income tax already filed claim before me and shall be paid in order of priority as provided under Insolvency & Bankruptcy Code 2016 and the registration of property on successful bidding has no relevance to the same. In case of any objection from the SRO the same shall be brought before the Tribunal and suitable order shall be obtained by the Liquidator so as to proceed with the registration."

36.4 It can be seen from the two clarifications given by the Liquidator to the Auction Purchaser that registration of the subject property in favour of the successful bidder was not to be linked with the income tax attachment order for the reason that the Income Tax Department had already lodged a claim before the Liquidator and payment was to be released to the Department in the order of priority, as stipulated under the IBC. Despite that, the Auction Purchaser did not proceed further.

36.5 In the light of the Notice for sale and the replies furnished to the Auction Purchaser well before the bidding process had commenced, we are of the considered view that it was for the Auction Purchaser as an intending bidder to have conducted a due diligence at its own end, gather all the relevant information pertaining to the subject property which included the status of the property and the liabilities attached to it, weigh all the pros and cons and only thereafter participate in the auction process. After having participated in the e-auction with its eyes wide open, the Auction Purchaser cannot be heard to state that payment of the balance sale consideration was linked with the lifting of the attachment order passed by the Income Tax Department when it knew all along that the auction was being conducted on an "AS IS WHERE IS", "AS IS WHAT IS" and "WHATEVER THERE IS" basis.

36.6 To fortify the submission that the sale transaction could not have been completed on account of the embargo placed under the IT Act, learned counsel for the Auction Purchaser has referred to Sections 222 and 281 of the IT Act read with Rule 48 Part III, Schedule 2 of the IT Act. Section 222 of the IT Act, empowers the Tax Recovery Officer to draw up a statement specifying the amount of arrears due from an assessee who has defaulted in payment of tax and thereafter proceed to recover the said arrears by attaching and selling the assessee's movable/immovable properties. Section 281 of the IT Act declares that if an assessee creates a charge or parts with the possession of any of his assets, such charge/transfer would be treated as void against a claim in respect of tax payable by the assessee. However, the second *proviso* to Section 281 clarifies that such a charge/transfer will not be void if it is made with the previous permission of the assessing officer. As for Rule 48 falling under Part III Schedule 2 of the IT Act, it contemplates attachment of an immovable property of the defaulter, prohibiting the defaulter from transferring/charging the property and prohibiting all other persons from taking benefit from such a transfer/charge.

36.7 The sequence of the events as unravelled from the records reveal that the Income Tax Department had already filed a claim before the Liquidator who had in turn moved the Adjudicating Authority for appropriate directions relating to the subject property that was under the attachment order passed by the Income Tax Authorities. The said application was disposed of by the Adjudicating Authority *vide* order dated 10th February, 2020 wherein, directions were issued to lift the attachment order subject to the conditions that may be specified in an Escrow account where the sale consideration would be deposited

by the Liquidator. The said order passed in open Court was duly conveyed by the Liquidator to the Auction Purchaser, though it is the stand of the latter that a physical copy of the said order passed on 10th February, 2020, was received by it much later, in the month of May, 2020. The escrow account[55] was created on 3rd August, 2020 and the entire tax arrears amounting to ₹2,44,01,603/- (Rupees Two crore forty four lakhs one thousand six hundred and three only) were deposited in the escrow account on 24th August, 2020, though the income tax department lifted the attachment order three days later, on 27th August, 2020. This was duly conveyed to the office of the Sub-Registrar at Trichy on the same date. The second *proviso* to Section 281 of the IT Act did provide a window to the Auction Purchaser to approach the assessing officer for prior permission to transfer the subject property. But that option was exercised when the Liquidator moved an application for appropriate permission before the Adjudicating Authority which was granted on 10th February, 2020 under intimation to the Auction Purchaser.

36.8 The contention of the learned counsel for the Auction Purchaser is that Rule 13, Schedule I of the IBBI Regulation, 2016 must be read in conjunction with Rule 12 and only on payment of the full amount, could the sale transaction be treated to have been completed in all respects. Since the full amount could not be paid till the attachment order was lifted, the Liquidator could not have executed a certificate for sale/sale deed to transfer the subject property in favour of the Auction Purchaser.

[55] Escrow Account No. 50200050623451

36.9 We are afraid, such an assumption does not stand to reason. Rule 12 is not interlinked with Rule 13. Both the Rules cover different situations. The first *proviso* to Rule 12 gives a leeway to the successful bidder to make payment of the balance sale consideration after thirty days subject to paying interest at the rate of 12%. However, the second *proviso* to Rule 12 is unequivocal and declares that the sale itself will be treated as cancelled if the payment is not received within the outer limit of 90 days. It is only on completion of the steps contemplated in Rule12 that Rule 13 can come in. Reference to Rule 13 that starts with the expression "*on payment of the full amount*" would naturally be understood to mean on payment of the full amount within the period prescribed in Rule 12. We have already held Rule 12 to be mandatory in character because non-payment within the timeline has consequences attached to it. However, in contrast thereto, there are no adverse consequences spelt out in Rule 13 for it to be treated as mandatory. The said Rule lays down the procedure for completion of the sale and would have to be treated as directory since some procedural steps have been set out for purposes of completion of the sale process, but nothing beyond that. We are therefore not inclined to accept the submissions made by the respondents that none of the activities as contemplated in Rule 12 could have been completed unless and until the attachment order passed by the Income Tax Authorities was lifted or that the Liquidator was not in a position to complete the sale under Rule13 on that count.

36.10 In any event, the Liquidator had taken timely steps to move the Adjudicating Authority for appropriate permission which was obtained as long back as on 10th February, 2020, i.e. about a month and a half before the nationwide lockdown was declared.

Moreover, the Auction Purchaser was well aware of the fact that the entire tax arrears amounted to ₹2,44,01,603/- (Rupees Two crore forty four lakh one thousand six hundred and three only), which could have easily been paid out of the earnest money of ₹2,95,59,638/- (Rupees Two crore ninety five lakh fifty nine thousand six hundred and thirty eight only) deposited by it, still leaving some surplus funds. The Liquidator had also taken steps to apprise the Auction Purchaser of the said position and the order of priority that was to be given to the claim of the Income Tax Department. Yet the Auction Purchaser did not deposit the balance sale consideration. In view of the above, the plea taken by the Auction Purchaser that the income tax attachment order was a serious and an insurmountable impediment in completion of the sale and the subject property could not have been validly transferred in its favour by the Liquidator, is rather tenuous and not persuasive.

36.11 The anxiety of the Auction Purchaser was adequately addressed on the Adjudicating Authority passing an order on 10th February, 2020, lifting the attachment order. This order was communicated by the Liquidator to the Auction Purchaser well in time. Mere not receipt of a copy of the said order cannot be a ground for the Auction Purchaser to have delayed deposit of the entire balance sale consideration. The spectre of Covid-19 was nowhere on the horizon at that time. It spiralled only in the last week of March, 2020. If the Auction Purchaser was serious, it could have easily deposited at least some amount out of the balance sale consideration of ₹26,60,36,677/- (Rupees Twenty six crore sixty lakh thirty six thousand six hundred and seventy seven only) much earlier, but it elected not to deposit a penny till the end of August, 2020. When the first *proviso* to

Rule 12, Schedule I of the IBBI Regulations, 2016 permits payment of sale consideration after expiry of 30 days from the date of demand subject to payment of interest @ 12% p.a., there was no question of the Auction Purchaser going scot free, when its conduct has not been blemishless.

36.12 On an overall conspectus of the facts of the present case which brings out the glaring default on the part of the Auction Purchaser in making deposit of the balance sale consideration even after permission was granted by the Adjudicating Authority on 10th February, 2020 to lift the attachment order, the only question that needs to be answered is as to whether this Court should proceed to set aside the auction and as a sequence thereto, declare as null and void, the sale certificate issued by the Liquidator in favour of the Auction Purchaser, as has been pleaded by the appellant.

36.13 In our opinion, such an order would be too harsh. Much water has flown under the bridge by now. The subject land has been utilized by the Auction Purchaser to build a 200-bed Mother and Child hospital which is operational. Huge amounts have been pumped into the project by the Auction Purchaser. The hospital is fully functional providing medical facilities to seven surrounding districts. In contrast, the appellant has not been a vigilant litigant. His conduct shows that he has dragged his feet at every stage. Records reveal that belated applications have been filed by him for seeking recall of the orders passed by the Adjudicating Authority granting extension of time to the Auction Purchaser. For reasons best known to him, it took 19 months for the appellant to prefer an appeal before the Tribunal against the order passed by the Adjudicating Authority, as provided for

in the IBC. Furthermore, the appellant resisted handing over possession of the subject property to the respondents thereby causing more delay.

36.14 This Court must underscore the well settled legal position that once an auction is confirmed, it ought to be interfered with on fairly limited grounds. (***Refer: Valji Khimji and Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator)***[56] and ***Celir LLP v. Bafna Motors (Mumbai) Private Limited and others***[57]). Repeated interferences in public auction also results in causing uncertainty and frustrates the very purpose of holding auctions. (*Refer :* ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple and others***[58]). Unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. Given the facts noted above, we shall refrain from cancelling the sale or declaring the Sale Deed as void. Instead, it is deemed appropriate to balance the equities by directing the Auction Purchaser to pay an additional amount in respect of the subject property.

CONCLUSION

36.15 For arriving at a just and fair figure, we propose to take into consideration the estimated value of the subject property in terms of the Reports submitted by the Registered Valuers appointed by the Liquidator. Based on their Reports, the Liquidator had fixed ₹39,41,28,800/- (Rupees Thirty nine crore forty one lakh twenty eight thousand and eight

[56] (2008) 9 SCC 299
[57] (2024) 2 SCC 1
[58](2022) 5 SCC 710

hundred only) as the average liquidation value of the subject property for the purpose of e-auction. This figure was brought down by 25% in the second round of auction which came to ₹29,55,96,375/- (Rupees Twenty nine crore fifty five lakh ninety six thousand three hundred and seventy five only). The difference in the two figures mentioned above comes to ₹10,00,00,000/- (Rupees Ten crore only) approximately. Keeping in mind the fact that the Auction Purchaser managed to retain the balance sale consideration for over six months reckoned from 10th February, 2020 and about five months reckoned from 25th March, 2020, we deem it appropriate to direct it to deposit 50% of the differential figure, i.e., an additional sum of ₹5,00,00,000/- (Rupees Five crore only) with the Liquidator along interest @ 9 % p.a. reckoned from 26th March, 2020 till date of actual payment. The said amount shall be deposited by the Auction Purchaser with the Liquidator within eight weeks from today. Thereafter, the Liquidator shall disburse the amount received in terms of the orders passed/may be passed by the Adjudicating Authority, as contemplated under the IBC.

36.16 The appeals are partly allowed on the above terms. Parties shall bear their own expenses.

……..…….J.
[HIMA KOHLI]

……..…….J.
[AHSANUDDIN AMANULLAH]

New Delhi;
August 28, 2024