



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 15<sup>TH</sup> DAY OF DECEMBER, 2025**

**PRESENT**

**THE HON'BLE MRS. JUSTICE K.S.MUDAGAL**

**AND**

**THE HON'BLE MR. JUSTICE C.M. POONACHA**

**REVIEW PETITION NO.557/2023**

**IN**

**WRIT PETITION NO.12140/2023**

**BETWEEN:**

INSOLVENCY AND BANKRUPTCY  
BOARD OF INDIA,  
REPRESENTED BY GENERAL MANAGER,  
7TH FLOOR, MAYUR BHAVAN,  
CONNAUGHT PLACE,  
NEW DELHI-110001.

...PETITIONER

(BY SRI. K. ARVIND KAMATH, SENIOR ADVOCATE FOR  
SMT. ANUPAMA HEGDE, ADVOCATE)

**AND:**

1. MR. KONDURU PRASHANTH RAJU  
LIQUIDATOR FOR BASE CORPORATION LTD.  
HAVING ITS REGISTERED OFFICE AT  
FLAT NO. 52, 2ND FLOOR,  
NO. 13, LOHAN'S REGENT,  
SUNDARMURTHY ROAD,  
COX TOWN, BANGALORE - 560005.
2. M/S NDR UNIQUE SPACE PVT LTD  
A COMPANY REGISTERED UNDER THE  
COMPANIES ACT 1956,  
HAVING ITS OFFICE AT 54,  
B BLOCK-103,  
SREEKARAM APARTMENTS,





PALLAVAN NAGAR,  
MADHURAVOYAL,  
THITUVALLUVAR, CHENNAI,  
TAMIL NADU-600095,  
REPRESENTED BY ITS  
AUTHORIZED REPRESENTATIVE,  
MR. NAIDU AMRUTESH REDDY ... RESPONDENTS

(BY SMT. LAKSHMI MENON, ADVOCATE FOR R1  
SRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR  
SRI. M.V. SUNDARA RAMAN, ADVOCATE FOR R2)

THIS REVIEW PETITION IS FILED UNDER SECTION 114 R/W ORDER XLVII RULE 1 OF THE CPC, 1908, PRAYING TO CALL FOR RECORDS OF W.P. No.12140/2023, REVIEW THE FINAL ORDER DATED 15.06.2023 PASSED BY THIS HONBLE COURT IN WP No. 12140/2023 AT ANNEXURE -A AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.11.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **K.S.MUDAGAL.J** AND **POONACHA.J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL  
and  
HON'BLE MR. JUSTICE C.M. POONACHA

**CAV ORDER**

**(PER: HON'BLE MRS. JUSTICE K.S.MUDAGAL &  
HON'BLE MR. JUSTICE C.M. POONACHA)**

1. The present review petition is filed by Review Petitioner-Insolvency and Bankruptcy Board of India<sup>1</sup> under Section 114 read with Order XLVII Rule 1 of the Code of Civil

---

<sup>1</sup> hereinafter referred to as 'IBBI'



Procedure, 1908<sup>2</sup> seeking to review the order dated 15.06.2023 passed in WP No.12140/2023 (GM-RES) wherein, a Co-ordinate Bench of this Court disposed of the writ petition filed by respondent No.2 [writ petitioner] - M/s NDR Unique Space Pvt Ltd.,<sup>3</sup> and directed respondent No.1 - liquidator [respondent in the writ petition] to receive the balance sale consideration in terms of the auction dated 20.03.2023 from NDR. IBBI was not a party to the writ petition.

2. The admitted fact situation can be stated to be as under:

- i. The Corporate Insolvency Resolution Process<sup>4</sup> with respect to Base Corporation Ltd.,<sup>5</sup> was admitted by the National Company Law Tribunal<sup>6</sup> vide order dated 2.8.2019. Pursuant to the CIRP proceedings initiated against BCL an Interim Resolution Professional<sup>7</sup>, was appointed and subsequently confirmed to be the Resolution Professional<sup>8</sup>;

---

<sup>2</sup> hereinafter referred to as 'CPC'

<sup>3</sup> hereinafter referred to as 'NDR'

<sup>4</sup> hereinafter referred to as 'CIRP'

<sup>5</sup> hereinafter referred to as 'BCL'

<sup>6</sup> hereinafter referred to as 'NCLT'

<sup>7</sup> hereinafter referred to as 'IRP'

<sup>8</sup> hereinafter referred to as 'RP'



- ii. An e-auction notice dated 9.9.2021 was issued under the provisions of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002<sup>9</sup> auctioning the immovable properties belonging to one of the promoters of BCL located at Hosur, comprising a factory building and machinery was issued by a creditor of the promoter. The said property was situated abutting the property of BCL;
- iii. BCL, represented by its RP filed IA No.373/2021 before the NCLT seeking to cancel the e-auction notice dated 09.09.2021 contending, *inter alia*, that if the said land was sold without the property of BCL being brought to sale, the same would depreciate the value of the property of BCL;
- iv. The auction sale, pursuant to the sale notice dated 9.9.2021 was concluded on 19.10.2021 and a sale certificate dated 16.2.2022 was issued for a total sale consideration of ₹10,29,00,000/-;
- v. Since the resolution plan was not accepted by the Committee of Creditors<sup>10</sup>, an application came to be filed

---

<sup>9</sup> hereinafter referred to as SARFAESI Act

<sup>10</sup> hereinafter referred to as 'COC'



for liquidation of BCL, consequent to which the adjudicating authority/NCLT ordered for liquidation of BCL vide its order dated 26.4.2022 and appointed respondent No.1 as the liquidator of BCL. Respondent No.1 conducted the first Stakeholders Consultation Committee<sup>11</sup> meeting on 14.09.2022;

vi. Respondent No.1 - liquidator issued an e-auction notice dated 08.11.2022 for sale of the assets of BCL including the plant and machinery at Hosur. However, since certain members of the SCC raised objections regarding the valuation, consequent to which respondent No.1 issued a corrigendum dated 16.11.2022 withdrawing the e-auction sale notice dated 08.11.2022;

vii. Vide order dated 5.1.2023, IA.No.373/2021 was dismissed by the NCLT. Appeal No.73/2023 was filed by respondent No.1 - liquidator before the National Company Law Appellate Tribunal<sup>12</sup> on 17.2.2023 challenging the said order dated 5.1.2023;

viii. Respondent No.1 - liquidator issued a fresh e-auction notice dated 13.2.2023 for sale of the plant and

---

<sup>11</sup> hereinafter referred to as 'SCC'

<sup>12</sup> hereinafter referred to as 'NCLAT'



machinery and building of the Hosur unit of BCL as a going concern, fixing the date of auction as 20.03.2023;

- ix. On 20.3.2023 the auction was held in terms of the auction notice dated 13.2.2023, wherein NDR was the highest bidder and 25% of the bid amount of ₹16,53,50,000/- was deposited by NDR;
- x. On 05.04.2023 respondent No.1 - liquidator filed an application (IA No.218/2023) before the NCLT seeking confirmation of sale in favour of NDR;
- xi. Since the IBBI received a complaint alleging discrepancies in the e-auction of BCL conducted by respondent No.1, the IBBI appointed an Investigating Agency to investigate the said complaint. On 12.04.2023 the Investigating Agency issued a notice of investigation to respondent No.1 calling upon him to submit his para-wise reply along with supporting documents with respect to the complaint made. Respondent No.1 submitted his reply on 20.4.2023;
- xii. The Investigating Agency submitted a detailed investigation report to IBBI stating, *inter alia*, that respondent No.1 had contravened the provisions of the



Insolvency and Bankruptcy Code, 2016<sup>13</sup>, Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016<sup>14</sup> as well as the Code of Conduct as specified in Schedule I of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016<sup>15</sup>. The conclusions of the Investigating Agency were, *inter alia*, that the valuator appointed by respondent No.1 to value the property of BCL had expertise only in the valuation of securities/financial assets categories; Respondent No.1 failed to reconstitute the SCC and that, only financial creditors were made constituents of the 4th and 5th SCC meetings, while operational creditors, such as workmen, shareholders, etc., did not participate in the said meetings; Respondent No.1 submitted three progress reports to the IBBI vide its e-mail dated 14.03.2023 after being reminded by IBBI vide its e-mail dated 14.3.2023, while the 4<sup>th</sup> progress report was not filed; that respondent No.1 failed to protect and preserve the value of BCL;

---

<sup>13</sup> hereinafter referred to as 'IBC'

<sup>14</sup> hereinafter referred to as 'Liquidation Process Regulations'

<sup>15</sup> hereinafter referred to as 'Insolvency Professionals Regulations'



- xiii. The IBBI issued a show cause notice dated 21.4.2023 to respondent No.1 seeking his response as to why suitable actions should not be taken, which was replied vide reply dated 2.5.2023. Vide order dated 19.5.2023, IBBI suspended respondent No.1 from the role of liquidator for a period of two years w.e.f., 30 days from that date;
- xiv. Being aggrieved, respondent No.1 filed W.P.No.11056/2023 and a learned Single Judge of this Court vide interim order dated 30.5.2023 stayed the order dated 19.5.2023 passed by IBBI. Being aggrieved by the interim order of stay dated 30.5.2023 granted by the learned Single Judge, IBBI has preferred Writ Appeal No.982/2023, which is pending consideration;
- xv. NDR, who was the highest bidder pursuant to the auction conducted on 20.3.2023 filed W.P.No.12140/2023. A coordinate Bench of this Court vide order dated 15.6.2023 (order under review) disposed of the said writ petition, consequent to which, NDR paid the balance sale consideration within the stipulated time and respondent



- No.1 issued sale certificate dated 17.6.2023 in favour of NDR with respect to the auction conducted on 20.3.2023;
- xvi. The IBBI filed SLP (Civil) Diary No.30197/2023 challenging the order dated 15.6.2023 passed in W.P.No.12140/2023 before the Hon'ble Supreme Court, which was disposed of by order dated 6.9.2023 granting liberty to IBBI to approach this Court. Thereafter, IBBI filed the present review petition;
- xvii. Respondent No.1 withdrew Appeal No.73/2023, which was pending before the NCLAT on 26.4.2024;
- xviii. The IBBI issued a show cause notice dated 11.07.2024 to respondent No.1, consequent to receipt of investigation report dated 3.7.2024. Respondent No.1 filed W.P.No.20276/2024 challenging the show cause notice dated 11.7.2024 as well as the investigation report dated 03.07.2024. This Court, vide interim order dated 29.07.2024 has stayed the said show cause notice and investigation report.

3. At this juncture, it is pertinent to note that NDR-auction purchaser filed W.P.No.12140/2023, contending, *inter alia*, that it was the highest successful bidder in the auction



dated 20.03.2023, wherein the Hosur unit of BCL was auctioned as a going concern and that NDR had paid 25% of the total bid amount in a sum of ₹16,53,50,000/-. That the sale of the assets of BCL was done pursuant to Regulation 32A and 33 of the Liquidation Process Regulations, wherein Clause 1(12) of Schedule I states that the highest bidder ought to pay the total sale consideration within 90 days, failing which the sale was to be cancelled. Hence, NDR was required to pay the entire sale consideration within 90 days from 20.3.2023 i.e., on or before 19.06.2023. It was further contended that although NDR had addressed a letter dated 31.03.2023 to respondent No.1 - liquidator (respondent in W.P.No.12140/2023) seeking certain clarifications, the liquidator filed an application under Sections 34 and 60(5) of the IBC on 05.04.2023 seeking permission to register the sale certificate and convey the property in favour of the NDR subject to the reliefs and exemptions sought for and although NDR had filed an affidavit before the NCLT stating its willingness to purchase the property without any waivers and by paying the balance sale consideration, no orders were passed by the NCLT on the said application. Hence, the said writ petition (W.P.No.12140/2023) was filed seeking for the following reliefs:



"i) *ISSUE a writ of MANDAMUS or any other appropriate writ directing the Hon'ble National Company Law Tribunal, Bangalore, to pass orders on I.A.No.218 of 2023 in C.P.No.220 of 2018 on or before 16.06.2023;*

ii) *DIRECT that the time period to make payment of the balance sale consideration shall stand extended until the Hon'ble National Company Law Tribunal passes an order on I.A.No.218 of 2023 in C.P.No.220 of 2018;*

iii) *DIRECT that the Petitioner is not liable to pay interest at the rate of 12% on the balance sale consideration until the Hon'ble National Company Law Tribunal passes an order on I.A.No.218 of 2023 in C.P.No.220 of 2018;*

iv) *OR IN THE ALTERNATIVE, DIRECT, the Respondent to receive the balance sale consideration and issue and register a certificate of sale or sale deed to transfer the Hosur unit of Base Corporation Ltd in favour of the Petitioner in terms of Clause 13 of Schedule 1 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 without reference to I.A.No.218 of 2023 in C.P.No.220 of 2018 or any of the reliefs claimed thereunder and on the basis of the auction sale notice dated 13.02.2023;*

v) *PASS any such other order/s as this Hon'ble Court may deem fit and proper in the facts of the case in the interests of justice and equity."*

4. Respondent No.1 - liquidator, who was arrayed as a respondent in the said writ petition, entered appearance and filed a memo dated 15.6.2023 placing on record various documents. Considering the same, a coordinate Bench of this Court, vide order dated 15.6.2023 (order under review) disposed of the writ petition and passed the following order:

*"Heard the learned Senior counsel Sri Dhyan Chinnappa along with Sri Sundara Raman M V for the*



*petitioner. The learned counsel Smt. Lakshmi Menon takes notice on behalf of the liquidator, the respondent herein.*

*2. The petitioner is before this Court in a very peculiar circumstances. Having heard the learned Senior counsel and the learned counsel Smt. Lakshmi Menon for the respondent, though we were not initially inclined to entertain the request of the learned counsel for the petitioner, but keeping in consideration the predicament that the parties will be placed in and also the fact that it would involve re-doing the exercise of bringing about sale of properties, the writ petition is taken up for disposal on concession made by the petitioner and the consent of the learned counsel for the respondent.*

*3. The facts are not in dispute. One Base Corporation Limited was treated as a Corporate Debtor and the CIRP proceedings came to be initiated by the NCLT on 02.08.2019 and as the resolution plans did not find favour with the NCLT, the application for liquidation of the Corporate Debtor came to be allowed on 26.04.2022 and at which time the respondent was appointed as the liquidator. Consequently the assets of the Corporate Debtor including the asset at Hosur was put up for e- auction under the sale notice published on date 13.02.2023. The date of e-auction was fixed as 20.03.2023. Pursuant to the same the petitioner turned out as the highest bidder and in terms of the conditions of auction 25% of said amount i.e. totaling to Rs.16,53,50,000/- was deposited and the sale was to be concluded within 90 days thereafter. It appears that the petitioner thereafter entertained certain doubts and also sought for certain clarifications/concessions from the respondent liquidator, which resulted in the respondent liquidator filing an application with the NCLT for clarification of the same.*

*4. It is submitted that the said application is pending and the NCLT has been adjourning the same and there being no resolution the petitioner is constrained to approach this Court or otherwise he is likely to lose the sum of Rs.16 crore and odd deposited by him for not having completed the sale process within the stipulated time as noted supra.*

*5. It is his case that the liquidator having filed the application on his instance is now reluctant to abide by the conditions of sale as the liquidator is apprehensive about*



*the reaction of the NCLT bench in trying to comply with the sale conditions. It is submitted that, after the 18th of June, the application would be rendered infructuous.*

*6. We have queried the learned counsel representing the respondent. Learned counsel for the respondent fairly concedes that in terms of the auction sale conditions, the sale is to be concluded within 90 days and the last day falls on 18.06.2023. Though the reluctance is bonafide and in deference to the application pending before the NCLT it is stated that, if directed the respondent has no objection to receive the balance sale consideration.*

*7. The learned Senior counsel on instructions of his client, who is present in the Court, submits that the balance amount due in entirety would be paid into or transferred into the liquidator's account by tomorrow. It is further submitted by the learned Senior counsel that the petitioner would not be making any demands for any concessions and that he would abide by the conditions imposed under the e-auction notice.*

*8. The submission of the learned Senior counsel is placed on record. The learned counsel for the respondent liquidator submits that she is willing to receive the amounts as stipulated as per the letter of intent dated 20.03.2023. Copy of the letter of intent is also placed before this Court by the respondent and the same is taken on record.*

*9. We have perused the conditions. Clause 11 and 14 would indicate that the petition is not baseless. Be that as it may, the present situation is of the making of the petitioner himself which has resulted in expending valuable judicial time. Hence, we are of the considered opinion that the instant writ petition can be disposed of by directing the respondent to receive the balance sale consideration, if the same is made within 18.06.2023, subject to payment of cost.*

*10. Accordingly there shall be a direction directing the respondent to receive the balance sale consideration if the same is made by the petitioner on or before 18.06.2023.*

*11. In the event payment is not made within the stipulated date i.e., 18.06.2023, then the petitioner shall not have the benefit of this order.*



*12. In view of our above observation, learned Senior counsel on behalf of the petitioner submits that the petitioner volunteers to deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) into the account of the Karnataka State Legal Services Authority. That the deposit shall be made within two weeks.*

*13. It is made clear if the balance sum as indicated in the letter of intent is deposited within the stipulated date, the liquidator shall issue a sale certificate within a week thereafter.*

*14. Petition stands ordered accordingly."*

5. It is forthcoming that this Court considered the submissions of NDR that since the sale was required to be concluded within 90 days; that NDR had undertaken to pay the entire amount into the account of the liquidator without making any demands for any concessions and that the auction purchaser would abide by the conditions imposed under the e-auction; also noticed that the liquidator was willing to receive the amounts in terms of the letter of intent dated 20.3.2023, which was issued to the auction purchaser after he was declared as the highest bidder in the auction held on 20.3.2023. Hence, the writ petition was disposed of by directing the liquidator to receive the balance sale consideration.

6. Pursuant to the said order dated 15.06.2023, passed in WP.No.12140/2023, NDR paid the balance sale consideration



of ₹49,64,50,000/- along with the interest on 16.06.2023 and respondent No.1 - liquidator issued a sale certificate dated 17.06.2023 in favour of NDR confirming the sale of the Hosur property of BCL.

7. IBBI preferred SLP (Civil) Dairy No(s).30197/2023 before the Supreme Court challenging the order dated 15.06.2023 passed in WP No.12140/2023. The Supreme Court, vide order dated 06.09.2023 dismissed the said petition as withdrawn and passed the following order:

*"Learned counsel for the petitioner – Insolvency and Bankruptcy Board of India seeks permission to withdraw the present special leave petition with liberty to approach the High Court by way of application for review/recall.*

*In view of the statement made, the special leave petition is dismissed as withdrawn.*

*We also record that the petitioner– Insolvency and Bankruptcy Board of India will be entitled to challenge the order dated 15.06.2023, in case the application for review/recall is dismissed.*

*We clarify that we have not made any comments/observations on the merits of the case."*

8. Thereafter, the present review petition is filed.

9. Learned Senior Counsel Sri Arvind Kamath appearing along with learned counsel Smt. Anupama Hegde, for IBBI contends:



- i. That by virtue of the order dated 15.6.2023 (order under review) wherein respondent No.1 - liquidator did not oppose the request made by NDR, the acceptance of the balance amount by the liquidator from NDR pursuant to the order dated 15.6.2023 resulted in a situation where there was no maximization of the value of the assets of BCL in liquidation;
- ii. That NDR and liquidator did not disclose the true and correct facts before this Court in W.P.No.12140/2023, as a result of which the order dated 15.06.2023 is liable to be reviewed;
- iii. That if the true and correct facts were placed on record by the parties in WP No. 12140/2023, this Court would not have passed the order dated 15.06.2023;
- iv. IA.No.373/2021 was filed by the then RP, who was the predecessor of respondent No.1 - liquidator to cancel the e-auction dated 19.10.2021 auctioning the immovable property of the promoter of BCL, which was conducted under the provisions of the SARFAESI Act. That the said IA No.373/2021 was dismissed by the NCLT vide order dated 05.01.2023. Being aggrieved, respondent No.1 - liquidator



preferred an appeal in CA(AT)(INS) No.73/2023 on 15.02.2023, before NCLAT. The respondent No.1 issued sale notice dated 13.02.2023 for sale of the assets of BCL including the land at Hosur, wherein NDR was the highest bidder. Hence, it is contended that respondent No.1, having filed the appeal before the NCLAT ought not to have brought the property of BCL at Hosur for auction, which resulted in the assets of BCL being sold for a price far below than the price that it ought to have fetched;

v. That various provisions of the IBC as well as the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017<sup>16</sup> have been referred, to contend that IBBI is empowered to interfere in the present situation, more particularly, when the object of the IBC, i.e., maximization in the value of assets has not been achieved due to the actions of respondent No.1;

vi. That due to the irregularities committed by respondent No.1, a show cause notice dated 21.4.2023 was issued for alleged contravention of various provisions of the Liquidation Process Regulations as well as the Insolvency Professionals Regulations. Being aggrieved,

---

<sup>16</sup> hereinafter referred to as 'Inspection & Investigation Regulations'



respondent No.1 referred W.P.No.11056/2023 and this Court vide order dated 30.05.2023 has granted stay of the order dated 19.05.2023 passed by the disciplinary committee, which was enquiring into the actions of respondent No.1. That, being aggrieved by the stay granted in W.P.No.11056/2023, IBBI has preferred W.A.No.982/2023 before a coordinate Bench of this Court. It is thus contended that respondent No.1 had not referred regarding the pendency of W.P.No.11056/2023 in W.P.No.12140/2023. That since respondent No.1 was carrying out its functions merely on account of the stay having been granted by a learned Single Judge of this Court in W.P.No.11056/2023, respondent No.1 ought not to have proceeded to issue the sale notice dated 13.02.2023.

10. Hence, it is contended that the relief sought for in the review petition ought to be granted and the order dated 15.06.2023 passed in WP No.12140/2023 (GM-RES) is required to be reviewed/recalled.



11. Learned counsel Smt. Lakshmi Menon appearing for respondent No.1 - liquidator submits as under:

- i. That IBBI has no *locus standi* to file the review petition in order to question the order dated 15.06.2023 (order under review) since IBBI has no role to play in the liquidation process;
- ii. That by virtue of Regulation 31A of the Liquidation Process Regulations, the liquidator is bound to complete the liquidation process in a time-bound manner and is bound only by the instructions of the SCC;
- iii. All facts have been brought on record before this Court in W.P.No.12140/2023 and the allegation that there has been suppression of facts by respondent No.1 - liquidator is vehemently contested;
- iv. The SCC as well as the adjudicating authority, which is the NCLT have not found fault or any irregularity in the sale process conducted by respondent No.1 pursuant to the auction notice dated 13.02.2023 and hence, IBBI has no *locus standi* to question the same;
- v. Even if the *factum* regarding the pendency of the appeal before the NCLAT where the order dated



05.01.2023 passed on IA No.373/2021 was challenged, was placed on record in W.P.No.12140/2023, the same would not have resulted in a different order, as has been passed vide order dated 15.06.2023 (order under review);

vi. That respondent No.1 - liquidator has followed the requisite procedure and has complied with all the stipulations under the IBC during the liquidation process;

vii. That since an interim order of stay was granted by a learned Single Judge of this Court vide order dated 30.5.2023 passed in W.P.No.11056/2023, there was no impediment for respondent No.1 - liquidator to proceed further with the liquidation process and hence, there was no wrong doing on the part of the liquidator in accepting the balance sale consideration and issuing the Sale Certificate so as to complete the sale process pursuant to the auction sale notice dated 13.02.2023.

12. Hence it is contended that IBBI is not entitled to the relief sought for in the review petition.

13. Learned Senior Counsel Sri Dhyan Chinnappa appearing along with learned counsel Sri M.V.Sundara Raman



for NDR adopts the submissions of the learned counsel for respondent No.1 with regard to the *locus standi* of IBBI and its role to interfere with the insolvency process. In addition, it is contended:

- i. That the sale of the property pursuant to the sale notice dated 13.02.2023 has been completed and admittedly, NDR having been the highest bidder has, paid the bid amount, consequent to which the Sale Certificate dated 17.06.2023 has been issued. That NDR has also been put in possession of the property purchased by it vide Possession Letter dated 19.06.2023;
- ii. That NDR, consequent to having purchased the said property, has availed various credit facilities from banks and financial institutions and has developed the property purchased by it and is running its business of carrying out warehousing activities in the said property;
- iii. There is no suppression of facts either by NDR or by respondent No.1 - liquidator in W.P.No.12140/2023 and that all the relevant facts have been placed on record;
- iv. That by virtue of the order dated 15.06.2023 (order under review), rights of the parties have not been



adjudicated upon and this Court merely permitted NDR to pay the balance amount within the stipulated time in terms of the sale notice dated 13.02.2023;

v. That NDR has participated in the e-auction notice dated 13.2.2023, wherein the NDR being the highest bidder has merely complied with all the rules and regulations of the auction process.

14. Hence, the learned counsel seeks for dismissal of the review petition.

15. In response to the submissions made on behalf of the respondents, it is sought to be contended on behalf of IBBI that the fact that respondent No.1 and NDR are *ad idem* in their opposition to the review petition itself demonstrates the wrongdoing in the insolvency process conducted by respondent No.1 and more particularly, wrongdoing in the sale conducted by respondent No.1 vide sale notice dated 13.02.2023, under which NDR has acquired right, title and interest in the property purchased by it.



16. The assertion made by IBBI alleging wrongdoing by respondent No.1 along with NDR, is vehemently contested by the respondents.

17. Various judgments/citations have been relied upon by the learned counsels for the parties in the course of their submissions, which shall be referred, to the extent that the same is required for the purpose of adjudicating upon the question that falls for consideration in the present review petition. The questions that would arise are:

*i) Whether IBBI has locus standi to file the present petition?*

*ii) Whether the order dated 15.06.2023 passed in WP No.12140/2023 (GM-RES) is liable to be reviewed?*

**Req. question No.(i):**

18. In this context, it is pertinent to note that the present review petition is filed under Section 114 read with Order XLVII Rule 1 of the CPC. It is a settled proposition of law that a review petition will lie only if the order under review is passed by the Court having exercised the jurisdiction not vested in it by law; if the Court failed to exercise jurisdiction; or the Court has acted in exercise of its jurisdiction illegally or with



material irregularity. Further, IBBI is required to demonstrate that there was a mistake or error apparent on the face of the record.

19. Before considering the contentions put forth by the learned counsels, it is necessary to notice the relevant statutory provisions of the IBC:

- i. The IBC has been enacted to "*consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders including .....*".
- ii. Section 3(1) defines the 'Board' as the IBBI established under Section 188;
- iii. Section 196 enumerates powers and functions of the IBBI. Sub-section (1)(aa) of Section 196 stipulates that the IBBI may, *inter alia*, "*regulate, the working and practices of insolvency professionals, insolvency professional agencies, .....*";



- iv. Section 217 stipulates that a complaint may be made to the IBBI regarding the functioning of an Insolvency Professional or Agency;
- v. Section 218 enables the IBBI to appoint a person/s to act as an investigating authority to conduct an inspection or investigation of the insolvency professional/agency;
- vi. Section 219 of the IBC permits the IBBI to issue a show cause notice;
- vii. Section 220 enables the IBBI to constitute a disciplinary committee vis-à-vis action proposed to be taken pursuant to a report of investigation conducted under Section 218;
- viii. Chapter II (Sections 6 to 32A) stipulates regarding CIRP; and Chapter III (Sections 33 to 54) stipulates regarding liquidation process;
- ix. Section 33 stipulates as to when a liquidation should be initiated which, *inter alia*, contemplates liquidation be initiated if there is violation of a CIRP;



- x. Section 34 deals with appointment of a liquidator and Section 35 enumerates the powers and duties of the liquidator;
- xi. Section 36 deals with liquidation estate; Sub-section (2) of Section 36 specifically stipulates that the *"liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors"*; Sub-section (3) of Section 36 stipulates as to what comprises the liquidation estate;

20. Liquidation Process Regulations deals with various stages of the liquidation process as contemplated under Chapter III of the IBC. The following provisions of the Liquidation Process Regulations are required to be noticed:

- i. Chapter V (Regulations 16 to 31A) deals with claims during the liquidation process;
  - a. Regulation 16 deals with submissions of claims;
  - b. Regulations 17 to 20 deal with claims by various persons;
  - c. Proof of a claim is stipulated under Regulations 21 to 29;



- d. Regulation 31 stipulates that a liquidator shall prepare a list of stakeholders, category-wise on the basis of proof of claims submitted and accepted. Regulation 31A stipulates that *"the liquidator shall constitute a Consultation Committee consisting of Creditors of the Corporate Debtor within 60 days from the liquidation commencement date based on the list of stakeholders permitted under Regulation 31"*, which consultation committee is known as the SCC;
- ii. Chapter VI (Regulations 32 to 40) deals with realization of assets;
  - a. Regulation 35 contemplates valuation of assets or business intended to be sold in the liquidation process;
  - b. Regulation 32 specifies regarding sale of assets;
  - c. Regulation 33 specifies regarding mode of sale;
  - d. Regulation 36 contemplates preparation of an asset sale report;



- e. Regulation 32A contemplates sale as a going concern;
- f. Regulation 32B contemplates conduct of meetings of the Consultation Committee wherein, it is stated the stipulation contained regarding the meetings of the COC during the CIRP proceedings shall apply *mutatis mutandis* to the meetings of the consultation committee i.e., SOC (during the liquidation proceedings)

21. With regard to the contention of *locus standi* raised by the respondents, it is pertinent to note that one of the functions of IBBI as enumerated in Section 196 of the IBC is as stipulated in sub-section (1)(aa) which is to regulate, the working and practices of Insolvency Professionals, Insolvency Professional Agencies, etc. Further, Section 217 of the IBC stipulates that a complaint can be made to the IBBI regarding the functioning of an Insolvency Professional or Agency. Section 218 enables the IBBI to carryout an investigation with regard to the complaint. Sections 219 and 220 of the IBC also enable the IBBI to issue a show cause notice and constitute a disciplinary committee pursuant to the report of investigation. It is clear



that the provisions of the IBC as noticed above amply empower the IBBI to take such action as may be necessary vis-à-vis the functioning of an Insolvency Professional/ Liquidator. Hence, it cannot be held that the petitioner has no *locus standi* to file the present review petition. Accordingly, question No.(i) framed for consideration is answered in the *Affirmative*.

**Reg. question No.(ii):**

22. IA.No.373/2021 filed by the RP, *inter alia*, seeking for setting aside of the e-auction notice dated 9.9.2021 issued under the provisions of the SARFAESI Act was dismissed by the NCLT, vide order dated 5.1.2023. Subsequently, pursuant to a member of the SCC advising respondent No.1 - liquidator to file an appeal, Appeal No.CA(AT)(INS)73/2023 was filed by the liquidator before the NCLAT. In the meanwhile, in the 4<sup>th</sup> SCC meeting held on 9.2.2023, the discussion regarding the sale of the property of BCL took place, wherein the valuation report of the said assets was discussed. It was noticed that the fair market value was ₹1,04,59,21,905/- and the liquidation value was ₹76,54,96,450/-. It was decided that the e-auction be conducted by getting the fair market value. The



process/manner of e-auction was also discussed and agreed upon. In the 5<sup>th</sup> SCC meeting held on 28.3.2023, the action taken by the liquidator with regard to sale of the property of BCL was noticed and it was also noticed that in the auction conducted on 19.10.2021 the highest bidder (NDR) had quoted a sum of ₹66,18,00,000/- with respect to the unit of BCL at Hosur, which was auctioned as a going concern. A sum of ₹16,53,50,000/- was deposited in terms of the said auction. The balance sale consideration of ₹49,64,50,000/- was to be paid within 30 days from 20.3.2023. It was placed on record of the said meeting the request made by the bidder. In the 13<sup>th</sup> meeting of the SCC held on 18.3.2024, it is noticed that the aspect regarding the appeal filed before the NCLAT was discussed. Subsequently, vide order dated 26.4.2024 the appeal before the NCLAT was dismissed as withdrawn. In the 17<sup>th</sup> meeting of the SCC held on 22.7.2024 the action regarding withdrawal of the appeal pursuant to the 13<sup>th</sup> SCC meeting was noticed, as also the withdrawal of the said appeal on 26.4.2024 and the consent of the SCC was accorded to the same.

23. It is also pertinent to note here that in W.P.No.12140/2023 filed by the NDR, respondent No.1 -



liquidator had filed a memo dated 15.06.2023 placing on record various documents as under:

1. *Memo producing documents submitted by the Respondent.*
2. *Document No.1: A copy of the e-auction process information document.*
3. *Document No.2: A copy of the e-auction notice dated 13.02.2023.*
4. *Document No.3: A copy of the BDF dated 27.02.2023 and other documents submitted by the Petitioner.*
5. *Document No.4: A copy of the Bank Statement of Base Corporation Ltd. for the period from 14.02.2023 to 13.03.2023.*
6. *Document No.5: A copy of the minutes of 4<sup>th</sup> Stakeholders' Committee Meeting.*
7. *Document No.6: A copy of NCLT order dated 11.04.2023 in CP (IB) No.11/BB/2018.*
8. *Document No.7: A copy of NCLT order dated 01.06.2023 in CP (IB) No.11/BB/2018.*
9. *Document No.8: A copy of the Minutes of 5<sup>th</sup> Stakeholders' Committee Meeting.*
10. *Document No.9: A copy of the order of the Disciplinary Committee of the IBBI dated 19.05.2023.*
11. *Document No.10: Daily orders and interim order dated 30.05.2023 by the Hon'ble Single Judge, High Court of Karnataka in W.P.No.11056/2023.*
12. *Document No.11: A copy of e-auction sale notice timelines under IBC 2016 dated 13.02.2023.*



24. NDR has also contended that pursuant to it being the highest bidder in the auction conducted 20.03.2023, it paid the total sum of ₹16,53,50,000/- in two instalments on 13.03.2023 and 24.03.2023 which amounted to approximately 25% of the total bid value. Thereafter, NDR addressed the letter dated 31.03.2023 to respondent No.1 - liquidator seeking certain legal clarifications relating to stamp duty in connection with the purchase of the said auctioned property (Hosur property) as a going concern and respondent No.1 indicated that NDR is required to seek the approval of the NCLT. NDR was required to pay ₹ 49,64,50,000/-, being the balance sale consideration at the time of execution of the sale deed.

25. Respondent No.1 - liquidator filed I.A.No.218/2023 before the NCLT seeking permission to register the sale certificate and conveyance the auctioned property in favour of NDR. The said application was listed before the NCLT on 01.06.2023, wherein NDR entered appearance, filed an affidavit stating that it is willing to purchase the property without any waivers and by paying the balance sale consideration and sought for completion of the sale. Both respondent No.1 - liquidator and NDR auction purchaser jointly prayed for the



application to be allowed and also informed the NCLT of the urgency to dispose of the application having regard to the timeline of the completion of the same, despite which the said application was not considered. In the said context, NDR filed the writ petition (WP No.12140/2023).

26. It is placed on record by NDR that consequent to the order dated 15.06.2023 passed in WP No.12140/2023, NDR paid the balance sale consideration along with interest on 17.6.2023 and respondent No.1 issued a sale certificate on 17.6.2023 conveying the property as also issued a possession certificate. It is also stated that consequent to the purchase of the property, NDR has developed the said property by availing loans in a cumulative sum of ₹1,70,00,00,000/-. The loan sanction letters have also been placed on record. It is also stated that the property, which was in a dilapidated and neglected condition has been repaired, refurbished and developed and NDR is carrying on its business of providing warehousing business on the said property.

27. It is clear that consequent to the e-auction dated 20.03.2023 conducted by respondent No.1, third party rights



have been created in respect of the Hosur property of BCL, which was the subject matter of the said e-auction.

28. Regulation 44 of the Liquidation Professionals Regulations stipulates that the liquidation process is required to be completed within a period of one year. Further, Regulation 31A of the Liquidation Professionals Regulations stipulates that the liquidator shall constitute a SCC, which has been done in the present case. Further, as noticed above, the liquidator has placed all the aspects pertaining to the sale of the assets of BCL before the SCC and suitable decisions have been taken by the SCC periodically. The entire process of the sale of the property of BCL was being done by the liquidator in terms of the decisions taken by the SCC. It is also pertinent to state here that at no point of time, the SCC had passed any resolution for changing/replacing the liquidator.

29. In this context, it is relevant to notice the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for respondent No. 1 in the case of **State Bank of India &**



***Ors., vs Consoritum of Murari Lal Jalan & Florian Fritsch & anr.,***<sup>17</sup> wherein it has been held as under:

*"27. SBI has stated that the lenders have been saddled with huge recurring expenditure every month to maintain the remaining airline assets of the corporate debtor. The lenders have been embroiled in litigation before NCLT and NCLAT with little progress on this ground towards implementing the resolution plan. Such a state of affairs cannot be permitted to continue interminably as it defeats the very object and purpose of the provisions of and timelines under the IBC. The timely resolution of insolvency cases is vital for sustaining the effectiveness and credibility of the insolvency framework. Therefore, concerted efforts and decisive actions are imperative to break the deadlock and ensure the expeditious implementation of the resolution plan."*

*(emphasis supplied)*

30. It is also pertinent to notice the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for respondent No.1 in the case of ***Kridhan Infrastrcuture (P) Ltd., v. Venkatesan Sankaranarayan***<sup>18</sup> wherein it has been held as under:

*"11. The appellant has been unable to raise the funds. The fact of the matter, as it emerges from Mr Viswanathan's submissions, is that the appellant will be unable to raise funds from the term lenders who are insisting that the status of the Company should change from a company under liquidation to an active status. The order of liquidation has not been set aside. Ultimately, what the request of the appellant reduces itself to, is that it would raise funds on a mortgage of the*

---

<sup>17</sup> (2024) 8 SCC 1

<sup>18</sup> (2021) 6 SCC 94



*assets of the Company and unless the Company is brought out of liquidation, it would not be in a position to raise the funds. This is unacceptable. At this stage, the order of liquidation has only been stayed, but a final view was, thus, to be taken by this Court. Sufficient opportunities were granted to the appellant earlier during the pendency of the proceedings both before the NCLT and NCLAT. The orders of the NCLT and NCLAT make it abundantly clear that despite the grant of sufficient time, the appellant has not been able to comply with the terms of the resolution plan. Since 9-10-2020, despite the passage of almost five months, the appellant has not been able to deposit an amount of Rs 50 crores. Time is a crucial facet of the scheme under IBC [Innoventive Industries Ltd. v. ICICI Bank<sup>19</sup>. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However, a resolution applicant must be fair in its dealings as well. The appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the civil appeal any further. The consequence envisaged under the order of this Court shall accordingly ensue in terms of the forfeiture of the amount of Rs 20 crores. As a consequence of this order, the management shall revert to the liquidator for taking steps in accordance with law. The civil appeal is accordingly dismissed".*

*(emphasis supplied)*

31. With regard to the contention put forth on behalf of IBBI that due to the action of respondent No.1 - liquidator, the sale of the assets of the BCL has not fetched the maximum value, it is pertinent to note that in terms of Regulation 31A of

---

<sup>19</sup> (2018) 1 SCC 407, paras 12-16 : (2018) 1 SCC (Civ) 356



the Liquidation Process Regulations, the liquidator is required to constitute a SCC and in terms of Regulation 32B, conduct periodical meetings of the SCC, wherein appropriate decisions will be taken with regard to the sale of the assets. Further, the liquidator, in terms of Section 35 of the IBC, shall apply to the adjudicating authority (NCLT) for appropriate orders regarding sale of the assets of the Corporate Debtor in liquidation. The SCC and the adjudicating authority (NCLT) have not found any error or wrongdoing in the sale process as conducted by respondent No.1 - liquidator. Even the roles of the adjudicating authority (NCLT) as well as the appellate authority (NCLAT) are clearly defined. In this context, it is pertinent to notice the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for respondent No.1 in the case of **R.K.Industries (Unit-II) LLP vs. H.R.Commercials Pvt.Ltd. and ors.,**<sup>20</sup> wherein it has been held as under:

*"79. The powers vested in and the duties cast upon the liquidator have been made subject to the directions of the adjudicating authority (NCLT) under Section 35 IBC. Once the liquidator applies to the adjudicating authority (NCLT) for appropriate orders/directions, including the decision to sell the movable and immovable assets of the corporate debtor in liquidation by adopting a particular mode of sale and the adjudicating authority (NCLT) grants approval to such a decision, there is no provision in IBC that empowers*

---

<sup>20</sup> (2024) 4 SCC 166



HC-KAR

*the appellate authority (NCLAT) to suo motu conduct a judicial review of the said decision. The jurisdiction bestowed upon the adjudicating authority (NCLT) and the appellate authority (NCLAT) are circumscribed by the provisions of IBC and borrowing a leaf from Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta<sup>21</sup> , they cannot act as a court of equity or exercise plenary powers to unilaterally reverse the decision of the liquidator based on commercial wisdom and supported by the stakeholders. The Court has also observed in the captioned case that "from the legislative history, there is contra-indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority". A similar reasoning has prevailed with the respondent in *K. Sashidhar v. Indian Overseas Bank<sup>22</sup>*, *AMTEK Auto Ltd. (CoC) v. Dinkar T. Venkatasubramanian<sup>23</sup>*, *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.<sup>24</sup>*, *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.<sup>25</sup>* and *Jaypee Kensington Boulevard Apartments Welfare Assn.,<sup>26</sup>**

*80. The aforesaid view will apply with equal force to any commercial or business decision taken by the liquidator for conducting the sale of the movable/immovable assets of the corporate debtor in liquidation. The appellate authority cannot don the mantle of a supervisory authority for overseeing the validity of the approach of Respondent 2 liquidator in opting for a particular mode of sale of the assets of the corporate debtor."*

*(emphasis supplied)*

---

<sup>21</sup> (2020) 8 SCC 531

<sup>22</sup> (2019) 12 SCC 150

<sup>23</sup> (2021) 4 SCC 457

<sup>24</sup> (2021) 10 SCC 401

<sup>25</sup> (2021) 9 SCC 657

<sup>26</sup> (2022) 1 SCC 401



32. It is clear from the aforementioned that the commercial decisions of respondent No.1 - liquidator are governed by the requisite decisions taken in the SCC as well as the appropriate orders passed by the adjudicating authority (NCLT). Although, the IBBI has a supervisory role in terms of sub section 1(aa) of Section 196 of the IBC, to regulate the working and practices of Insolvency Professionals, the IBC and the Regulations clearly demarcate the scope of the decision making process of the liquidator, which is subject to overview by the SCC and the adjudicating authority (NCLT). In the absence of any interjection to the sale process by the SCC or the adjudicating authority (NCLT), it is not open for this Court to intervene in the same in the present review petition.

33. The contention of the petitioner that if all the material were placed on record in W.P.No.12140/2023, the order dated 15.6.2023 would not have been passed, does not deserve acceptance having regard to the admitted position that respondent No.1 in the Memo dated 15.6.2023 filed in the said W.P.No.12140/2023 had placed all the relevant records including a copy of the stay order dated 30.5.2023 passed in



W.P.No.11056/2023, which had stayed the show cause notice and investigation report.

34. It is further pertinent to note that vide the order under review, this Court merely permitted the sale proceedings to be completed in terms of the sale notice dated 13.2.2023 and no adjudication of the rights of the parties was made vide the order under review.

35. Although, it is the vehement contention on behalf of the petitioner that there is suppression of material facts and fraud has been played, which is a good ground for a review as also that the fraud vitiates all acts and various judgments have been relied upon in support of the said contention, as noticed above, the relevant material with regard to the auction as also the proceedings initiated against respondent No.1 - liquidator was placed on record in W.P.No.12140/2023.

36. In the aforementioned circumstances, the petitioner has not made out any ground to review the order dated 15.6.2023 passed in W.P.No.12140/2023. Accordingly, question No.(ii) framed for consideration is answered in the *Negative*.



37. We clarify that this order shall not come in the way of any action initiated by IBBI against respondent No.1.

38. Subject to the aforesaid observations, the present review petition stands dismissed.

Pending IAs stand disposed of.

**Sd/-  
(K.S.MUDAGAL)  
JUDGE**

**Sd/-  
(C.M. POONACHA)  
JUDGE**

ND /List No.: 1 SI No.: 1