THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 3699 of 2025

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules

Dhanestha Steels
Through its Proprietor Mr. Dinesh Yadav
...**Applicant**

V/s

Avil Menezes
Liquidator of Sunil Hitech Engineers Limited
…**Respondent**

In the matter of
COMPANY PETITION (IB) No. 2295/MB/2018

AMERICAN EXPRESS BANK CORP.
…Petitioner

V/s

SUNIL HITECH ENGINEERS LIMITED
…Respondent

Order delivered on: 12.05.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Ms. Aishwarya Gairola
For the Respondent	:	Mr. Akshay Petkar

ORDER

1. This Application IA 3699/2025 was filed by Dhanestha Steels, through its Proprietor Mr. Dinesh Yadav, (Applicant) in the liquidation proceedings of M/s Sunil Hitech Engineers Limited ("Corporate Debtor"), for directions to the Liquidator, Mr. Avil Menezes, under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking following reliefs:

   i. *Direct the Respondent Liquidator to comply with the order dated 01st November 2023 passed by this Hon'ble Tribunal in I.A. No. 1877/2022 in C.P. (IB) No. 2295/MB/2018, including issuance of the Certificate of Sale in favour of the Applicant;*
   ii. *Direct the Respondent to facilitate and ensure immediate handover and delivery of the auctioned assets (Mechanical Items and Inventory/ Scrap items) situated at the Karanpura, Jharkhand site to the Applicant;*
   iii. *Direct the Respondent to immediately address and resolve the material shortfalls and pending issues highlighted by the Applicant in relation to the Darlipalli, JMC Barauni, and Kakarapara Vidhyanchal sites, including supply of balance material or refund of corresponding payments made;*

iv. Direct the Respondent to compensate the Applicant for the cumulative material shortfall amounting to Rs. 11,04,302/- (Rupees Eleven Lakhs Four Thousand Three Hundred and Two Only) in relation to the Darlipalli, JMC Barauni, and Kakarapara sites, as well as for incidental expenses and logistic costs incurred by the Applicant;

v. Direct the Respondent to appropriately account for and adjust the payments made by the Applicant strictly against the relevant auctions as already directed by this Hon'ble Tribunal;

vi. Pass such further or other orders as may be deemed fit and proper in the interest of justice, equity and good conscience, including imposing costs for non-compliance and unnecessary delay.

2. The Applicant is seeking issuance of appropriate directions to the Respondent, the Liquidator of the Corporate Debtor, for failure to comply with the binding order dated 01st November 2023 passed by this Tribunal in I.A. No. 1877 of 2022 in CP (IB) No. 2295/MB/2018, by which this Tribunal had directed the Respondent herein "6.....*to issue Certificate of Sale in favor of Applicant in relation to these two auctions, if the goods have not been sold as yet. In view of contentions raised in the Rejoinder disputing the adjustments made by the Respondents, we direct the Respondent to resolve those differences and appropriate the payments made by the Applicant against notified auction only , if conveyed while making payments under each of such auction.....*".

3. It is noted that this tribunal had issued directions to the Respondent herein in relation to sale of assets of the corporate debtor under Auction No. 217683 and 223488 located at North Karnapura, BHEL factory, vide order dated 1.11.2023 passed in the Applicant's application IA 1877 of 2022 only. Besides, this tribunal had set aside the decision of the Respondent in relation to sale of assets located at Darlipalli and Lara.

Issues arising from North Karnapura's assets Auction

4. It is noted that the sale of assets located at North Karnapura, BHEL factory is yet to be consummated, in view of Hon'ble NCLAT granting stay on the directions issued by this Tribunal to BHEL, to issue Gate Pass, in Company Appeal (AT) (Ins) No. 500 of 2024 filed by BHEL challenging the order dated 09th November 2023 passed by this Tribunal in I.A. No. 3691 of 2022, and the said stay is stated to be in force as yet. In view of this, this tribunal can not issue any directions for handing over the assets lying thereat and issuance of sale certificate in relation to sale of assets located at North Karnapura, BHEL factory on account of pending consummation of such sale. Hence, the prayer in relation to assets at North Karnapura are rejected. Nonetheless, the Respondent Liquidator has also stated that *the Respondent could not consummate the sale of the Subject Assets in favour of the Applicant and was / is willing to refund the amount deposited by the Applicant as it is not in the hands of the Respondent to handover the same due the matter being sub judice*, accordingly, the applicant may exercise his option for refund, as offered by the Liquidator, if the applicant wish so. Nonetheless, the applicant may seek appropriate relief in the appellate proceedings pending

before Hon'ble NCLAT in this relation, if otherwise permissible under the law.

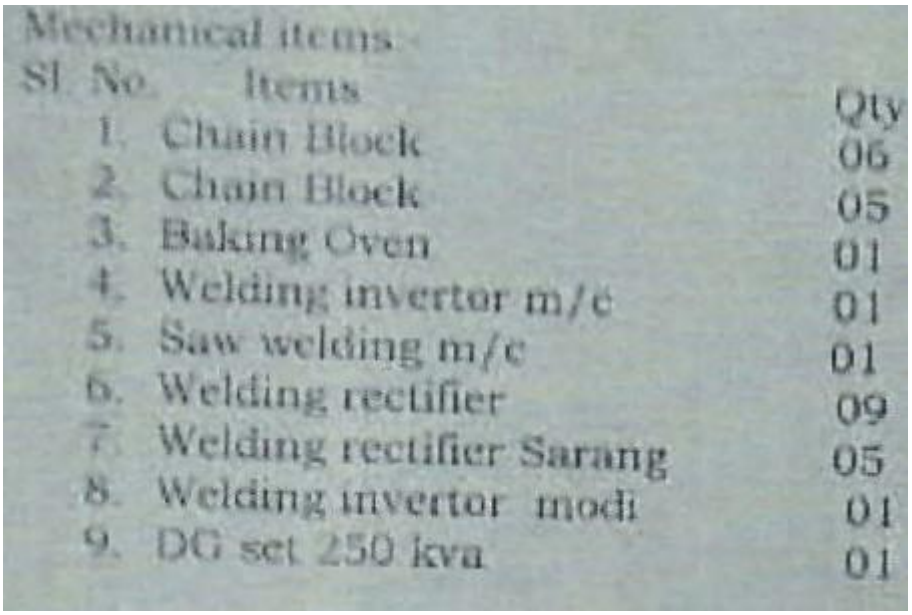
Issues arising from Darlipalli's assets Auction

5. It is case of the applicant that, upon visiting the location for loading of materials pursuant to the auction, it was found that key items, namely a 250 KVA DG set, a 5 KVA DG set, and four welding machines, were missing, despite the said items being clearly listed in the materials list and photographs shared by the Respondent prior to the auction, and when the Applicant sought clarification from the site staff, the response was rude and uncooperative. The Applicant is stated to had duly communicated this concern vide letter dated 20th December 2021 requesting that the missing materials be supplied so as to facilitate final payment, but no response is stated to have been received.
6. The Respondent Liquidator has stated that, with respect to the assets lying at Darlipalli, the sale for the assets was consummated, and the assets were handed over to the Applicant, consequent thereto, the Applicant and Respondent has also executed the handover letters dated 06th December 2021 for the assets lying at Darlipalli. It is further stated by the Liquidator that the said private sale was undertaken on an '*as is where is, as is what is, whatever there is and no recourse*' basis.

7. The Process Memorandum dated 24.03.2021, as available in reply of the liquidator filed in IA 1877 of 2022, following list of assets is notified to the intending bidders, to be sold on '*as is where is, as is what is, whatever there is and no recourse*' basis, fixing reserve price thereof at Rs. 2,95,500/- :

Chain Block	5 Ton	6	16,783
Chain Block	10 Ton	5	18,607
Baking Oven	50 Kg	1	2,340
Welding Inverter Machine	L&T 400 AMP	1	4,286
Saw Welding Machine	Ador	1	12,313
Welding Rectifier	Weldtronix 400 AMP	9	28,381
Welding Rectifier	Sarang 400 AMP	5	14,403
Welding Inverter Machine	Modi 400 Amp	1	3,859
DG Set	5KVA	1	8,024
DG Set	250 KVA	1	1,86,506

8. The letter dated 6.12.2021 issued by the Liquidator to the Applicant for handing over the auctioned assets located at Darlipalli site lists the following assets :



Mechanical items

Sl. No.	Items	Qty
1.	Chain Block	06
2.	Chain Block	05
3.	Baking Oven	01
4.	Welding inverter m/c	01
5.	Saw welding m/c	01
6.	Welding rectifier	09
7.	Welding rectifier Sarang	05
8.	Welding invertor modi	01
9.	DG set 250 kva	01

9. It is evident from the above, that DG Set 5 KVA was not handed over to the applicant, though the applicant has alleged that the said DG set as well as 4 welding machines were found missing. In view the facts on record, it is clear that only 1 DG Set 5 KVA, forming part of assets listed in Process Memorandum was found missing, which in our considered view, ought to have to been handed over to the applicant, even if the sale was conducted on '*as is where is, as is what is, whatever there is and no recourse*' basis, as the liquidator can not take refuge behind this condition which only contemplate the sale of assets in their present form and state, and the said statement can not be read to mean that the number of assets listed in Process Memorandum can be reduced at the time of handing over, while the whole auction process as well determination of reserve price proceeded on the basis of all assets listed in such Process Memorandum. It was for the liquidator to ensure pilferage of such assets till the conclusion of assets placed under auction. Needless to say, it is the liquidator, who was obligated to notify the change in quantity of assets before concluding the auction sale, and the applicant can not be required to be pay whole of auction amount, including the value of missing assets listed in the Process Memorandum documents. Accordingly, we direct the liquidator to refund a sum of Rs. 8,024/- to the applicant on account of missing assets.

Issues arising from JMC Barauni's assets Auction

10. It is case of the applicant that it received material worth Rs. 1,90,026/- only, and the material for a sum of Rs. 1,63,974/- was not available. The applicant has relied upon Bill No. SHEL/21-22/BIN/01 for ₹1,18,879/- and Bill No. SHEL/21-

22/BIN/02 for ₹71,147/-, issued by the liquidator in relation thereto.

11. The Liquidator has submitted that the sale for the said assets were consummated, and the said assets were handed over to the Applicant. It is emphasized that the said sale was private sale in favour of the Applicant wherein the Applicant approached the Respondent offering the reserve price after the respective failed auction. Such private sale were undertaken on an ' as is where is, as is what is, whatever there is and no recourse' basis, thus, it is assumed that the Applicant would have conducted its own due diligence and thus being satisfied with the same, the Applicant made an offer acquiring the said assets on private sale basis.

12. The Process Memorandum dated 24.03.2021, as available in reply of the liquidator filed in IA 1877 of 2022, following list of

Asset Group	Particulars	Capacity, Make & Model	Qty	Price
Hydra Crane, Container, 4-Wheeler, 2-wheeler, Commercial Vehicle and Mechanical Item	CHAIN BLOCK	10 TON	2	11,054
	CONTAINER	40 FT	1	1,26,169
	HYDRA CRANE	12 TON CG-04 DA 6763	1	51,416
	TORQUE WRENCH	MANUAL	1	8,878
	TWO WHEELER	SPLENDER	1	3,043
	WELDING RECTIFIER	400 AMP	4	25,694
	WINCH M/C	5 TON	2	73,746
			12	3,00,000

assets is notified to the intending bidders, to be sold on '*as is where is, as is what is, whatever there is and no recourse*' basis, fixing reserve price thereof at Rs. 3,00,000/- :

13. It is noted that the liquidator has not denied having issued only two invoices for an aggregate sum of Rs. 1,90,026/-, and has also not placed on record any other invoice(s) issued by the liquidator in relation to auction sale of the remaining items. The liquidator has emphasized on the fact that the sale was conducted

on private sale basis after auction thereof had failed, the applicant ought to be diligent to verify the quantities available at site while agreeing to pay the reserve price fixed for failed auction.

14. It is clear from the facts placed on record that the applicant was handed over goods worth Rs. 1,90,026/-, as admitted by the liquidator while issuing invoice(s) towards consummation of such sale. It appears that some of the assets, forming part of assets listed in Process Memorandum were missing and not available for handover, which in our considered view, ought to have to been handed over to the applicant, even if the sale was conducted on '*as is where is, as is what is, whatever there is and no recourse*' basis, as the liquidator can not take refuge behind this condition which only contemplate the sale of assets in their present form and state, and the said statement can not be read to mean that the number of assets listed in Process Memorandum can be reduced at the time of handing over, while the whole auction process as well determination of reserve price proceeded on the basis of all assets listed in such Process Memorandum. It was for the liquidator to ensure pilferage of such assets till the conclusion of assets placed under auction. Needless to say, it is the liquidator, who was obligated to notify the change in quantity of assets before concluding the auction sale, and the applicant can not be required to be pay whole of auction amount, including the value of missing assets listed in the Process Memorandum documents. Accordingly, we direct the liquidator to refund a sum of Rs. 1,63,974/- to the applicant on account of missing assets. Nonetheless, the liquidator could not have retained the GST component in relation to value of assets not handed over, while the same would not have been deposited with the central

government in the absence of any invoice having been raised for such difference.

Issues arising from Kakarapara's assets Auction

15. It is case of the applicant that it received material worth Rs. 8,16,810/- only, and the material for a sum of Rs. 9,40,328/- was not available. The applicant has relied upon Bill No. SHEL/21-22/GJ-01 amounting to ₹1,08,810/-, Bill No. SHEL/21-22/GJ02 amounting to ₹2,36,000/-, and two invoices bearing Bill No. SHEL/21- 22/GJ-04 collectively amounting to ₹4,72,000/-, issued by the liquidator in relation thereto.

16. It is submitted by the liquidator that the Applicant has consciously and deliberately sought to mislead this Tribunal by placing selective, incomplete and distorted facts on record, while conveniently suppressing material documents which demolish its own case. It is further submitted that, pursuant to the private sale of the assets lying at the Kakrapara site in favour of the applicant, four invoice(s), namely SHEL/21 -22/GJ/02 - INR 2,36,000, SHEL/21 -22/GJ/03 - INR 2,36,000, SHEL/21 -22/GJ/04 - INR 2,36,000, and SHEL/21 -22/GJ/05 -INR 10,49,138, were issued to the applicant and these invoice(s) aggregates to the consideration received by the liquidator. Further, the assets in relation to these invoice(s) were duly handed over to the applicant.

17. On perusal of details of invoice(s) submitted by the applicant, it is noted that the applicant has considered invoice no. SHEL/21- 22/GJ-01 (which is not stated to have been issued in relation to sale of assets under present auction), while it has completely missed invoice no. SHEL/21 -22/GJ/05 -INR 10,49,138/-. These invoice(s) were sent to the applicant by the

liquidator vide email dated 3.9.2021, and also informing that "*We understand that you have picked up all the materials from the Kakrapara site*. After taking into consideration the correct facts placed on record by the liquidator, it is noted that liquidator has issued invoice(s) for the full auction value, including GST, implying that these goods were handed over the applicant. It is also noted that the SHEL/21 -22/GJ/05 -INR 10,49,138/- is claimed to be not appearing on GST portal of the Applicant, accordingly, the liquidator shall take necessary steps so that the said invoice is mapped on GST portal of the Applicant entitling it to claim the GST input credit. The Applicant has not controverted this fact either in closing arguments or by way of filing written submissions, the liberty of which was allowed by this tribunal. Accordingly, we do not find any merit in contention of the applicant in relation to this site.

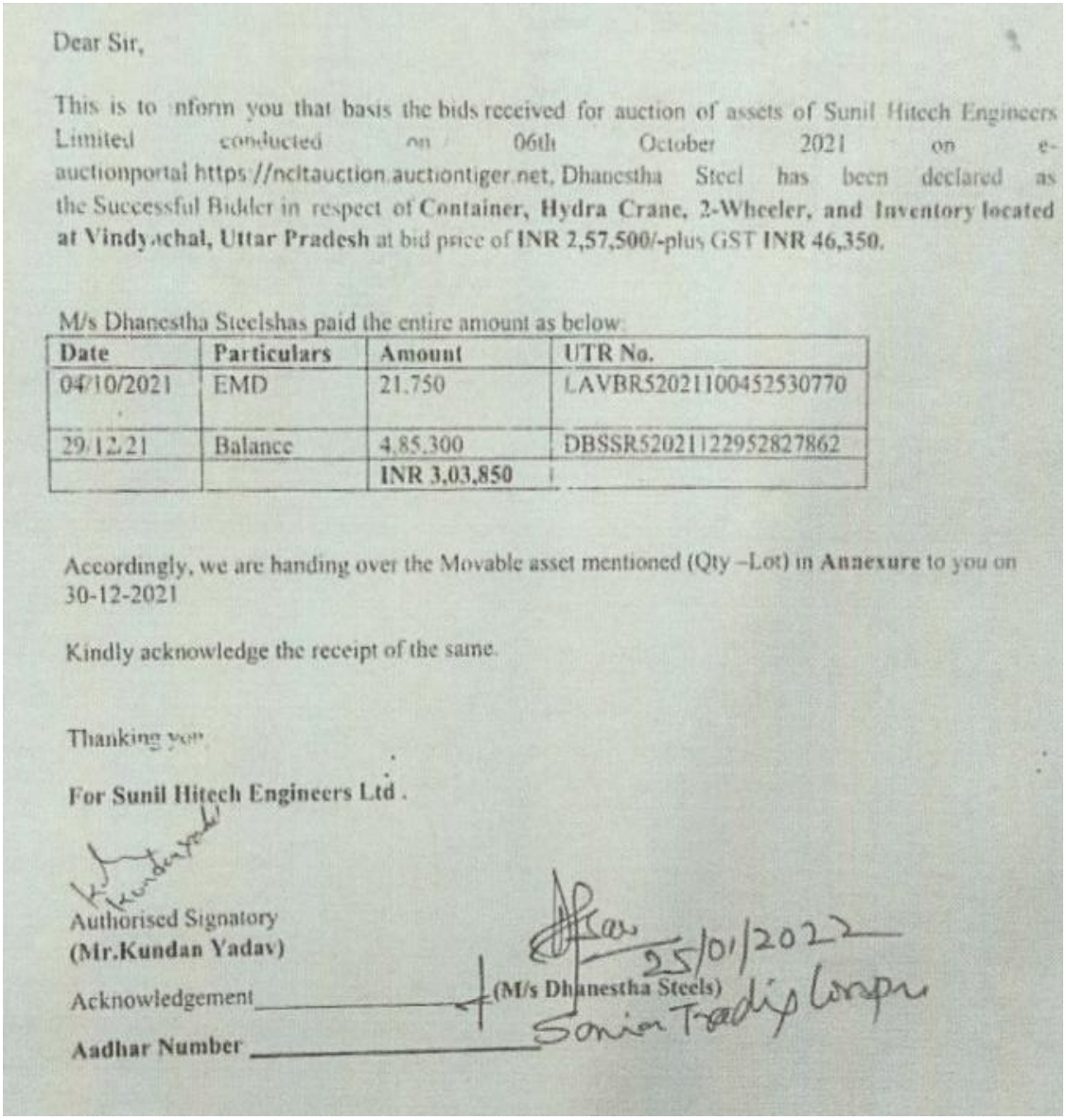
Issues arising from Vindhyanchal's assets Auction

18. It is claimed by the applicant that materials at Vidhyanchal were not received due to failure of Liquidator to issue the exit gate pass or deliver the auctioned assets, despite its readiness to comply with all formalities and having made appropriate arrangements for collection of the materials.

19. It is submitted by the Liquidator that the sale for the assets was consummated, and the assets were handed over to the Applicant. Further, the said sale was undertaken through public auction dated 06th October 2021 wherein the Applicant was declared as the highest bidder for an amount of INR 2,17,000/- (Indian Rupees Two Lakh Seventeen Thousand Only). The entire

assets mentioned as part of the said sale were handed over to the Applicant 18th January 2022.

20. The liquidator has also placed on record a letter dated 18.01.2022 addressed to the applicant herein advising handing over of the material to one M/s Sania Trading Corp, the copy of said letter is extracted below :



Dear Sir,

This is to inform you that basis the bids received for auction of assets of Sunil Hitech Engineers Limited conducted on 06th October 2021 on e-auctionportal https://ncltauction.auctiontiger.net, Dhanestha Steel has been declared as the Successful Bidder in respect of **Container, Hydra Crane, 2-Wheeler, and Inventory located at Vindyachal, Uttar Pradesh** at bid price of **INR 2,57,500/-**plus GST **INR 46,350.**

M/s Dhanestha Steelshas paid the entire amount as below:

Date	Particulars	Amount	UTR No.
04/10/2021	EMD	21,750	LAVBR52021100452530770
29/12/21	Balance	4,85,300	DBSSR52021122952827862
		INR 3,03,850	

Accordingly, we are handing over the Movable asset mentioned (Qty –Lot) in **Annexure** to you on 30-12-2021

Kindly acknowledge the receipt of the same.

Thanking you

For Sunil Hitech Engineers Ltd .

Authorised Signatory
(Mr.Kundan Yadav)

Acknowledgement _____ (M/s Dhanestha Steels)

Aadhar Number _____

25/01/2022
Sonia Trading Corp

21. The above letter clearly demonstrates acceptance of delivery by Sania Trading Corp. The Applicant has not controverted this fact either in closing arguments or by way of filing written

submissions, the liberty of which was allowed by this tribunal. Accordingly, we do not find any merit in contention of the applicant in relation to this site.

22. As regards claim for the expenditure incurred by the applicant towards segregation and preparation of delivery of the assets, it is noteworthy that the sale took place on '*as is where is*, *as is what is*, *whatever there is and no recourse*' basis, accordingly, it was for the applicant to bear all costs in relation to segregation and delivery for the auctioned assets.

23. Before we part away, it is imperative to instruct the insolvency professionals, in general, to have records of delivery of material to third parties demonstrating unambiguously the delivery of goods, so as to avoid such conflicts in future.

24. In terms of the aforesaid directions, this IA 3699 of 2025 is disposed of as partly allowed.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)