**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH, COURT-II**

**KOLKATA**

**I.A. (IB) No. 388/KB/2025**

**IN**

**C.P. (IB) No. 1180/(KB)/2020**

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

**IN THE MATTER OF:**

**State Bank of India**

… Financial Creditor

**Versus**

**Kaushik Global Logistics Limited**

… Corporate Debtor

**And**

**IN THE MATTER OF:**

**Ravi Shaw**, proprietor of Angad Impex, having its office at 35(S) B07, Kalyani, Nadia - 741235;

… Applicant

**Versus**

**Swarup Ghosh**, Liquidator of Kausik Global Logistics Limited, working for gain at 1716, Rajdanga Main Road, Block-EF4, Opposite Acropolis Mall, Kasba, Kolkata 700107;

…

Respondent

**Coram**:

**Shri Labh Singh : Member (Judicial)**

**Ms. Rekha Kantilal Shah : Member (Technical)**

**Appearances (via physical mode/virtual mode)-:**

For the Applicant

i. Mr. D.N. Sharma, Sr. Adv.

ii. Mr. Dripto Majumdar, Adv.

For the Liquidator

i. Mr. Swarup Ghosh, Liquidator in person

**Date of Pronouncement-: 27.07.2026**

**ORDER**

**Per: Rekha Kantilal Shah, Member (Technical)**

1. The instant application has been preferred seeking the following reliefs:-

*"A) Condone the delay on the part of the applicant to make payment of the balance sale consideration of Rs.6,74,96,387/- within March 3, 2025 in terms of the order passed on 24th January, 2025 as modified on 14th February, 2025;*

*B) Permit the applicant to make payment of the balance sum of Rs. 6,74,96,387/- along with interest @12% per annum till the date of payment within a period of three weeks from the date of the order to be passed in the instant application or within such time as this Hon'ble Tribunal deems fit and proper;*

*C) Injunction restraining the respondent from forfeiting the EMD amount of Rs.69,44,403/- as furnished by the applicant;*

*D) Injunction restraining the respondent from taking any steps towards cancellation of outcome of the e-auction conducted on October 25, 2024 or in regard to the LOI issued on October 26, 2024 in any manner whatsoever;*

*E) Injunction restraining the respondent from publishing any further e-auction notice pending disposal of the present application;*

*F) Alternatively, direct the respondent to refund the EMD amount of Rs.69,44,403/- to the applicant in the event the time to make payment is not extended;*

*G) Ad-interim reliefs in terms of prayers above;"*

*H) Such further or other directions as this Hon'ble Tribunal may deem fit and proper.*

**2. Facts of the Case**

2.1 This Tribunal vide an order dated 10th June, 2022 initiated Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor (hereinafter referred to as the "CD").

2.2 Subsequently, vide an order dated 21st November, 2023, an order of liquidation was passed against the CD and the respondent was appointed as the liquidator of the CD.

2.3 The liquidator issued an auction sale notice for sale of the CD as a going concern on 21st September, 2024 at an e-auction which was scheduled to be conducted on 25th October, 2024 on an "as is where is", "as is what is", "whatever there is" and "no recourse" basis.

2.4 As per the e-auction sale notice published in Business Standard and Aajkal on 21st September, 2024, the reserve price was Rs. 6,94,40,429/- (Rupees Six Crores Ninety Four Lakhs Forty Thousand Four Hundred and Twenty Nine) and the refundable Earnest Money Deposit (hereinafter referred to as "*EMD*") was Rs. Rs. 69,44,043/- (Rupees Sixty Nine Lakhs Forty Four Thousand and Forty Three). The last date for submission of affidavit under Section 29A of the IBC as well as bid documents was 05th October, 2024. The said EMD amount was to be deposited by 22nd October, 2024 and the date of declaration of highest bidder was 25th October, 2024.

2.5 The Applicant in compliance of the sale auction notice, paid a sum of Rs.40,00,000/- towards part of the EMD amount on October 17, 2024 and the balance sum of Rs.29,44,043/- was paid on October 21, 2024.

2.6 On the date of the e-auction, the applicant submitted a bid of Rs.7,44,40,429/- (Rupees Seven Crores Forty Four Lakhs Forty Thousand and Four Hundred and Twenty Nine) i.e., Rs. 50,00,000 (Rupees Fifty Lakhs) in excess of the reserve price.

2.7 Thereafter, the Liquidator declared the applicant as the highest bidder and issued a Letter of Intent ("LOI") on 26th October, 2024 in favour of the applicant. The liquidator requested the applicant to pay the balance consideration of Rs.6,74,96,386/- within 24th November, 2024. As per the LOI, any payments made after November 24, 2024 would attract interest @ 12% per annum. The LOI further stated that, in the event, the applicant was unable to pay the balance consideration within January 23, 2025, the sale would stand cancelled and the amounts paid by the applicant would be forfeited.

2.8 It is the non-payment of the balance consideration amount within the time stipulated in the LOI that forms the basis of the dispute in the instant application.

3. **Submissions of the Applicant**

3.1 It has been submitted that even though the Applicant was ready and willing to make payment of the balance consideration, it was not able to do so within 23rd January, 2025, the final date for making payment of the balance consideration as per the LOI, due to acute lumbosacral spondylosis which had rendered the applicant bed ridden and made him seek medical treatment.

3.2 As such, the Applicant preferred an Interlocutory Application before this Tribunal being I.A. (IB) 122/KB/2025 praying for leave of this Tribunal to make payment of the balance amount of Rs. 6,74,96,387/- (Rupees Sixty Nine Lakhs Forty Four Thousand and Forty Three) within a period of two weeks from 23rd January, 2025. This Tribunal vide an order dated 24th January, 2025 permitted the Applicant to make payment of the balance consideration within two weeks from the date of the order. Thereafter, vide a corrigendum order dated 14th February, 2025, this Tribunal modified the order passed on 24th January, 2025 and permitted the applicant to make payment of the balance consideration by 03rd March, 2025 failing which, the EMD would be forfeited and the e-auction conducted on 25th October, 2024 would stand cancelled.

3.3 It has been submitted by the Applicant, that it could not make the payment of the balance sum by 03rd March, 2025, due to relapse of the medical ailment suffered by the Applicant, due to which the Applicant was again rendered bed ridden for a week. It has further been submitted that the applicant had to be hospitalised on and from 24th January, 2025 till 01st March, 2025 due to the medical condition suffered by the applicant.

3.4 It has been submitted that the applicant was the sole bidder in the third e-auction process. As such, in the event of forfeiture of the EMD amount or cancellation of sale, no party will benefit from the same and this will cause further delays in liquidation process.

3.5 It has further been submitted that the applicant could not make the payment regarding the balance consideration due to the medical ailment of the applicant, which was beyond its control, and that it is sincerely interest to acquire the CD on a going concern basis.

3.6 It has further been submitted that the applicant would the make payment of the balance consideration alongwith interest @ 12% p.a. within a period of three weeks from the date of order, if any is passed by this Tribunal in the instant application.

3.7 It has further been submitted that the grant relief as sought for in the application will not cause prejudice to any stakeholder, including the CD. It has further been submitted that in the event the time to make payment of the balance sum is extended by this Tribunal, it would consequently result in a successful conclusion of the liquidation proceedings of the CD, and in the event the relief is not granted, the same would lead to further delays and litigations in respect of the liquidation process of the CD.

**4. <u>Submissions of the Respondent</u>**

4.1 It has been submitted that the LOI issued on 26th October, 2024, declaring the Applicant as the highest bidder, expressly stipulated that failure to make payment of the balance consideration would result in forfeiture of the EMD. As such, the Applicant was required to comply with the same and that the applicant cannot seek relief on the basis of unforeseen circumstances.

4.2 It has been submitted that the Liquidator is bound to act as per the terms of e-auction sale documents and the LOI, and cannot grant arbitrary extensions that may hinder the liquidation process. It has further been submitted that the Liquidator has no discretion to extend timelines beyond what is permitted in the Insolvency and Bankruptcy Code, 2016 and the liquidation regulations.

4.3 It has further been submitted that this Tribunal, had already twice granted extensions to the Applicant, i.e., up to 03rd March, 2025, which was a reasonable accommodation. It has been submitted that the extensions were granted in good faith and with the objective of ensuring that the liquidation process progresses in an orderly manner, however, despite being granted such accommodation, the payment failed to fulfil its payment obligation within the extended timeline.

4.4 It has been submitted that The IBC has been designed to ensure a timebound resolution and liquidation process, thereby preventing undue delays that could diminish the value of the Corporate Debtor's assets. Delays in the completion of the sale process directly impact the creditors, whose recoveries are contingent upon the timely liquidation of assets. Moreover, granting repeated extensions would set an unfavourable precedent by allowing bidders to evade their financial commitments, thereby undermining the credibility and efficiency of the e-auction process.

4.5 It has been submitted that the applicant had ample opportunity to arrange the requisite funds and meet the financial obligations within the prescribed time. Their inability to do so cannot be used as a ground for seeking additional time at the expense of the creditors and the liquidation process.

4.6 It has further been submitted that the applicant, having voluntarily participated in the auction and agreed to the stipulated conditions, cannot now seek leniency or deviation from the agreed terms. It has been submitted that the fact of the applicant being the sole bidder does not entitle them to seek indefinite extensions. As such it has been submitted that the Liquidator should be permitted to forfeit the EMD and proceed with an alternative course of action to ensure maximum value realization for the creditors and stakeholders of the CD.

4.7 It has further been submitted that in the said auction, certain properties which were attached by the Enforcement Directorate had also been sold. However, the said properties have also been released based on an order of the PMLA court, after the date of the auction. As such, the value of properties may have increased pursuant to such release.

4.8 It has also been submitted that an SCC meeting had been convened on 04$^{th}$ March, 2025, i.e., after expiry of the deadline of 03$^{rd}$ March, 2025 as had been granted by this Tribunal, wherein, the SCC had unanimously resolved to reject the request for any further extensions beyond 03$^{rd}$ March, 2025.

4.9 As such, the liquidator has sought for rejection of the instant application, cancellation of the e-auction sale process and forfeiture of EMD made by the application.

## 5. Findings and Analysis

5.1 We have gone through the case file carefully and perused the pleadings of the Applicant and Respondent, the documents placed on record, the arguments put forth by the counsel for the parties and we shall now proceed to consider the present application on its merits.

5.2 As stated by the parties, prior to this application, this Tribunal had granted extension to the Applicant to make payment of the balance consideration by order dated 24th January, 2025, whereby the time to make the payment was extended by two weeks. Thereafter by corrigendum order dated 14th February, 2025 the order dated 24th January, 2025 stood modified and the time to make the payment was extended till 03rd March, 2025.

5.3 Moreover, it is pertinent to note, that this Tribunal vide order dated 05th March, 2025, in the interest of justice, had granted the applicant another accommodation to make the payment within a period of 10 days from the date of the order. The relevant portion of the order is reproduced hereinbelow:-

*"i. The present application has been filed for condonation of delay on the part of the applicant to make payment of balance sale consideration of Rs. 6,74,96,387/- with interest within March 4, 2025 in terms of order passed on January 24, 2025 as modified February 14, 2025 and sought for three weeks' time.*

*ii. The applicant has prayed to make payment of balance of sum as stated above along with interest till the date of payment within a period of three weeks, However, in the interest of justice only 10 days' time is granted for the same."*

5.4 However, despite being granted the said accommodation, the applicant again failed to payment of the consideration within the timeline stipulated in the order dated 05th March, 2025.

5.5 It is also important to take note of Annexure III (Declaration of the bidder), annexed to the application at p. 36, which had been executed by the Applicant in order to participate in the e-auction process. It expressly stipulated as follows:-

*"4. 1/We also agree that after my/our offer given in my/our bid for purchase of propert(ies)/asset(s) is accepted by the Seller and if, I/ We, fail to accept or act upon the terms and conditions of the sale or am/are not able to complete the transaction within the time limit specified for any reason whatsoever and/or fail to fulfil any/ all the terms and conditions of the auction and offer letter, the EMD and other monies paid by me/us along with the bid form and thereafter, are liable to be forfeited. The timeline for payment of final sale consideration may be extended by sole discretion of liquidator, to the extent permissible under the applicable laws and regulations. In case final sale consideration is not paid within timeline, the liquidator shall forfeit EMD and/or Bank Guarantee."*

5.6 Furthermore, the LOI expressly stated that that the sale shall be cancelled if the entire consideration regarding the auction sale is not paid by the applicant within 23rd January, 2025 and the amount of EMD shall be forfeited. The relevant portion of the LOI is reproduced hereinbelow:-

*"4. Please further note that the sale shall be cancelled if the full payment for the sale consideration is not received within 23.01.2025 and the amount received shall be forfeited."*

5.7 It is also relevant to consider Clause 12 of Schedule 1 (Mode of Sale) of the Liquidation Process Regulations, which states as follows:-

> *(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days or such period as mentioned in the auction notice under clause 3, of the date of such demand:*
> *Provided that payments made after thirty days shall attract interest at the rate of twelve per cent.:*
> *Provided further that the sale shall be cancelled if the payment is not received within the period provided under this clause.*

5.8 The e-auction was conducted on 25th October 2024, and the Applicant was declared the highest bidder via email on the same date, in accordance with the e-auction sale notice. Subsequently, on 26th October 2024, the Liquidator issued the Letter of Intent (LOI) demanding the payment of the balance consideration. Pursuant to Clause 12 of Schedule I of the IBBI (Liquidation Process) Regulations, 2016, the 30-day interest-free period expired on 25th November 2024, and the outer limit of 90 days expired on 24th January 2025. However, under the LOI, the Liquidator called upon the Applicant to deposit the balance amount by 24th November 2024 and 23rd January 2025 respectively i.e., short-changing the statutory timeline provided under Clause 12 by one day.

5.9 Be that as it may, the Applicant defaulted in making any payment within the timelines stipulated under Clause 12 of Schedule I. The default on the part of the Applicant continued despite this Tribunal granted multiple extensions to the Applicant.

5.10 In this context, the judgment of the Hon'ble NCLAT, New Delhi in ***Deepika Bhugra Prasad (Liquidator) v. Lucky Holdings Pvt. Ltd.***, ***(2025) ibclaw.in 1005 NCLAT***, is important. The relevant portion of the judgment has been extracted hereinbelow:-

> ***71.*** *The third issue based on which Ld. AA allowed the appeal related to applicability of Section 74 of the Contract Act to the aforesaid auction proceeding. In this regard, it is to be noted that IBC, 2016 is a complete law in itself for corporate insolvency resolution process. Detailed procedure and process of liquidation has been laid down in the law; and rules and regulations framed thereunder. Any contractual obligation under the Code has to be dealt with in accordance with procedure laid down. We note that in this case, the liquidator has strictly followed the procedure laid down by the Code. The forfeiture of EMD in such auctions arises out of statutory terms, and not negotiated penalty clauses. Accordingly, in accordance with clauses of the E-Auction notice, E-auction process document and affidavit filed by the respondent, the liquidator has correctly forfeited the EMD.*
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> ***72.*** *This legal position has been conclusively settled by the judgment of this Appellate Tribunal in Westcoast Infraprojects Private Limited (supra), which was affirmed by the Hon'ble Supreme Court in* ***Civil Appeal No. 4087 of 2023 (order dated 25.07.2023)*** *in the same matter. In these*

*decisions, it has been held that forfeiture of EMD in liquidation auctions is a legitimate, contractual and statutory remedy for default, and Section 74 is wholly inapplicable. Relevant paragraphs para 4 and 20 of the judgment of this Appellate Tribunal have been extracted below:*

*"(4) Learned Counsel for the Appellant challenging the Impugned Order submits that forfeiture by the Liquidator of the amount paid by the Appellant is a penalty and impermissible in law. Learned Counsel for the Appellant relying on Section 74 of the Indian Contract Act, 1872 submits that for forfeiting the amount, Liquidator ought to have filed a suit for recovery of the penalty by way of compensation and the Liquidator had no jurisdiction to forfeit the EMD and amount of Rs. 1,75,00,000/-deposited by the Appellant. Learned Counsel for the Appellant has however not raised any submission questioning the cancellation of the sale. The clauses of the Tender Document providing for forfeiture of the part consideration paid by the Appellant are stipulations in the nature of a penalty under Section 74 of the Indian Contract Act, 1872. Forfeiture of the part consideration by the Liquidator is impermissible and unlawful and at the highest the Liquidator is entitled to sue for damages/compensation before the Competent Court. Until such adjudication by the Competent Court, Liquidator has no right to receive any sum of the money from the Appellant. It is further submitted that there is no provision in the Insolvency and Bankruptcy Code, 2016 or in the Liquidation Process Regulations, 2016 under which monies paid towards the purchase of assets put to sale by the Liquidator may be forfeited upon cancellation of the sale due to purchaser's*

*default. Forfeiture by the Respondent has no basis in law. Learned Counsel for the Appellant further submitted that the Liquidator is guilty of suppressing crucial information from the Appellant and other bidders. It is submitted that property tax in respect of land was outstanding which ought to have been disclosed and due to outstanding dues title of the land was defective. It is submitted that land was subject to attachment due to non-payment of property tax dues and any transfer of the land would have been void under law. The liquidator was bound to disclose the defect in title and lack of the title of the land. The sale of assets "as is where is" or "as is what is" basis is only used to caveat the physical nature or quality of what is sold. It does not apply to situations where the title of the subject matter sought to be sold is defective or worse absent in the seller. The Liquidator cannot wriggle out of its duty to disclose encumbrances, and particularly known encumbrances, on the basis of the "as is where is"/ "as is what is" Clause in the Tender Document.*

*(20) For purpose of this case, law as laid down in Paragraph 43.7 is relevant where Hon'ble Supreme Court has clearly held that when forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application. The statement of law in paragraph 43.7 is fully applicable in the case of the present case. The present is a case where Appellant participated in the eAuction conducted by the Liquidator under the Liquidation Process Regulations, 2016. Section 74 of the Indian Contract Act has no application in the case of Auction conducted by the Liquidator under the Liquidation Process Regulations, 2016. The terms and conditions of the sale as finalized by the Liquidator under*

*which the e-Auction was held is binding on all including the bidders. Bidders give an unqualified undertaking for participation in the e-Auction after knowing fully well of clauses of the e-Auction Process Document and undertook to abide by the clauses. The submission of the Appellant can not be accepted that Appellant's EMD can not be forfeited even though he has committed default in making the payment of balance amount and the Liquidator should file a suit for forfeiting amount deposited by the Appellant. Such preposterous argument can not be accepted in view of the fact that Liquidation Process is conducted under the statutory Liquidation Process Regulations, 2016. The terms and conditions of the Process Document has been framed as per statutory empowerment given to the Liquidator by Schedule I of the Liquidation Process Regulations, 2016 as noticed above. When the clauses of the Process Document as noted above, clearly empowers the Liquidator to forfeit the EMD and any payment made in event default is committed by the Highest Bidder, no exception can be taken to the action of the Liquidator in cancelling the sale and forfeiting the amount deposited by the Appellant."*

***73.*** *Further support for the Liquidator's position is found in judgment of this Appellate Tribunal in 'BRS Refineries Private Limited v. Supriyo Kumar Chaudhuri' (supra), where a bidder's failure to demonstrate readiness and repeated requests for time were held incompatible with the time-bound nature of liquidation, and forfeiture was upheld. The same reasoning was followed in judgment of this Appellate Tribunal in 'Potens Transmission & Power Private Limited' (supra), which reaffirmed that even minor deviations from timelines permit forfeiture when the terms are strict. Most recently, this Appellate Tribunal in*

*'Vikram Bajaj, Liquidator of Best Foods Limited' (supra) held that conditional expressions of willingness do not save a bidder from default; only clear, unconditional readiness suffices.*

***74.*** *In light of the foregoing, we are of the view that the Respondent did commit default under the binding auction terms, that the Liquidator's action of cancelling the sale and forfeiting the EMD was fully justified and in accordance with the provisions of the Code. We have already seen that the impugned order suffers from incorrect appreciation of facts and law like application of Indian Contract Act whereas the issue should have been examined through the lens of this Code only.*

5.11 The conduct of the Applicant in the present proceedings is far from *bona fide* and amounts to a blatant abuse of the process of this Tribunal. The Liquidation process which ought to have effectively concluded on 24th January, 2025, has been extended till this date, resulting in an inordinate delay of more than a year and a half.

6. **Order**

6.1 In light of the above, we are not inclined to grant any further opportunities to the Applicant. Accordingly, the Liquidator is directed to forfeit the EMD made by the Applicant. The e-auction sale process also stands cancelled. Further, in view of the inordinate delay in the liquidation process, caused by the actions of the applicant, we hereby impose costs of **Rs. 25,000/- (Rupees Twenty Five Thousand)** upon the applicant. The said costs shall be paid to the **West Bengal State Legal Services Authority**, within a period of two weeks from the date of this order.

6.2 The present Interlocutory Application being **I.A. (IB) 388/KB/2025** stands **rejected** and **disposed of.**

6.3 Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**(Rekha Kantilal Shah)** **(Labh Singh)**

**Member (Technical)** **Member (Judicial)**

Order signed on the 27th day of July, 2026.

H.T. (LRA)