IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.304

IA/668(AHM)2026 in CP(IB) 322 of 2018

Proceedings under Section 60(5) of the IBC,2016 r/w Rule 11 of NCLT Rules,2016

IN THE MATTER OF:

Shyam Sunder Commodities Private Limited **.....Applicant**
V/s
Ramesh Kumar Totla Liquidatior of Galaxy Cotton And Textiles Private Limited **.....Respondent**

Order delivered on: 28/10/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet

-SD-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-SD-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

IA No. 668 of 2026
In
CP(IB) No. 322 of 2018

(An Application filed under Section 60(5) readwith Rule 11 of the National Company Law Tribunal Rules 2016)

IN THE MATTER OF:

Shyam Sundar Commodities Private Limited
Flat No. 4,4th Floor, Ashutosh Apartment 1,
Geetanagar, Opp. Swaminarayan Gurukul,
Dhebar, Rajkot - 350002 ...Applicant

Versus

Ramesh Kumar Totla
Liquidator of Galaxy Cotton and Textiles Pvt. Ltd.
304, Metro Tower, Ring Road,
Near Kinnari Cinema, :
Surat - 395002
Email Address: liquidation.gctpl@g

.... Respondent

Order pronounced on 28.10.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Monaal Davawala, Adv.

For the Respondent : Mr. Nitesh Shrivastava, Adv
Mr. Ankit Sareen, Adv, and
Ms. Shraddha Sareen, Adv

JUDGEMENT

1. The Applicant, Shyam Sundar Commodities Private Limited, the successful auction purchaser of the Galaxy Cotton and Textiles Private Limited (Corporate Debtor), has filed the present application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, seeking directions to the Respondent-Liquidator to pay alleged interest at the rate of 12% per annum on the Earnest Money Deposit (EMD) of Rs.2,19,67,625/-, retained from 25.01.2024 until its refund on 11.03.2026, amounting to approximately Rs.56,19,497/- for a period of approximately 777 days.

2. It is submitted that the Financial Creditor, State Bank of India, filed CP No. 322 of 2018 under Section 7 of the Code, which was admitted on 10.10.2019, initiating CIRP against the Corporate Debtor. It is submitted that as no Resolution Plan was approved by the CoC, the Resolution Professional filed IA No. 305 of 2020 seeking liquidation, which was allowed by this

Tribunal on 29.08.2022, appointing Respondent No. 1 as the Liquidator. The Applicant submits that, pursuant to the e-auction sale notice dated 03.01.2024 for sale of the Corporate Debtor as a going concern, it deposited an amount of Rs. 2,19,67,625/- EMD, participated in the e-auction held on 29.01.2024, and was declared the successful bidder on 30.01.2024, followed by issuance of the Letter of Intent by liquidator dated 05.02.2024. It is submitted that the suspended management challenged the auction in IA No. 525 of 2024, which was allowed by this Tribunal vide order dated 10.12.2025, setting aside the auction sale and recording lapses on the part of the Liquidator, including delay in constitution of the Stakeholders' Consultation Committee, failure to properly verify SBI's claim and take appropriate action on the scheme of compromise under Section 230 of the Companies Act, 2013, proceeding with the auction despite pendency of the scheme, irregularities in the voting period, and denial of a reasonable opportunity to the aggrieved parties. The Applicant further submits that the said order dated 10.12.2025 has not been challenged by the Liquidator before the Hon'ble NCLAT and, therefore, the findings therein

have attained finality. It is submitted that following disposal of the connected applications as infructuous vide order dated 10.02.2026, the EMD was refunded only on 11.03.2026.

3. The Applicant submits that, by representation dated 26.03.2026, it sought interest at 12% per annum on the amount retained, which the Liquidator rejected vide reply dated 28.03.2026 by relying upon Clause 9.6 of the e-auction process memorandum. It is submitted that despite reiteration of its claim by the Applicant on 30.03.2026, the Liquidator did not respond to the request. The Applicant contends that Clause 9.6 is standard commercial term intended to operate in ordinary and lawful auction proceedings and cannot be invoked to deny interest where the auction itself was set aside by this tribunal on account of the Liquidator's own procedural irregularities.

4. The Applicant further relies upon Clause 9.7 of the e-auction process memorandum and Regulation 1(12) of Schedule I to the IBBI (Liquidation Process) Regulations, 2016, which provide that payments made by a successful bidder after 30 days shall attract interest at 12% per annum. It is contended that the same rate should apply on the principle of mutuality,

as the regulatory and contractual framework itself recognises 12% per annum as the applicable benchmark for delayed payments in the liquidation process.

5. Applicant has relied upon following judgements:

a) *Dr. Poornima Advani & Anr. vs. Government of NCT & Anr. [2025 INSC 262]*
b) *Authorised Officer, Karnataka Bank vs. R.M.S. Granites Pvt. Ltd. [Petition for Special Leave to Appeal (C) No. 7965/2023]*
c) *Union of India vs. Tata Chemicals Ltd. [(2014) 6 SCC 335*
d) *Indian Council for Enviro-Legal Action vs. Union of India [(2011) 8 SCC 161]*
e) *Secretary, Irrigation Department, Government of Orissa vs. G.C. Roy [(1992) 1 SCC 508]*
f) *Shree Yash Stainless Private Limited vs. Mr. Udayraj Patwardhan, RP of Nami Steels Private Limited [IA No. 348 Of 2024, Order Dated 15.5.2024]*

6. The Respondent-Liquidator has filed written submissions wherein submits that the present written submissions are confined to the issue of maintainability. The Respondent submits that IA Nos. 1528 of 2024, 410 of 2024 and 599 of 2024, concerning the same auction sale and EMD, were disposed of as infructuous vide order dated 10.02.2026 pursuant to the Applicant's own pursis, following the order dated 10.12.2025, without reserving any liberty to claim

interest. The Respondent contends that the Applicant, having represented that the entire auction-related dispute stood exhausted. The Respondent further submits that the principles of abandonment, estoppel and the bar against splitting a cause of action render the present application not maintainable. It is further contended that the order dated 10.12.2025 recorded the Applicant's status as a related party and sale cannot be completed in favour of related party under the IBC and the Regulations framed thereunder.

7. The Respondent submits that the claim for interest by way of compensation for alleged wrongful retention of funds, loss of business opportunities and financial blockage, as pleaded in the Applicant's representations dated 26.03.2026, is in substance a claim for unliquidated damages and restitution involving seriously disputed questions of fact, which can be adjudicated only upon proper pleadings, evidence and trial, and is not maintainable through a summary application under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016. The Respondent further submits that, under Clauses 9.2 and 9.6 of the e-auction Process Memorandum, the EMD was a non-interest-bearing deposit and no interest

was payable to bidders, and the Applicant had expressly undertaken in the Bid/Application Form not to claim interest in the event of delay in the sale process. Accordingly, the Applicant has no contractual, statutory or other enforceable right to interest, and the inherent powers of the Tribunal under Rule 11 cannot be invoked to rewrite or override the express contractual terms accepted by the Applicant.

8. The Respondent submits that neither the IBC, 2016 nor the IBBI (Liquidation Process) Regulations, 2016 contain any provision obliging the Liquidator to pay interest on a refunded EMD. It is contended that Regulation 1(12) of Schedule I and Clause 9.7 of the Process Memorandum relate to interest payable by a successful bidder on delayed payment of the balance sale consideration and cannot create a reciprocal right to interest on refund of an EMD following the setting aside of a sale. The Respondent further submits that the authorities relied upon by the Applicant concern the merits of entitlement to interest and do not cure the threshold defects of maintainability, including abandonment of the earlier proceedings, the summary adjudication of unliquidated damages, and the contractually excluded right to interest.

9. Observations:

a) This application is filed for seeking interest for the period of retaining the EMD amount for a period of 777 days during which there have been certain disputes between the parties. The information memorandum if is the basis for the applicant to put up his proposal, the same is one sided on the payable interest if defaulted. Hence there is no cause of action arising to settle this dispute.

b) The EMD was offered for purchase of property based on information memorandum, which is not a commercial contract and binds the applicant to submit subject to consideration of the sale of asset. It is a mutual proposal between parties, this tribunal has no authority to consider such prayer filed under Sec 60 (11) of IBC 2016 and Rule 11 of NCLT Rules 2016.

10. Hence we pass the following Order:

ORDER

IA 668 of 2026 is rejected and disposed of.

-SD- **-SD-**

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

AS