

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

I.A.(IB) 909/KB/2022

In

C.P (IB) No.1284/KB/2019

In the matter of

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

And

In the matter of:

Ess Dee Aluminium Limited (In liquidation)

And

Chinar Steel Segments Private Limited

.... Applicant

Versus

Mrs. Deepika Bhugra Prasad, Liquidator of ESS DEE Aluminium Limited.

... Respondent

Date of hearing : 31/08/2022

Order Pronounced on : 02/09/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference /Physical

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| 1. Mr. Mainak Bose, Adv. |] For the Applicant |
| 2. Mr. Anurag Bagaria, Adv. |] |
| 3. Ms. Riya Debnath, Adv. |] |

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| 1. Mr. Rishav Banerjee,Adv. |] For Liquidator |
| 2. Mr. Aditya Gauri, Adv. |] |
| 3. Mr.Dhanjaya Sud, Adv. |] |
| 4. Ms. Deepika Bhugra Prasad, Liquidator |] in Person |

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court is convened by video conference today.
2. This application has been filed by the applicant for seeking direction to the Respondent/Liquidator to allow the Applicant to participate in e-auction of Ess Dee Aluminum Limited on 26th August,2022 at 3.00 P.M.
3. When this matter came up for consideration today, we were informed by the Ld. Counsel appearing for the Liquidator that auction has already been held on 26th August 2022 and the bid of amount of Rs. 103.4 Crores has already been accepted by the Liquidator.
4. In view of this situation, Ld. Counsel appearing for the applicant has sought for stay of issuance of LoI to the Successful Bidder.
5. We have heard Ld. Counsel for the parties. It is an admitted position that the notice inviting bids was issued by the Liquidator on 3rd August, 2022 inviting bids for various Blocks i.e. Block A, Block-B, Block-C, Block-D, Block-E, Block-F, Block-G and Block –H, as is evident from Annexure-A of this application.
6. It is also an admitted position that the applicant submitted bid for Block-H and an amount of Rs.4 Crore was deposited as EMD with the Liquidator.

7. The last date of EMD submission was 24th August, 2022 upto 5:00 P.M. and the date of e-auction was fixed on 26th August, 2022 at 3:00 P.M. to 5:00 P.M. This is also an admitted position between the parties.
8. It is also an admitted position that the applicant submitted an additional amount of Rs. One Crore in the liquidation account of the Corporate Debtor on 24th August, 2022 at 8.30 P.M. and through its Email dated 24th August, 2022 at around 10:00 P.M. requested to switch from Block-H to Block A and also mentioned that he will be providing the duly executed document by 25th August, 2022 for bidding for Block-A. These facts were also not in dispute.
9. Ld. Counsel for the applicant has stated that merely depositing Rs. One Crore just few hours late than the time fixed in the bidding notice is not a valid reason for rejection of the bid. It is also stated that by accepting the bid of the applicant could give a wider participation and therefore better chances of maximization of value of assets, which is the object of the IBC,2016.
10. It is also stated by Ld. Counsel for the applicant while relying on email dated 26th August 2022 written by Liquidator that it is the SCC which rejected the bid and as per the Regulations, it is only the Liquidator who is empowered to accept or reject a bid and SCC has no role as such in it. Therefore, it is not the decision of the Liquidator. Therefore, the rejection of applicant's bid is bad in law.
11. It is further stated by the Ld. Counsel appearing for the applicant that the Liquidator cannot act upon the whims of SCC.
12. It is further stated that the Liquidator has adopted the hyper technical approach in not extending a few hours of time and allowing the applicant to participate in the bidding process of Block-A instead of Block-H.

13. In rebuttal to the above contentions raised by the Ld. Counsel for the applicant, the Ld. Counsel for the Liquidator has stated that auction was held on 26th August, 2022 and Block-A has already been sold to the highest bidder.
14. It is submitted by Mr. Rishav Banerjee, Ld. Counsel appearing for the Liquidator that there were as many as 51 bidders, who submitted their bids before 5:00 P.M. in terms of the time fixed in bidding notice dated 3rd August, 2022. The Liquidator is bound by the bidding document and the schedule fixed therein and applicant could not be treated differently.
15. Our attention has also been drawn at condition 9 of the bidding process which is reproduced as under:-

“ The intending bidder should submit the evidence for EMD Deposit or Bank Guarantee and Request Letter for participation in the E-Auction along with self attested copy of (1) Proof of Identification (2) Current Address-Proof (3) PAN Card (4) Valid e-mail ID (5) Landline and Mobile Phone Number (6) Affidavit and Undertaking, as per Annexure-I (7) Bid Application Form as per Annexure II (8) Declaration by Bidder, as per Annexure III, the formats of these Annexures can be taken from the Complete E-Auction process document. These documents should reach the office of the Liquidator or by E-mail, at the address given below before 5:00 PM of August 24th, 2022. Interested bidders will have to upload their KYC documents along with EMD submission details <https://aaa.auctiontiger.net> before 5:00 PM of August 24th 2022”.

[Emphasis supplied]

16. We have heard Ld. Counsel for the parties and perused the record.
17. The bids were invited on 3rd August, 2022. There was sufficient and reasonable time for any bidder to bid for any Block subject to the eligibility. Admittedly,

applicant applied for Block-H and chose to change his mind on the last date to bid for Block A and deposited Rs. One Crore more as EMD (EMD for Block A was Rs. Five Crore and EMD for Block H was Rs. Four Crore) admittedly after the time fixed i.e. 5:00 P.M.

18. We don't find any valid reason for seeking to bid for a different block and depositing the money after the time fixed by the Liquidator has elapsed. The time lines are fixed with a definite purpose, the different stages of bidding process should conclude at the scheduled time.
 19. We see the applicant failed to submit his bid in terms of the terms and conditions and the time schedule fixed in the e-auction notice dated 3rd August,2022. It is not understood or forthcoming as to why the applicant after 23 days suddenly changed his mind on the last date for change from Block from H to A.
 20. We see no reason why a person should be allowed to change his mind on the last date and be allowed to deposit the EMD as such. It needs to be noted that there were as many as 51 bidders, who submitted their bid within the time. Therefore, no exception can be made in case of applicant. If applicant was serious in bidding, he could have done so for which there was sufficient and reasonable time of 23 days granted in the e-auction notice issued on 3rd August, 2022.
 21. There is no reason for the applicant to complain after having failed to submit the EMD within time.
 22. For the above reasons, we find that the plea of the applicant is completely misplaced and misconceived and thus liable to be rejected.
 23. We see no infirmity as alleged by the applicant in the application.
 24. Accordingly, I.A. being I.A. (IBC) No. 909/KB/2022 is hereby rejected.
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25. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 2nd day of September, 2022

pj