

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 2316 of 2024

(Arising out of Order dated 21.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA/364(AHM)2023 in CP(IB) 66 of 2017)

IN THE MATTER OF:

CA Ramchandra Dallaram Choudhary
Liquidator of Anil Ltd.

...Appellant

Versus

Adani Infrastructure & Developers Pvt. Ltd.

...Respondent

Present:

For Appellant : Mr. Ramji Srinivasan and Mr. Sunil Fernandes, Sr. Advocates with Mr. Atul Sharma, Mr. Pankaj Jain, Mr. Arjun Bhatia, Ms. Shefali Munde, Ms. Aditi Sharma, Mr. Vikram Choudhary and Mr. Sarthak Dugar, Advocates.

For Respondent : Mr. Arun Kathpalia and Mr. Krishnendu Datta Sr. Advocates with Mr. Anirudh Bhat, Mr. Siddharth Aggarwal, Mr. Aditya Dhupar, Mr. Sanidhya Kumar, Mr. Harshit Chaudhary, Mr. Yash Tandon and Mr. Harsh Gurbani, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by the Appellant, Liquidator of the Corporate Debtor (“CD”) has been filed challenging the order dated 21.06.2024 passed by National Company Law Tribunal, Ahmedabad, Court-2 in IA/364(AHM)2023 in CP(IB)66 of 2017. The Adjudicating Authority by the impugned order allowed IA/364(AHM)2023 filed by Respondent No.1 – the Successful Auction Purchaser (“SAP”). Aggrieved by part of the order by

which the Adjudicating Authority has exonerated the SAP from paying interest charged on balance consideration, this Appeal has been filed.

2. The Appellant in the Appeal has prayed for following reliefs:

- “(A) This Hon'ble Tribunal may be pleased to quash and set aside the impugned judgment and order dated 21.06.2024 as passed by the Hon'ble Adjudicating Authority in I.A. 364 of 2023 in CP (IB) No. 66 of 2017 to the extent of waiver of interest granted to the Respondent on the delayed payment of balance Sale Consideration;
- (B). Pending hearing and final disposal of the present Appeal, this Hon'ble Tribunal may be pleased to direct the Respondent to deposit the interest @ 12% per annum on balance sale consideration to the tune of Rs. 46.81 Crores;
- (C). Pass any or such further orders in favour of the Appellant as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The CD – Anil Limited was subjected to insolvency process vide order dated 23.08.2017 passed by Adjudicating Authority. The Appellant was appointed as Resolution Professional. During the subsistence of moratorium, Department of State Tax, Gujarat attached the land of the CD on 16.10.2018.
- (ii) On 25.10.2018, the Adjudicating Authority directed liquidation of the CD and the Appellant was appointed as Liquidator. On 17.08.2020, IA No.501 of 2020 was filed by

the Liquidator against State Tax Department regarding unlawful attachment of the property.

- (iii) The Liquidator has issued e-auction sale notice along with Tender Document on 01.12.2022. Respondent No.1 gave an offer on 21.12.2022 along with demand draft of Rs.20 crores. Respondent No.1 gave bid amount of Rs.325 crores. On 29.12.2022, Respondent No.1 was declared as successful bidder, there being no other bid received. A letter dated 29.12.2022 was issued by the Liquidator to the SAP to make the balance payment.
- (iv) Respondent No.1 wrote a letter on 13.03.2023 to the Liquidator that the Respondent was required to make payment as per Sale Confirmation, the Respondent paid Rs.50 crores by way of part payment, totalling to Rs.70 crores. Respondent No.1 vide letter dated 13.03.2023 raised issue regarding -encroachment over 945 sq. mtrs. of land, charge of the State Tax Department over the land and reflection of name of Anil Products Ltd. instead of the CD in the revenue records. The Liquidator in reply on 17.03.2023 stated that Respondent No.1 was informed about the said issues prior to e-auction.
- (v) On 19.03.2023, Respondent No.1 wrote to the Liquidator that whether the Liquidator will be able to convey the property to Respondent on receipt of payment of Rs.255 crores on or

before 29.03.2023. The Appellant vide its letter of the same date informed that transfer process shall be considered as an independent process and shall not in any way affect the payment schedule and the auction sale was 'as is where is basis', 'as is what is basis' and 'whatever there is basis'.

- (vi) On 23.03.2024, Respondent No. filed IA/364(AHM)2023 seeking extension of time/ waiver of interest. An interim order dated 15.06.2023 was passed on IA/364(AHM)2023 with respect to prayer (a), which prayed for extension of time. With respect to prayer (b), the Adjudicating Authority observed that at this stage it is not deciding the issue of waiver of interest.
- (vii) On 21.06.2024, IA filed by the Liquidator for removal of the attachment was allowed and on the same date, the impugned order was passed in IA/364(AHM)2023. The operative portion of the impugned order is as follows:

“22. In view of the above, we pass the following order:

ORDER

- i) Application is partly allowed.
- ii) Applicant is exonerated from paying interest charged on balance consideration by respondent. Respondent not to charge interest on balance consideration at this stage.
- (iii) No extension of time is granted.
- iv) Prayer for removal of encroachment and other issues are rejected.”

4. The present Appeal is filed by the Liquidator challenging the impugned order dated 21.06.2024. Initially this Tribunal vide its order dated 06.02.2025 rejected IA No.8709 of 2024 filed by the Appellant praying for condonation of 115 days delay in refiling the Appeal. The Appellant filed Civil Appeal No.5106 of 2025 in the Hon'ble Supreme Court, challenging the order of this Tribunal dated 06.02.2025. The Hon'ble Supreme Court vide its judgment and order dated 05.05.2025 allowed the Appeal and set aside the order of this Tribunal dated 06.02.2025, which required this Tribunal to hear the Appeal on merits.

5. We have heard Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant and Shri Arun Kathpalia, learned Senior Counsel appearing for Respondent No.1.

6. Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant submits that under the order dated 15.06.2023 passed by Adjudicating Authority in IA/364(AHM)2023 the prayer made with regard to waiver of interest, was not considered. It is submitted that after order passed by Adjudicating Authority dated 15.06.2023, the entire payment of balance amount was made within the time allowed by the Adjudicating Authority, however, the payment made by Respondent No.1 was not with 12% interest, which was liable to be paid after 30 days, as provided under Schedule-I of IIBI (Liquidation Process) Regulations, 2016. It is submitted that the payments made by SAP after 30 days are required to be made with 12% interest, which is a statutory requirement. It is submitted that

under the Clauses of Tender Document, it was clearly provided that the sale is as is where is basis', 'as is what is basis' and 'whatever there is basis' and Bidders were made aware of all relevant facts. It was also contemplated that sale process shall be considered as independent process and shall not in any way affect the payment schedule as specified in Clause 4.10 of the Tender Document. It is submitted that attachment of the land by the State Tax Department, could not be a ground for non-payment of sale consideration within the time prescribed by Schedule-I of the Regulation. In any event, payments made beyond 30 days has to be with 12% interest. The Adjudicating Authority without there being any consideration or discussion has exonerated Respondent No.1 from paying interest on balance consideration, which is not in accordance with law. Learned Counsel for the Appellant in support of his submission has placed reliance on judgment of the Hon'ble Supreme Court in **V.S. Palanivel vs. Sri Lakshmi Hotels (P) Ltd., P. Sriram, CS, Liquidator and Ors. – (2025) 1 SCC 559**. He submits that the above judgment of the Hon'ble Supreme Court fully covers the issues, which have been raised in the present Appeal. It is submitted that in the above case, the Hon'ble Supreme Court has held that attachment by Income Tax Department of the assets, could not be a ground for not making the payment of sale consideration within the time allowed. It is submitted that the Hon'ble Supreme Court has ultimately directed the payment with interest, which judgment covers the issues. It is submitted that SAP was obliged to make payment of balance consideration along with interest and

interest having not been paid, the Adjudicating Authority has erroneously exonerated Respondent No.1 from making the payment of interest.

7. Shri Arun Kathpalia, learned Senior Counsel appearing for Respondent No.1 refuting the submissions of the Appellant submits that the attachment by the State Tax Department being continued, Respondent No.1 within 90 days period wrote a letter on 19.03.2023 asking the Liquidator whether Liquidator would be in a position to convey the ownership of the land in event the entire amount is paid. The Liquidator on 20.03.2023 replied that he would not be in a position to convey ownership of the said land until attachment by State Tax Department is lifted. Thus, Respondent No.1 was always ready and willing to pay, but since the Liquidator was not able to transfer the title, the payment could not be made. It is submitted that on 15.06.2023, the Adjudicating Authority had extended the period for making the balance consideration, which order permitted Respondent No.1 to pay the balance consideration towards the auctioned property within five days from the date of intimation by the Liquidator regarding lifting of attachment. After lifting of attachment on 21.06.2024, the payment was made within the time allowed. The Adjudicating Authority having extended the payment of time till the attachment is lifted, there was no obligation on Respondent No.1 to pay the balance consideration. The Liquidator was also not entitled for payment of interest, since the Liquidator was not in position to transfer the ownership of the land. The Sale Certificate was required to be issued within 30 days from the date of last payment of full bid amount,

and since the Liquidator was not able to execute the Sale Deed on account of attachment of asset, there was no obligation on Respondent No.1 to make payment. Learned Counsel for Respondent No.1 referring to Section 51 of the Indian Contract Act, 1872 submits that in the absence of reciprocal promises being fulfilled by a promisee, the promisor is not bound to perform his obligations. The agreement between parties, which depends on fulfilment of reciprocal promises constituting consideration for one another. The Adjudicating Authority vide order dated 15.06.2023 directed that the Appellant was to take steps to lift attachment from the said land and within a period of five days of intimation, Respondent No.1 was required to pay the balance consideration. The Respondent having complied the payment of balance consideration within the time as allowed by the NCLT, there is no liability to pay interest. The order dated 15.06.2023 was never challenged by the Appellant and has become final between the parties. Respondent No.1 was always willing and was in a position to pay the balance consideration. There was no obligation to pay the balance consideration in view of the order dated 15.06.2023. The Adjudicating Authority has rightly exonerated Respondent No.1 from paying the interest on balance consideration.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. Before we enter into respective submissions of the parties, it is relevant to notice certain clauses of Tender Document dated 03.12.2022,

which is Annexure 'E' to the Appeal. Under the heading 'disclaimer' in Clauses 3, 10 and 12, following has been mentioned:

- “3. It is to be noted that no information being provided in this 'Tender Document' claims to be comprehensive, independent due diligence of the intended user of this document or the bidder is highly recommended.”
10. The Land of the Company are proposed to be sold on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis and the proposed sale of land of the Company does not entail transfer of any other title, except the title which the Company had on its land as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the land of the Company.
12. This Tender Document is neither an agreement nor an offer by the Liquidator to the Prospective Bidders or any other person. The objective of this Tender Document is to provide interested parties with information that may be useful to them in making their bids. It may be noted that the assumptions, assessments, statements and information contained in the Tender Document may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own due-diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Tender Document and may get independent advice from appropriate sources.”

10. Further, the Tender Document contemplated that information provided in Tender Document is to be read together with the provisions of

IBC and Liquidation Process Regulations. Clauses 1.2 and 1.7 are as follows:

“1.2 The information provided in this "Tender Document" should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Tender Document and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall always prevail.

1.7 The sale of the Land will be conducted in terms of:

- (i) the Order of the National Company Law Tribunal; and
- (ii) the sections, rules, regulations and guidelines under Insolvency & Bankruptcy Code, 2016”

11. Annexure-2, which was declaration by the Bidder, was integral part of the Tender Document. The Bidder was to issue a declaration. Further under Clause 4, terms and conditions of the e-auction, following has been mentioned in Clauses 4.2 (a), (b) and (g):

“4.(a) The Land are being sold strictly on an "as is where is, what is there is, whatever there is and non-recourse" basis.

(b) Bidders are advised to go through all the terms and conditions of sale given in this Tender Document and also in the Notice of Sale before participating in the online bidding/auction.

(g) Kindly note that on the basis of available records, part of the land is appearing as Lease hold in the Property Card and Revenue records of Anil Limited. The Bidder shall conduct his own diligence before submitting the EMD and signing this documents. The Seller shall only ensure the transfer of title as available. However, such process shall be considered

independent process and shall not in any way affect the payment Schedule as specified Clause 4.10, in accordance with Regulation 33, Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.”

12. Further, under Clause 4.3, Bidders were requested to inspect the land, including the area of the land. Clauses (b), (d) and (e) of 4.3 are as follows:

- “4.3(b) Bidders are advised/ cautioned to verify with the sub-registrar's office as well as obtain and analyze the revenue records with respect to the Land and to satisfy themselves regarding the existence, title, nature, description, condition, existing encumbrances, liens, charges, statutory dues, etc. over the Land before submitting their bids.
- (d) Bidders are bound by the principle of caveat emptor (buyer beware).
- (e) Bidders are requested to submit their bids only after conducting their own independent due diligence exercise with respect to the title to the Land.

13. Under Clause 4.10, sub-clause (b), bidders were required to pay balance sale price within 30 days of issue of Sale confirmation Advice. However, they can pay the amount within the extended period of 90 days from the date of issue of Sale of Confirmation Advice along with interest of 12% p.a. after 30 days. Clause 4.10 (b) is as follows:

- “4.10(b) No interest shall be levied if the balance amount (being total bid price less EMD) is paid within 30 days from the date of issue of sale confirmation advice. However, the successful bidder can pay the balance amount (being total bid price less EMD) within the extended period of 90 days

from the date of issue of sale confirmation advice along with the interest @ 12% p.a. after 30 days as specified under Regulation 33, Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Default in deposit of any amount as envisaged above by the successful bidder would entail forfeiture of the amount already deposited including EMD and property/(ies) shall be put to reauction and the defaulting bidder shall have no claim/right in respect of property/amount.”

14. Further, the Liquidator was free to cancel the sale, if the amount is not paid within the time as prescribed.

15. The Sale Confirmation Advice dated 29.12.2022 was issued to Respondent No.1, which is filed as Annexure ‘F’ to the Appeal. The Bidder was required to pay Rs.325 crores within 30 days from the date of issue of Sale Confirmation Advice. It was further provided that successful bidder may pay the balance amount within the extended period of 90 days from the date of issue of Sale Confirmation Advice along with interest @ 12% as per Schedule-I of the IBBI (Liquidation Process) Regulations, 2016. Respondent No.1 has relied on its letter dated 19.03.2023 issued by Respondent No.1 to the Liquidator, by which letter, Respondent No.1 asked following from the Liquidator:

“19th March, 2023

To,

CA Ramchandra Dallaram Choudhary.
Liquidator of Anil Ltd...
9-B. Vardan Complex,
Nr. Vimal House,
Lakhudi Circle,
Navrangpura, Ahmedabad,
Gujarat-380014

Dear Sir.

Sub: Sale of land Bearing Final Plot No. 137/P, 138, 139, 140 and 141 of TP Scheme no. 12 total admeasuring 1,44,856 Sq Mtrs. located at Bapunagar, Ahmedabad of Anil Limited ("property")

Ref: Your Letter dated 17.03.2023 mailed to us vide your email dated 18.03.2023

We are in receipt of your above referred response and have noted the contents thereof and we reserve our right to reply to it separately.

In the meantime, please let us know specifically that if we decide to pay the balance payment of Rs.255 or on or before 29th March. 2023. would you be able to convey the property to us simultaneously.

We await for your response.

Thanking You

Yours Sincerely

For Adani Infrastructure and Developers Private Limited
Vishal Shah
Authorised Signatory”

16. The Liquidator on 20.03.2023 replied the letter and clearly stated that transfer process is an independent process and shall not in any way affect the payment schedule as prescribed under Clause 4.10 of the Tender Document. It is useful to extract reply dated 20.03.2023, which is as follows:

“Dated 20.03.2023

To,

Shri Vishal Shah,

Adani Infrastructure and Developers Private Limited
10th floor, Shikhar, Near Adani House,
Mithakhali six roads, Ahmedabad 380009

Dear Sir,

Subject:

Reply to your letter dated 19.03.2023 with respect to Sale of land of Anil Limited ("property") located at Bapunagar, Ahmedabad.

With reference to the above subject, the undersigned is astound that at this stage of sale process your good office has raised this query with regards to transfer of property and payment terms. Kindly note that all the property documents/information / records related to sale process of land was shared with your good office well in advance and sufficient time was granted to carry out our own due diligence as required under the provisions of liquidation Regulations, 2016. Further, in clause 4.2 para g of the tender document dated 03.12.2022, clearly states that, the "transfer process shall be considered as independent process and shall not in any way effect the payment schedule os specified in clause 4.10 of the tender document".

Further, Clause 4.3 of the tender document clearly specifies that, "Bidders are requested to submit their bids only after conducting their own independent due diligence exercise with respect to title of land." The undersigned would like to reiterate again that the sale of Land of Anil Limited located at Bapunagar, Ahmedabad was made on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis"

The undersigned has time and again assured you to provide complete support and assistance in ensuring the transfer/conveying of the ownership of the property under revenue records in due course of time since transfer process has its independent mechanism which will be under taken as per the applicable Land Revenue Rules, however, the sale shall stand confirmed once sale certificate is issued by the undersigned since the undersigned will be in a position to issue the sale certificate on receiving the balance sale consideration and will also handover you the possession of the said property.

Further, at this stage since it is the known fact that there is charge of State Tax Department over the said property of the Corporate Debtor and the matter is pending before Hon'ble NCLT, Ahmedabad Bench under IA 501 of 2020 regarding removal of the attachment from the said property by State Tax Department, the undersigned will not be in a position to convey the ownership of the said property by registration of the sale deed until the attachment is removed by the State Tax Department. Further, the next date of hearing of the said IA 501 of 2020 is on 28.03.2023.

Thus, the undersigned humbly request you to adhere to the provisions of the Code and fulfill your commitments and make the payment as per the scheduled timeline i.e., on or before 29.03.2023 and as per the terms of tender document

Thanking you,

Yours faithfully,

For Anil Limited (In Liquidation)

Sd/-

CA Ramchandra Dallaram Choudhary
Liquidator
IP Reg. No: IBBI/IPA-001/IP-P00157/2017-18/10326
AFA valid till date: 15.11.2023”

17. The above letter clearly communicated Respondent No.1 that payment time lines as per Clause 4.10 of the Tender Document has to be adhered to and the Liquidator has already taken steps for removal of attachment, which application is to be listed on 28.03.2023.

18. IA/364(AHM)2023 was filed by Respondent No.1, in which following prayers were made:

“(a) This Hon'ble Tribunal may be pleased to direct the Respondent to extend the time-limit for making payment of the balance consideration amount of Rs.255,00,00,000/- (Rupees Two Hundred and Fifty Five Crores Only) by a further period of 3 months from 29.3.2022 or till such time as the issues raised by the Applicant in its letter dated 13.3.2023 relating to the said land are not finally resolved, whichever is later;

(b) This Hon'ble Tribunal may be pleased to direct the Respondent to waive the 12% Interest in respect of the balance payment of Rs.305,00,00,000/- (Rupees Three Hundred and Five Crores Only) made/to be made by the Applicant:

(c) This Hon'ble Tribunal may be pleased to direct the Respondent to take necessary steps for removal of encroachment over the said land and resolve the other issues raised in the Applicant's letter dated 13.3.2023 relating to the said land;

(d) Pending the hearing and disposal of the present interlocutory application, this Hon'ble Tribunal may be pleased to direct the Respondent to not take any coercive steps against the Applicant, including forfeiture of amount of Rs. 70,00,00,000/- (Rupees Seventy Crores Only) already deposited by the Applicant and/or cancellation of sale confirmed in favour of the Applicant;

(e) This Hon'ble Tribunal may be pleased to grant ex-parte ad-interim relief in terms of prayer (c) above; and

(f) This Hon'ble Tribunal may be pleased to grant such other reliefs as this Hon'ble Tribunal may deem fit in the interest of justice.”

19. In IA/364(AHM)2023, an order dated 15.06.2023 was passed, in which order, the Adjudicating Authority issued following directions:

“We are deciding the Prayer (a) at this stage. We direct the liquidator to intimate within seven days to the State Tax Department regarding their treatment as Secured Creditor. We direct the learned governing bidder to lift the attachment within ten days of receipt of the intimation from the liquidator. We direct the liquidator to intimate within two days of lifting of attachment to the Successful Bidder. The Successful Bidder is directed to pay the balance amount of Rs. 255 Crores towards the auction property within five days of intimation from the liquidator. At this stage, we are not deciding the issue of waiver of interest prayed in Clause (b).”

20. The above order, thus, clearly extended the period for deposit of the balance consideration by Respondent No.1, which was to be deposited within five days after receiving the intimation from the Liquidator regarding lifting of the attachment.

21. The Adjudicating Authority passed an order dated 21.06.2024 allowing IA 501 of 2020 filed by the Liquidator for lifting the attachment. On the same day, IA/364(AHM)2023 was allowed in which directions as noted above were passed. Only question to be considered in this Appeal is as to whether Respondent No.1 was liable to pay interest @ 12% on the balance sale consideration, which was not paid within 30 days from the receipt of Sale Confirmation Advice and whether the order of Adjudicating

Authority exonerating Respondent No.1 from interest charge is sustainable.

22. The statutory provisions of Schedule-I Clause 12 and 13, which are relevant are 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.

(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.”

23. The statutory provision required payment of entire sale consideration in maximum 90 days, but payment beyond 30 days has to be made with 12% interest. In the present case, on an application filed by Respondent No.1, the Adjudicating Authority has already extended the period for deposit of the balance sale consideration by order dated 15.06.2023, in pursuance of which order, the SAP has deposited balance consideration on 29.07.2024 (Rs.255 crores). Thus, the present is not a case, where there is any issue with regard to deposit of balance consideration by SAP. The Liquidator has also accepted the offer and has issued Sale Certificate. We have noticed order dated 15.06.2023, which clearly provided that question of waiver of interest is not being considered

and will be considered while finally deciding IA/364(AHM)2023. When we look into the impugned order dated 21.06.2024, in the order, the Adjudicating Authority has exonerated Respondent No.1 from paying interest charge, the only reason, which can be referred to for exonerating for payment of interest is that the Liquidator was unable to execute the Conveyance Deed and transfer of the asset, hence, the SRA cannot be forced to pay balance consideration. The Adjudicating Authority has further held that time line given for payment of sale price is only directory in nature. The observation made by Adjudicating Authority in paragraph 21 of the impugned order is as follows:

“21. From the above judgments, it is clear that the time line given for payment of sale price is only directory in nature. So also when there was an attachment by the Sales Tax Department, the respondent is not in a position to convey the land to the applicant by executing necessary sale deed. When the liquidator is unable to execute the conveyance deed and transfer the assets, the SA cannot be forced to pay balance consideration. Therefore, applicant cannot be directed to make payment of balance consideration and in default of same ask to make payment of interest. The respondent is not entitled the claim interest on the balance amount in this situation being unable to convey title. The tribunal has adjudicated the matter in separate applications filed by the liquidator and State Tax Department in IA 501/2020 in CP(IB) 66 of 2017.”

24. As far as the observation of the Adjudicating Authority in paragraph 21 that the time line given for payment of sale price is only directory in nature, the said observation cannot be sustained. It is now settled by several decisions of this Tribunal and the Hon'ble Supreme Court that the time line provided in Schedule-I of Regulation is mandatory. The Hon'ble

Supreme Court in **V.S. Palanivel** (supra) in paragraph 68 has clearly held that Rule 12 of Schedule-I has to be treated as mandatory. Paragraph 68 of the judgment of the Hon'ble Supreme Court is as follows:

“**68.** In view of the analysis undertaken above, Rule 12 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator. To that extent, there is substance in the submission made on behalf of the appellant that since the second proviso under Rule 12 contemplates a consequence of cancellation of the auction on non-payment of the balance sale consideration within 90 days, the Liquidator was not empowered to extend the timeline.”

25. There can be no dispute that provision of Schedule-I Rule 12 is mandatory as noted above. Ninety days' maximum period for payment of sale consideration with 12% interest on payment made after 30 days, both have to be treated as mandatory. The present is a case where 90 days' period was extended by the Adjudicating Authority on IA/364(AHM)2023 filed by SAP. The order dated 15.06.2023 contained following directions – (i) The Liquidator to intimate to the State Tax Department regarding their treatment as Secured Creditor; (2) Direction to the governing bidder to lift the attachment within 10 days of the receipt of the intimation from the Liquidator; (3) Direction to the Liquidator to intimate within two days of lifting of attachment to the Successful Bidder; and (4) Successful Bidder to pay the balance amount of Rs.255 crores towards the auction property within five days of intimation from the Liquidator. It is settled law that the Liquidator has no jurisdiction to

extend timelines as provided under Schedule-I Rule 12. However, the Adjudicating Authority in appropriate case has been held empowered to extend the timelines provided in Schedule-I Rule 12. In **V.S. Palanivel's** case, the Liquidator has expressed its inability to extend the timeline, on which the auction purchaser filed an application before Adjudicating Authority, which application was allowed by the Adjudicating Authority vide order dated 05.05.2020. The said order came to be challenged before the Appellate Tribunal, which Appeal was dismissed, against which Civil Appeal was filed in the Hon'ble Supreme Court, which was decided by the judgment of the Hon'ble Supreme Court dated 28.08.2024. The Hon'ble Supreme Court in the above context has referred to Section 35 of the IBC, where the Liquidator is to exercise its powers and duties for sale of assets, subject to directions of the Adjudicating Authority. The Hon'ble Supreme Court found that the Adjudicating Authority has jurisdiction in extending the timeline. It is useful to notice paragraphs 71 to 74 of the judgment, which are as follows:

“71. In the present case, records reveal that when the auction-purchaser had approached the Liquidator seeking extension of time to deposit the balance sale consideration. The Liquidator had rightly expressed his inability to do so and indicated that such a power vests only in the adjudicating authority. On receiving the aforesaid response, the auction-purchaser did take steps to move the adjudicating authority for seeking extension of time for making the payments. It is a matter of record that the said application was allowed by the adjudicating authority on 5-5-2020 [*KMC Speciality Hospital (I) Ltd. v. Sri Lakshmi Hotels Ltd. (Liquidator)*, 2020 SCC OnLine NCLT 7278] and time was granted to the auction-purchaser

to pay the balance sale consideration on the Central Government/State Government lifting the lockdown.

72. The aforesaid order dated 5-5-2020 [*KMC Speciality Hospital (I) Ltd. v. Sri Lakshmi Hotels Ltd. (Liquidator)*, 2020 SCC OnLine NCLT 7278] , was passed by the adjudicating authority in exercise of its inherent powers under Rule 11 of the 2016 NCLT Rules which states as follows:

“**11. Inherent powers.**—Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

73. The aforesaid Rule is not to be read in isolation but in conjunction with Section 35 IBC that deals with the powers and duties of the Liquidator and states that the Liquidator shall have the powers and duties specified in clauses (a) to (o) of sub-section (1) including the power to sell an immovable/movable property of the corporate debtor in liquidation by public auction/private sale as per clause (f), subject to the directions of NCLT. Pertinently, it has been observed in *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.* [*Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*, (2021) 7 SCC 474 : (2021) 14 Comp Cas-OL 231, para 81] that : (SCC pp. 527-28, para 81)

“81. ... The Liquidator exercises several functions which are of a quasi-judicial in nature and character. Section 35(1) itself enunciates that the powers and duties which are entrusted to the Liquidator are “subject to the directions of the adjudicating authority”. The liquidator, in other words, exercises functions which have been made amenable to the jurisdiction of NCLT, acting as the adjudicating authority.”

74. In the facts of the present case, the adjudicating authority exercised statutory powers under Section 35 IBC read with its inherent powers under Rule 11 of the 2016 NCLT Rules for extending the time to deposit the balance sale consideration on

sufficient cause being shown i.e. in view of the countrywide lockdown due to the Covid-19 Pandemic. This latitude that was given in the aforesaid extraordinary circumstances to meet the ends of justice, cannot be faulted.”

26. Further, it is relevant to notice that order dated 15.06.2023, by which directions were issued by Adjudicating Authority for extending timelines, was not challenged by any of the parties. The order dated 15.06.2023 was not a simple order of extending the timelines, it contained various directions as noted above, which indicates the balance payment of sale consideration by auction purchaser was dependent on various facts, which were to be completed prior. There is no challenge to the order dated 15.06.2023, which has become final between the parties.

27. The challenge in the present case is the decision of the Adjudicating Authority exonerating the SAP from paying interest on balance consideration. In the present case, Sale Confirmation Advice was issued on 29.12.2022. The period of one month for sale consideration as provided in Schedule-I Rule 12 came to an end on 28.01.2023. The SAP has only paid an amount of Rs.20 crores, hence, Rs.305 crores was balance consideration, which admittedly was not paid within 30 days. The balance consideration of Rs.305 crores was liable to be paid with 12% interest, after expiry of 30 days. Further, the amount of Rs.50 crores was paid on 13.03.2023, i.e. within a period of 90 days as provided in Schedule-I Rule 12. As per Schedule-I Rule 12, after 30 days from 29.12.2022 SAP was liable to pay 12% interest. The application IA/364(AHM)2023, which was filed by the SAP praying for extension of

time and exoneration of interest, came to be considered and order was passed on 15.06.2023 as noted above. Time extension, which was allowed by the Adjudicating Authority, thus, commenced only on 15.06.2023. The SAP, thus, was clearly liable to pay balance sale consideration @ 12% interest as per Schedule-I Rule 12. We, thus, hold that SAP was clearly liable to pay interest @ 12% on the balance consideration after expiry of 30 days from 29.12.2022.

28. Shri Arun Kathpalia, learned Senior Counsel appearing for the Respondent relying on Section 51 of the Indian Contract Act, 1872 submits that in the absence of reciprocal promises being fulfilled by a promisee, the promisor is not bound to perform his obligation. It is submitted that when the Liquidator was not competent to transfer the assets in favour of SAP, the Liquidator cannot ask the Appellant to fulfill the promise of payment of balance consideration. In support of the above submission Shri Kathpalia relies on judgments of the Hon'ble Supreme Court in **(1969) 3 SCC 120 – Nathulal vs. Phoolchand; Sikkim Subba Associates vs. State of Sikkim – (2001) 5 SCC 629** and Delhi High Court judgment in **I.C.M. Airport Technics vs. International Airports Authority of India (2006) SCC OnLine Del 15**.

29. The Hon'ble Supreme Court in **Nathulal's** case (supra) was considering a case where parties have entered into a contract with regard to ginning factory, constructed on a plot of land, which was entered into revenue records in the name of brother of Nathulal (the Appellant). Contract was rescinded. Thereafter, a suit was filed for decree for

possession. In the above reference, the Hon'ble Supreme Court made following observations in paragraphs 11 and 12:

“**11.** Nathulal had expressly undertaken to have the revenue records rectified by securing the deletion of Chittarmal's name, and it was an implied condition of the contract that Nathulal will secure the sanction of the collector to the transfer under Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act 66 of 1950. The first condition was not fulfilled till October 6, 1952, and the second condition was never fulfilled. We are unable to agree with Mr Shroff that the repeal of the Madhya Bharat Act 66 of 1950, by the Madhya Pradesh Land Revenue Code, 1959, has retrospective operation.

12. In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account. The argument raised by Mr Shroff that Nathulal was bound to perform the two conditions only after the amount of Rs 21,000 was paid is plainly contrary to the terms of the agreement. By virtue of Section 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. If, therefore, under the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.”

30. The present is not a case for any breach of contract entered between the parties, rather is a case of sale of liquidation estate under the statutory provisions of Liquidation Process Regulations, 2016. The above judgment, thus, does not come to any aid of the Respondent in the present case. Similarly, the judgment of Hon'ble Supreme Court in **Sikkim Subba Associates** (supra), which arose out of award given by District Judge Gangtok, where the State has filed an application under Section 30 of the Arbitration Act, 1940, which judgment has no application in the facts of the present case. The judgment of the Delhi High Court in **I.C.M. Airport Technics** (supra) was also a case, which arose out of the Arbitration Act, 1940 and has no applicability in the facts

of the present case. We, thus, are of the view that the above submission advanced by learned Counsel for the Respondent relying on Indian Contract Act, 1872, does not help the Respondent in the facts of the present case.

31. The next question, which needs consideration is as to whether during the period of order dated 15.06.2023, extending the time for payment of sale consideration was in operation, whether the SAP was liable to pay interest of 12% on the balance sale consideration during the said period or not? There being order of the Adjudicating Authority on 15.06.2023 extending the period for deposit of balance sale consideration, clearly there was no liability on the SAP to pay balance sale consideration. When balance sale consideration could not have been paid by SAP during the abovesaid period, we are of the view that liability to pay interest during the said period needs to be waived.

32. We also need to consider one submission raised by the Respondent that due to attachment by Sate Tax Department, the Liquidator could not have executed the Conveyance Deed in favour of the SAP, hence, the SAP was not liable to pay any consideration till attachment is lifted. We have already noticed the relevant clauses of the Tender Document dated 03.12.2022 and Clauses 9 to 13, as above. The clauses of Tender Document clearly provided that sale was 'as is where is basis', 'as is what is basis' and 'whatever there is basis' and the prospective bidders were required to make their own due diligence. The disclaimer contained in Clauses 3, 10 and 12 has also been noted above and the bidders were

also advised to analyze the revenue records with respect to the land and to satisfy themselves regarding the existence, title, nature, description, condition, existing encumbrances, liens, charges, statutory dues, etc., which were contained in Clause 4.3 (b) of the Tender Document. Further, under Clause 4.2 (g) bidders were required to conduct their own due diligence and seller shall only ensure the transfer of title as available, which process was to be considered as independent process and shall not in any way affect the payment schedule as specified in Clause 4.10. Thus, the Tender Document made it clear that payment timelines are not dependent on any completion of process of transfer of title. The Hon'ble Supreme Court in **V.S. Palanivel** had also considered the same submissions in context of attachment by Income Tax Department on the assets of the CD. The Hon'ble Supreme Court had held that after having participated in the e-auction with eyes wide open, the auction-purchaser cannot be heard to state that payment of the balance sale consideration was linked with the lifting of the attachment order passed by the Income Tax Department. Following was held in paragraph 79 of the judgment:

“79. In the light of the notice for sale and the replies furnished to the auction-purchaser well before the bidding process had commenced, we are of the considered view that it was for the auction-purchaser as an intending bidder to have conducted a due diligence at its own end, gather all the relevant information pertaining to the subject property which included the status of the property and the liabilities attached to it, weigh all the pros and cons and only thereafter participate in the auction process. After having participated in the e-auction with its eyes wide open, the auction-purchaser cannot be heard to state that payment of the balance sale consideration was linked with the lifting of the attachment order passed by the Income Tax Department when it knew all along that the auction was being conducted on an “as-is-where-is”, “as-is-what-is” and “whatever-there-is” basis.”

33. The Hon'ble Supreme Court has further held that Rule 12 is not interlinked with Rule 13. In paragraphs 82, 83 and 84, the Hon'ble Supreme Court held following:

“82. The contention of the learned counsel for the auction-purchaser is that Rule 13, Schedule I to the 2016 IBBI Regulations must be read in conjunction with Rule 12 and only on payment of the full amount, could the sale transaction be treated to have been completed in all respects. Since the full amount could not be paid till the attachment order was lifted, the Liquidator could not have executed a certificate for sale/sale deed to transfer the subject property in favour of the auction-purchaser.

83. We are afraid, such an assumption does not stand to reason. Rule 12 is not interlinked with Rule 13. Both the Rules cover different situations. The first proviso to Rule 12 gives a leeway to the successful bidder to make payment of the balance sale consideration after thirty days subject to paying interest @ 12%. However, the second proviso to Rule 12 is unequivocal and declares that the sale itself will be treated as cancelled if the payment is not received within the outer limit of 90 days. It is only on completion of the steps contemplated in Rule 12 that Rule 13 can come in. Reference to Rule 13 that starts with the expression “*on payment of the full amount*” would naturally be understood to mean on payment of the full amount within the period prescribed in Rule 12. We have already held Rule 12 to be mandatory in character because non-payment within the timeline has consequences attached to it. However, in contrast thereto, there are no adverse consequences spelt out in Rule 13 for it to be treated as mandatory. The said Rule lays down the procedure for completion of the sale and would have to be treated as directory since some procedural steps have been set out for purposes of completion of the sale process, but nothing beyond that. We are therefore not inclined to accept the submissions made by the respondents that none of the activities as contemplated in Rule 12 could have been

completed unless and until the attachment order passed by the Income Tax Authorities was lifted or that the Liquidator was not in a position to complete the sale under Rule 13 on that count.

84. In any event, the Liquidator had taken timely steps to move the adjudicating authority for appropriate permission which was obtained as long back as on 10-2-2020 [*P. Sriram v. Sub-Registrar of Assurances*, 2020 SCC OnLine NCLT 4703] i.e. about a month-and-a-half before the nationwide lockdown was declared. Moreover, the auction-purchaser was well aware of the fact that the entire tax arrears amounted to Rs 2,44,01,603 (Rupees two crores forty-four lakhs one thousand six hundred and three only), which could have easily been paid out of the earnest money of Rs 2,95,59,638 (Rupees two crores ninety-five lakhs fifty-nine thousand six hundred and thirty-eight only) deposited by it, still leaving some surplus funds. The Liquidator had also taken steps to apprise the auction-purchaser of the said position and the order of priority that was to be given to the claim of the Income Tax Department. Yet the auction-purchaser did not deposit the balance sale consideration. In view of the above, the plea taken by the auction-purchaser that the income tax attachment order was a serious and an insurmountable impediment in completion of the sale and the subject property could not have been validly transferred in its favour by the Liquidator, is rather tenuous and not persuasive.”

34. We, thus, are of the view that submission of Respondent that the assets being attached with the State Tax Department, there was no obligation to pay sale consideration, cannot be accepted.

35. In view of our above observations and conclusions, we are of the view that Appeal deserves to be partly allowed. The directions contained in paragraph 22 (ii) of the impugned order is set aside and is substituted by following direction:

“22(ii). The Respondent No.1 is liable to pay 12% interest on balance sale consideration after 30 days period from 29.12.2022 till 15.06.2023, on which date the Adjudicating Authority granted extension for payment of sale consideration. The aforesaid amount of interest be paid by Successful Auction Purchaser (Respondent No.1) within a period of two weeks.

The rest of the order of Adjudicating Authority is not being interfered with.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

8th December, 2025

Ashwani