

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

NCLAT Judgement:

Adjudicating Authority by adopting a process of taking two bids cannot conclude the sale of a Corporate Debtor without giving an opportunity to Liquidator to take steps for private sale.

State Bank of India vs. Bhueve Stenovate Pvt. Ltd. & Ors.,

In the present case, Laser Solar LLP(R2) has given an offer to the liquidator to acquire the assets by way of private sale of Rs. 50.05 Crores which offer was rejected by the Liquidator on 13.05.2022. On IA by R2, Adjudicating Authority directed both R2 and M/s. Jindal Stainless Ltd. to submit their respective bids under cover of sealed envelope before the Adjudicating Authority and thereafter, confirmed the sale by private treaty in favour of the highest bidder(R2).

NCLAT held that the liquidator under the statutory Scheme of the IBBI (Liquidation Process) Regulations, 2016 have been empowered to take a decision regarding sale of the assets of the Corporate Debtor. Merely on the basis of one application and other by an intervenor, the Adjudicating Authority could not have concluded the sale in favour of the R2. The Adjudicating Authority by adopting a process of taking two bids, one by the Applicant and another by intervenor could not have concluded the sale of the Corporate Debtor without giving an opportunity to the liquidator to take steps for private sale.

Whether Adjudicating Authority (NCLT) can remove a Liquidator?

CA V. Venkata Sivakumar vs. IDBI Bank Ltd.,

NCLAT held that the Code, 2016 does not explicitly state the grounds for removing the liquidator. In the absence of specific provisions, we may resort to Section 33 & 34 of the Code, 2016 and Section 276 of the Companies Act, 2013, which provides for the removal and replacement of liquidators on various grounds. No Liquidator has any personal rights, to continue in Liquidation and the Adjudicating Authority, can order for replacement of the Liquidator, recording sufficient reasons, as per law. Combined reading of above Case Laws and provisions along with Section 33 and Section 34 of the Code, 2016, would make it clear that the Adjudicating Authority, which had the powers, to appoint the Liquidator, will also have the powers, to remove the Liquidator for reasons, the Adjudicating Authority, may find fit, just, valid and proper.