NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1944 of 2024

IN THE MATTER OF:

Arrhum Tradelink Pvt. Ltd. **...Appellant**

Versus

Manoj Khattar
Liquidator of Vimal Oil & Foods Ltd. **...Respondent**

Present:

For Appellant : Mr. Navin Pahwa, Sr. Advocate with Mr. Himanshu Satija, ms. Neha Mehta Satija, Mr. Harsh Saxena Ms. Ridhi Ranjan and Mr. Ravi Pahwa, Advocates

For Respondent : Ms. Richa Kapoor, Mr. Kunal Anand and Ms. Shisham Pradhan, Advocates for R-2 (Bank of India).
Mr. Palash Agarwal, Advocate for Liquidator

With
Company Appeal (AT) (Insolvency) No. 2284 of 2024

IN THE MATTER OF:

Manoj Khattar,
Liquidator of Vimal Oil & Foods Ltd. **...Appellant**

Versus

Arrhum Tradelink Pvt. Ltd. & Anr. **...Respondents**

Present:

For Appellant :

For Respondent : Ms. Richa Kapoor, Mr. Kunal Anand and Ms. Shisham Pradhan, Advocates for R-2 (Bank of India).

Mr. Navin Pahwa, Sr. Advocate with Mr. Himanshu Satija, ms. Neha Mehta Satija, Mr. Harsh Saxena Ms. Ridhi Ranjan and Mr. Ravi Pahwa, Advocates for R-1.

O R D E R
(Hybrid Mode)

17.04.2025 Heard Learned Counsel for the Appellant as well as the Counsel for the Liquidator and counsel appearing for the Financial Creditor.

These two appeals have been filed against the same order dated 07.10.2024 in I.A. No. 471/NCLT/AHM/2022 filed by Arrhum Tradelink Private Limited – The Successful Auction Purchaser. By the impugned order, Adjudicating Authority while dismissing the application has also set aside the sale of the property as going concern and has also issued various directions, aggrieved by which order the Successful Auction Purchaser as well as the Liquidator has filed these Company Appeal (AT) (Insolvency) No. 1944 of 2024, filed by the Successful Auction Purchaser and Company Appeal (AT) (Insolvency) No. 2284 of 2024 filed by the Liquidator.

Brief facts to be noticed deciding the appeals are:

On an application filed by the Bank of Baroda under Section 7 CIRP against the Corporate Debtor – Vimal Oil and Foods Limited CIRP commenced on 19.12.2017, no resolution plan having been approved, The Liquidation order was passed on 19.12.2019 by the Adjudicating Authority. Liquidator published a sale notice on 02.11.2020 for sale of the assets and properties of Corporate Debtor liquidation as a going concern.

In pursuance of the auction notice, the Appellant - Arrhum Tradelink Pvt. Ltd. participated in the auction held on 04.12.2020 and was declared Successful Purchaser for an amount of Rs.69.95 Crores. A sale agreement was also executed on 03.03.2021 by the Liquidator in favour of the Successful Auction by a to the separate process of public auction and separate agreement dated 11.03.2021 was entered. All Financial Creditors gave no objection/no dues certificate to the Corporate Debtor and confirmed the sale as going concern. Appellant paid the entire sale consideration and acquired the Corporate Debtor as going concern. Appellant has also filed a Criminal Miscellaneous Application No. 11557 of 2021 in the Gujrat High Court praying for quashing the criminal proceeding filed against the Corporate Debtor. Relying on Section 32A of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC'). The Appellant filed an IA No. 471/2022 seeking certain reliefs and concessions.

In the Application, the Appellant has prayed for various reliefs and concessions. The Application came for consideration before the Adjudicating Authority. By the impugned order, the Adjudicating Authority has dismissed the Application and while dismissing the application has also directed for cancellation of sale as going concern. The Adjudicating Authority by the impugned order in paragraph 11 has issued following direction:

> *"....*
>
> *11. In view of the above, we pass the following orders:*
>
> *ORDER*
>
> *I. The sale of the property of the corporate debtor as "going concern" is null and void.*
>
> *II. Penalty to be imposed for filing this application as having been done on "Clean Slate Basis". Separate action to be initiated against the Liquidator in the IA filed seeking discharge from liquidator, who has done this act of sale when there are IAs including Sec 66 applications and recovery of Debts pending (which have been excluded from the sale) including the action of the SCC with directions to Registry to report to IBBI further disciplinary action against the liquidator on all acts and*

deeds committed during the liquidation. process including passing necessary orders against the Resolution Professional not be enrolled in any of the CIRP matters till the matter is decided by the Disciplinary Committee.

III. Pending IAs to be disposed at the earlier and the liquidation process to continue by appointing a new liquidator from the panel of IBBI.

IV. IA 471 of 2022 in CP(IB) No.135/NCLT/AHM/2017is dismissed."

Aggrieved by the aforesaid order these two appeals have been made.

Learned Counsel for the Successful Auction Purchaser Mr. Navin Pahwa, Senior Counsel appearing for the Appellant contends that the application which was filed by the Successful Auction Purchaser was seeking relief and concessions and at the time of consideration of application, there was no occasion to declare the sale void, illegal as has been done in the impugned order. It is submitted that the sale was confirmed, Financial Creditor also gave their no objection and there was no challenge to the sale by anyone. When there was no challenge to the sale, question of sale being void or illegal could not have been gone into by the Adjudicating Authority while considering the Application for relief and concessions.

Learned Counsel for the Appellant has also referred to the judgment of Gujrat High Court dated 24.08.2022 in Criminal Miscellaneous Application No. 11557 of 2021 which application was filed by the Successful Auction Purchaser and has been allowed by the Gujrat High Court relying on Section 32A of the IBC. It is submitted that the present in not a case where any order was required by Adjudicating Authority for declaring the sale as null and void and issuing further directions.

Learned Counsel for the Liquidator also has supported the submissions made by the Successful Auction Purchaser and submits that sale was never challenged by any of the bidders or any of the creditors. Sale had become final and sale agreement was never questioned and Corporate Debtor has already been handed over to the Successful Auction Purchaser for running the Corporate Debtor, which is being run. It is submitted that application was only for seeking certain reliefs and concessions and at that stage, there was no occasion to declare the sale null and void.

Learned Counsel appearing for the Financial Creditor – Bank of India also submits that there was no challenge to the sale and the Financial Creditors also support the submissions of Counsel appearing for the Appellant.

We have considered submission of counsel for the parties and perused the record.

From the facts which has been noticed above, it is clear that the sale of the Corporate Debtor was on pursuance of the public auction held on 04.12.2020. The Arrhum Tradelink Pvt. Ltd. emerged a Successful Auction Purchaser and sale agreement dated 03.03.2021 is also executed by Liquidator in its favour and the Successful Auction Purchaser has been handed over the Corporate Debtor and has been running the Corporate Debtor. The auction notice which has been brought on the record indicate that sale of the auction mentioned the sale as going concern. Copy of the auction notice has been brought on record at page 95, which is as follows:

SALE NOTICE UNDER IBC,2016
VIMAL OIL & FOODS LIMITED (IN LIQUIDATION)
Reg. Off .: At Village Hanumant Heduva, Nr. Palavasna Railway Crossing Highway, Road, Mehsana, Gujarat 384002

Sale of Assets and Properties owned by M/s. Vimal Oil & Foods Limited (in Liquidation) forming part of Liquidation Estate formed by the Liquidator. The Sale will be done by the undersigned through the E-Auction platform: https://ncltauction.auctiontiger.net..

Asset Description	Manner of Sale	Inspection Date	Date and Time of Auction	Reserve price INR In Crores	EMD Amount & Documents submission deadline
Company as a whole	As going Concern (excluding 7 receivables described in the auction process document)	Before 24th November, 2020	1st December 2020 11 AM to 1 PM	69.70	INR 6.97 Crores on or before 24th November 2020

1. EMD can be deposited either by remittance into the account or through demand draft or Bank Guarantee.
2. E-Auction will be conducted on "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS BASIS" and "WITHOUT RECOURSE BASIS" only. The auction will be conducted through the service provider M/s eProcurement Technologies Limited, Mr. Praveen Thevar (9722778828/ 6351896833) at web portal https://ncltauction.auctiontiger.net
3. Interested applicants may refer to the COMPLETE E- AUCTION PROCESS INFORMATION DOCUMENT containing details of terms and conditions of online E-Auction, E-Auction Bid form, Eligibility Criteria, Declaration by Bidders, EMD requirement etc., are available on service provider web portal i.e. https://ncltauction.auctiontiger.net, https://TenderTiger.com/FreeTender.aspx. or https://rbsa.in/announcements.html or through EMail: support@auctiontiger.net & praveen.thevar@auctiontiger.net.
4. The Liquidator has absolute right to accept or cancel or extend or modify, etc any terms and conditions of E-Auction at any time. He has right to reject any of the bid without giving any reasons

Manoj Khattar, Liquidator, Cell: 9172753488
IBBI Reg No.: IBBI/IPA-002/IP-N00748/2018-2019/12264
Date : 02.11.2020
Place: Ahmedabad
Liquidator's Address : Unit no. 1121, Building No. 11,2nd Floor Solitaire Corporate Park ,Andheri- Kurla Rd., Chakala, Andheri (E), Mumbai City, Maharashtra ,400093
Email IDs: manojkhattardd@gmail.com or lp.vimaloil@rbsa-advisors.com

No bidder or any other creditor has challenged the auction notice as going concern sale. When no one challenged the auction notice as a going concern sale and auction took place as a going concern and culminated finally, we fail to see that issue of going concern sale could be raised by the Adjudicating Authority of its own at the time of considering the application for relief and concessions. There was no challenge before the Adjudicating Authority to the sale in favour of the auction purchaser the entire sale consideration had already been paid and distributed to the stakeholders, no creditor has also raised any question regarding sale.

We thus are of the view that the Adjudicating Authority declaring the going concern sale as null and void cannot be supported. The Appellant has also relied on the judgment of Gujrat High Court as noted above, where giving the benefit of Section 32A of IBC, the proceedings have been quashed against the Corporate Debtor and the Gujrat High Court has extended the benefit of Section 32A of IBC in the facts of the present case.

We thus are of the view that the impugned order passed by Adjudicating Authority dated 07.10.2024 cannot be sustained. Both the Appeals are allowed. Order impugned is set aside.

The prayer of the applicants in I.A. No. 471/2022 having not being considered on merits, we permit the applicant to file a fresh application seeking reliefs and concessions within a period of 30 days from today, which may be considered and decided accordance with law at an early date.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

pks/nn