NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins)No.36/2025
(IA Nos. 127 & 128/2025)

In the matter of:

Ketan C Bagadia
28, Ritherdon Road,
Vepery, Chennai – 600 007 **… Appellant**

V

Radhakrishnan Dharmarajan,
Liquidator of Nexus Electro Steel Ltd.
Erstwhile Resolution Professional of
Nexus Electro Steel Ld.
C/o. RDH Co., Flat No.31,59, 'Krishna'
1st Avenue, 100-f, Road, Ashok Nagar,
Chennai 600 083 **...Respondent No. 1**

M/s. Chinar Steel Segment
Centre Private Limited,
Rep. by its Director
Mr. Bankey Bihari Singh,
Having its Registered Office at 301,
Centre Point,
21, Hemanta Basu Sarani,
Kolkata-700 001 (WB). **…Respondent No.2**

Present:

For Appellant	:	Mr. Raghav Menon, Advocate
For Respondents	:	Mr. T Ravichandran, Advocate for R1
		Ms. Shalya Agarwal, Advocate for R2

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant in the instant Company Appeal, questions the propriety of the Impugned Order dated 11.03.2024, as it has been rendered by the Ld. NCLT Division Bench II, Chennai, on an application which was preferred by the Appellant being IA(IBC)/1123(CHE)2023, in CP(IB)/377(CHE)2020 by invoking the provisions contained under Section 60(5) of Insolvency & Bankruptcy Code, to be read with Regulation 2B of IBBI (Liquidation) Regulations, 2016. The Appeal is accompanied by two interlocutory applications, being IA No 128/2025, praying for grant of stay of operation of the impugned order dated 11.03.2024, and IA No 127/2025, praying for condonation of delay of 224 days in re-filing the instant appeal.

2. In the Application IA(IBC)/1123/(CHE)/2023 thus preferred before Ld. Adjudicating Authority the appellant Ketan C Bagadia, had prayed for the following reliefs.

A. Declare the Auction notice dated 20.05.2023 issued by the Respondent and consequent proceedings/ sale under the aforesaid Auction Notice as null and void

B. Condone the delay in submitting the scheme under Section 230 of the Companies Act, 2013 mandated under Regulation 2B of IBBI (

Liquidation process) Regulations, 2016 and consequently , permit the Applicant to provide a scheme of Compromise under Section 230 of the Companies Act.

C. Pass such further or other Orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstanced of the case and thus render justice.

3. Brief facts of the case are that the Appellant/Applicant is Ex- Managing Director of the Corporate Debtor, (CD), M/s Nexus Electro Steel Limited, that the said CD was admitted into liquidation vide order dated 09.09.2022 in IA No. 773/2022 in Company Petition No. CP(IB)/377/2020, that the Liquidator (respondent no. 1) made 3 attempts to auction the company as a going concern on 27/02/2023, 30/03/2023 & 13/04/2023 and failing therein, on 20/05/2023, he successfully auctioned the Company on a piecemeal basis. Being aggrieved by the auction notice of 20/05/2023, the Appellant filed IA No.1123/2023 which came to be dismissed by the learned Adjudicating Authority.

4. This Application was put to a strong objection by the Respondent No. 1 in the Company Petition by filing a reply to it on 29.07.2023, wherein a definite stand has been taken by the respondent, that since the auction has already been completed on 11.06.2023 and the sale certificate has been issued, as back as on 17.07.2023 a material right has been created and crystalized in favour of the auction purchaser M/s Chinar steel segment Centre pvt Ltd

herein (Respondent No.2) and as such there was no occasion to quash the auction notice as held on 20.05.2023 or to declare it to be null and void. Another reason that was assigned by the Ld. Adjudicating Authority based on objection, it was to the effect that the liquidator has also confirmed the same, and that the distributions have already been made as it was projected before the Ld. Adjudicating Authority, based upon the progress report which was also placed before it. Ultimately, the view taken by the Ld. Adjudicating Authority was that, owing to the developments which had taken place after the culmination of the auction and the consequential issuance of the sale certificate, nothing much survives for passing of an order on IA(IBC)/1123(CHE)2023.

5. The Ld. Counsel for the Appellant submits that, though apparently the development as referred in the Impugned Order, of the factum of confirmation of sale and of the distribution of proceeds having been made as apparent from the progress report cannot be disputed, the issue cannot be declared as 'closed' and owing to there being a certain procedural flaw in the entire exercise of the auction proceedings as conducted, the issue could still be ventured into by this Appellate Tribunal.

6. We observe that the Appellant himself has to be blamed for the delay, which has chanced in his questioning the auction proceedings before the Ld. NCLT which had emanated from the auction notice of 20.05.2023, and

culminated in conduct of auction on 11.06.2023 and issue of sale certificate on 17.07.2023. As against the aforesaid dates, the application was preferred by the Appellant at a much-belated stage, and it is that during the pendency of the proceedings of IA(IBC)/1123(CHE)2023, he also sought to implead the auction purchaser, M/s. Chinar Steel Segment Centre Private Limited, as one of the parties to the proceeding, by filing IA/2375/2023, which was allowed by the Ld. Adjudicating Authority by the Order of 21.12.2023.

7. The Appeal being aggrieved as against the Impugned Order dated 11.03.2024 has been preferred by the Appellant before this Appellate Tribunal on 13.04.2024. The Registry had pointed out certain defects, which were not rectified in time and rather it was at a much-belated stage, that the appeal was refiled only on 23.12.2024 i.e., after a delay of 224 days.

8. This Appeal is accompanied by an Interlocutory Application, being IA No. 127/2025, seeking condonation of delay which has chanced in refiling the appeal of 224 days. If the application for condonation of delay in refiling is taken into consideration, the reasons have been attributed by the Appellant are evasive and not specific with no plausible explanation has been given, to explain the delay of 224 days, which could be condoned because simpliciter it has been submitted in para 2.4 of the said application, that because of the health issues of the Appellant and several other pending litigations against him the delay has chanced. This reason in itself for the delay may not be much

appealing and justified as it has not been supported by any other documentary evidence to substantiate the plea of ill-health and the pendency of several other litigations. However exclusively in the interest of Justice and particularly owing to the fact that the issue of refiling of the Company Appeal, is an issue exclusively between the Appellant and the Tribunal the **delay in refiling the Company Appeal would hereby stand 'condoned' and the appeal is being considered on its own merit**.

9. However, it is worth noting that this itself shows that the Appellant was not diligent in pursuing his remedies against the auction proceedings, which he, by his dilatory conduct, had permitted the same to be finalized and concluded by the issuance of a sale certificate as back as on 17.07.2023.

10. The Ld. counsel for the Appellant for the purposes of pressing the Company Appeal as against the Impugned Order has submitted that the entire auction proceedings had not followed the regulations, specifically those provided under Schedule I (1)(1E) and Schedule I (1)(5) of the Regulation 31A(2) of the Liquidation Regulations. He has further submitted that Respondent No.1 was not fair enough, while constituting the Stakeholders Committee and that, the appellant was deprived of, being given a fair chance to present his scheme of arrangement under Section 230 of the Companies Act, 2013, which admittedly was filed at a much belated stage.

11. The Appellant has submitted that the Impugned Order happens to be without any reasoning and hence it is bad in the eyes of the law since being a non-speaking order. We are of the view that the rationale and necessity of giving a reasoned order would only come into picture when in case the sequence of events in form of confirmation of sale and the distribution of the proceeds had not taken place, but because of the fact, that much water has flown after the auction having been conducted on 11.06.2023 after issuance of sale auction notice on 20.05.2023, it cannot be permitted to be de novo resettled on the basis of the allegation levelled by the Appellant pertaining to, that the order happens to be a non-reasoned order. This logic that the Order being non-reasoned is further, not acceptable by us for the reason being that the Tribunal did take into consideration the reply which was submitted, to explain the delay, which has chanced in submitting the scheme under Section 230 of the Companies Act, 2013, and the long drawn impact of the completion of the auction proceedings and the issuance of the sale certificate on 17.07.2023. Looking to the facts and circumstances of the instant appeal, it is always not necessary for the Tribunal to elaborately deal with an issue owing to the subsequent development which had diluted the impact of remedy sought and particularly when the Appellant, had himself has shown diligence in filling the application for submitting the scheme under Section 230 of the Companies Act, 2013, in time. If there was a failure on that behalf, which as

a logical corollary, ultimately evolved into the confirmation of sale, an elaborate discussion is not required to be made by the Ld. Adjudicating Authority as it would be an act of futility to justify the decision, which otherwise did not call for any interference owing to the aforesaid fact because the controversy has been laid to rest after the deposition of the amount by the successful auction purchaser and its consequential distribution.

12. The Ld. Counsel for the Appellant, though having not taken it as to be a substantial question of law or a ground to be answered in the appeal, had referred to non-compliance of Regulation 31A (2) of the Liquidation Regulations, in order to purportedly prove a point, that the impugned auction was conducted in violation to the Regulations. This factual aspect, as pleaded by the Appellant in the Memorandum of Appeal, is not a question of law on which the appeal was pressed upon. But still, the Ld. counsel for the Respondent in response to the arguments had submitted that, the reason which has been argued by the Ld. counsel for the Appellant, regarding non-adherence of Regulations 31(A1) &(A2) is bad for the reason being that, he has drawn the attention of the Tribunal, to the reply which was filed by the Respondent before the Ld. Adjudicating Authority and particularly he has made reference to contents of Para 18 of the reply where he has given the details of the process and the stages adopted by the liquidator in completing the auction proceedings, up to the stage of issuance of the sale certificate. The

processes which has been adopted and as narrated in Para 18 are extracted hereunder:-

> *18. With regard to the averments in paragraph 4(s), the following tabular chart will demonstrate that the allegations of the Applicant has no basis.*

Para No.	***Applicant's Observations***	***Respondent's Response***
i	*The Applicant had built the building on the land which is owned by the Pondicherry Industrial Promotion Development and Investment Corporation. The building is owned by the Corporate Debtor and land is owned by PIPDIC. The Corporate Debtor cannot be considered as the title holder of the land. Therefore, without obtaining a No-objection Certificate from PIPDIC, the Respondent cannot have the authority to sell the land or include the same as part of an auction notice. The Applicant apprehends that such no-objection was never obtained from PIPDIC.*	*It is not understood as to how the Applicant can be aggrieved with this. This Respondent has sold the immovable properties in terms of the advertisement on "**As is where is, as is what is, whatever there is and without recourse basis**".*
ii	*The auction notice does not mention anything about the plant, machinery available in the Pondicherry units. This gives the Applicant to apprehend that the plant and machinery*	*A perusal of the sale notice would reveal that the plant - situate at Nashik Maharastra was put for sale as a separate unit and the 3 Pondicherry units which are leasehold were put for*

	available in the Pondicherry units were never valued.	*sale along with other balance sheet assets. Balance sheet assets include plant and machinery situate in Pondicherry and other assets as well which were properly valued. Hence this contention does not have any basis. Copy of the balance sheet for the financial year ended on 31.03.2021 is submitted herewith as* ***Annexure - R13.***
iii	*This Hon'ble Tribunal had given a specific direction in its order dated 09.09.2022 to sell the Company only as a going concern. In such case, the decision by the Respondent to undertake piecemeal sale is arbitrary and in any case, prior to the sale as a piecemeal basis, the Respondent is ought to get a direction from this Hon'ble Tribunal to undertake the same. The Respondent cannot unilaterally act without obtaining sanctions from this Hon'ble Tribunal.*	*A perusal of the stakeholders committee meeting would reveal that this Respondent has taken steps to sell the Corporate Debtor as a going concern since the first two auctions did not elicit any response, the third auction was conducted. The property has been sold as a going concern in the auction held on 11.06.2023*
iv	*The Respondent has totally misconceived the auction process / composition of the SCC and due opportunity / records were not provided to the Applicant to provide advice and in fact, the*	*There is no requirement under law to convey the decision of the stakeholders committee. A perusal of the third minutes of the stakeholders committee would reveal that the reserve price was fixed in*

	decision amongst the SCC has also not been transparent. The decision of the SCC providing a consent to the fixation of the reserve price was never intimated to the Applicant. The Applicant having given his consent to provide a scheme under Section 230 would have even expedited their actions.	*consultation with the stakeholders committee. The question of intimating the consent to the Applicant does not arise since he is not the stakeholder as defined under Regulation 2(k). The question of considering the SO called proposal under Section 230 Companies Act will not prevent the Respondent from discharging his functions under liquidation process regulations more so when the stakeholders in their SCC meeting has categorically rejected the same. The fact remains the valuation was done by this Respondent in terms of provisions of the Code and the Regulations.*

13. The factum of the aforesaid processes as extracted above having been followed is not a fact denied by the Appellant either in his arguments or pleading. Owing to the specific stand taken by the Respondent that there was no procedural flaw, coupled with the fact that the question of considering the so-called proposal under Section 230 of the Companies Act, 2013, since having been filed belatedly could not have created at all any obstacle as such for the Respondent from discharging his statutory function of the completion of the liquidation process particularly when the Stakeholders Committee in the SCC meeting, has categorically rejected the said scheme. Owing to the

fact that the valuation was already done by the Respondent in terms of the provisions of the code and the regulations, since there was no procedural flaw established by the Appellant to have chanced, in conducting the auction till the stage it was finalized by the issuance of the sale certificate on 17.07.2023, and since apparently, and admittedly too, the proposal of the scheme under Section 230 of the Companies Act, 2013, was preferred by the Appellant at a much belated stage, there was no error on part of the liquidator to proceed further to finalize the liquidation process by auctioning the property which had now attained finality after the distribution. Hence the **Company Appeal (AT) (CH) (Ins)No.36/2025** lacks merit and the same is accordingly "dismissed".

All pending Interlocutory Applications would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

10.03.2025
GKJ/GL/TM/MS