

LEGAL UPDATES

NCLAT: THE LIQUIDATOR HAS THE RIGHT TO CANCEL THE AUCTION PRIOR TO THE SUCCESSFUL BIDDER RECEIVING A SALE CERTIFICATE

The National Company Law Appellate Tribunal overturned the National Company Law Tribunal NCLT order, which held, among other things, that Clause 12 of Schedule 1 of the Liquidation Process Regulations does not give the Liquidator any discretion to cancel the auction, but clarified that in the present instance, the Liquidator was entitled to cancel the auction because it was in a stage between Clauses 12 (payment of sale consideration) and 13 (issuance of the certificate of sale) of Schedule 1 and was in compliance with the provisions in the sale auction notice.

The Hon'ble Tribunal noted that: -

- (I) the only bidder (the "Respondent") had placed its bid at the reserve price, but the liquidator decided to use the clauses in Clause 3(k) of the sale auction notice to cancel the auction, considering that the property in question could be sold for a higher price, and
- (II) NCLT, vide the impugned order, allowed the Respondent's application on the incorrect assumption, namely that the sale had already been completed and therefore could not have been cancelled.

The Appellate Tribunal further observed that NCLT neglected to take into account Clause 13 of Schedule 1, which states that upon payment of the full amount, the sale shall be deemed completed, the Liquidator shall execute the certificate of sale deed to transfer such assets, and that Clause 11 authorises the Liquidator to hold multiple rounds of the auction to maximise the realisation from the sale of assets and advance the interests of the creditors.

Further referring to the Hon'ble SC's well-established precedent that the winning bidder in an auction sale does not acquire a vested legal right to enforce the auction, in particular where

the auction notice gives the authority conducting the auction the discretion to cancel the auction.

It permitted the appeal while stating that *"...terms of auction sale notice that provides an absolute right to accept or reject any or all bids or adjourn/postpone/cancel the E-Auction...at any stage without assigning any reason thereof cannot be considered as in violation of the Schedule I of the Liquidation Process Regulations,"* It was noted that NCLT had committed an error in reading the relevant provisions of the Regulations as well as the law laid down by Hon'ble Apex Court.