

## LEGAL UPDATES

### **NCLAT: AFTER PAYING EMD, THE BIDDER CAN NOT MAKE CONDITIONAL BIDS OR RESCIND BIDS**

NCLAT bench headed by Justice A.B. Singh and Ms Shreesha Merla held that after payment of Earnest Money Deposit (EMD), the Appellant/bidder cannot be allowed to forfeit his bid and subsequently claim any refund on account of the bid being a conditional offer. NCLAT observed that the Liquidator made it quite clear in the e-auction document that once the e-auction's legal concerns have been made public, they cannot be amended, thereby the Appellant is bound by the terms of the e-auction and no correspondence to the liquidator that refers to the offer as conditional is tenable. NCLAT further observed that the bidder was free to not place any bids if there were any concerns, legal or otherwise, regarding any term of the e-auction. The division further noted that the Appellant, by placing the bid, bound himself by the terms of e-auction and cannot put any subsequent condition for acceptance of the bid. NCLAT pointed out that the Liquidator cannot alter the terms of the contract and can merely act upon it. NCLAT held that if bidders were to be allowed to withdraw bids at a later stage and to seek a refund stating a conditional offer, the process will become perpetual, thereby negating the Code's intent and purpose. Lastly, NCLAT after relying on several SC pronouncements including [Mohan Gems](#), and Regulation 32A of Liquidation Process Regulations, 2016, reiterated that the duties under the contract that result from the acceptance of the bidder's bid cannot be avoided. Hence, the Appellate Tribunal held that if the appellant violates the terms of the contract, he will not be entitled to the EMD amount and the money paid toward the Bid Purchase document.