

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 418/2025
(IA No. 1198/2025)

In the matter of:

MS BIOTECH PRIVATE LIMITED

Lead member of the Consortium

Represented by its Authorised Representative

Mr. Jaipal Reddy Amireddy,

Office at: Plot No. 64, Sagar Society,

Road No. 2, Banjara Hills,

Hyderabad, Telangana – 500034.

...Appellant

V

DR KONDAPALLI VENKAT SRINIVAS

Liquidator of M/s. Veda Biofuel Limited,

Reg. No. IBBI/IPA-001/IP-P00520/2017-2018/10945

Address: #402, 4th Floor, 6-3-249/6, "Alcazar Plaza &

Towers", Road No. 1, Banjara Hills,

Hyderabad, Telangana – 500034.

...Respondent

Present :

For Appellant : Mr. TK Bhaskar, Advocate

For Respondent : No Appearance

JUDGMENT

(Hybrid Mode)

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

The Appellant herein, happens to be the successful bidder, in the sale of the Corporate Debtor, M/s. Veda Biofuel Limited, as a going concern, for which the sale notice, was issued on 21.08.2024 and the e-auction was conducted on 16.09.2024, in which the Appellant was determined as the successful bidder.

2. The Appellant agitates his grievance being aggrieved as against the impugned order of 03.07.2025, that was passed by the Learned NCLT Amaravati Bench in IA No. 41/2025, that was preferred in TCP(IB)/41/9/AMR/2019, to be read with the corrigendum order dated 18.07.2025. By virtue of the impugned order of 03.07.2025, the aforesaid application preferred by the Liquidator, Respondent herein praying for taking on record the completion of the sale of the Corporate Debtor as a going concern, and for grant of certain reliefs and concessions as sought for by Successful Auction Purchaser as detailed in Annexure – 29 of the Application, has been rejected by the Impugned Order of 03.07.2025, which was subsequently rectified for certain minor typographical errors by the order of 18.07.2025.

3. The said Interlocutory application, IA No. 41/2025 was preferred on 06.12.2024, by the Liquidator of the Corporate Debtor, invoking Section 35 of I&B Code, to be read with Section 60 (5)(c), and with Regulation 32A, 33 and 42(2) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator, in the said Application has formulated a relief as extracted here under:

In light of the foregoing submissions and in the interest of facilitating a successful revival of Veda Biofuel Limited, it is most humbly prayed that this Hon'ble Tribunal may be pleased to:

- 1) *To allow the instant application reporting completion of sale of the corporate debtor as a going concern in accordance with the provisions of Regulation 33(1) in the manner specified in Schedule 1 of IBBI (Liquidation Process) regulations, 2016 to the Respondent, i.e., MS Biotech & Ors in accordance with the terms enshrined in the Process Document dated 21.08.2024 on an "as is where is" "as is what is" "as is how is" "whatever there is" and "no recourse basis"; having received the entire consideration as per the said process Document together with interest;*
- 2) *Grant the reliefs and concessions, as sought by the Respondent i.e., MS Biotech & Ors as particularly detailed in Annexure 29 of the Application for the smooth transition of the corporate debtor.*
- 3) *It is further prayed that this Hon'ble Tribunal may be pleased to pass such other order(s) as it may deem fit and proper in the circumstances of the case and in the interest of justice.*

4. Thus the aforesaid application was filed by the Liquidator to report the completion of sale of the Corporate Debtor as a going concern, as per the provisions contained under Regulation 33(1) of IBBI (Liquidation Process) Regulations, 2016, as specified in Schedule 1 of the aforesaid Regulations, to M/s. MS Biotech Pvt Ltd in accordance with the notice of sale and the terms of Process Document dated 21.08.2024, on "**as is where is**", "**as is what is**" and "**as is how is**", "**whatever there is**" and "**no recourse**" basis, having received the entire sale consideration in full as per the said process document together with interest.

5. In addition, the Liquidator, in the said Application IA No. 41/2025, had prayed for grant of certain reliefs and concessions totalling 41 in number, as sought for, by the Successful Bidder, M/s Biotech Private Limited & Others, as particularly detailed in Annexure – 29 of the application for smooth transition of the Corporate Debtor.

6. The Application IA No. 41/2024 thus preferred on 06.12.2024, by the Liquidator, came up for consideration before the Learned Tribunal and the Learned Tribunal after hearing both sides, passed a detailed order on 03.07.2025, rejecting the Application, recording that it is not inclined to grant the reliefs and concessions sought for by the Bidder, M/S Biotech Pvt Limited beyond what is already covered under in the bid process document as per provisions of law and that since there are various Applications challenging the auction sale pending before it for adjudication, it is not inclined to pass any order for completion of sale at this point of time.

7. It is seen that the interlocutory application, apart from reporting the completion of the sale of the CD as a going concern, went further to pray for grant of a total of 41 reliefs / concessions consequent to confirmation of sale of the assets of the Corporate Debtor as a going concern, such as deemed issue of NOC by creditors, cessation of all past liabilities and claims, Extinguishment of corporate guarantees, Discharge of related party claims, waiver of VAT/Income Tax/Customs duty/such other duties that may

arrange beyond the term sheet, withdrawal of cases by secured creditors, waiver of past dues relating to water and electricity, carry forward of losses, grace period to comply with various future statutory/regulatory requirements, from liabilities accrued under various Acts and laws, resting of assets, and internal assets of the CD, continuation of licenses, release of charges by RoC, an assurance that all claims under the applicable law and contract or as determined by the judicial or quasi-judicial proceedings, disputed or undisputed, prior to the issuance of the sale certificate by the Liquidator, shall not in future pose any difficulty or any additional liability on the Auction Purchase or the Corporate Debtor and liberty to approach the Tribunal for additional reliefs to address difficulties, if any, faced in the process of acquisition of the CD as a going concern.

8. The Learned Tribunal after considering the rival contentions and analysing the principles, laid down by the various judicial precedents, observed that, the successful bidder had earlier preferred IA(IBC)/414/2024, for the similar relief and concessions. that the same was withdrawn. It further observed that the contentions of the applicant, without anything on record that, the application IA(IBC)/ 41/2025 was filed by the Liquidator based on a suggestion by the Bench on 08.11.2024, was absolutely a fallacy, and that the order passed by the Learned Tribunal on 08.11.2024, was a permission for simpliciter withdrawal of the application, with no such liberty reserved for the Liquidator to file the aforesaid application i.e., IA (IBC)/41/2025.

9. Since the order of 08.11.2024, happens to be a simpliciter dismissal of the application preferred by the Auction Purchaser, that in itself will not make the subsequent application preferred by the Liquidator to be maintainable for the same set of reliefs. Apart from it, the Tribunal has rightly observed that, the application thus preferred by the Liquidator, where he has prayed for, to allow the application for the purposes of reporting the completion of sale of Corporate Debtor as going concern, in accordance with the terms enshrined in the process documentation dated 21.08.2024 including grant of a total of 41 reliefs/ concessions, is not maintainable because the terms and conditions as it was contained in the auction notice of 21.08.2024, had made it very clear as to under what terms and conditions the assets of the Corporate Debtor was to be put to sale. Clause 2 and clause 3 of the auction sale notice of 21.08.2024, is of particular relevance and it is extracted here under:

- 2) *The sale is on "as is where is", "as is what is", "whatever there is", "without any recourse" basis.*
- 3) *For detailed terms & conditions of e-Auction sale refer COMPLETE E-AUCTION PROCESS DOCUMENT can be obtained by sending an email to the Liquidator at liquidator.vbfl@aaip.co.in. Ph. No. 9959223615 or can also be obtained by sending an email to Mr. S Upendra Reddy, Email: csupendrareddys@gmail.com, Ph. No. 7799278523.*

10. The Tribunal while considering the rival contentions and particularly the contents of the application, which was preferred by the

Liquidator, had rightly come down to a conclusion that, once the bidder has already participated in the bidding process, there would be a deeming presumption that, the bidder had knowledge of all the terms and conditions, which were mentioned in the e-auction notice of 21.08.2024 and has accepted by submitting the bid and therefore all acts of the Successful bidder would be strictly governed by the terms and conditions of the sale notice and its consequential acceptance and that he cannot, under the garb of the application that, was subsequently preferred by the Liquidator, attempt to do or achieve something, which he has been unable to do, by filing an earlier application which he withdrew simplicitor and which was dismissed as withdrawn unconditionally, without any liberty. The nature of the unconditional order of withdrawal, as extracted here under:

IA(IBC)/414/2024:

Present: *Dr. S.V. Ramakrishna, Ld. Counsel for the applicant. Mr. Y. Suryanarayana for Liquidator.*

Ld. Counsel for the Applicant wants to withdraw this application. Hence, recording the said submission, IA(IBC)/414/2024 is dismissed as withdrawn. Accordingly, IA(IBC)/414/2024 is disposed of.

11. This order itself will create an embargo by way of a procedural restriction as against the Appellant to file the subsequent application for the same relief. Further, the impugned order of rejecting the application, which has been passed on an application preferred by the Liquidator, on the ground

that, since the sale has been made in terms of the auction notice of 21.08.2024, and the bidder has voluntarily accepted the condition of sale by participating in the bidding process, there would be a positive assumption that all the conditions that were contained therein were accepted by the successful bidder, who would be strictly governed and would be bound by the terms and conditions of the bidding document, for which subsequent elaborative clarification sought to be made by the application filed by liquidator, was not required and the liquidator was not expected to further the cause of the successful bidder which the Successful bidder has failed to advance by his own application which was dismissed as withdrawn.

12. In the proceedings that were held before the Learned Adjudicating Authority, the Liquidator was seen to be pressing the cause of the appellant, for the purposes of consideration of reliefs and concessions, which was not in the scope open for the Liquidator to press for on behalf of the appellant, that too when the rights of the Appellant himself stood closed with the withdrawal of his application, seeking similar reliefs and concessions.

13. The Learned Tribunal has also rightly taken into consideration that, the disclaimers as it was mentioned in the auction notice, would rather create an estoppel as against the successful bidder and the liquidator too, and that both would be bound by the terms and conditions of the auction notice,

that is, the clauses as already referred to in the aforesaid paragraph, particularly that of the sale having been made on an "**as is where is**", "**as is what is**", "**as is how is**", "**whatever there is**", "**without any recourse**" basis. Hence, it would be deemed that, the auction sale was conducted in accordance with the commercial transactions, which was entered into, with the full knowledge and acceptance by the successful bidder accepting to the attendant risk as a consequence of the conclusion of the auction sale. The same was the principle, which was considered by the Hon'ble Apex Court in the judgment rendered, in the matters of **KC Ninaan Vs Kerala State Electricity Board & Others, as rendered in Civil Appeal No. 2109-2110/2024**. wherein, the Hon'ble Apex Court in its Para 141, 142, 143, had considered the implication of the conditions of the sale which is carried, on "**as is where is**" basis and had observed therein that the implication of expression of "**as is where is**" basis is that, every intending bidder is put to a notice that, the seller does not undertake responsibility in respect of the property offered for sale in regards to any liability such as the payment of dues like service charges, electricity dues for power connections and taxes of local authorities. Relevant para 141, 142, 143 of KC Ninaan (Supra) is extracted here under:

141. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate "as is where is" clause is incorporated in the auction sale agreement. It is for the intending auction purchaser to satisfy

themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

142. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of [Section 3](#) of the Transfer of Property act, 1882. However, in terms of [Section 88](#) PART G 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.

143. While examining the effect of an "as is where is" clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision.

14. The said conclusion, which was drawn in the matters of KC Ninaan (Supra), was on the basis of the principles of the doctrine of "Caveat Emptor", which casts a responsibility on the prospective auction purchaser i.e., the Appellant herein, who was determined to be successful bidder upon the confirmation of the sale, to undertake all due exercise of due diligence, because under no set of circumstances, particularly from the viewpoint of the

terms and conditions as it was contained in the auction notice of 21.08.2024, the seller would be under any obligation to disclose any patent defect, which a buyer would be presumed to have actual constructive notice, in the light of the provisions contained under Section 3 of the Transfer Property Act, which has to be read in the light of Section 55(1)(a). In the absence of there being any contract to the contrary, the seller's obligation to disclose the material defect in the property or in the seller's title could not ordinarily be the responsibility, which was expected to be discharged by the him, as the buyer himself has to discover all the vital details in the light of the provisions contained under Section 3 of the Transfer Property Act.

15. Thus, the Tribunal has rightly come to a conclusion that, because of the terms and conditions as it was contained under clause 2 and 3 of the auction sale notice dated 21.08.2024, coupled with the fact that, the Appellant's earlier application for grant of a similar relief being **IA(IBC)/414/2024** was dismissed as withdrawn, without the liberty reserved for him or, for anyone else to re-approach the Tribunal for the same relief, and which has attained finality, the instant application preferred by the Liquidator i.e., IA(IBC)/41/2025, which is for the similar set of reliefs would not be maintainable in the light of the ratio laid down in the matter of *KC Ninaan(Supra)*. There could be yet another feature, which is required to be considered by us, is that, the Tribunal has rightly rejected the request made by the Liquidator because the liquidator was rather agitating the cause of the

Appellant for the purposes of consideration of the concessions / reliefs / directions, which already stood denied to the appellant by the rejection of the application preferred by the Appellant by the order of 08.11.2024, which could not have been permitted to be re-agitated as of now and that too at the behest of the appellant.

16. Further, we agree with Learned NCLT that, the clarifications and concessions, as it was sought for by the Liquidator can have wide and adverse implications because a number of other proceedings being IA(IBC)/351/2024, filed by Mr. K. Nageshwar Patro & 12 Ors. & IA(IBC)/330/2024 and IA(IBC)/327/2024, filed by Mr. Vijay Luar Penmesta, challenging the confirmation of auction in favour of appellant are under adjudication, which are required to be independently decided.

17. Thus, we are of the view that any order to be passed on an application preferred by the Liquidator would be barred by constructive res judicata due to the earlier order of 08.11.2024, where the application of the Appellant for same relief stood rejected, and that as of now the same cannot be permitted to be agitated by appellant and since other IAs challenging the auction are still pending, completion of sale cannot be declared as it will effectively close the doors for such applications, as referred to, in the concluding paragraph of the impugned judgment. Hence, the clarification as sought for, by the Liquidator by filing of the aforesaid application would be

absolutely barred by law and also would be barred by equity and fair play. The Appellant could not have succeeded to obtain and attain something, which he had otherwise directly failed to achieve, because of the dismissal of his application for the similar relief has attained finality. Thus, the impugned order as rendered by the Learned Tribunal on 03.07.2022 and the corrigendum of 18.07.2025, does not call for any interference in the exercise of our Appellate Jurisdiction under Section 61 of I&B Code. The Company Appeal lacks merit and the same is accordingly dismissed.

All Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

02/04/2026

YS/MS/AK