NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 10th SEPTEMBER 2026

IA(IBC)/124/GB/2024
In CP(IB)/22/GB/2019

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Punjab National Bank VS Shree Sai Rolling Mills India Ltd.
Under Section	U/s 7 of IBC, 2016

Appearances (via video conferencing/physically)

IA(IBC)/124/GB/2024

For Petitioner (s) : Mr. Nishant Das, Adv.
: Ms. Aatrayi Das, Adv.
: Ms. Adrita Bhuyan, Adv.

For Respondent (s) : Mr. Kamal Kanti Nandi, Adv. R-1, 2 & 3 (PNB)
: None for R-5

For Liquidator : Ms. Anshika Khaitan, CA for Liquidator Mr. Sandeep Khaitan.

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Zeba (PS)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI
IA(IBC)/124/GB/2024
In
CP(IB)/22/GB/2019

An Application under Rule 11 of the National Company Law Tribunal Rules, 2016 read with section 60(5) of The Insolvency And Bankruptcy Code, 2016.

In the Matter of IA(IBC)/124/GB/2024:

1. Sandeep Kumar Bhagat (Since Deceased) Through his Legal Heirs

A. Smt. Shalini Bhagat, W/o Late Shri. Sandeep Kumar Bhagat R/o ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009 (M): +91 8638731449 Email: bhagatshalini0@gmail.com

...PETITIONER 1(A)

B. Ms. Smriti Bhagat, D/o Late Shri. Sandeep Kumar Bhagat R/o ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009 (M): 88110 26169 Email: smritibhagat1156@gmail.com

... PETITIONER 1(B)

C. Ms. Rashi Bhagat, D/o Late Shri. Sandeep Kumar Bhagat R/o ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009 (M): 8811026199 Email: rbhagat.psy@gmail.com

...PETITIONER 1(C)

-Versus-

1. **PUNJAB NATIONAL BANK,** Zonal Sastra Branch, UBI Building, 2nd floor, H.B. Road, Panbazar Guwahati Kamrup (Metro), Assam- 781001

....RESPONDENT NO. 1

2. **THE AUTHORISED OFFICER,** Punjab National Bank, Zonal Sastra, UBI Building, 2nd floor, H.B. Road, Panbazar Guwahati- 781001 Kamrup (Metro), Assam Email: zoguwahati@pnb.co.in

....RESPONDENT NO. 2

3. **ASSISTANT GENERAL MANAGER** Punjab National Bank Zonal Sastra, UBI Building, 2nd floor, H.B. Road, Panbazar Guwahati- '781001 Kamrup (Metro), Assam Email: zoguwahati@pnb.co.in

....RESPONDENT NO. 3

4. **SANDEEP KHAITAN ,** Liquidator for M/s Shree Sai Smelters (India) Ltd., M/s Shree Sai Rolling Mills (India) Ltd. And M/s Shree Sai Prakash Alloys Pvt. Ltd. (IBBI/IPA-001/1P-P00532/201 Having address at 2nd Floor, Sanmati Plaza, G.S Road, ABC, Guwahati, Assam — 781005 ,Email: khaitansandeep@gmail.com

....RESPONDENT NO. 4

5. **M/S N.K. MARKETING** Through is Proprietor Mr. Nitesh Agarwal Having its registered address at 13th Mile, Tamulkuchi, Byrnihat, Meghalaya-793101

...RESPONDENT NO.5

-And-

In the Matter of CP(IB)/22/GB/2019

PUNJAB NATIONAL BANK

...Financial Creditor

Versus

M/S SHREE SAI ROLLING MILLS INDIA PVT. LTD.

...Corporate Debtor

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through physical appearance):

For Applicants : Mr. N. Das

For Respondents : Mr. K.K. Nandi

: Mr. A. Prasad

: Mr. A. Chaudhuri (Advs.)

Order pronounced on: 10.09.2026

<u>As Per Bench</u>

1. This Application has been filed by **Sandeep Kumar Bhagat Through his Legal Heirs, Smt. Shalini Bhagat PETITIONER 1(A), Ms. Smriti Bhagat PETITIONER 1(B) and Ms. Rashi Bhagat PETITIONER 1(C)** [altogether mentioned hereinafter as "Petitioners") under Rule 11 of the National Company Law Tribunals Rules, 2016 read with section 60(5) of the Insolvency And Bankruptcy Code , 2016 against **Punjab National Bank (Respondent No.1) , The Authorised Officer (Respondent No.2), Assistant General Manager(Respondent No.3), Sandeep Khaitan (Respondent No.4) AND M/S N.K. MARKETING (Respondent No.5)** [altogether mentioned hereinafter as "Respondents"] for purportedly praying for the following orders:
   a) Admit this application and call for the records; AND
   b) That this Hon'ble Tribunal be pleased to issue an order quashing and setting aside the published e-Auction Notice dated 10.05.2024 pertaining to the Sale of Assets of the Corporate Debtor, the E-Auction dated 06.06.2024, and any subsequent Sales carried out under the said Notices; AND,
   c) Restrain the Liquidator (Respondent No. 4) from taking any action or further action to sell/ liquidate the Corporate Debtor as a whole or its assets in piecemeal; AND,
   d) That this Hon'ble Tribunal be pleased to issue a direction to maintain the status quo in the e-Auction process of the Corporate Debtor concerning the Sale of Corporate Debtor's Assets; AND,
   e) That this Hon'ble Tribunal be pleased to issue a directive to the Respondent No. 4/Liquidator to accept the OTS proposal made by the Applicant vide the Letter dated 29.12.2023; AND,
   f) That this Hon'ble Tribunal be pleased to grant interim and ad-interim reliefs in terms of prayer clauses a), b),c), d), e) and f), AND/OR,
   g) That this Hon'ble Tribunal be pleased to pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.
2. Submissions of the Applicant *vide* the Interlocutory Application are as follows:
   2.1 It is submitted that Respondent No. 1 Bank sanctioned credit facilities of ₹57,36,00,000/- to M/s Shree Sai Prakash Alloys Pvt. Ltd., ₹35,39,00,000/- to M/s Shree Sai Rolling Mills (India) Ltd., and ₹13,94,00,000/- to M/s Shree Sai Smelters (India) Ltd. on various dates between 2004 and 2014.

2.2 The aforesaid loan accounts were subsequently classified as Non-Performing Assets (NPA). Respondent No. 1 thereafter initiated CIRP against the three Corporate Debtors by filing CP(IB) Nos. 22/GB/2019, 23/GB/2019 and 24/GB/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal (NCLT), Guwahati Bench at Guwahati.

2.3 The Corporate Debtors, through the Applicant, submitted a consolidated One-Time Settlement (OTS) proposal dated 06.08.2018 for ₹60,00,00,000/- to the Respondent No. 1 Bank. The proposal was approved by Respondent No. 1 *vide* letter dated 27.12.2018 and accepted on 10.01.2019. The Corporate Debtors paid ₹7,00,00,000/- towards the OTS but failed to comply with the remaining terms of OTS. Consequently, Respondent No. 1 revoked the OTS on 31.07.2019 and this revocation was communicated to the Corporate Debtors through Petitioner No. 1.

2.4 The aforesaid Company Petitions against the three Corporate Debtors were admitted by this Hon'ble Tribunal on 23.08.2019.

2.5 Aggrieved by the admission order, the Applicant and the Corporate Debtors preferred Company Appeals bearing CA(AT)(Ins.) Nos. 1003/2019, 1004/2019 and 1005/2019 before the Hon'ble NCLAT against the Respondent No. 1 Bank. *Vide* separate orders dated 18.06.2020, the Hon'ble NCLAT allowed the appeals, set aside the order dated 23.08.2019 and remanded the matters to this Hon'ble Tribunal for fresh consideration.

2.6 Aggrieved by the judgment dated 18.06.2020, the Applicant, the Corporate Debtors and Respondent No. 1 preferred appeals before the Hon'ble Supreme Court.

2.7 During the pendency of Civil Appeal No. 2997 of 2020, the Corporate Debtors sought liberty to submit a fresh OTS proposal before Respondent No. 1 Bank. The Applicant also deposited ₹5,00,00,000/- with Respondent No. 1, which was recorded in the order dated 17.05.2022. However, Respondent No. 1 did not accept the proposed settlement.

2.8 *Vide* judgment dated 14.07.2022, the Hon'ble Supreme Court set aside the order dated 18.06.2020 passed by the Hon'ble NCLAT and restored the Company Appeals for consideration on merits.

2.9 Pursuant to the Judgement of the Hon'ble Supreme Court dated 14.07.2022, the Company Appeals were listed before the Hon'ble NCLAT on 21.07.2022 and were heard by the Hon'ble NCLAT, *vide* consolidated judgment dated 02.09.2022 passed in the Company Appeal (AT) (Insolvency) No.1003, 1004, 1005 of 2019 the Hon'ble NCLAT dismissed the Appeals filed by the Applicant and the Corporate Debtors and allowed the admission of the Company Petitions filed by the Respondent No. 1 Bank against the Corporate Debtors.Respondent No. 4 was appointed as Liquidator of the Corporate Debtors by this Hon'ble Tribunal vide order dated 25.01.2024.

Copy of the Orders dated 25.01.2024 passed in CP (IB)/22/GB/2019, CP (IB)/23/GB/2019 and CP (IB)/24/GB/2019 is annexed herewith as *Annexure*-2 (COLLY).

2.10 After classification of the loan accounts as NPAs, the Applicant and the Corporate Debtors had paid an aggregate amount of ₹13,00,00,000/- towards the earlier OTS of Rs. 60,00,00,000 which subsequently failed and was cancelled by Respondent No. 1 Bank. In addition, approximately ₹3,00,00,000/- was realised from the sale of the Applicant's residential flats.

2.11 Owing to the COVID-19 pandemic and other financial difficulties, the factories of the Corporate Debtors remained non-operational for the past 3-4 years. Additionally, insolvency proceedings have been ongoing against the Corporate Debtors for approximately one and a half years. During this period, a significant portion of the valuable assets have been stolen, and the entire plant has sustained substantial damage.

2.12 The factory land is situated in a Sixth Schedule area and was acquired for the three Corporate Debtors. Since the 3 Companies are no longer viable at that location, the factory land is unlikely to fetch significant value. That the Respondent No.1 Bank has already sold the Applicant's flats, which were kept as collateral, and NEDFi has sold other assets of the Applicant and Corporate Debtors. That the Applicant, along with other Promoters are currently residing in rented accommodation and have no source of income. Consequently, the Applicant negotiated with M/s. Associated Construction Co., Panjabari, Guwahati, who has agreed to take over the entire assets by making a lump-sum payment of Rs. 22,50,00,000/- (Rupees Twenty Two Crores

Fifty Lakhs only) within 90 days. Accordingly, the Applicant, via Letter dated 29.12.2023, requested Respondent No. 1 Bank through the Respondent No. 3 to settle all loan accounts under an OTS for Rs. 22,50,00,000/- (Rupees Twenty Two Crores Fifty Lakhs only). Copy of the Letter dated 29.12.2023 is annexed herewith as Annexure-3.

2.13 The aforesaid OTS proposal was dispatched to the Zonal/SASTRA Branch of Respondent No. 1 at Guwahati and to its Head Office at New Delhi. However, no response was received from Respondent No. 1 to the said proposal.

2.14 Meanwhile the Applicant came to know of the e-auction notice dated 10.05.2024 published in Shillong Times for auction of the land, buildings and plant and machinery of all the three Corporate Debtors. The aggregate reserve price of the three Corporate Debtors was ₹16,23,40,000/-, as against the Applicant's OTS offer of ₹22,50,00,000/-.A copy of the E-auction Notice dated 10.05.2024 published in Shillong Times along with the individual copy of the E-auction Notice is annexed as Annexure-4 (COLLY).

2.15 It is most respectfully submitted that the Respondent No. 4 Liquidator published the E-Auction Notice of the sale of assets of the Corporate Debtors on 10.05.2024 in Shillong Times which is a local newspaper of Meghalaya and inaccessible to the Applicant who is a resident of Guwahati, Assam. The e-auction was scheduled for 06.06.2024 between 11:00 A.M. to 1:00 P.M. through the E-Auction Tiger platform. The important details in the notice of sale of assets are reproduced herein below:

i. The date of the Notice of Sale of Assets was 10.05.2024.

ii. Date and Time for E-Auction: 06.06.2024 at 11 AM to 1 PM (with unlimited extension of 5 minutes each).

iii. Last date for submission KYC documents and EMD/BID: 24.05.2024 and 03.06.2024 respectively.

iv. The E-Auction would be for the sale of assets of the Corporate Debtor forming part of its Liquidation Estate under the provisions of the Code.

v. The Sale of the Assets would be done by the Respondent through the e-auction platform: Auction Tiger

vi. The assets were proposed to be sold as going concerns under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016.

vii. The sale would be on "as is where is", "as is what is", "whatever there is without any recourse" basis.

viii. The last date and time for submission of Expression of Interest (EOI) by the Interested Bidders is 24.05.2024 before 05:00 pm.

ix. The last date and time for payment of EMD & other forms only by qualified bidders is 03.06.2024.

2.16 The auction notice dated 10.05.2024 provided for the auction on 06.06.2024, leaving less than 30 days between publication of the notice and the auction. The Applicant contends that the process was undertaken with undue haste and without providing adequate opportunity for a better offer to be considered.

2.17 Upon becoming aware of the e-auction, the Applicant approached Respondent No. 3 and reiterated his OTS offer of ₹22,50,00,000/-. Respondent No. 3 informed the Applicant that the proposal was under consideration and advised him to meet Respondent No. 4. The Applicant accordingly met Respondent No. 4, who was aware of the OTS proposal and, according to the Applicant, represented that the auction notice was procedural and that the Applicant's offer was favourable.

2.18 Despite the Applicant's higher OTS offer of Rs 22,50,00,000 the respondent bank quoted a lower reserve price and proceeded with the auction of the assets of M/s Shree Sai Rolling Mills (India) Pvt. Ltd and Respondent No. 4 informed the Applicant by email dated 10.06.2024 that there were multiple bidder beside M/s N. K. Marketing and the same had emerged as the successful bidder in respect of the assets of M/s Shree Sai Rolling Mills (India) Pvt. Ltd. The Applicant was not provided with the details of the bidding process or the details of the successful bid or the status of the auction of the remaining two Corporate Debtors.A copy of the Email dated 10.06.2024 is annexed as *Annexure*-5 to the application.

2.19 The Applicant, vide letter dated 20.06.2024, communicated through email, WhatsApp and courier to Respondent No. 3,as well as to the Head Office, Zonal Office and Chief Manager of Respondent No. 1, sought details of the auction of assets belonging to M/s Shree Sai Rolling Mills India Pvt. Ltd., including the status of the other two Corporate Debtors. The Applicant states that his delayed response was occasioned by his health-related difficulties. A copy of the Letter dated 20.06.2024 along with the tracking Report is annexed as *Annexure*-6 to the application. (COLLY)

2.20 Despite the aforesaid communication, the Applicant did not receive any response from Respondent No. 1 regarding the auction or his OTS proposal. Being aggrieved and in view of the summer recess of this Hon'ble Tribunal until 30.06.2024, the Applicant approached the Hon'ble Gauhati High Court by filing WP(C)/3241/2024, titled "*Sandeep Kumar Bhagat v. Punjab National Bank & Ors*". Upon hearing the parties, the Hon'ble Gauhati High Court, *vide* order dated 25.06.2024 directed Respondent No. 1 Bank and Respondent No. 4 Liquidator to maintain status quo until 03.07.2024 or until this Hon'ble Tribunal took up the matter, whichever was earlier.

2.21 The Applicant states that, despite his communication dated 20.06.2024 and request for information, he was not informed regarding the issuance, if any, of the sale certificate in favour of the successful bidder.

2.22 SCHEME OF THE CODE AND GROUNDS

Before considering the concessions, declarations and directions sought in the present Application, it is apposite to briefly set out the scheme of the Code governing realisation of the assets of a Corporate Debtor:

i. Upon admission of a Corporate Debtor into CIRP, a Committee of Creditors (CoC) is constituted, comprising the Financial Creditors. The RP acting under the directions of the COC determines whether the Corporate Debtor is put to a resolution or liquidation.

ii. Where no resolution plan is approved, the Corporate Debtor proceeds into liquidation. At this stage, the CoC may, in accordance with Regulation 39 of the CIRP Regulations, may resolve to explore sale of the Corporate Debtor as a going concern, in terms of Regulation 32A of the Liquidation Regulations.

iii. Upon liquidation, the Liquidator realises the assets of the Corporate Debtor in accordance with Chapter VI of the Liquidation Regulations and distributes the sale proceeds among the stakeholders in accordance with the applicable statutory waterfall mechanism.

iv. In the present case, the resolution plans had proposed an aggregate consideration of ₹21.80 crore for the Corporate Debtors, comprising ₹8.56 crore for Sai Rolling, ₹2.26 crore for Smelters and ₹10.98 crore for Prakash. The said resolution plan was subsequently rejected. The Applicant, by letter dated 29.12.2023, offered ₹22.50 crore, which was higher than the amount proposed under the rejected resolution plan. The Applicant contends that despite its OTS proposal having been submitted to Respondent No. 1 Bank and being within the knowledge of Respondent No. 4/Liquidator, the proposal was neither duly considered nor responded to, thereby raising concerns regarding transparency and fairness in the process of realisation of the Corporate Debtors' assets.

vi. Reliance has been placed upon the decision of the Hon'ble NCLAT in *Naren Seth v. Sunrise Industries & Ors., Company Appeal (AT) (Insolvency) No. 401 of 2023*, wherein, with reference to Rule 8(6) of the SARFAESI Rules, it was observed that, ordinarily, a notice period of 30 days is provided to facilitate obtaining the best value.

vii. The Applicant further contends that the reserve price was fixed arbitrarily and without proper valuation, thereby compromising the objective of maximising value. It is alleged that the Liquidator, being the custodian of the Corporate Debtor's assets, is required to endeavour to realise the maximum possible value and cannot proceed with a sale at an inadequate or undervalued consideration.

viii. Accordingly, the Applicant seeks appropriate relief against the alleged actions of Respondent No. 1 Bank and Respondent No. 4/Liquidator in relation to the proposed sale and realisation of the assets of the Corporate Debtors.

2.23 In view of the facts and grounds stated hereinabove, the Applicant respectfully seeks the reliefs as mentioned above.

3. In response to the aforesaid averments, Respondent No. 1 i.e, Punjab National Bank filed its reply on behalf of Respondent No.1,2 and 3, the substance of which is summarised hereinbelow:

3.1 The Respondent states that this Tribunal, *vide* order dated 23.08.2019, admitted the applications filed by the Financial Creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") against the Corporate Debtor, and the said order continues to hold good in law. Further, *vide* order dated 25.01.2024, this Tribunal ordered liquidation of the Corporate Debtor with immediate effect and appointed Respondent No. 4 as the Liquidator.

3.2 With respect to the credit facilities availed by the Corporate Debtor, the Respondent states that the same are matters of record and any averments contrary thereto are denied.

3.3 In respect of the OTS proposal, the Respondent states that the Corporate Debtor had earlier failed to comply with the terms of the OTS settlement and thereafter approached the Hon'ble Supreme Court seeking liberty to submit a fresh proposal which is evident from the order dated 17.05.2022 passed in Civil Appeal No. 2997 of 2020, where a fresh proposal was submitted; however, the same was considered inadequate and was not accepted by the Respondent Bank. The said position was brought to the notice of the Hon'ble Supreme Court, that the proposal for one time settlement was not accepted by the bank after which Hon'ble Supreme Court disposed of the appeals vide order dated 14.07.2022.Copy of the order dated 17.05.2022 and 14.07.2022 are annexed as *Annexure* A and B to the reply.

3.4 The averments concerning proceedings before this Tribunal, the Hon'ble NCLAT and the Hon'ble Supreme Court are stated to be matters of record and, to the extent inconsistent with the record, are denied.

3.5 The Respondent states that it cannot comment upon the alleged dues of the Corporate Debtor towards Meghalaya Power Distribution Corporation Ltd., as it was not a party to the demand notice dated 12.07.2022.

3.6 With respect to payments made towards the loan account, it is submitted that all such payments are duly reflected in the statement of account maintained by the Respondent Bank.

3.7 The Respondent denies that the grounds of COVID-19 or alleged theft absolve the Corporate Debtor of its liability towards the Bank and submits that the Applicant has failed to substantiate such statement.

3.8 With regard to the OTS proposal dated 29.12.2023, the Respondent submits that the Applicant has failed to establish that the said letter was served upon the Respondent Bank, there being no postal receipt, tracking report or proof of e-mail service on record. It is further submitted that acceptance of an OTS proposal is within the commercial discretion of the Bank and no borrower can claim such acceptance as a matter of right. Reliance is placed upon the decision of the Hon'ble Supreme Court in *The Bijnor Urban Cooperative Bank Limited, Bijnor & Ors. v. Meena Agarwal & Ors.*

3.9 The Respondent states that the e-Auction Sale Notice dated 10.05.2024 was issued by Respondent No. 4 in his capacity as Liquidator. Accordingly, the Respondent Bank has no comments to offer regarding the issuance or compliance of the said e-auction, as these matters fall within the domain of the Liquidator and not by the respondent Bank.

3.10 The Respondent denies the allegation that the Applicant personally conveyed the OTS offer to Respondent No. 3 and submits that the said assertion is vague and unsupported by any material.

3.11 In respect of the communications exchanged by Respondent No. 4, including the e-mails and the e-auction proceedings, the Respondent submits that the same relate to actions undertaken by the Liquidator and, therefore, refrains from making any comments thereon.

3.12 The Respondent submits that the order dated 25.06.2024 passed by the Hon'ble Gauhati High Court did not adjudicate the merits of the matter and, therefore, cannot be taken into consideration for deciding the merit of the application filed by the corporate debtor.

3.13 With regard to the issuance sale certificate, The Respondent states that the Sale Certificate in favour of the successful bidder, N.K. Marketing, was issued on 21.06.2024.Copy of the sale certificate is annexed as *Annexure* C to the reply.

3.14 With respect to the CIRP and liquidation proceedings, the Respondent states that Sri Amit Pareek was appointed as IRP and the public announcement was made on 07.10.2022 in the prescribed Form A which was published on two newspapers being The Shillong Times and Rupang. Thirteen meetings of the CoC were thereafter held, followed by the 14th CoC meeting on 18.12.2023, wherein the CoC, with 100% voting share, resolved to reject the resolution plan and proceed with liquidation. Upon consideration of the material on record, this Tribunal ordered liquidation on 25.01.2024, which order has not been challenged before any competent forum.

3.15 The Respondent further states that the reserve price was not fixed by the Respondent Bank. Any issue concerning the reserve price or the conduct of the e-auction falls within the domain of Respondent No. 4/Liquidator.

3.16 The Respondent submits that the reliefs sought in the Application are untenable, frivolous, misconceived and devoid of merit. The Application is accordingly liable to be dismissed.

4. In response to the averments made in the Application, Respondent No. 4 i.e., Sandeep Khaitan Liquidator of the Corporate Debtor has filed its reply, the substance of which is summarized herein below:

4.1 Respondent No. 4, being the Liquidator of the Corporate Debtor, submits that the present reply is confined to the allegations concerning him and the liquidation process. Save and except matters of record or those specifically admitted, all other averments in the Application are denied until and unless any of the contents are specifically admitted hereunder.

4.2 It is submitted that the letter dated 29.12.2023, relied upon by the Applicant as the basis of the present Application, was neither issued to nor received by Respondent No. 4. The said letter was a request for on OTS addressed to Respondent Nos. 1 to 3 which is buttressed from the applicant's own contention in the para xix of the Application as well as from the contents of the request letter. Accordingly, the allegation that Respondent No. 4 failed to consider or respond to the proposal is misconceived. In any event, acceptance or rejection of the OTS proposal was within the discretion of Respondent Nos. 1 to 3, and the Liquidator had no role in such decision.

4.3 The Applicant's contention that the e-auction conducted on 06.06.2024 lacked transparency on account of the bid price being lower than the Applicant's OTS offer is denied. The entity on whose behalf the Applicant made the offer, M/s Associate

Constructions Co., neither addressed any communication to the Liquidator nor participated in the e-auction, despite applicant being aware of the auction process. It is reiterated that the Request Letter was neither issued nor received by nor was it issued/ addressed to the Answering Respondent.

4.4 It is submitted that the reserve price was fixed at 120% of the liquidation value pursuant to the decision of the Stakeholders' Consultation Committee (SCC) in its 4th meeting held on 03.05.2024. The successful bidder matched the reserve price and, being the sole bidder, its bid was accepted. Thus, there was no lower bid accepted contrary to the reserve price, and the Applicant or M/s Associate Constructions Co. could have participated in the e-auction but chose not to do so. A copy of the minutes of the 4th SCC meeting is annexed as Annexure A to the reply.

4.5 The allegation that the time gap of 30 days between the date of paper publication and the date of e-auction indicated "utmost hast" on the part of the Answering Respondent is also denied. The Liquidator submits that Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 requires the auction process to be completed within thirty-five days from issuance of the public notice. The auction was accordingly conducted in conformity with the applicable regulatory framework.

4.6 The allegation that the reserve price was arbitrarily fixed is denied. The reserve price was determined by the SCC at 120% of the liquidation value, which was based on the valuation report of an SCC approved valuer. The minutes of the SCC meeting and the basis of fixation of the reserve price were also communicated to the Applicant by e-mail dated 06.05.2024. Since the successful bidder matched the reserve price and no other bidder submitted a higher bid or no other bid was available, the consideration realised represented the highest bid available in the auction. A copy of the email dated 06.05.2024 addressed to the Applicant is annexed as *Annexure* B to the reply.

4.7 It is further submitted that the present Application seeks to challenge the concluded auction and indirectly secure acceptance of the Applicant's OTS proposal, despite the sale having been completed and the Sale Certificate having been issued in favour of the successful bidder on 21.06.2024. A copy of the Sale certificate dated 21.06.2024 is annexed as *Annexure* C.

4.8 The Respondent points out that the Applicant has made contradictory statements regarding his knowledge of the e-auction. While alleging that he was unaware of the bidding process (para xxv of the Application), the Applicant has admitted knowledge of the e-auction (para xx of the Application). Additionally, on one hand the Applicant alleges that the E-Auction notice was published in a local newspaper of Meghalaya, which was inaccessible to the Applicant (para xxi of the Application) and on the other hand admits becoming aware of the E-auction though the same newspaper (List of dates and para xx of the Application).Despite such knowledge, no timely challenge was made and the writ petition before the Hon'ble Gauhati High Court was filed only on 24.06.2024, after completion of the auction and issuance of the Sale Certificate. Screenshot of the case details of W.P. (C) No. 3241/2024 obtained from the website of the Hon'ble Gauhati High Court is annexed as *Annexure* D to the reply.

4.9 The allegation that Respondent No. 4 was aware of the Applicant's OTS proposal or had assured the Applicant that the e-auction notice was merely procedural and that his offer would be favourably considered is denied. The Applicant is put to strict proof of such allegations, which are unsupported by any particulars or contemporaneous material. Further, it is reiterated that the Request Letter was for an OTS between the Applicant and Respondent Nos. 1-3 and the Answering Respondent, being the liquidator, had no authority or role in either its acceptance or rejection.

4.10 In view of the foregoing, Respondent No. 4 submits that the Application is devoid of merit and therefore liable to be dismissed.

5. In response to the Application, Respondent No. 5 i.e, Successful Purchaser (M/s N.K. Marketing) has filed its reply, the substance of which is summarised hereinbelow:

5.1 The present Application has been filed challenging the non-acceptance of the Applicant’s OTS request dated 29.12.2023 and, consequently, the e-auction conducted on 06.06.2024 and the Sale Certificate issued in favour of Respondent No. 5. The Applicant relies upon the alleged proposal of M/s Associated

Construction Co. to acquire the assets of the Corporate Debtor for approximately ₹22 crore.

5.2 It is submitted that the said OTS request was made prior to commencement of liquidation on 25.01.2024 and was merely a request by the Applicant. No binding offer was submitted by the alleged third party, nor did it participate in the subsequent e-auction.

5.3 Respondent No. 5 was impleaded as the successful purchaser pursuant to IA (IB)/160/GB/2024 and thereafter participated in the present proceedings in compliance with the directions of this Tribunal.

5.4 The e-auction conducted on 06.06.2024 was carried out in accordance with the applicable provisions of the Insolvency and Bankruptcy Code, 2016 and the Liquidation Process Regulations. The Applicant's contention that the auction notice was published in an inaccessible newspaper is contrary to his own pleadings, wherein he admits having knowledge of the auction notice. Such an admission clearly belies the plea of inaccessibility and renders the contention wholly misconceived and devoid of merit.

5.5 Respondent No. 5 bona fide participated in the e-auction, emerged as the highest bidder and deposited the requisite EMD for three group companies, including the Corporate Debtor. Upon payment of the entire sale consideration of ₹16,23,40,000/, the Liquidator issued the Sale Certificate dated 21.06.2024 in its favour.

5.6 The Applicant subsequently approached the Hon'ble Gauhati High Court on 24.06.2024. The submission made in the writ petition filed before Hon'ble High Court that no Sale Certificate had been issued was incorrect, as the Sale Certificate had already been issued on 21.06.2024 upon receipt of the full sale consideration. The direction to the Financial Creditor and the Liquidator to maintain status quo till 03.07.2024 (or until the matter was taken up) stood duly complied with, as the Sale Certificate had already been issued on 21.06.2024, i.e., prior to the order dated 25.06.2024.The Hon'ble High Court did not adjudicate the merits and directed the Applicant to avail the appropriate remedy before this Tribunal.

5.7 It is submitted that the Applicant, having failed to produce any binding offer or participate in the auction process, cannot seek to unsettle a concluded and lawful sale in favour of a bona fide successful purchaser. Any interference with the completed sale would cause serious prejudice to Respondent No. 5 and other stakeholders.

5.8 In view of the above, the challenge to the concluded e-auction and Sale Certificate is misconceived and amounts to an indirect attempt to enforce an unaccepted OTS proposal. The Application, being devoid of merit and not maintainable, is liable to be dismissed.

6. The Applicant has filed the present Rejoinder to the Reply filed by Respondent No. 4 (Liquidator) and has stated as follows:

6.1 At the outset, the Applicant denies all averments, allegations and contentions contained in the Reply filed by Respondent No. 4, except those which are expressly admitted herein. The contents of the Interlocutory Application and the documents annexed thereto may be read as part of the present Rejoinder and are not being repeated for the sake of brevity.

6.2 The contents of Paragraphs 1 and 2 of the Reply are matters of record and, therefore, require no specific reply. Any averment contrary to the case of the Applicant is denied.

6.3 That the contents of the corresponding Paragraphs 3 to 5 of the Reply are denied as incorrect and misleading. The Applicant submits that the letter dated 29.12.2023 was duly communicated to Respondent Nos. 1 to 3 through email and speed post on 30.12.2023, and the postal receipts, tracking report and email proof are annexed as ***ANNEXURE-1 (COLLY)***. The Applicant had also personally conveyed the proposal of ₹22.50 crores to Respondent Nos. 3 and 4 and was assured that the same was under consideration however the same was not considered without any valid reasons. Despite the said higher offer, the reserve price was subsequently fixed at a substantially lower amount without any satisfactory explanation.

6.4 The Applicant further submits that the reasons recorded regarding the Tribal Belt land and lack of viability of revival appear inconsistent with the subsequent sale of the units as a going concern. The contradictory stands taken by the Respondents regarding consideration of the Applicant's proposal and the basis for reduction of the reserve price raise serious concerns regarding the transparency and fairness of the liquidation process. The Applicant's non-participation in the auction is dealt with separately in subsequent parass herein below.

6.5 That the contents of the corresponding Paragraph 6 of the Reply are denied as false and misleading. The Applicant submits that, contrary to the Respondent's assertion, the Applicant had multiple interactions with Respondent No. 4 regarding the valuation and sale of the assets and was assured that the Applicant's proposal was under consideration. However, despite the same, the reserve price was substantially reduced and the auction was proceeded with. Further, the e-auction notice was published on 10.05.2024 and the auction was conducted on 06.06.2024, providing less than 30 days' notice. The Applicant submits that such inadequate notice was contrary to the requirement of providing a reasonable opportunity to secure the best possible value for the assets and reflects undue haste in the sale process.

6.6 That the contents of the corresponding Paragraph 7 of the Reply are denied. The Applicant submits that the reduction of the reserve price from ₹24.15 crores to ₹16.23 crores was effected without any apparent attempt to realise the earlier valuation of ₹21.15 crores neither does they consider the higher proposals of ₹21.56 crores nor they have accepted the applicant's offer of Rs ₹22.50 crores. The Applicant submits that the subsequent reduction in the reserve price, without adequate justification, raises serious concerns regarding the fairness and transparency of the liquidation process.

Further, the Applicant submits that the Liquidator's reliance on the valuation report which discusses the development and sale of flats is entirely misplaced and unwarranted. That the sale was to be conducted as a going concern, meaning the business operations of the Corporate Debtor were to continue. Therefore, the valuation report's suggestion about the construction and sale of flats is irrelevant and reflects an intentional effort to undervalue the assets for the benefit of certain parties.

6.7 That the contents of the Paragraph 8 of the Reply are denied as incorrect and misleading. The Applicant submits that neither the Respondent Bank nor the Liquidator has provided any cogent reason for not considering the Applicant's proposal of ₹22.50 crores, which was higher than the reduced reserve price. Further, the Resolution Plan of ₹21.56 crores and applicant's proposals in the range of Rs. 22,50,00,000 were not duly considered, whereas the assets were ultimately sold for ₹16.23 crores, substantially below the earlier liquidation value of ₹24.15 crores. The Applicant submits that the successive rejection of higher offers, reduction of the reserve price and subsequent sale at a substantially lower value raise serious concerns regarding the transparency, fairness and propriety of the liquidation process and warrant scrutiny of the conduct of the Respondents. These actions are suggestive of efforts to favour certain parties and are glaring examples of misconduct that need to be scrutinized.

6.8 That the contents of the corresponding Paragraphs 9 and 10 of the Reply are denied as incorrect and misleading. The Applicant submits that there is no inconsistency between subsequently becoming aware of the e-auction notice through the *Shillong Times* and the Applicant's submission regarding its limited accessibility in Guwahati. The Applicant had, much prior to the publication of the e-auction notice, approached Respondent No. 3 with its OTS proposal dated 29.12.2023 which was much before the e- auction notice published on 10.05.2024 and was assured by Respondent Nos. 3 and 4 that the same was under consideration. The Applicant's conduct was therefore guided by such assurances and cannot be termed as inaction. On the contrary, the failure to duly consider the Applicant's higher offer of ₹22.50 crores, coupled with the reduction of the reserve price and subsequent sale at a substantially lower value, raises serious concerns regarding the fairness and transparency of the liquidation process and the conduct of the Respondents.

6.9 In view of the above, the Applicant reiterates the reliefs sought in the Interlocutory Application and prays that the same may kindly be considered and allowed in accordance with law. Save and except what has been expressly admitted herein, all other averments, allegations and contentions contained in the Reply filed by Respondent No. 4 are denied.

ANALYSIS AND FINDINGS

7. The present Application has been filed under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 in relation to the liquidation proceedings of the Corporate Debtor. We have considered the Interlocutory Application, the replies filed by the Respondents, the rejoinder filed by the Applicant, the written submissions placed on record and the documents relied upon by the respective parties. The principal questions which arise for consideration are:

   I. Whether the Applicant is entitled to seek a direction for acceptance of the OTS proposal dated 29.12.2023?

   II. Whether the e-auction conducted on 06.06.2024 and the consequential sale in favour of the Successful Purchaser are liable to be set aside on the grounds alleged by the Applicant?

   III. Whether the fixation of the reserve price and the conduct of the Liquidator disclose any material irregularity, illegality or failure to maximise the value of the assets of the Corporate Debtor?

   IV. Whether after the payment of the entire sale consideration and issuance of the Sale Certificate, interference with the concluded sale is warranted?

I. Whether the Applicant is entitled to seek a direction for acceptance of the OTS proposal dated 29.12.2023?

i. It is relevant to note that, following the proceedings before the Hon'ble NCLAT and the Hon'ble Supreme Court, this Tribunal ultimately passed the order of liquidation dated 25.01.2024. The said order has not been shown to have been challenged or stayed before any competent forum. The OTS proposal dated 29.12.2023, therefore, has to be considered in the context of the subsequent commencement of the liquidation process.

ii. The Applicant submits that the OTS proposal of ₹22.50 crore dated 29.12.2023 was higher than the reserve price at which the assets were ultimately sold and ought to have been considered.

iii. The earlier OTS of ₹60,00,00,000/-, though accepted, was not complied with in its entirety and was subsequently revoked. Thereafter, the further settlement proposals were not accepted by the Bank.

iv. Acceptance of an OTS is a matter of commercial consideration, having regard to the financial position, security, recoverability and applicable banking norms. This Tribunal cannot compel the Financial Creditor to accept an unaccepted settlement proposal.

v. Further, the proposal dated 29.12.2023 was addressed to Respondent Nos. 1 to 3 and not to the Liquidator. Therefore, the allegation that Respondent No. 4 failed to accept or consider the OTS proposal cannot, in the absence of cogent material, be sustained against him.

vi. Even assuming that the proposal was brought to the Liquidator's knowledge, such knowledge would not confer upon him any authority to bind the Financial Creditor to the OTS. The acceptance or rejection thereof remained a matter between the Applicant and the Financial Creditor, and no material has been placed on record to establish otherwise.

vii. Further it is noted that he OTS proposal dated 29.12.2023 was made prior to the passing of the order of liquidation dated 25.01.2024. Thus, at the time when the said proposal was submitted, the liquidation process had not yet commenced. In the absence of any acceptance of the said proposal or a concluded and binding settlement between the Applicant and the Financial Creditor prior to the order of liquidation, the Applicant cannot seek enforcement of the said OTS as a matter of right after commencement of the liquidation proceedings. The subsequent liquidation process, therefore, cannot be interdicted merely on the basis of an OTS proposal which had remained unaccepted or which was made before the date of passing of the liquidation order.

viii. The fact that the proposed OTS amount was higher than the eventual sale consideration does not, by itself, render the auction illegal or confer any right upon the Applicant. A person intending to acquire the assets was required to participate in the auction and submit a bid in accordance with its terms.

ix. Therefore, Applicant seeking direction for acceptance of the OTS proposal dated 29.12.2023 cannot be granted.

II. Whether the e-auction conducted on 06.06.2024 and the consequential sale in favour of the Successful Purchaser are liable to be set aside on the grounds alleged by the Applicant?

i. The e-auction notice was published on 10.05.2024 and the auction was conducted on 06.06.2024. The Applicant contends that the period of notice was less than 30 days and, therefore, the process was conducted with undue haste.

ii. The Liquidator submits that the auction was conducted in accordance with Schedule I of the Liquidation Process Regulations. Mere allegation of inadequate notice, without establishing violation of any mandatory statutory or regulatory requirement or prejudice to any eligible bidder, is insufficient to invalidate the auction.

iii. The Applicant admittedly became aware of the auction before its conclusion, including through the very newspaper publication whose accessibility has been questioned. Despite such knowledge, neither the Applicant nor its proposed purchaser, M/s Associated Construction Co., participated in the auction or submitted any bid.

iv. The successful purchaser participated in the e-auction, matched the reserve price and paid the entire sale consideration of ₹16.23 crore. The mere existence of an unaccepted private proposal for a higher amount that too which was offered before that date of liquidation order was passed, without participation in the auction, cannot by itself invalidate the auction. Also the applicant has also not demonstrated that any particular prospective bidder was prevented from participating on account of the period provided.

v. The auction was concluded on 06.06.2024 and the Sale Certificate was issued on 21.06.2024. The interim order dated 25.06.2024 passed by the Hon'ble Gauhati High Court was subsequent thereto and did not adjudicate upon the validity of the sale;

rather, the Applicant was directed to avail the appropriate remedy before this Tribunal.

vi. The Applicant has failed to establish that the alleged shorter notice period resulted in denial of a reasonable opportunity to any eligible bidder or otherwise affected the fairness, transparency or competitiveness of the auction. Accordingly, no sufficient ground has been made out for interfering with the auction process on the said count. This issue is, therefore, answered in favour of the Respondents.

III. Whether the fixation of the reserve price and the conduct of the Liquidator disclose any material irregularity, illegality or failure to maximise the value of the assets of the Corporate Debtor?

i. The Applicant contends that the reduction in the value/reserve price from approximately ₹24.15 crores to ₹16.23 crores, despite the OTS proposal of ₹22.50 crores and other higher proposals, demonstrates failure to maximise the value of the assets and material irregularity in the liquidation process.

ii. The Liquidator submits that the reserve price was fixed at 120% of the liquidation value on the basis of the approved valuation report and the decision of the Stakeholders' Consultation Committee in its meeting dated 03.05.2024. The relevant basis was also communicated to the Applicant.

iii. A mere difference between an earlier valuation, private proposals and the eventual auction consideration does not, by itself, establish illegality or arbitrariness. In the absence of material establishing violation of the applicable regulations, improper valuation, extraneous considerations, fraud, collusion or any other material irregularity, this Tribunal finds no ground to interfere with the valuation undertaken in accordance with the liquidation process.

iv. The Applicant has also alleged that the Liquidator had assured that the auction was merely procedural and that the OTS proposal would be favourably considered. The said allegation has been denied, and no independent or contemporaneous material has been placed on record to substantiate such assurance.

v. Further, the Applicant, despite having knowledge of the e-auction before its conclusion, did not participate in the auction. No material has been placed to establish that any eligible bidder was prevented from participating, that the auction process was manipulated, or that the successful purchaser was favoured.

vi. Upon consideration of the material on record, we find that the Applicant has failed to establish any statutory violation, fraud, collusion, mala fide or material misconduct on the part of the Liquidator. The challenge, being principally founded on the earlier valuation and higher private proposals, is insufficient to establish any material irregularity in the fixation of the reserve price or conduct of the auction. Accordingly, this issue is answered in favour of the Respondents.

IV. Whether after the payment of the entire sale consideration and issuance of the Sale Certificate, interference with the concluded sale is warranted?

i. The e-auction was concluded on 06.06.2024, the Successful Purchaser paid the entire sale consideration of ₹16.23 crores, and the Sale Certificate was issued on 21.06.2024.

ii. Thus, upon completion of the sale, receipt of the entire consideration and issuance of the Sale Certificate, the transaction stood concluded, and the rights of the Successful Purchaser and the interests of other stakeholders became relevant considerations.

iii. In the absence of any established statutory violation, material irregularity, fraud, collusion or other compelling circumstance affecting the legality of the concluded sale, no interference with the sale is warranted merely on the basis of a subsequent higher offer or settlement proposal. Therefore this issue stands in favour of Respondent.

8. In view of the foregoing discussion and findings, we are of the considered view that the Applicant has failed to establish any statutory violation, material irregularity, fraud, collusion or other circumstance warranting interference with the concluded liquidation sale. The Applicant has also failed to establish any legal basis for directing the Financial Creditor to accept the OTS proposal dated 29.12.2023.

9. Accordingly, the reliefs sought by the Applicant, including setting aside of the e-auction dated 06.06.2024, cancellation of the Sale Certificate dated 21.06.2024, restraint upon the Liquidator and acceptance of the OTS proposal, cannot be granted.

10. The present Interlocutory Application, therefore, deserves to be dismissed.

ORDER

1. Accordingly, in view of the foregoing analysis and findings the present Interlocutory application i.e **IA(IBC)/124/GB/2024** in CP(IB)/22/GB/2019 filed by the applicant is **dismissed**.
2. Accordingly, the instant application i.e, **IA(IBC)/124/GB/2024** stands **disposed of**.
3. The Registry is directed to send e-mail copies of the order forthwith to all the concerned parties inclusive of the Counsel and the Interim Resolution Professional.
4. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
5. File be consigned to record.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 10th day of September,2026

Niketa Choudhary (L.R.A.)