

# IBC DOSSIER

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## **Eva Agro Feeds Private Limited Vs. Punjab National Bank and Anr.**

### **Brief Facts**

In the present case, CIRP was launched in the case of M/s Amrit Feeds Ltd by NCLT order dated 22<sup>nd</sup> October 2019. The CIRP was not successful, and a Liquidation Order was issued on 19<sup>th</sup> February 2021. An e-auction was held to sell the Corporate Debtor's assets. Because the first auction did not take place, a second auction was held. Eva Agro Feeds Pvt. Ltd. (Appellant) participated in the e-auction and made a Rs. 1 Crore earnest money deposit.

The Appellant was notified that it had won the bid by e-mail on July 20, 2021. The Appellant was notified on 21.07.2021, that the e-auction had been cancelled under clause 3 (k) of the Disclaimer Clause of the E-auction Process Information Memorandum. The Appellant was also notified that a new auction would be held.

The Appellant filed application before NCLT against the decision of the Liquidator which was allowed

by NCLT. One of the financial creditors filed appeal before NCLAT against the order of the NCLT which was allowed by NCLAT. Aggrieved by the same, the Appellant filed an appeal before the Supreme Court.

## **Decision**

The Supreme Court observed that no reasons were assigned by the Liquidator for cancellation of the E-auction held on 20<sup>th</sup> July 2021. Appellant was simply informed that the E-auction was cancelled in terms of Clause 3(k) of the E-Auction Process Information Document.

The Supreme Court relied on S. N. Mukherjee Vs. Union of India ( (1990) 4 SCC 594), State of Orissa versus Dhaniram Luhar ((2004) 5 SCC 568), East Coast Railway versus Mahadev Appa Rao (2010) 7 SCC 678, Kranti Associates (P) Ltd. Versus Masood Ahmed Khan (2010) 9 SCC 496 and observed that the furnishing of reasons are integral facet of principle of natural justice. Relevant Para is as under:

*29. We are afraid we cannot accept such a contention made on behalf of the intervenor. While it is true that para 1(11A) came to be inserted in Schedule 1 to the Regulations with effect from 30.09.2021, it does not imply that an auction sale or the highest bid prior to the aforesaid date could be cancelled by the Liquidator exercising unfettered discretion and without furnishing any reason. It is trite law that furnishing of reasons is an important aspect rather a check on the arbitrary exercise of power. Furnishing of reasons presupposes application of mind to the relevant factors and consideration by the concerned authority before passing an order. Absence of reasons may be a good reason to draw inference that the decision making process was arbitrary. Therefore, what para 1(11A) has done is to give statutory recognition to the requirement for furnishing reasons, if the Liquidator wishes to reject the bid of the highest bidder. Furnishing of reasons, which is an integral facet of the principles of natural justice, is embedded in a provision or action, whereby the highest bid is rejected by the Liquidator. Thus, what para 1(11A) has done is to give statutory recognition to this well-established principle. It has made explicit what was implicit.*

There was another issue involved regarding ineligibility of the Appellant under Section 29A of the Code. Shri Vijay Kumar Ghidia, director and principal shareholder of the appellant, was in the past also one of the promotor director and principal shareholder of the corporate debtor. Whether he was related party and as such the Appellant was barred under under Section 29A of the Code.

The Court relied on judgments of the Supreme Court in Swiss Ribbons Private Limited and Another Versus Union of India and Others ((2019) 4 SCC 17), Phoenix ARC Private Limited versus Spade Financial Services Limited ((2021) 3 SCC 475), Arcelor Mittal (India) (P) Ltd. V. Satish Kumar Gupta ((2019) 2 SCC 1) and observed as under:

*50. From the above, it is clearly manifest that the disqualification sought to be attached to the appellant is without any substance as the related party had ceased to be in the helm of affairs of the corporate debtor more than a decade ago. He was not in charge of the company or an influential member of the company i.e., the corporate debtor when the appellant had made its bid pursuant to the auction sale notice.*

Finally, the order of the NCLAT was set aside and order of the NCLT was restored.

### **Link of the Order**

<https://ibbi.gov.in/uploads/order/44e0363db0f2715224aad66e8e152963.pdf>



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