

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CWP-1671-2022

Date of Decision: 02.02.2022

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(Through VC)

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M/s Aggarwal Trading Co. & Anr.

.....Petitioners

V/s.

Liquidator for Best Foods Ltd. & Ors.

.....Respondents

**CORAM:** **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.**  
**HON'BLE MR. JUSTICE HARMINDER SINGH MADAN**

Present: Mr. D.S. Patwalia, Sr. Advocate with  
Mr. Gaurav Rana, Advocate for the petitioners

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**M.S. RAMACHANDRA RAO, J. (Oral)**

Notice of motion.

Mr. Abhishek Anand, Advocate and Mr. Viren Sharma,

Advocate accepts notice on behalf of respondent No.1.

Heard counsel for the parties.

The second respondent-company which is said to be in liquidation before NCLT, Chandigarh is said to have executed two agreements to sell on 05.07.2017 and 10.08.2017 in respect of two parcels of land in favour of the writ petitioners.

According to the petitioners, the sale consideration of ₹25 lakhs and ₹28 lakhs stood adjusted towards dues owed to the petitioners by the second respondent, and original link documents in favour of second respondent were handed over to the petitioners and they are in possession of the petitioners.

On 17.11.2017, a Company Petition under the IBC of 2016 was filed against the respondent No.2, and the same was admitted on 02.02.2018 and an IRP was appointed.

The petitioners had filed the civil suit No.2385/2021 before the Civil Judge (Sr.Divn.), Karnal and Civil Suit No.216 of 2021 before the Civil Judge (Sr.Divn.), Sonapat seeking specific performance of agreements to sell dt. 05.07.2017 and 10.08.2017 and had impleaded the first respondent, who was the liquidator of the second respondent.

According to the petitioners, the subject property was not a part of the liquidation estate, and therefore, was not included in the e-auction notices issued on 08.7.2021 and 29.09.2021 issued by 1st respondent. But the first respondent had issued e-auction notice dt.25.10.2021 including, for the first time therein the parcels of land which are subject matter of two agreements to sell dt. 05.07.2017 and 10.08.2017, and the auction was held on 15.11.2021.

In this Writ Petition, the petitioners had sought quashing of the e-auction notice dt. 25.10.2021 issued by the first respondent.

It is the contention of the petitioners that since the subject properties did not form part of the liquidation estate, they could not have been put to sale by the first respondent.

It is his contention that there is no remedy for him before the NCLT since he did not claim the amount of ₹53 lakhs before the Liquidator, and had only made a residual claim of a small sum of ₹4,42,297.70 paise which it still had against the respondent No.2/company-in-liquidation.

Mr. Abhishek Anand, counsel for the first respondent, however, contended that in view of Section 60(5)(c), only the NCLT would

have jurisdiction to entertain this Writ Petition and this Court should not entertain this Writ Petition. He also placed reliance on an order dt.18.11.2019 in Civil Appeal No.8800-8801 of 2019 where the Supreme Court had interfered with an order granted by the High Court of Orissa staying the sale being conducted by the Liquidator appointed by the NCLT.

*Prima facie*, it appears to us that the petitioners can avail the remedy before the NCLT as provided in Section 60(5)(c) and impugn the e-auction notice issued by the first respondent.

Therefore, without expressing on the opinion on the contentions of either parties, we direct the petitioners to approach the NCLT, Chandigarh for seeking appropriate relief in the matter. The petitioners shall do so within a period of one week from today and till the said date, no sale deed shall be executed by the Liquidator in favour of the purchaser since it is stated by the first respondent that the purchaser had been given time till 14.02.2022 to make the full payment for purchasing the assets after participating in the e-auction notice dt.25.10.2021.

Disposed of in above terms.

**(M.S. RAMACHANDRA RAO)**  
**JUDGE**

**(HARMINDER SINGH MADAN)**  
**JUDGE**

**02.02.2022**

*Ess Kay/Vivek*

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|------------------------------------|---|-----------------|
| <i>Whether speaking / reasoned</i> | : | <i>Yes /No.</i> |
| <i>Whether Reportable</i>          | : | <i>Yes/No</i>   |