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NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

(29)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 18.12.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER : MA/661/2018
PETITION NUMBER : TCP/431/IB/2017
NAME OF THE PETITIONER(S) : SS Chockalingam
NAME OF THE RESPONDENTS : Nag Yang Shoes Pvt Ltd
UNDER SECTION : Rule 11

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

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|----|--|-----------------------|-----------------------|
| 1. | For Praveesh Kumar | For Liquidator | A. Ch. Satyanarayanan |
| 2. | Ashish Sain kunia
Chinna Aswathy Abraham
(for Surana & Surana) | Counsel for Applicant | Wasish |

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

MA/661/2018 in TCP/431/2017 filed
under Rule 11 of the National
Company Law Tribunal Rules, 2016

In the matter of **M/s. Nag Yang Shoes Pvt. Ltd**

Mr. S.S.Chockalingam

... Applicant

-vs-

Mr. CA Mahalingam Suresh Kumar (Liquidator)

... Respondent

Order delivered on 18th December, 2018

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Applicant

: Mr. Ashish Jain Hunia
for M/s. Surana & Surana, Counsel

For Liquidator

: Mr. A.G.Sathyanarayana, Counsel

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Miscellaneous Application No. 661/IB/2018 in
TCP/431/IB/CB/2017 has been filed on 05.12.2018 by the
Applicant, under Rule 11 of the National Company Law

Tribunal Rules, 2016 seeking the prayer *inter alia* to pass an order directing the 1st Respondent viz., Liquidator to extend the last date of payment from 06.12.2018 to 29.12.2018 (1st tranche), 25.02.2019 (2nd tranche) and 25.03.2019 (tax component/final tranche).

2. The Counsel for the Applicant has stated that the Applicant has submitted the e-auction Tender Form on 24.10.2018 to participate in e-auction to be held on 26.10.2018. In the said process, the Applicant has been declared as successful bidder, who offered the highest bid amount, sale letter has been issued in favour of the Applicant, and thereafter, the Applicant was asked to deposit 25% of the total bid amount within 24 hours and the rest of 75% of the bid amount was to be paid within 15 days.

3. The Counsel for the Applicant has further submitted that the Applicant has paid 25% of the bid amount on 3rd day i.e. 29.10.2018, and thereafter, he sought extension of

time from 1st Respondent viz., the Liquidator. The Liquidator has granted extension of time twice for making payment of rest of 75% of the bid amount. In spite of the extension of time granted by the 1st Respondent twice for payment of rest of 75% of the total bid amount, the Applicant was not in a position to adhere to the timeline of the terms and conditions of the bidding process. Therefore, the Liquidator has cancelled the proposed sale and proceeded to negotiate with the 2nd highest bidder, who has paid the bid amount in one ~~shot~~^{shot} on 13.12.2018, and accordingly, the machinery stood sold by the Liquidator in favour of the 2nd highest bidder by following the bidding process.

4. The Counsel for the Applicant has submitted that the Applicant is a *bona fide* bidder as he has paid 25% of the bid amount, and in total, the Applicant has paid 57% of the highest bid amount offered by him, and the process that has been initiated by the 1st Respondent viz., Liquidator to

cancel the proposed sale and proceed to negotiate with the 2nd bidder is not in accordance with law and the same may be set aside. The Counsel for the Applicant has further submitted that the Liquidator has no authority to forfeit the amount that he has paid towards the payment as part of highest bid amount.

5. Heard the Counsels for the Applicant and the Liquidator and perused the record placed on file.

6. As seen from the Application, the Applicant sought for extension of time for making payments of the rest of 75% of the total bid amount, ~~of~~ which is not in line with the terms and conditions of the bidding process and there does not appear any provisions in the I&B Code, 2016 to give extension of time as far as the bidding process is concerned. Moreover, the Liquidator has already negotiated with the 2nd highest bidder who has already made payment which is equivalent to the amount, which has been offered by the Applicant being the highest bidder. In other words, the 2nd

bidder, being in a position to make the payment of the same amount, has become the successful bidder and made the payment well in time. Therefore, in the circumstances, the Application of the Applicant has become *infructuous* ^{and} ~~is~~ the same stands dismissed. f

7. The order is dictated and pronounced in open court in the presence of the Counsels for the Applicant and Liquidator.

P. ATHISTAMANI


[CH. MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)