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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 698/2015**

SBI CAPITAL MARKETS LIMITED

..... Petitioner

Through:

versus

ARAVALI INFRAPOWER LIMITED

..... Respondent

Through: Ms. Ruchi Sindhwani, Senior
Standing Counsel with
Ms. Megha Bharara, Advocate for
OL.
Mr. Aman Nandrajog, Mr. Arjun
Nanda and Mr, Yash Gupta,
Advocates in Co. Appl. 217/2023 and
236/2023.
Mr. Abhishek Kr. Singh, Advocate.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

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ORDER
24.04.2023

CO.APPL. 236/2023 (for recalling the order dated 02.11.2022 and for setting aside of the sale confirmed vide order dated 02.11.2022 passed in Company Application No. 638/2022)

1. The Applicant, Native Estate Pvt. Ltd., seeks setting aside of the sale of land of Respondent-Company admeasuring 19 Bigha 11 Biswa situated at Khata No. 110/75, Khasra No. 1037/385, 392, 393, Khata No. 51/78, Khasra No.8 383, 384, 1036/386 at Village Bhagwanpur, Derabassi, District Mohali, Punjab [hereinafter, “**subject land**”] in favour of Mr. Shiva



Budhiraja, Ms. Kamlesh Rani, Mr. Pankaj and Ms. Anjali Saini [*hereinafter collectively, “Owners”*], which was confirmed *vide* order dated 02nd November, 2022.

FACTUAL BACKGROUND

2. On 18th September, 2019, sale of the plant and machinery lying at Derabassi property was confirmed in favour of the Applicant, with a direction to them to lift the same within three months from the date of the order. In the process of removal, Applicant removed the sheds which were constructed thereon. When this was brought to the notice of the Court, directions were issued to replace/ rebuild the said sheds.

3. In the meantime, *vide* communication dated 07th August, 2022 addressed to the Official Liquidator [“OL”], Applicant expressed their inclination to purchase the land and buildings at Derabassi property for Rs. 10,65,38,430/- in the following terms:

“Respected Sir,

This is with reference to the captioned order whereby time was sought by the Counsel for your good office to take instructions on the proposal forwarded on behalf of the undersigned regarding the issue raised in Company Application No. 143/2022.

The Proposal being put before you on behalf of the undersigned is as follows:

i. Factory Site at Village Bhagwanpur (New Kuranwala), Barwala Road, Derabassi, District Mohali, Punjab.

The undersigned is willing to purchase the Land and Building for a sum of INR 10,65,38,430/- (Rupees Ten Crores Sixty Five Lacs Thirty Eight Thousand Four Hundred Thirty Only), i.e. the Reserve Price in terms of the Sale Notice dated 25.07.2019.

ii. Factory site at D-7. ELDECO SIDCUL, Industrial Park, Sitarganj, Uttarakhand



As per the Valuation Report dated 08.05.2022 submitted by Dr. S.N. Bansal, there is a shortfall of material worth INR 1,28,00,000/- (Rupees One Crore Twenty Eight Lacs Only). The undersigned is willing to make good the said loss by making payment of the same to your good office.

Hence, in view of the above, you are requested that the aforesaid proposal on behalf of the undersigned is accepted.

Thanking you.

*Sd/-
For Native Estate Pvt. Ltd."*

4. Later, the buildings/ sheds erected on Company's two sites – (a) Derabassi property and (b) D-7, ELDELCO SIDCUL, Industrial Park, Sitarganj (Uttarakhand) were ordered to be auctioned in the hearing held on 18th August, 2022. At that stage, Manasvi Security Agency submitted that in case the buildings/ sheds at the aforesaid two sites do not fetch the minimum reserve price, they would be willing to purchase the same at the reserve price. Accordingly, the buildings/ sheds and the land at the sites were separately put to auction. No bids were received for either of them. In the subsequent hearing held on 10th October, 2022, with the consent of the parties, the aforesaid buildings/ sheds were sold together to the Applicant and Manasvi Security Agency, with a direction to dismantle the sheds within 60 days of handing over of the possession.

5. As regards the subject land, which was also put to auction through sale notice dated 31st August, 2022, it must be noted that despite Applicant's offer dated 07th August, 2022 (extracted above), they chose not to participate. Further, no such offer to purchase was made during the hearing held on 18th August, 2022.



6. In the above background, the Owners filed CO. APPL. 638/2022 offering to purchase the subject land at the reserve price. Since OL's previous attempts to sell the same had been unsuccessful, the Court, *vide* order dated 02nd November, 2022, permitted sale of the subject land to the Owners, on the following terms:

"6. In my opinion, as the Official Liquidator did not receive any bid pursuant to the Sale Notice, and the amount being offered by the applicants is equivalent to the Reserve Price fixed in the Sale Notice for the subject property, the bid of the applicants deserves to be accepted [...]"

8. In view of the above, and subject to the payment of the balance consideration amount within a period as prescribed in the Sale Notice, which is 60 days from today, the sale in favour of the applicants for the subject property shall stand confirmed. The Official Liquidator shall hand over the possession of the subject property and execute the Sale Deeds on receipt of entire Sale Consideration from the applicants."

7. The Owners, as per the order mentioned above, paid the sale consideration to the OL and a registered sale deed was executed in their favour on 03rd January, 2023. Therefore, presently, the Owners hold title over the land at Derabassi property, whereas the Applicant owns the sheds/buildings constructed on Derabassi property, which as noted hereinabove, have been directed to be dismantled and removed. Now, when the Applicant is in the midst of removal process, they have filed the instant application for cancellation of sale in favour of the Owners and have offered to purchase the subject land for Rs. 8.5 crores, which price was, during the course of submissions, enhanced to Rs. 9 crores.

APPLICANT'S CONTENTIONS

8. Mr. Aman Nandrajog, counsel for Applicant, makes the following submissions:



8.1. The OL never responded to Applicant's offer dated 07th August, 2022 to purchase the subject land for the reserve price. Thus, till 02nd November, 2022 (the date of confirmation of sale in Owners' favour), Applicant's offer was still open, but not considered by OL for undisclosed reasons.

8.2. Throughout the sale process, OL was aware of Applicant's communication/ offer of 07th August, 2022, however, when the sale was confirmed in the Owners' favour on 02nd November, 2022, this fact was not brought to Court's notice.

8.3. The procedure dictates that in case no bids are received, the Company's properties should be re-auctioned after reducing the reserve price by 10-20%. Had the same been done, Applicant and the Owners could have engaged in *inter-se* bidding for the land in question. In **Okara Agro Indus Ltd.**,¹ an application was filed by one Mr. Manoj Jain seeking permission to purchase a property of the company under liquidation. In the reply to the said application, the OL had urged before the Court that auction of the property would be the appropriate course of action for such sale.

8.4. Applicant is desirous of purchasing the subject land for Rs. 9 crores, which is substantially more than what was paid by the Owners. The primary objective of the liquidation process is to obtain the highest possible price for company's assets. Therefore, as the Applicant's offer is more lucrative, the sale deed executed on 03rd January, 2023 in favour of the Owners should be nullified.

8.5. The Company Court has the power to set aside a sale that has already been confirmed. Reliance is placed upon judgement of the Supreme Court in

¹ CO. APPL. (M) 115/2002.



Divya Manufacturing Company v. Union Bank of India² and order dated 05th April, 2022 of this Court in ***Okara Agro (Supra)***.

SUBMISSIONS BY COUNSEL FOR THE OL AND THE OWNERS

9. Ms. Ruchi Sindhvani for OL and Mr. Abhishek Kr. Singh for the Owners, strongly oppose the application by stating that the principles for confirming sales are well-established and that there is no evidence of any irregularities in the conduct of the auction. As a result, they argue that there are no grounds for the Court to exercise its discretion in setting aside the sale. To support their contentions, reliance is placed upon ***Vedica Procon Private Limited v. Balleshwar Greens Private Limited***³ and ***Navalkha v. Ramanya Das***.⁴ Ms. Sindhvani emphasises that Applicant was fully aware of the auction of subject land, yet, they did not participate. She controverts Applicant's assertion that if auction fails, OL is bound to re-auction the property. To buttress her submission, she refers to several orders of this Court whereby properties of companies in liquidation have been permitted to be sold to interested buyers, if no bids were received during auction process.⁵ She also draws the Court's attention to judgment of a Division Bench of this Court in ***Narender Kumar Nehra v. Bhupinder Singh and Ors.***⁶

ANALYSIS

10. The Court has considered the afore-noted submissions. Although the Applicant's offer to purchase the land at subject property of Rs. 9 crores is

² (2000) 6 SCC 69.

³ (2015) 10 SCC 94.

⁴ (1969) 3 SCC 537.

⁵ (a) Order dated 10th September, 2020 in CO. PET. 618/2015.

(b) Orders dated 10th August, 2018 and 06th September, 2018 in CO. PET. 329/2011.



higher than the sale price of Rs. 7,24,32,750/-, the Court is not inclined to unsettle the Owners' legal rights, which stand crystallized with the confirmation of sale. The Court is of the opinion that the mere fact of an enhanced offer cannot be the sole basis on which the present application must be decided. The principles governing the sale of properties of a company in liquidation require the Court to ensure that the sale is conducted in a transparent manner and that the highest possible price is obtained, while also considering the reasonableness of the consideration offered. The Court cannot set aside the sale and the resulting rights in favour of the Owners, unless the Applicant can prove the existence of a manifest irregularity, illegality, or fraud in the process, which is not the case here. Furthermore, the Applicant has not contested that the price paid by the Owners was insufficient or unreasonable.

11. The public auction was conducted in a transparent manner, allowing all interested parties to participate and submit their bids. The fact that the Applicant did not submit a bid during the auction suggests a lack of serious intent to acquire the subject land at that time. Admittedly, Applicant had sufficient opportunity to participate in the auction process for sale of subject land, which was notified *vide* sale notice dated 31st August, 2022. The fact that Applicant proposed to buy the land through their letter of 07th August, 2022, does not give them any preferential rights. If the Applicant had a genuine interest in purchasing the land, they should have followed up on their offer or submit a bid in the public auction. No justifiable explanation for non-participation in auction process is forthcoming. That apart, Ms. Sindhwani has pointed out that the order of auction was passed in presence

⁶ DHC Neutral Citation: 2020:DHC:1068-DB.



of the Applicant, which has not been controverted by Mr. Nandrajog. Thus, evidently, despite knowledge, Applicant failed to participate in the process.

12. Similar view has been taken by the Courts in **Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Products (Gujarat) Ltd.**,⁷ **Narender Kumar Nehra (Supra)**, **Vedica Procon (Supra)** and **Navlakha (Supra)**. Mr. Nandrajog sought to distinguish the judgment of this Court in **Narender Kumar Nehra (Supra)** by arguing that Respondent in the said case had offered to purchase the property in question by increasing the price by only 5%, which was unsubstantial in comparison to the facts of the present case. However, the same does not find favour with the Court. The judicial principles are well-settled and the Court is not convinced that present is a fit case for cancellation of sale. Reliance on the judgement in **Divya Manufacturing Company (Supra)** by Applicant, is also of no avail as in the facts of the said case, the Supreme Court had noted that the company's property had been sold at a 'throwaway' price and for that reason, the sale was set-aside.

13. Mr. Nandrajog alleged procedural irregularity in the process by strenuously contending that since no offers were received in the auction, subject property should have been re-auctioned and could not have been sold privately to an interested buyer. It must be highlighted that when the auction for buildings/sheds at the Derabassi property was conducted, Applicant had not participated, yet subsequently, *vide* order dated 10th October, 2022, the same were sold to them alongwith Manasvi Security Services. Therefore, having once taken benefit of this process, Applicant cannot be permitted to challenge its validity. It would be inappropriate for the Applicant to



challenge the auction process when they had the opportunity to participate in it, but chose not to do so. The Court disagrees with the notion that a Company Court lacks the authority to permit the sale of a company's assets to an interested buyer if the auction process fails, as evidenced by the cases cited by Ms. Sindhwani.

14. In the present case, not only has the sale has been confirmed, but a sale deed has also been executed in Owners' favour on 03rd January, 2023. There is no allegation of any fraud or illegality in the sale process undertaken. Thus, mere offer of an enhanced amount cannot be the sole ground for recalling the order dated 02nd November, 2022.

15. Dismissed.

CO.APPL. 217/2023 (seeking extension of time in terms of the order dated 10.10.2022 passed in Company Application Nos. 143/2022, 334/2022, 453/2022 and 593/2022)

16. Having regard to the facts narrated in the application, the request is allowed and timelines for the Applicant to comply with directions contained in order dated 10th October, 2022 are extended by a period of two months from today, subject to payment of Rs. 5 lakhs by the Applicant to the Owners of the subject land towards compensation for overstay. This amount shall be paid within three weeks from today. The Owners shall extend full cooperation to Applicant for removal of sheds.

17. With respect to company's property at Sitarganj, Uttarakhand, the Applicant shall incur the expenses for running security services to safeguard the said site, till the same is vacated by them as per previous directions.

⁷ (2008) 9 SCC 299.



18. The application is disposed of.

SANJEEV NARULA, J

APRIL 24, 2023/nk
(Corrected and released on 05th May, 2023)