

| (Shashi Sareen)
| Court Master

| | (Veena Khara)
| | Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6832-6833 OF 2013
(Arising out of SLP(C) No. 7637-7638 of 2011)

| NIRMAL UJJWAL COOP CREDIT SOCIETY

| ... | Appellant(s) |

| Versus |

| MAH. STATE COOP BANK LTD. AND ORS.

| ... | Respondent(s) |

O R D E R

Leave granted.

These appeals arise out of three different interim orders dated 31.1.2011, 8.2.2011 and 15.2.2011 passed in Writ Petition No. 629 of 2007 by the Nagpur Bench of the High Court of Judicature at Bombay.

Vidharbha Weavers Central Cooperative Society Limited was under liquidation in terms of an order dated 26.02.2012 passed by the Director of Textile. The society it appears had provident fund dues outstanding against it for recovery whereof the Commissioner Provident Fund had passed orders of attachment of the property owned by the society. The order of attachment came to be challenged by Maharashtra State Coop Bank Ltd. respondent No. 1 in Writ Petition No. 629 of 2007. The High Court by its order dated 25.2.2008 passed in the said petition directed sale of a parcel of land measuring 8.33 acres along with super structure standing on the same and owned by the society. The sale was to be conducted by calling tenders from interested parties.

It is not in dispute that the appellant-society was one of the bidders who participated in the auction and offered a sum of Rs. 14,77,77,000/- for the property being sold. This happened to be the highest bid. But before the same could be accepted, respondent No. 6 Tirupati Infratech filed Civil Application 1602 of 2010 before the High Court offering an amount higher than the one offered by the appellant. The High Court entertained that offer and directed the liquidator who was conducting the sale proceedings to give an opportunity to the appellant to revise its bid and to hold negotiations between the appellant and respondent No. 6. Negotiations were accordingly held between the said two bidders on 23.06.2010 when the appellant Nirmal Ujjwal Coop Credit Society revised its bid to Rs. 16,29,40,000/- as against 15,08,00,000/- offered by the Tirupati Infratech. When the matter appeared before the High Court on the report submitted by the liquidator, respondent No. 5 appears to have intervened to offer a still higher amount of Rs. 18,11,00,000/- for the property in question. The High Court has passed the orders impugned in these appeals on that intervention application. By its order dated 31.1.2011, the High Court directed respondent No. 1 to deposit the entire amount of Rs. 18,11,00,000/- within one week with a direction that in case the amount is not deposited, the Court would consider whether the bid offered by Nirmal Ujjwal should or should not be accepted. By the second order dated 8.2.2011, the High Court altered the said direction to the extent that instead of depositing the entire amount offered by respondent No. 1, it was directed to

deposit a sum of Rs. 5,00,00,000/- only within a period of one week. The third order dated 15.01.2011 granted time till 21.02.2011 to respondent No. 5 to deposit the balance amount of Rs. 3,18,00,000/- by 5 p.m.

It is not in dispute that respondent No. 5 did make the deposit of the requisite amount within the time allowed for that purpose. The appellant is all the same aggrieved of the orders mentioned above primarily on the ground that respondent No. 5 should not have been allowed to intervene and that its offer should not have been considered nor any direction regarding the deposit made qua the said respondent.

It was contended on behalf of the appellant society that the bid offered by the society was as good as accepted by the High Court which left no room for the High Court to take note of the higher offer made in the intervention application especially when the same was made by one who had at no stage participated in the auction proceedings.

Mr. P.S.Patwalia, learned senior counsel for respondent No. 5 argued that the orders passed by the High Court were interim in nature and the entire issue whether or not the offer made by the society should be accepted at Rs. 16,40,00,730/- was still at large. No right had accrued to the appellant-society to insist that its offer should necessarily be accepted nor was there any impediment for the High Court to consider a better offer especially when the same made a difference of more than Rs. 2,00,00,000/- contended Mr. Patwalia.

On behalf of the official liquidator, it was contended that the entire controversy regarding the acceptance of the offer made by the appellant-society or that made by respondent No. 5 had with passage of time been rendered academic in view of the fact that prices of real estate in Nagpur had risen considerably and the property in question was today capable of fetching any thing up to Rs. 25,00,00,000/- (Rupees Twenty Five Crores only). It was submitted that instead of going into the validity of the offers made in response to the earlier auction or those made before the High Court, it would be more appropriate if a fresh auction was directed to be held which would fetch the optimum price that the property is capable of fetching for the mutual benefit of the owner of the property as also creditors of the society.

There is, in our opinion, merit in the submission made by the learned counsel for the liquidator. It is obvious from a reading of the orders passed by the High Court that the offer made by the appellant-society had not been accepted by the High Court. On the contrary order dated 31.1.2011 specifically left the question regarding the acceptance or rejection of the offer made by the appellant open to be considered only after the requisite deposit was made by respondent No. 5 who had offered a higher amount. It is common ground that the High Court did not at any stage after the above order consider the question of acceptance of the offer made by the appellant-society nor is there any order of acceptance as on date.

In the circumstance and keeping in view the fact that considerable time since the earlier auction has elapsed, we see no reason why instead of examining the validity of the offer made for the property in question a fresh auction after giving wide publicity to the same, should not be ordered. Any such fresh auction is in our opinion bound to carry a better price for the debtor society to the advantage of all concerned.

Learned counsel for the appellant submitted on instructions that if property were to be sold on the basis of the previous auction the appellant was ready and willing to match the offer made by respondent No. 5 and pay a sum of Rs. 18,11,00,000/- within one week. We are not, however, inclined to accept any such offer in these proceedings. All the same we are of the view that since both the parties are ready to offer an amount of Rs. 18,11,00,000/- towards the price of the property in question, fresh auction which we are directing shall fix a reserve price of Rs. 18,00,00,000/- (Rupees Eighteen Crores only) for the property in question.

In the result we dispose of these appeals with the following directions:

(a) The official Liquidator shall initiate appropriate proceedings for holding a fresh auction for the property after giving wide publicity to the same

(b) The auction shall be by inviting sealed tenders.

(c) The auction notice shall mention the reserve price of the property at Rs. 18,00,00,000/- (Rupees Eighteen Crores only).

(d) Subject to the appellant and respondent No. 5 depositing earnest money as required in terms of the fresh auction notice, the amount deposited by them earlier shall stand released in their favour together with interest if any accrued on the same.

(e) The orders passed by the High Court and impugned in these appeals shall to the extent indicated above stand modified and the appeals disposed of leaving the parties to bear their own costs.

.....J.
(T.S.THAKUR)

.....J.
(VIKRAMAJIT SEN)

New Delhi,
August 19, 2013