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For Respondent(s)
For UOI: Mr. A. Sharan, ASG.
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Res.No.6&7: Mr. Soli J. Sorabjee, Sr.Adv.
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Res.No.3: Ms. Kavita Wadia, Adv.
Ms. Monika Garg, Adv.

Dr. Kailash Chand, Adv.

Mr. D.N. Goburdhan, Adv.

Mr. K.R. Sasiprabhu, Adv.

Mr. Ravindra Kumar, Adv.

Ms. Jyoti Mendiratta, Adv.

Ms. Puja Sharma, Advs.
Mr. Vijay Kumar Verma, Adv.

UPON hearing counsel the Court made the following
ORDER

This Court has been monitoring the revival of Super

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Bazar in New Delhi for last couple of years.

An Evaluation Committee was appointed earlier by this Court which has made recommendations on 3rd August, 2007 to this Court. It may be noted that three bidders were identified by the Evaluation Committee. They are: (1) M/s. Indian Potash Ltd., (2) National Consumer Co-operative Federation (NCCF) and Pantaloon Retail (India) Ltd. (PRIL) and (3) M/s. Writers and Publishers Ltd.

Before us, at one point of time, there was a dispute interse between the Trade Unions regarding payment of wages. Earlier, Union of India had waived an amount of Rs.114 Crores which position continues even today. However, we found that certain section of workers were represented by

different Unions. Therefore, an attempt was made to quantify the claims of the workers so that the bidders should know their quantified liability before re-evaluation takes place. This re-evaluation is required to be done by the Committee for two reasons. Firstly, the Unions have now agreed to a quantified amount vide affidavit dated 14th March, 2008 and that agreed amount is Rs.54.31 Crores as on 31st December, 2007. Secondly, re-evaluation is required because a value is required to be assigned by the Committee to the open vacant office space in the subject premises which needs to be done as on 31st December, 2007 for which the Committee will have to call for the valuation report of an expert valuer. Ultimately, the exercise needs to be undertaken so that the

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bidders should know the liabilities which they are required to take over. At this stage, it may be noted that there are creditors of the erstwhile society. Some of them are secured creditors. Similarly, eviction notices have been given by local authorities and also eviction orders have been passed by the Estates Officer of the NDMC etc. for non-payment of rent.

In order to put an end to the controversy, we have made the position clear to all the three bidders and the counsel appearing for some of the local authorities, including NDMC, that highest bidder will have to pay the consideration for the value assigned to the open office premises, which amount is required to be deposited with the Registry. The said bidder has also to deposit Rs.54.31 Crores. The idea being that to a certain extent the Official Liquidator would be in a position to pay off the creditors as well as the dues of the local authorities from the amounts which are required to be deposited by the highest bidder in this Court. This would also facilitate the liquidation proceedings.

Since the Evaluation Committee is being asked to reconsider its recommendations in the light of the above-mentioned later developments, we are directing the Evaluation Committee to consider, inter alia, the following financial parameters of the three bidders, whose names are given hereinabove.

These financial parameters are: the net worth of the

bidder company as on 31st March, 2007 and the net profits of the bidder company as on 31st March, 2005, 31st March, 2006 and 31st March, 2007.

It would be open to the Evaluation Committee to take into account any other parameter both on performance as well as financial, apart from the two parameters which this Court has mentioned above, particularly in the case of Joint Venture(s).

One aspect needs to be clarified. Under the recommendations dated 3rd August, 2007 made by the Evaluation Committee, the successful bidder is required to get the by-laws of Super Bazar amended. That amendment can be made only by the Official Liquidator. However, it appears that as a result of the said amendment, the share capital of Super Bazar might have to be enhanced. Therefore, the highest bidder should undertake that in such eventuality, it will stand by the enhancement of the share capital and reconstitution of the new Board of Super Bazar to be done in accordance with the provisions of Multi-State Cooperative Societies Act, 2002.

We do not want in this case any rebidding. The evaluation by the Committee will take place only inter se between the three above-mentioned bidders. The three bidders will take into account the projections mentioned hereinabove as well as the parameters.

Within three weeks from today, the Evaluation Committee will call for the valuation report in respect of the vacant

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office premises. The valuation report will be called in a sealed cover. The Evaluation Committee will have to fix a reserved bid. It will also try to ascertain the dues of the local authorities recalculated upto 31st December, 2007. They may also call for the balance sheets of the secured creditors and try to ascertain the dues till the date of liquidation, namely, 5th July, 2002.

After completion of this exercise, the Evaluation Committee will inform each of the three bidders that the exercise is complete and it will call upon each of the bidders to submit its revised offer within a period of four weeks from the date of such intimation.

It is made clear that we want the Evaluation Committee to ascertain the dues payable to each of the statutory authorities upto 31st December, 2007 because if those dues are paid by the highest bidder, then, the eviction/cancellation notices have to be withdrawn.

At this stage, learned counsel appearing for NDMC submits that apart from vacant office premises, the remaining area is in occupation of Super Bazar under a lease. Learned counsel submits that the lease rent also needs to be revised if a private company is going to take over the business. We do not find merit in this contention for two reasons. Firstly, the lessor of the property is Union of India. As stated above, Union of India has waived Rs.114 Crores liability. It is the case of the Union of India that they

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want Super Bazar to be revived. Revival of the Super Bazar is the predominant object of this exercise. In the circumstance, we make it clear that in respect of the premises other than the vacant office premises, NDMC will not enforce the eviction notices/orders on the ground of rent being revised because they would be entitled to revision only in accordance with the lease and nothing beyond that. We also make it clear that this order is being passed under Article 142 of the Constitution in order to do complete justice between the parties and, particularly, keeping in mind the predominant object of this exercise, namely, revival of Super Bazar.

List these matters on 5th August, 2008 first on Board, subject to over-night part heard.

(N. ANNAPURNA)
COURT MASTER

(MADHU SAXENA)
COURT MASTER