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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 414 OF 2014
IN
COMPANY PETITION NO. 501 OF 1984

Paramjeet Singh Dhyan Singh Kalsi ... Applicant

In the matter between

Mohanlal Keshavlal Shah ... Petitioner
Vs

The Official Liquidator,
M/s. Polynit Pvt. Ltd. (In Liqn) & 2 Ors. ... Respondents

WITH

COMPANY APPLICATION NO. 44 OF 2014
IN
COMPANY PETITION NO. 501 OF 1984

Shukla Ramlubhya Mehra ... Applicant

In the matter between

Mohanlal Keshavlal Shah ... Petitioner
Vs

The Official Liquidator,
M/s. Polynit Pvt. Ltd. (In Liqn) & 2 Ors. ... Respondents

Mr. Mayur Khandeparkar i/by Mr. Prakash Mahadik, for Applicant in CA 414 of 2014.

Mr. P.H.Chande, for Petitioner.

Mr. C.N.Mehta i/by M/s. MMK Law Associates, for Applicant in CA 44 of 2014.

Mr. Naushad Engineer, for Official Liquidator.

Mr. S. Ramakantha, Official Liquidator, present.

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Coram: S.J. Kathawalla, J.

Date: 30th April, 2015

P.C.

1. This Order disposes off Application No. 414 of 2014 and Application No. 44 of 2014. Application No. 414 of 2014 has been filed by the son of Dhyan Singh Kalsi who was one of the original founder members of the Respondent Company M/s. Polynit Pvt. Ltd. The said Application No. 414 of 2014 has been filed to set aside the auction/sale held on 17th November 1993 (i.e. more than 20 years ago) of the Company's properties consisting of land admeasuring 837 sq. mtrs and the structures standing thereon on Plot No. H-171, Survey No. 2, Hissa No. 2, Village Kashigaon, Thane ("the said property"). The Company Application also seeks directions to conduct a fresh auction of the said property.

2. The Applicant in the said Company Application No. 414 of 2014 has contended that the auction of the said property on 17th November 1993 requires to be set aside on the ground of material irregularly, fraud and collusion which is allegedly borne out from the following:

- (i) There was no valuation report of the said property that was obtained before the auction of the said property.

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- (ii) Respondent No. 2 (Mr. Ajay Mehra) had participated in the said auction in his personal capacity and not as an authorised representative of “Polyhigh Industries” Respondent No. 2 Mr. Ajay Mehra did not disclose that he was associated in any manner with the firm “Polyhigh Industries” which was owned by the ex-Director of the Respondent Company viz. Respondent No. 3. Therefore, the “real bidder” was not disclosed which tantamounts to a fraud.
- (iii) Respondent No.3 being the ex director of Respondent No. 1 Company could not have bid at the auction without the leave of the Court. No such leave was taken. Therefore the sale was bad in law.
- (iv) The sale was confirmed in the name of Respondent No.2 Mr. Ajay Mehra. However, the payments were made by Respondent No. 3 which could not have been done.
- (v) Respondent No. 3 in her Affidavit in Company Application No. 1344 of 2008 has claimed to be the assignee of Respondent No.2. However, Respondent No.3’s case in Company Application No. 678 of 2012, 276 of 2013 and in Company Application No. 44 of 2014 are that Respondent No.3 was the actual bidder. The said stands are inconsistent and therefore Respondent No. 2 and 3 have colluded with each other.

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- (vi) The liability of Respondent No.1 Company has increased manifold and the purchase price of Rs.13,21,000/- will not be adequate to meet the liabilities and therefore the said property needs to be re-auctioned as it would fetch a far greater consideration today. For all these reasons, the auction/sale that had taken place of the said property deserves to be set aside and the Official Liquidator should be directed to conduct a fresh auction.

3. Company Application No. 44 of 2014 has been filed by Ms. Shukla Mehra who is the Proprietor of Polyhigh Industries. The said Company Application has been filed seeking relief that the order dated 23rd October 2008 passed in Company Application No. 1344 of 2008 by which the sale deed was ordered to be executed in favour of Respondent No.2 is required to be modified and that the Official Liquidator be directed to execute the sale deed in respect of the said property in favour of Ms. Shukla Mehra.

4. As both these Company Applications essentially deal with the same subject matter and since the decision in one of the Company Applications would affect the other, both Company Applications have been heard together and disposed off by this common order.

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5. In order to correctly appreciate the arguments of all sides, it is first necessary to set out the facts of the present case which are as under:

- (i) On 25th July, 1985, the company M/s. Polynit Pvt. Ltd., was ordered to be wound up and the Official Liquidator, High Court was appointed with all the usual power under the Companies Act, 1956.
- (ii) On 3rd October 1985, the Official Liquidator received a letter from the Court Receiver, High Court, Bombay which intimated that pursuant to the order of this Court dated 11th October 1982, passed in Suit No. 1744 of 1981, the Court Receiver had been appointed as the Receiver of the movable assets of the company and that the Receiver has taken possession of the movable assets on 20th April 1983.
- (iii) On 8th June 1992, the Official Liquidator fixed a meeting in which it was agreed that the Official Liquidator would sell the immovable property and the Official Liquidator would obtain the necessary directions from the Court. The meeting was adjourned to 29th June 1992.
- (iv) On 29th June 1992, it was decided that a report would be submitted before the Court seeking the permission for sale of the immovable property after necessary valuation was done by the Official Liquidator.

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- (v) On 31st July 1992, the Official Liquidator addressed a letter to M/s. H.N. Kanga & Company, who is a valuer on the panel on the Official Liquidator seeking its willingness to take up the valuation of the land and building of the said Respondent Company i.e. the said property.
- (vi) On 17th August 1992, the said valuer addressed a letter to the Official Liquidator stating that it was willing to take up the valuation work. On 28th September 1992, the valuer took inspection of the said property. On 13th October 1992, the valuer submitted his valuation report of the said property in a sealed cover with the Official Liquidator.
- (vii) The Official Liquidator published a notice of sale in the Indian Express and Lok Satta newspapers for sale of the said property in November 1992 and also on 3rd September 1993. Notice was again issued in The Economic Times (all issues) and Lok Satta on 12th November, 1993 and 7th November, 1993 respectively.
- (viii) On 17th November 1993, the sale was conducted. Bids were received from three parties. The bids started at Rs.4,00,000/- and the highest bid received was Rs.13,21,000/-. The progress of the auction was shown in the auction bid sheet. Minutes of the meeting were also prepared by the Official Liquidator. It is clear from the auction bid

sheet that Mr. Ajay Mehra representing M/s. Poly High Industries was accepted as the highest bidder as Rs.13,21,000/-. It has expressly been stated by the Official Liquidator that *“The offer of Rs.13.21 lacs given by Mr. Ajay Mehra representing Polyhigh Industries for Land & Building is accepted subject to confirmation of court”*. In the Minutes of the meeting, it was also reiterated that *“The highest offer for the land & building of the company (In Liquidation) came from Shri Ajay Mehra of M/s. Polyhigh Industries, Bombay Mutual Building, 2nd floor, Dr. D.N. Road, Fort Box No. 396, Fort, Bombay for Rs.13,21,000/-”*.

- (ix) On 24th November 1993, the Official Liquidator submitted his report for confirmation of the sale of the said property.
- (x) On 25th November 1993, the sale was confirmed by this Court in favour of Mr. Ajay Mehra.
- (xi) During the period 26th November 1993 to 24th December 1993, the sale proceeds of Rs.13,21,000/- was paid over to the Official Liquidator from M/s. Polyhigh Industries' account.
- (xii) Vacant and peaceful possession of the said property was handed over to M/s. Polyhigh Industries.

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- (xiii) On 24th October 2000, Respondent No. 3 submitted the draft of the Conveyance Deed to the office of the Official Liquidator. However, as there was a delay on the part of the Respondent NO.3 in submitting the draft, the Official Liquidator did not finalize the same and execute the same.
- (xiv) On 29th August 2008, Ms. Shukla Mehra took out Company Application No. 1344 of 2008 and sought condonation of delay in execution of the sale deed / Conveyance.
- (xv) On 23rd October 2008, this Court passed an order condoning the delay on payment of costs of Rs.5,000/-. It was directed that the sale deed should be executed in the name of and in favour of Mr. Ajay Mehra (Respondent No. 2).
- (xvi) It appears that no sale deed was executed in favour of Mr. Ajay Mehra nor did Ajay Mehra take any steps to execute the sale deed in his favour.
- (xvii) On 1st November 2012, Respondent No. 3 took out Company Application No. 678 of 2012 seeking a direction to the Official Liquidator to execute the sale deed in favour of Respondent No.3.
- (xviii) On 16th January 2013, this Court passed an order in which it was recorded that by an order dated October 2008, this Court had

directed that the sale deed should be executed in the name of Mr. Ajay Mehra and therefore the application by Ms. Shukla Mehra could not be considered in view of the earlier order. Accordingly, Ms. Shukla Mehra withdrew the said Company Application No. 678 of 2012 with liberty to take out such appropriate proceedings as would be available in law.

- (xix) On 4th April, 2013, Ms. Shukla Mehra filed Company Application No. 276 of 2013 to set aside / recall and/or to modify the order dated 23rd October 2008.
- (xx) By order dated 27th August 2013, this Court permitted Ms. Shukla Mehra to withdraw the said Company Application No. 276 of 2013 since certain documents had not been annexed to the application and extensive amendments would be required. Accordingly the Company Application was allowed to be withdrawn with liberty to file a fresh application.
- (xxi) On 19th September 2013, Company Application No. 44 of 2014 has been filed seeking modification of the order dated 23rd October 2008 as also a direction to execute the sale deed / Conveyance in favour of Ms. Shukla Mehra.

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(xxii) On 16th June 2014, Company Application No. 414 of 2014 has been filed by the Applicant Paramjeet Singh Dhyan Singh Kalsi seeking to set aside the auction sale dated 17th November 1993 on the ground that the auction was effected by fraud and material irregularity for the reasons set out hereinabove.

6. I have heard the Counsel appearing on behalf of the Applicant in both the Company Applications as also the Counsel for the Official Liquidator.

7. For the reasons more particularly set out hereinafter, I am of the view that the Company Application No. 414 of 2014 seeking cancellation of the auction sale deserves to be dismissed as none of the grounds set out therein have any merit. Additionally, it is clear that Mr. Ajay Mehra had bid at the time of the auction as the representative of M/s. Polyhigh Industries. From the documents annexed to Company Application No. 44 of 2014, it is clear that Ms. Shukla Mehra is the Proprietress of M/s. Polyhigh Industries and accordingly the said Company Application deserves to be allowed.

8. I shall now set out the reasons why the said Company Application No.414 of 2013 deserves to be dismissed. The said Company Application No.

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414 of 2014 seeks cancellation of the auction/sale on various grounds which are enumerated above. I shall now deal with the aforesaid contentions raised by the Applicant in the said Company Application No. 414 of 2014.

- (i) The first contention is that there was no valuation taken by the Official Liquidator before the property was put up for auction. As can be seen from the facts enumerated above, the Official Liquidator in fact had addressed a letter dated 31st July 1992 to the valuer on the panel of the Official Liquidator viz. M/s.H.N. Kanga & Company. M/s. H.N. Kanga & Company replied vide their letter dated 17th August 1992 expressing their willingness to take up the valuation work. Inspection was taken on 28th September 1992 and the valuation report was submitted on 13th October 1992. The said facts as set out in the affidavit of the Official Liquidator have not been controverted by the Applicant in Company Application No. 414 of 2014. No rejoinder has been filed. There is nothing to show that what is stated in the affidavit of the Official Liquidator is incorrect. Further this Court had confirmed the sale vide its order dated 25th November 1993. The present Application No.414 of 2014 has been filed more than twenty years after the auction was completed. The Applicant has no basis to contend that there was no

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valuation taken. That being so, the said contention is misconceived and is liable to be rejected.

- (ii) The Applicant has further sought to contend that Mr. Ajay Mehra had bid personally at the auction and not as an authorised representative or on behalf of M/s. Polyhigh Industries. He had not disclosed that he was associated with the firm M/s. Polyhigh Industries in any manner, and that therefore the said facts were intentionally suppressed and as such a fraud had been committed which vitiates the auction process. The said contention is only stated to be rejected as it is contrary to the documentary evidence on record. The Counsel for the Official Liquidator has taken me through the Official Liquidator's report dated 24th November 1993. Annexed to the report is the auction bid sheet and the Minutes of the proceedings of the auction sale. In the bid sheet, it has expressly been stated "*The offer of Rs.13.21 lacs given by Mr. Ajay Mehra representing Polyhigh Industries for Land & Building is accepted subject to confirmation of court*". Further, even in the name of the party in the said auction sheet, it has expressly been stated that the party who bid was "**Mr. Ajay Mehra. M/s. Polyhigh Industries, Bombay**". Further, even in the Minutes of the proceedings, it has expressly been stated that "*The highest offer for the land & building of the*

company (In Liquidation) came from Shri Ajay Mehra of M/s. Polyhigh Industries, Bombay Mutual Building, 2nd floor, Dr. D.N. Road, Fort Box No. 396, Fort, Bombay for Rs.13,21,000/-”. The said Minutes of proceedings and auction bid sheets were placed before the court when it sanctioned and confirmed the sale. That being so, the contention that Mr. Ajay Mehra had personally bid and that he had suppressed any connection with M/s. Polyhigh Industries is an incorrect statement made by Mr. Paramjeet Singh Dhyan Singh Kalsi. That being so, the said contention that any fraud was perpetrated is wholly misconceived and unsustainable.

- (iii) The said Paramjeet Singh Dhyan Singh Kalsi has further sought to contend that assuming that M/s. Polyhigh Industries was the actual bidder, it being the proprietorship concern of Ms. Shukla Mehra, (Respondent No.3 in C.A. No.414 of 2014) who was the ex director of the Company in liquidation, she could not have bid without leave of the court. Counsel relies on Order 21 Rule 72 of the Code of Civil Procedure to hold that the ex director of the Respondent Company could not have bid without the leave of the court which was not taken. In this regard, the Counsel for the Official Liquidator has drawn my attention to the fact that the Rule governing the sale of properties is Rule 272 of the

Company Court Rules and there is no restriction in the Company Court Rules which prevent an ex director of the Respondent Company from purchasing the properties of the company. Further, it is submitted that Order 21 Rule 72 applies only to cases where the decree holder wishes to bid at an auction of the judgment debtors properties in execution of a decree. The ex director of the Respondent Company could not be considered to be a decree holder and therefore the restriction on the ex director of the Respondent Company could not apply. I have seen Rule 272 and there is no restriction in Rule 272 which prevents an ex director from bidding at the auction of the company's properties. No law has been placed before me to indicate that there is any such restriction. Additionally, Order 21 Rule 72 (1) is as under.

“72. Decree-holder not to bid for or buy property without permission. – (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property”.

From a perusal of the said Rule, it is clear that no holder of a decree in execution of which property is sold could bid for purchase of the property without the permission of the Court. The restriction is only with regard to the “decree holder”, bidding at an auction of the properties in execution of the said decree. There is no restriction on the directors of the Respondent Company bidding at an auction. The

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Respondent Company would be akin to a judgment debtor and not the judgment creditor or decree holder. The object of Rule 72 is to ensure fairness in a sale because if a decree holder was to bid for the properties which were put up for sale in execution of the decree in his own favour, he may deliberately put a low bid and try and acquire the properties at a throw away price and continue to seek to execute the decree for the balance amount against the judgment debtor. It is for that reason that leave is required when the decree holder seeks to participate in the auction process. The same logic could not apply when the judgment debtor / Respondent Company/ director of the Respondent Company would bid at the auction as the judgment debtor would always want that the property being sold would fetch the highest price so that the decree could be satisfied with as few of his properties being sold. That being so, the said contention raised by the Applicant in Company Application No. 414 of 2014 is misconceived and unsustainable.

- (iv) The Applicant has further contended that the Official Liquidator received monies from M/s. Polyhigh Industries when the sale was confirmed in favour of Mr. Ajay Mehra and that this constitutes a material irregularity. The said contention in fact goes against the case of

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the Applicant in Company Application No. 414 of 2014. The fact that M/s. Polyhigh Industries paid the purchase price in fact discloses that it was M/s. Polyhigh Industries who were the actual bidders at the auction. It is clear that the understanding was that Mr. Ajay Mehra was always bidding for M/s. Polyhigh Industries.

(v) It has been contended by the Applicant in Company Application No. 414 of 2014 that Ms. Shukla Mehra had taken contradictory stands in as much as she had contended in her affidavit in Company Application No. 1344 of 2008 that she was the assignee of Mr. Ajay Mehra and in the other Company Application, she has contended that she was the actual bidder and Mr. Ajay Mehra was bidding on her behalf. The Learned Advocate on behalf of Ms. Shukla Mehra has stated that it appears that the erstwhile Advocate may have made a mistake in contending that Ms. Shukla Mehra was the assignee of Respondent No.2. He submits that the records clearly show that Mr. Ajay Mehra was always bidding on behalf of M/s. Polyhigh Industries which is the sole proprietorship concern of Ms. Shukla Mehra. He further submits that in Company Application No. 1344 of 2008, the issue as to whether the sale deed had to be in favour of Mr. Ajay Mehra or Ms. Shukla Mehra was not a fact in issue since the only relief that was sought was for

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condonation of delay. I have seen the prayers in Company Application No. 1344 of 2008 and the said application was restricted only to seeking condonation of delay. In any event, even assuming that a stand was taken at one point of time that she was the assignee, the record shows that Mr. Ajay Mehra had bid on behalf of Polyhigh Industries.. Therefore, merely because an erroneous stand was taken by the erstwhile Advocate it would not be sufficient to vitiate the sale after more than twenty years when the record discloses that Polyhigh Industries which is the proprietorship concern of Ms. Shukla Mehra was in fact the auction purchaser. Hence, there is no merit in the said contention.

- (vi) The Applicant in Company Application No. 414 of 2014 has also sought to contend that since the sale has remained incomplete all these years and since the liabilities have increased manifold and since the consideration of Rs.13,21,000/- would not be sufficient to meet the liabilities, the properties should be re-auctioned. The Learned Counsel appearing on behalf of the Official Liquidator has drawn my attention to paragraph 18 of the affidavit in reply of the Official Liquidator in which it is stated that the Official Liquidator had invited claims from workers and creditors. The last date for filing of claim was 28th March 2013. The

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Official Liquidator has stated that he has not received any claims from workers and creditors. The said position is uncontroverted. That being so, the contention is misconceived.

9. In view of what is set out hereinabove, none of the contentions raised by the Applicant in Company Application No. 414 of 2014 have any merit. Additionally, the Applicant has filed this application more than twenty years after the auction sale has been confirmed. He only contends that they were unaware of the notices put up all these years since they were in Bombay edition newspapers and not in Thane edition. However, when the auction purchaser had issued a notice in the Bombay edition on 6th August 2013, the said Applicant noticed the same. The said Applicant also waited for nearly a year before approaching this Court. For all these reasons, no case has been made out for setting aside the auction sale and accordingly the Company Application No. 414 of 2014 deserves to be dismissed.

10. In so far as Company Application No. 44 of 2014 is concerned, as set out hereinabove, it is clear that Mr. Ajay Mehra had bid at the auction on behalf of M/s. Polyhigh Industries. Ms. Shukla Mehra in Company Application No. 44 of 2014 has annexed the income tax documents which show that she is

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the sole proprietress of M/s. Polyhigh Industries. This Court whilst considering Company Application No. 1344 of 2008 was only considering whether to condone the delay in executing the sale deed. However, it appears that since the sale was confirmed in the sale in favour of Mr. Ajay Mehra this Court directed that the sale deed should be executed in the name of Mr. Ajay Mehra. However, pursuant to orders dated 16th January 2013 and 27th August 2013, this Court had granted liberty to Ms. Shukla Mehra to file an appropriate application seeking a modification of the order dated 23rd October 2008. Having gone through the entire record, it is clear that M/s. Polyhigh Industries which is the sole proprietorship concern of Ms. Shukla Mehra was the auction purchaser. It is M/s. Polyhigh Industries which in fact paid the purchase consideration and accordingly a sufficient case has been made out to modify the order dated 23rd October 2008 and for a direction that the sale deed in respect of the said property be executed in favour of Ms. Shukla Mehra. Accordingly, the said Company Application No. 44 of 2014 deserves to be made absolute.

11. In view of what is set out above, I pass the following order.

(i) Company Application No. 414 of 2014 stands dismissed;

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- (ii) Company Application No. 44 of 2014 stands allowed in terms prayer clauses (a) and (b). The sale deed shall be executed in favour of Mrs. Shukla Mehra within a period of 4 weeks from the date of this order;
- (iii) There shall be no order as to cost.

(S.J.KATHAWALLA, J.)