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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 46 OF 2013
IN
INSOLVENCY PETITION NO. 82 OF 2002

Avinash Bansi Jaising & Anr. ...Insolvents

Ex-parte:

Suraj Prakash Khemchand ...Petitioning Creditor

WITH
NOTICE OF MOTION NO. 4 OF 2014
IN
INSOLVENCY PETITION NO. 82 OF 2002
WITH
NOTICE OF MOTION (L) NO. 46 OF 2014
IN
INSOLVENCY PETITION NO. 28 OF 2001
WITH
NOTICE OF MOTION (L) NO. 48 OF 2014
IN
INSOLVENCY PETITION NO. 28 OF 2001
WITH
OFFICIAL ASSIGNEE'S REPORT NO.16 OF 2015
IN
INSOLVENCY PETITION NO.28 OF 2001
AND
INSOLVENCY PETITION NO.82 OF 2002
.....

Mr. Sailesh Thakkar, i/b. Sailesh Thakkar & Co., for Avinash Bansi Jaising.

Dr. Birendra Saraf, a/w. Ms. Saniya Pulta, Mr. Shanay Shah, i/b. M/s. Soloman & Co., for Monisha Jaising.

Mr. Tushar Garodia, for Intending Bidder (Vardaan Associates).

Mr. Jayesh Vyas, for Bansi Jaising and Ravi Bansi Jaising.

Mr. M.D. Narvekar, Official Assignee present.

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CORAM : S.C. GUPTE, J.

JULY 22, 2015

P.C. :

. There are three properties belonging to the insolvent, namely, a flat at Bandra, an open plot at Pune and a commercial premises at Goa, which are to be sold by the Official Assignee. The sale of the properties was duly advertised by the Official Assignee. Offers were received in pursuance of the sale notice. When the matter, however, reached hearing on the last occasion, i.e. on 16 June 2015, it was submitted on behalf of the insolvent as well as joint owners of the properties (who claim to be joint owners along with the insolvent) that one more opportunity may be given to the interested parties to bring offers for purchase of the properties. Accordingly, this Court adjourned the sale to the next date. It was, however, made clear that no further time would be granted on the next date. The third party offerers were, accordingly, directed to lodge their offers in the Office of the Official Assignee on or before 14 July 2015 by 4.00 p.m. along with the earnest money deposit as fixed earlier. Accordingly, when the matter was called out yesterday, and adjourned to today's date, the offers received from various third parties have been opened. The emerging position is noted below :-

2. As far as the Bandra flat is concerned, against a reserve price of Rs. 6 crores fixed after a valuation report was duly submitted in that behalf by an approved valuer on the Panel of the Official Assignee, an offer is received for Rs. 6,01,00,000/- from Mr. Arun Bahirwani. The offer is backed by a banker's cheque of Rs. 2 crores towards the earnest money deposit. There are no other bidders for this property as of date. It is,

however, submitted by learned Counsel for the insolvent as well as the joint owners that there is a certain party in Dubai, who wishes to submit a much better offer for this flat. It is submitted that a comparable flat on the upper floor has been sold in the last year and has fetched a sum of over Rs. 8 crores. It is submitted that this third party intends to make an offer commensurate with the real value of the flat. Whilst I made it very clear on the last occasion that no further time will be granted for sale of the properties and particularly considering the fact that there is no concrete offer letter as yet, much less backed by an earnest money deposit, this Court is inclined to pass a conditional order accepting the offer submitted by Mr. Arun Bahirwani. Mr. Bahirwani is agreeable to this order being passed. Accordingly, it is directed that in the event no offer proposing a minimum 5% increase backed by a banker's cheque or pay order of Rs. 2 crores is received by the next date, Mr. Bahirwani's offer, which he now increases to Rs.6.51 crores during the course of the hearing of this matter, shall be accepted and the flat will be sold to him. In the event, however, any third party purchaser proposing to submit an offer offers a sum of at least 5% over and above the price offered by Mr. Bahirwani, that is to say, an increase of minimum amount of a sum of Rs.32.50 lacs, Mr. Bahirwani shall be allowed to improve his offer and the parties shall be allowed to bid in Court for purchase of the flat. Needless to add that in such an event, the flat shall be sold to the highest bidder. The amount of Rs.2 crores deposited by Mr. Bahirwani with the Official Assignee be deposited in a nationalised bank and invested in a short term fixed deposit of one month in the meanwhile.

3. As far as the property at Pune, which is an open plot, is concerned, there are three offers received for purchase of this property.

There is an offer received from one Mr. D.S. Patil for a sum of Rs. 42 lacs, an offer from M/s. Vardaan Associates for a sum of Rs. 40 lacs and an offer of one Mr. Sunil Dhanraj Shivnani for a sum of Rs.775 per sq. ft. This last offer is on a free of lien, free of any liabilities and encumbrances and free of any charges and mortgages basis. It was made clear to Mr. Shivnani that a conditional offer will not be accepted. The offer has to be on "as is where is basis" and in terms of rupee, anna and paise and not a rate. Mr. Shivnani has, thereupon, addressed a fresh letter dated 21 July 2015, offering to purchase the Pune property at a lumpsum consideration of Rs.1,71,27,500/- on "as is where is basis" and as per the terms advertised by the Official Assignee. When this offer of Mr. Shivnani was being considered by the Court, Mr. D.S. Patil, who is present in person and whose offer is noted above, raised his offer to a sum of Rs.1.80 crores for purchase of the Pune property. Since Mr. Shivnani is not present in Court today and is out of station, learned Counsel for the parties requested the Court that the sale of the Pune property should be deferred till 27 July 2015. It is accordingly ordered.

4. As regards the commercial premises at Goa, there are two offers received from third parties, one was from Mr. Juino De Souza for a sum of R. 65 lacs and the other from M/s. Crosscraft Pvt. Ltd. for a sum of R.1.51 crores. Since the offer of M/s. Crosscraft Pvt. Ltd. is the best offer that could be received and is far in excess of the valuation obtained by the Court, the offer is accepted. The earnest money deposit by Mr. Juino De Souza has already been returned to him, as noted in the order passed on 21 July 2015. M/s. Crosscraft Pvt. Ltd. shall now deposit 25% amount of the bid price, namely, Rs.37,75,000/- within two weeks, that is to say, on or before 5 August 2015 with the Official Assignee. The balance 75% amount

in the sum of Rs.83,25,000/- shall be paid within two weeks thereafter, that is to say, on or before 19 August 2015. Subject to payment of this amount, the sale of the Goa property has been thus concluded in favour of M/s. Crosscraft Pvt. Ltd.

5. Place the matter on board for consideration of the sale of the Pune property on 28 July 2015 at 3.00 p.m.

6. The sale of the Bandra flat shall be concluded on 25 August 2015. The Official Assignee shall give access to the third party purchasers for inspection of the flat as may be requested.

7. The Official Assignee shall permit the insolvent to take away the movables within the Bandra flat under the supervision of the Official Assignee. The insolvent shall, accordingly, seek a prior appointment with the Official Assignee.

8. As regards the Pune property, M/s. Vardaan Associates, who had submitted a bid, would like to withdraw their offer. Accordingly, the Official Assignee is permitted to return the earnest money deposit cheque of Rs. 15 lacs to M/s. Vardaan Associates through their Advocates. Stand over to 28 July 2015.

9. Prayer clause (b) of the Official Assignee's Report No.16 of 2015 for payment of the advertising charges to M/s. J.K. Advertisers is allowed.

(S.C.GUPTE J.)