# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Company Appeal (DB) No.15 of 2015**
**IN**
**COM PET 10 of 1999**

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SEEMA DEVI, WIFE OF SRI ARBIND KUMAR, RESIDENT OF TULSI MANDI, POST OFFICE GULZARBAGH, POLICE STATION AGAMKUAN, PATNA CITY, PATNA

.... .... APPELLANT

VERSUS

1. THE OFFICIAL LIQUIDATOR PATNA HIGH COURT, 4TH FLOOR, BLOCK –A, MAURYALOK COMPLEX, DAK BUNGALOW ROAD, PATNA
2. M/S BIHAR LEATHER INDUSTRIES (IN LIQUIDATION)
3. JAI PRAKASH SINGH, SON OF LATE RAM NARAYAN PRASAD SINGH, RESIDENT OF JAIMANGAL SINGH COMPLEX, MOHALLA MAHENDRU, PATNA-06

.... .... RESPONDENTS

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**Appearance :**

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| For the Appellant : | Mr. N. K. Agrawal, Senior Advocate |
| | Mr. Dhananjay Nath Tiwari, Advocate |
| | Mr. P. C. Agrawal, Advocate |
| | Mr. Ankit Katriar, Advocate |
| For O.L. : | Mr. Subhash Chandra Mishra, Advocate |
| For the Respondent No.3: | Mr. Basant Kumar Choudhary, Senior Advocate |

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**
**AND**
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

<u>JUDGMENT AND ORDER</u>
(CAV)

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date: 11-05-2016**

Pursuant to an order, dated 25.06.2015, passed, by the learned Company Judge, in a winding proceeding covered by Company Petition No. 10 of 1999, directing publication of sale notice for sale of 21 properties of M/s Bihar State Leather Industries Development Corporation Limited (in short, BSLIDC), a company registered under the Companies Act, 1956, sale notice, dated 08.07.2015, was published in two leading newspaper, on 09.07.2015, for auction sale of 21 moveable and immovable properties and, in this regard, sealed tenders were invited from interested parties to be accompanied by interest-free earnest money deposit, the description of the property, covered by the serial No. 1 of the sale notice, its reserved price and the amount of earnest money, being as follows:

> "**Description**: Model Tennary, Bihta, free hold land – 86.94 kathas and buildings, sheds with plants and machinery
>
> **Reserve Price**: Rs. 10,19,58,500/- (Rupees Ten crores nineteen lakhs fifty eight thousand five hundred only)
>
> **Earnest Money Deposit**: Rs. 1,04,60,000/- (Rupees one crores four lakhs sixty thousand only)"

**2.** The appellant, Seema Devi, submitted her tender documents and also made the Earnest Money Deposit, which were accepted. On 04.08.2015, bids were opened in the office of the Official Liquidator and *inter se* bidding was conducted for the properties/assets on sale at serial No. 1 of the sale notice. In the bid, so conducted, the appellant surfaced as the successful bidder for the property at serial No. 1 offering maximum bid price of Rs. 16,15,00,000/-.

**3.** On 08.10.2015, respondent No. 3 herein, namely, Jai Prakash Singh, filed I. A. No. 8458 of 2015, in Company Petition No. 10 of 1999, stating to the effect, *inter alia,* that he had come to know about the sale notice on 01.09.2015 and that he had written to the official liquidator, on 08.10.2015, offering his bid for Rs. 16,20,00,000/- along with a promise to deposit earnest money upon orders, if passed, the offer of the respondent No. 3 being Rs. five lakhs more than the appellant's offer.

**4.** By order, dated 13.10.2015, learned Company Judge directed for a fresh *inter se* bidding to be conducted, on 24.11.2015, in the open Court, allowing respondent No. 3 herein, Jai Prakash Singh, to participate in the *inter se* bidding and the Official Liquidator was directed to issue notices to all the bidders and interested persons accordingly. This direction passed by the order, dated 13.10.2015, forms the subject-matter of challenge in the present appeal.

**5.** We have heard Mr. N. K. Agrawal, learned Senior Counsel, appearing for the appellant, and Mr. Subhash Chandra Mishra, learned Counsel, appearing for the Official Liquidator. We have also heard Mr. Basant Kumar Choudhary, learned Senior Counsel, appearing for respondent No. 3.

**6.** As the notice could not be served on respondent

No. 3, because of the fact that the house, which was shown as the address of respondent No. 3 stood locked, a substituted notice was published in the newspaper, on 28.12.2015, fixing 08.01.2016, for hearing and it was pursuant to this order, when the appeal was being heard on 15.01.2016, that respondent No. 3 appeared through his engaged counsel. The matter was accordingly fixed, with the consent of the parties, on 20.01.2016, 21.01.2016, 03.02.2016 and 08.02.2016, and has, eventually, been even admitted and heard for the purposes of disposal on merit.

**7.** Appearing on behalf of the appellant, Mr. N. K. Agrawal, learned Senior Counsel, has submitted that it was falsely submitted, before the learned Company Judge, by respondent No.3, namely, Jai Prakash Singh, that he came to know about the sale notice on 01.09.2015 inasmuch as he had, in fact, participated in the *inter se* bidding process for another property listed at Serial No. 2 of the said sale notice.

**8.** With the false statement, so made, points out Mr. N. K. Agrawal, learned Senior Counsel, coupled with a mere statement of respondent No. 3 that he was willing to offer bid amount, which was Rs. five lakhs higher than the offer of the appellant, the learned Company Judge ought not to have put the property, in question, on sale once again inasmuch as the sale, according to Mr. N. K. Agrawal, learned

Senior Counsel, was subject to the condition precedent of submission of valid tender documents and making of earnest money deposit before the auction sale took place.

**9.** Resisting the appeal, Mr. Basant Kumar Choudhary, learned Senior Counsel, appearing for the respondent No.3, has submitted that inasmuch as the respondent No.3 is willing to offer a sum of Rs. five lakhs more than the bid, which the appellant had offered, there was no impediment in law in directing re-auction, in question, so that the property, in question, could be sold at the maximum available price. In support of his submission, Mr. Basant Kumar Choudhary, learned Senior Counsel, heavily placed reliance on **Divya Manufacturing Company (P) Limited, v. Union Bank of India and Others**, reported in **(2000) 6 SCC 69**.

**10.** Points out Mr. Basant Kumar Choudhary, learned Senior Counsel, that it is the duty of the Court to ensure, in public interest, that the property, in a situation as the present one, fetches maximum available price. Viewed from this angle, the order, which stands impugned in this appeal, is, according to Mr. Basant Kumar Choudhary, wholly in accordance with law and may, therefore, be maintained by dismissing the present appeal.

**11.** In the light of what have been discussed above, let us, now, consider the legal aspects of the present appeal.

**12.** In the case of ***Navalkha & Sons v. Ramanya Das****,* reported in ***(1969) 3 SCC 537*****,** the facts were that there was a winding up proceeding and the properties of the company were directed to be sold in public auction. The Company Court appointed Commissioners for the purpose of selling immovable and movable properties and actionable claims of the aforesaid Company. A sale proclamation was, accordingly, issued inviting offers for the purchase of movable and immovable properties and actionable claims of the Company as a single unit. The sale notice made it clear that immediately upon acceptance of the offer by the Commissioners, the offerer shall, within 15 days from the date of acceptance, deposit 15 per cent of the offered amount as initial deposit and the balance amount, together with the amount required for non-judicial stamp paper within 15 days from the date of acceptance. The acceptance of the offer by the Commissioners was subject to the condition of confirmation by the High Court and the offerer was entitled to take delivery of possession of the properties only after such confirmation. It was made abundantly clear in Clause 16 that in all matters, relating to the sale of the properties, the decision of the Commissioners shall be final and binding subject to the control of the High Court. One of the further conditions was that the proclamation of sale was to be advertised twice in each of the five leading dailies: *The Statesman, The Times of India, The Hindu, the Indian Express* and the *Hindustan Times* to ensure wide publicity and the Commissioners were also required to get the proclamation printed and distributed amongst the likely purchasers.

**13.** The appellant, Navalkha & Sons, happened to be the sole offerer. It had offered a sum of Rs 7,91,001, which was made of Rs 2,50,000 for the immovable property and Rs 5,41,001 for the machinery. It made no offer for the actionable claims. The appellant made deposit of Rs 50,000 in the shape of demand draft drawn on the State Bank of Hyderabad. The offer was accepted by the Commissioners on December 2, 1964. The appellant was called upon to deposit 15 per cent of the amount of the offer as initial deposit immediately and the balance together with the amount required for non-judicial stamp paper within 15 days from the date of acceptance. The appellant did make the initial deposit. The Commissioners, then, made an application on December 3, 1964, to the High Court for confirmation of the sale.

**14.** However, on December 24, 1964, one Gopaladas Darak made an offer of Rs 8,50,000 saying that he could not make his offer in time, because he came to know of the sale only two days prior to that date and it was due to the fact that there was no adequate publicity. To show his *bona fide,* he gave a demand draft for a sum of Rs 1,00,015. The learned Judge decided that the property did not fetch its proper price and there was possibility of higher bids. Instead of directing a fresh auction or calling for fresh offers, the learned Judge thought it proper to arrange an open bid in the Court itself, on that very day, between the appellant and Gopaladas Darak. Before starting the bid, the learned Judge gave time to the appellant to think over and say whether it was willing to accept the course decided upon and to participate in the auction bids. The appellant consented and volunteered to take part in the bid and became the highest bidder at Rs 8,82,000. The learned Judge accepted the said bid as final bid and concluded the sale in favour of the appellant directing him to pay the balance of the money together with the amount required for non-judicial stamp on or January 31, 1965, making it clear that in case of default, the deposit already made would be forfeited. The appellant paid the balance of the amount on January 30, 1965. On the same day, one Padam Chand Agarwal, made an application (CA 44 of 1965) offering Rs 10,00,000. He complained that publicity of the sale of the property was not adequately made and he came to know of the advertisement very late. He was prepared to enhance the offer to Rs 10,00,000 and was also willing to participate in open bid if the Court so decided with Rs 10,00,000 as initial bid. The learned Judge rejected his request and held that the sale should be confirmed in favour of the appellant. Aggrieved by this order, Padam Chand Agarwal filed an *intra Court* appeal. One Rammuja Das, a contributory, too, chose to prefer an appeal against the order of confirmation. According to him, the publicity given was inadequate and the first offer given by the appellant was too low and the Court has rightly refused to confirm the acceptance of the offer. His grievance was that the learned Judge should have held the auction only after due publicity, but has not done so and the course followed did not achieve the object of getting adequate price of the property.

**15.** Both the appeals were directed against the confirmation of the auction sale held in Court. These appeals were allowed by Letters Patent Bench and the order of the learned single Judge was set aside. It was decided that the learned Judge should take fresh steps for the sale of the property either by calling sealed tenders or by auction in accordance with law. The tenders would be called or the auction would take place with the requisite condition of minimum offer or starting bid of Rs 10,00,000.

**16.** When the appellant carried the matter to the Supreme Court, it was observed that the auction had not been held after giving due publicity. It was also held that the auction, in question, was, no doubt, conducted in a public place; but it was not a public auction and it was not open to the general public; rather, it was confined to only two named persons. Secondly, the auction was not held after due publicity inasmuch as the auction was held immediately after it was decided upon. Hence, the sale, in question, was not a public sale, which implies sale after giving notice to the public, wherein every member of the public is at liberty to participate. The Supreme Court further held that the denial of opportunity to purchase the property by persons, who would have taken part in the auction bid, but for want of notice, is a serious matter.

**17.** One of the important observations made by the Supreme Court, in ***Navalkha & Sons*** (supra), was that where the acceptance of the offer by the Commissioners is subject to confirmation of the Court, the offerer does not, by mere acceptance, get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court, held the Supreme Court, operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale.

**18.** In every case, points out the Supreme Court, in

***Navalkha & Sons*** (supra), it is the duty of the Court to satisfy itself that having regard to the market value of the property, the offered price is reasonable. Unless the Court is satisfied about the adequacy of the offered price, the act of confirmation of the sale would not be a proper exercise of judicial discretion. However, once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. The relevant observations are reproduced below;

> ***"6****. The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In* **Gordhan Das Chuni Lal v. S. Sriman Kanthimathinatha**

**Pillai (AIR 1921 Mad 286)**, *it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in* **Rathnaswami Pillai v. Sadapathi Pillai [(1925) Mad 218]** *and* **S. Soundarajan v. Roshan & Co. (AIR 1940 Mad 42)** *In* **A. Subbaraya Mudaliar v. K. Sundarajan (AIR 1951 Mad 986)** *it was pointed out that the condition of confirmation by the Court being a safeguard against the property being said at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co. case)."*

**19.** Thus, the principle consideration before a Company Court is adequacy of price. Once the Court is satisfied about the adequacy of price, then, it would not be proper to reject the offer even if the sale has not been confirmed. From the observations of Supreme Court, made in ***Navalkha's*** case (supra), two different circumstances have expressly envisaged. Following the adequacy of price, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or the offer already received. Hence, if the offered price is adequate and even if the sale has not been confirmed, then, bearing in mind the adequacy of price offered, it would not be proper for the Court to accept a higher price.

**20.** In the case of ***Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.,*** reported in ***(2008) 9 SCC 299,*** the facts were that the assets of Hindustan Nitro Product (Gujarat) Ltd. were proposed to be auctioned and, hence, the Court asked the Official Liquidator to obtain a valuation report. After obtaining the valuation report, the Official Liquidator submitted the same to the Court. The valuation of these assets, according to the Official Liquidator, was Rs 2.55 crores. The property was, then, put up for auction on 25.03.2003 after advertising it in various well-known newspapers having wide circulation including *The Economic Times,* which is a well-known newspaper having wide circulation in the business community. Several bids were received and were opened in the Court. The highest bid was that of the appellant, M/s Valji Khimji & Company, amounting to Rs 3.51 crores. The bid was accepted and the sale was confirmed. The Court directed the appellant to deposit 25 per cent of the purchase price, i.e., Rs 63,98,000, within 30 days from the said date and to deposit the balance amount within the next three months. The Court also directed that the amount may be deposited in instalments, but no instalment should be less than Rs 5 lakhs. These conditions were complied with by the appellant. Although the sale was confirmed in favour of the appellant on 30.07.2003, a letter, dated 22.10.2003, was sent to the Official Liquidator by one M/s Manibhadra Sales Corporation (Respondent No. 8) offering to buy the assets, in question, for Rs 3.75 crores (though this offer was, admittedly, withdrawn later on). Subsequently in August, 2004, M/s Castwell Alloys Ltd. (Respondent 9) made an offer of Rs 5 crores for the said assets. This offer was made more than one year after the confirmation of the sale in favour of the appellant.

**21.** Both, M/s Manibhadra Sales Corporation and M/s Castwell Alloys Ltd., filed applications praying for recall of the order, dated 30.07.2003, whereby the sale had been confirmed in favour of the appellant. On 10.09.2004, the learned Company Judge took up both these applications and passed an order, dated 10.09.2004, recalling the order, dated 30.07.2003, whereby the sale had been confirmed. When an appeal was preferred before the Division Bench, the appeal was dismissed.

**22.** In the backdrop of the facts as narrated above, the Supreme Court, in ***Valji Khimji*** (supra), held that the auction sale had been done after adequate publicity in well-known newspapers and, hence, if anyone wanted to make a bid in the auction, he ought to have participated in the said auction and made his bid. The Supreme Court further went on to observe, in ***Navalkha & Sons*** (supra), that entertaining objections after the sale is confirmed should not, ordinarily, be allowed except on very limited grounds like fraud; or else, no auction sale will ever complete.

**23.** On the aspects of re-opening of auction after the confirmation of sale, the Supreme Court, in ***Valji Khimji*** (supra), observed that if it is held that every confirmed sale can be set aside, the result would be that no auction sale will ever be completed, because somebody can always come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction sale was done after wide publicity, then, setting aside the sale after its confirmation will create huge problems. When an auction sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same and they are themselves to be blamed if they do not come forward to bid at the time of the auction and, ordinarily, they cannot, later on, be allowed *after the bidding (or confirmation) is over to offer a higher price.* Of course, the situation may be different if an auction sale is finalised, say for Rs 1 crore, and, subsequently, somebody turns up offering Rs 10 crores. In this situation, it is possible to infer that there was some fraud, because if somebody subsequently offers Rs 10 crores, then, an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if, after the auction is over, the price offered is only a little over the auction price, this cannot by itself suggest that any fraud has been played.

**24.** What follows from the case of ***Valji Khimji*** (supra) is that not only re-auctioning should not be ordered, ordinarily, but even entertaining higher price, after the bidding process is over, should not be allowed if the subsequent price offered, after the auction, is only little over the auction price.

**25.** The relevant observations, appearing in ***Navalkha & Sons*** (supra), in paragraph 28, read as follows;

> ***"28.*** *If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed if they do not come forward to bid at the time of the auction.* ***They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion.***

***However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done."***

(Emphasis is supplied)

**26.** In the case of ***Divya Mfg. Co. (P) Ltd. v. Union Bank of India,*** reported in ***(2000) 6 SCC 69,*** relied upon by Mr. Choudhary, learned Senior Counsel, the case of **Navalkha** (supra) came up for consideration. In ***Divya*** (supra), the facts were that there was a winding up proceeding of one Tirupati Mills. In the meantime, the workmen of Tirupati Mills entered into an agreement with appellant, Divya, whereby Divya agreed to run Tirupati Mills and to provide re-employment to the workmen of the said Mill upon purchase of the assets and properties of the said Mill under liquidation. The appellant, Divya, offered Rs 35 lakhs as price for purchasing the assets of the Mill; but in the course of litigation, it raised its bid to Rs 1.3 crore. This offer was accepted and sale was confirmed in its favour on the conditions mentioned therein. On the same day, the Court also disposed of the appeals and applications accordingly.

**27.** Later on, an application was filed by another person before the Division Bench praying therein that the order accepting and confirming the sale, in favour of Divya, be recalled and set aside and it may be given an opportunity to submit its offer of Rs 1.40 crores for the assets of the Mill in liquidation. This apart, another person filed an application that it was prepared to pay Rs 2 crores for the purchase of the assets of the Mill. The Division Bench held that it cannot shut its eyes to the fact that initially, the property, proposed to be sold at the price of Rs 37 lakhs, fetched Rs 1.3 crore by the same person. Considering all factors, the sale, confirmed in favour of the appellant for an amount of Rs 1.3 crores, was set aside with a direction for re-sale of the assets of the Mill.

**28.** The Supreme Court, relying upon the observations of **Navalkha** (supra), held that the appellant started its offer after having an agreement with the Employees' Samiti for Rs 37 lakhs. This was, on the face of it, under bidding for taking undue advantage of court sale. It was in these circumstances that the Supreme Court held that there was no need to confine the bid between three offerers only thereby holding that a meaningful intervention by the court may prevent, to some extent, underbidding at the time of auction through court.

**29.** The case of **Divya** (supra) came to be distinguished in the case of ***Vedica Procon v. Balleshwar Greens***, reported in ***(2015) 10 SCC 94.*** In ***Vedica Procon*** (supra), the Supreme Court was adjudicating on an auction dispute. In this case, the facts were that M/s Omex Investors

Ltd. was ordered to be wound up by the Company Judge of the Gujarat High Court by an order, dated 6-3-1990. By order, dated 26-3-2013, the Official Liquidator was directed to put the freehold land of the Company, measuring 13,895 sq meters, to auction for sale by inviting offers from the intending purchasers in sealed covers. By the said order, the High Court also fixed an upset price at Rs 55 crores and earnest money deposit (EMD) at 10% thereof. Tender notice (containing the terms and conditions of sale) inviting offers from the prospective purchasers, in sealed covers, was widely published. Eleven prospective purchasers responded to the notice. The auction was held in open Court. After *inter se* bidding of 12 rounds, the appellant, *Vedica Procon (P) Ltd.,* became the highest bidder with an offer of Rs 148 crores, whereas the first respondent, Balleshwar Greens (P) Ltd., the second highest bidder. The High Court accepted the bid of the appellant. By the same order, the High Court recorded that the earnest money deposit by the appellant and the first respondent be retained by the Official Liquidator and the earnest money deposits, made by the other unsuccessful bidders, be returned.

**30.** The appellant, thereafter, deposited 25% of the bid amount and, for the remaining amount, he prayed for extension of time, which was allowed, but even before the extended date, the appellant paid the balance money.

**31.** The first respondent, then, preferred an appeal against the order of the High Court granting extension of time to deposit the balance amount by the appellant. In the said appeal, the first respondent expressed its willingness to raise its offer to an amount of Rs 160 crores for the land in question and also offered to deposit the said amount within 72 hours.

**32.** In the course of various applications made by the respondent, Balleswar Greens, and pursuant to a direction of the Division Bench, the learned Company Judge, on an application filed by the first respondent, recalled its order and set aside the sale made in favour of the appellant. When the said order was challenged by the appellant before the Division Bench of the High Court, the same was dismissed.

**33.** Appreciating the findings of ***Divya's*** case (supra), in the light of ***Navalkha's case*** (supra), the Supreme Court, in ***Vedica Procon*** (supra), held that the conclusions, in ***Divya's*** case, were based upon by placing reliance on paragraph 6 of ***Navalkha's*** case (supra), by placing emphasis more on the penultimate sentence of the paragraph 6, which provided that *"Court in exercising the discretion, which it, undoubtedly, has, of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though* *there is no suggestion of irregularity or fraud".*

**34.** The Supreme Court, in ***Vedica Procon*** (supra), further pointed out that the last sentence of the paragraph 6, in ***Navalkha's*** case (supra), was not taken note of, which provided "*it is well to bear in mind the other principle, which is equally well-settled, namely, that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received".*

**35.** Elaborating further, the Supreme Court, in ***Vedica Procon*** (supra), held that no doubt, the penultimate statement of the paragraph recognises the discretion of the Company Court either for accepting or refusing the highest bid at the auction, it also emphasises the obligation of the Court to see that the price fixed at the auction is adequate price even though there is no irregularity or fraud in the conduct of the sale. However, the penultimate sentence restricts the scope of such discretion, which provided that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received.

**36.** Thus, in ***Vedica Procon*** (supra), the interpretation of ***Navalkha's*** case (supra), as interpreted in ***Divya's*** case (supra), was distinguished by holding that in

***Navalkha*** *case* (supra), the Supreme Court had only recognised the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made and it was further emphasized that that once the Company Court had recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

**37.** Having discussed the relevant authorities on the subject, the principles, which emerge, may be summarized as follows;

- It is the duty of the Court to satisfy itself that having regard to the market value of the property, the price offered is adequate;
- The Court is the custodian of the interests of the Company and its creditors and the sanction of the Court, required under the Companies Act, has to be exercised with judicial discretion, regard being had to the interests of the Company and its creditors as well;
- Where the acceptance of the offer is subject to confirmation of the Court, the offerer does not, by mere acceptance, get any vested right in the property so that he may demand

automatic confirmation of the offer;

- Once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received;
- When the auction-sale was done after adequate publicity in well-known newspapers, then, entertaining objections, after the sale is confirmed, should not, ordinarily, be allowed, except on very limited grounds like fraud.
- Re-auctioning, after the bidding process is over, or after the confirmation of sale, should not be ordered, ordinarily, if the subsequent price offered is only little over the auction price.
- Once the Company Court had recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

**38.** In the light of the legal position stated above, when the circumstances of the present case is looked into, it is evident, firstly, that the price offered by the respondent No. 3 was only little over the price offered by the appellant. The difference was not a quantum leap so as to justify re-auctioning process as held by the Supreme Court in ***Valji Khimji*** (supra).

**39.** In the case at hand, respondent No.3 was, admittedly, a bidder in respect of the property listed at serial No.2 in the sale notice. He cannot, therefore, be allowed to plead that he had no knowledge as to what other properties had been put on sale. Having known about the auction of properties, in question, and having not participated consciously it would be highly improper to allow the re-opening of *inter-se* bidding as the case of the respondent no. 3 is not that any fraud was practiced upon the Curt while confirming the sale.

**40.** In view of the above one has to infer, and we do infer, that respondent No.3 was not interested in the purchase of the property listed at serial No.1 of the sale notice and he, therefore, chose not to submit his tender documents including making of earnest money deposit in respect of the property listed at serial No.1 of the sale notice, before the date of the auction.

**41.** While considering the present appeal, it may also be noted that law is, in substance, nothing, but norms, which govern a society. With the changes, which take place in the society, the norms also undergo change. With the opening of India's economy and recognition of global economy, it is required that the confidence of the investors be maintained by ensuring that frivolous litigations are not permitted to be blessings of the Court. If mere making of an offer of a few lakhs higher than a bid amount for a property is encouraged, particularly, at the instance of a person, who was a bidder in the bidding process of the set of properties, which was put on sale, it would not be in public interest to keep putting on auction sale the property again and again.

**42.** In the background of the facts, which we have indicated above, we are clearly of the view that if the respondent No.3 was allowed to disturb the sale, already made to the present appellant, it will shake the confidence of the bidders/investors in the ability of the Court to hold auction sale in such a manner that repeated auction sales are not required to take place.

**43.** Considered in this light, we have no hesitation in holding, and we do hold, that in the facts and the attending circumstances of the present case, the order, dated 13.10.2015, passed by the learned Company Judge, was not tenable in law and calls for, therefore, interference.

**44.** In the result and for the reasons discussed above, this appeal is allowed, and the order, under appeal, dated 13.10.2015, is hereby set aside. Interlocutory

Application No. 8458 of 2015 is accordingly dismissed.

**(I. A. Ansari, ACJ.)**

**Anjana Mishra, J. :** I agree.

**(Anjana Mishra, J.)**

N.A.F.R.

Pawan/-

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