IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 346 OF 2016
IN
OFFICIAL LIQUIDATOR'S REPORT NO. 208 OF 2016
IN
COMPANY PETITION NO. 183 OF 2010
WITH
NOTICE OF MOTION (L) NO. 2748 OF 2016
WITH
O.L. REPORT NO. 381 OF 2016/LIQN.IX

Saiprabha Marine Services Pvt. Ltd. & Ors. .. Appellants
V/s
M/s BIL Industries Pvt. Ltd. (In Liquidation) .. Respondent

Mr. Akshay Patil with Mr. Nausher Kohli i/b DSK Legal for the appellants.
Mr. Sharan Jagtiani for the Official Liquidator.
Mr. Vinod Sharma, Official Liquidator, High Court, Bombay, present.

CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.

DATE : 21st DECEMBER 2016

P.C.:

This appeal is filed challenging the order dated 3rd August 2016 wherein a fresh sale was directed to be held by the Official Liquidator and directed to hand over the cheque of Rs.90,00,000/- (Rupees Ninety Lakhs) received from M/s Excelus Brands LLP before the Court.

2. The present appellant no.1 – M/s Saiprabha Marine Services Pvt. Ltd. initially came up with the offer of Rs.3,60,06,000/-, just Rs.10,00,000/- above the reserved price fixed. It is noticed that till date there is no other offer better than the offer made by the appellants for the property in question. As observed in the earlier order dated 14th December 2016, the offer made by the third party is Rs.1.52 crore which is much less than 50% of the offer made by the present appellants. Now there is no other third party who is coming up to match the price offered by the appellants. Since the appellants did not pay the money within the time of 30 days before the learned Single Judge, their offer was rejected and the said impugned order is before us.

3. Since the appellants are asking time till 28th February 2017 to pay the entire amount excluding the amount already deposited (Rs.90,00,000/-), the said amount deposited with the Prothonotary & Senior Master is directed to be transferred to the account of Official Liquidator, who shall deposit the same in interest earning fixed deposit till end of February 2017. Since the appellants are ready and willing to purchase the property at Rs.3,60,06,000/- along with interest payable at 9% with effect from 1st May 2016, apart from paying all actual costs incurred by the Official Liquidator towards the readvertisement for sale of the said property and other miscellaneous costs, we are of the opinion that the offer made by the

appellants deserves to be accepted. The offer made by the third party, who also paid the EMD amount by way of demand draft which is not yet credited to the account of the Official Liquidator, has to be returned back to the third party. If in case any interest is to be paid on the said EMD amount by the Official Liquidator, the same shall be made good by the appellants.

4. The appeal is disposed of with the following order:

(i) The appellants are directed to pay a sum of Rs.2,70,04,500/- along with interest at 9% per annum on Rs.3,60,06,000/- with effect from 1st May 2016 to 21st November 2016 and interest at 9% per annum on Rs.2,70,04,500/- with effect from 21st November 2016 to 28th February 2017.

(ii) The appellants are also directed to pay all actual costs incurred by the Official Liquidator towards readvertisement of sale, etc. They are also directed to pay interest, if any, payable by the Official Liquidator on the EMD of the third party.

(iii) The undertakings contained in the affidavit dated 16th December 2016 are accepted as undertakings to this Court.

(iv) It is made clear that if any of the above terms and conditions or the undertakings are violated by the appellants, the appellants will not have the benefit of this order and this appeal will be deemed to have been dismissed. Further, all amounts paid by the appellants upto 28th February 2017 shall stand forfeited without any further notice.

(v) In view of disposal of the appeal, the Official Liquidator's Report is also disposed of.

(M.S. SONAK, J.) **CHIEF JUSTICE**