

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

**COMPANY APPLICATION NO.542 OF 2016
IN
COMPANY PETITION NO.390 OF 2012**

Praxair India Pvt. Ltd. ... Applicant

In the matter between :

Shree Sai Industries Pvt. Ltd. ... Petitioner

Versus

Pinnacle Infrastructure
International Pvt. Ltd.

... Respondent

**WITH
OFFICIAL LIQUIDATOR REPORT NO.234 OF 2016**

In the matter of Companies Act 1 of 1956;
And
M/s Pinnacle Infrastructure International
Pvt. Ltd.

.....

Ms. Bharati Narichania i/b Vibha Juris Consultant Co., for the Applicant.

Mr. M.G. Agre i/b G.B. Kedia for the Petitioner.

Mr. Shushrut Desai for Ex-Director Mr. Pawan Kaher.

Mr. Dharma Raj i/b PRS Legal for Secured Creditor/Abhyudaya Co-op.
Bank Ltd.

Mr. Vinod Sharma, Official Liquidator.

Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator.

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CORAM : S.C.GUPTE, J.

DATE : 2 DECEMBER 2016.

P.C. :

. Heard learned Counsel for the Ex-Director, who has filed a reply to
the OLR, as also M/s. Praxair India Pvt. Ltd., the Applicant in Company

Application No.542 of 2016, M/s Abhyudaya Co-op Bank Ltd., who is a secured creditor and also the Official Liquidator.

2 This OLR seeks directions for conducting an auction sale of the immovable and movable assets of the Company (in Liqn.) referred to in prayer clause (a). There is also a companion Company Application, namely, Company Application No.542 of 2016. This application is filed by a third party, who claims to be the owner of two storage tanks within the immovable property of the Company (in Liqn.), which is sought to be auctioned. It is agreed between all that these tanks infact belong to the Applicant and that they were suppliers at the site of the Company (in Liqn.) under the products supply agreement with a stipulation that the storage tanks and related equipments shall always remain the property of the Applicant, and upon termination, the Applicant would have the right to enter upon the property of the Company and remove the same. Now that the Company's property is going to be auctioned, the Applicant would have to be permitted to take away the storage tanks and attached equipments. Accordingly, Company Application No.542 of 2016 is allowed in terms of prayer clause (a).

3 As for the directions sought for sale of the properties, this Court observed in its order dated 21 December 2015 that the properties of the Company, which consist of factory premises together with vacant land, have to be auctioned inviting offers, both separately and compositely for the factory premises and the vacant land. It is the case of the Official Liquidator in the OLR that offers received pursuant to the earlier sale notice were not upto the valuation obtained by the Official Liquidator in

pursuance of the directions of the Court. Besides, it is noted that the earlier sale notice inviting bids was a composite offer for the entire plot including factory premises and a separate offer only for the vacant plot belonging to the Company (in Liqn.). The earlier offers being found by this Court to be far below the lower of the two valuations, this Court wanted the Official Liquidator to issue a fresh advertisement and call for fresh offers. This Court was of the view that the question of fixation of the reserve price can be considered on the next occasion after hearing all the parties.

4 After hearing of the parties, this Court is of the view that though the sale notice issued by the Official Liquidator on the earlier occasion would have to be revised insofar as offers are concerned, namely, composite and separate for both properties, there need not be reserved price fixed as of now of the property. It is the experience of the Court that usually in a case like this, the offers based on a reserve price are approximately in the region of the fixed price and there is some kind of cartelization between the bidders. Considering the fact that the property consists of a large vacant land and also considering that both composite and separate offers are to be invited for the properties, this Court is of the view that no reserve price should be fixed as of now. The Official Liquidator shall, however, advertise the sale of two plots, alternatively as a composite offer for the entire property, including vacant land and factory premises on the eastern side of the State highway, and also separately each for the vacant land forming part of the residential zone on western side of the State Highway and the other land including the factory premises. Whilst advertising these properties, the Official Liquidator shall also separately indicate in the sale

notice the vacant plot in which the factory premises are situate.

5 The Official Liquidator's Report is, accordingly, disposed of by allowing prayer clauses (a) and (d).

6 As far as prayer (c) is concerned, the Official Liquidator shall separately present a report and serve the same on the Ex-Director. The Court will consider the rival contentions in this behalf and pass appropriate orders separately.

7 OLR No.234 of 2016 is disposed of.

(S.C.GUPTE, J.)