IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 01583 of 2017

District : Aurangabad

M/s. Metroglobal Limited,
Through its Chairman &
Managing Director,
Mr. Gautam Mithalal Jain,
Age : 65 years,
Occupation : Business,
Having its registered office
at 101, 1st floor,
"Mangal Disha",
Near Guru Gangeshwar Temple,
6th Road, Khar (West),
Mumbai - 400 052. .. Petitioner.

versus

1. Oriental Bank of Commerce,
   a body corporate constituted
   under the Banking Companies
   (Acquisitioin and Transfer of
   Undertakings) Act,
   having its branch offices
   at Plot No.130,
   Varad Ambe Building,
   Varad Ganesh Road,
   Savarkar Chowk,
   Samarth Nagar,
   Aurangabad - 431 001.

2. The Authorised Officer of
   Oriental Bank of Commerce,
   having his Office at
   Plot No.130,
   Varad Ambe Building,
   Varad Ganesh Road,
   Savarkar Chowk,
   Samarth Nagar,
   Aurangabad - 431 001.

3. M/s. J.& P. Foil Limited,
a company incorporated under
provisions of the Companies Act,
1956, and is having its
Registered Office and factory
at Plot No.6, G.I.D.C.,
Industrial Area Valia,
Ankleshwar, District Bharuch,
PIN 270 448, Gujarat. .. Respondents.

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Mr. Rahul R. Totala, Advocate, for the petitioner.

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CORAM : V.M. KANADE &
SANGITRAO S. PATIL, JJ.

DATE : 02ND FEBRUARY 2017

ORAL ORDER *(Per V.M. Kanade, J.)* :

Heard Mr. Totala, learned Counsel appearing on behalf of the petitioner. Chief Manager of respondent no.02 - Bank is present in the Court.

02. By the present petition which is filed under Article 226 of the Constitution of India, the petitioner is seeking following reliefs :-

> (a) This Hon'ble Court may be pleased to issue a writ of certiorari or any other writ, direction or order in the nature of certiorari setting aside the auction of the secured assets held by the Respondent Nos.1 and 2 on 23rd December 2016, pursuant to advertisement dated 21st November 2017.

(b) Pending the admission, hearing and final disposal of the Petition, the Respondent Nos.1 and 2 and their servants and agents be restrained by an order of this Hon'ble Court from in any manner whatsoever proceeding further in connection with the e-auction of the secured assets held on 23-12-2016.

03. Brief facts which are relevant for the purpose of decision of the petition are as under :-

A public notice for e-auction sale of immovable property was issued by the Oriental Bank of Commerce on 21.11.2016. There were about 11 terms and conditions of the said auction purchase. Clause No.08 thereof stipulates that the successful bidder has to deposit 25 % of the sale price, adjusting the EMD already paid, and balance 75 % of the sale price shall be deposited on or before 15th day of the sale. The other important conditions are as under :-

(1) The e-Auction is being held on *"As is where is"* and *"As is whatever is (Symbolic possession)"* basis.

(2) The measurement of properties are approximate and mentioned as per available records, however bidders are requested to personally verify at site and also from the records of the Revenue Authorities prior to participating in auction.

(3) To the best of knowledge and information of the Authorised Officer, there are no encumbrance on the property. However, the intending bidders should make their own independent enquiries regarding the encumbrances, title of property/ies put on auction and claims / rights / dues effecting the property, prior to submitting their bid. The Authorised Officer / Secured Creditor shall not be responsible in any way for any third party claims / rights / dues.

04. The petitioner, who was interested in purchasing the auction property, firstly did not go to the property to ascertain whether the Bank is in physical possession of the property. He also did not ascertain whether measurement of the properties are correct. Clause 1 of the terms and conditions clearly mentions that the property is being sold on "*As is where is*" and "*As is whatever is (Symbolic possession)*" basis. The petitioner wrote a letter to the Bank asking whether they have actual physical possession of the said property and, therefore, did not deposit 25 % amount within stipulated time on the day of the auction sale. Thereafter, some other person paid the said amount and offered to purchase the property.

05. Contention of the learned Counsel appearing on behalf of the petitioner is that, only after taking physical possession of the property by the auction seller, the property could be auctioned. In support of his contention, he has placed reliance on the judgment of this Court at Principal Seat, delivered in **Writ Petition No. 222 of 2015 and connected petitions**, on 27th January 2016, in the case of ***Blue Coast Hotels Limited, Goa and its corporate office at New Delhi Vs. IFCI Limited, New Delhi & another***, and particularly paragraph 133 of thereof.

06. Paragraph 133 of the judgment cited supra reads as under :-

" In *Harshad Govardhan Sondagar (supra)*, the Supreme Court has further elaborated dealing with the amended provisions, the mechanism needs to be followed by the secured creditors who want to take physical possession of the secured assets from the occupants / lessee. The similar view is reinforced in *M/s. Lakshmi Shankar Mills (P) Ltd. & others (supra)*. Recently, the Apex Court dealt with the aspect of taking possession from the tenant. In those matters, the Apex Court even observed that a notice / opportunity of hearing required to be given to the person, claiming lessee or tenant and decide there is valid subsisting lease. The Magistrate, therefore, is under obligation to consider the issue before ordering the possession of the property to the secured creditors. As per Section 13(6), the transfer of any secured assets and/or rights or interest are created in favour of transferee only after secured creditors have taken possession of the secured assets in accordance with law. The requirement of taking possession, through the Magistrate itself means the requirement of actual physical possession. <u>The physical possession, therefore is a must before taking any steps further including of auction and/or sale of the property.</u> The scheme and purpose of the Act, therefore, ought not to have been overlooked though the secured creditor has power to take steps and recourse to recover the secured credits and debts. " *(Emphasis supplied)*

It is apparent that the said observations have been made by this Court in the context of the issue which was raised in the said matter. The issue in the said case was whether the Magistrate while considering application under Section 14 of the Securitisation and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002, was entitled to hear a third party. All these observations and particularly underlined observations have been made by this Court in the context of the said case.

07. In the present case, the petitioner did not pay 25 % amount of the auction sale and as such, he has no locus to challenge the auction which has taken place in favour of the successful bidder. The submission made on behalf of the petitioner is devoid of merit.

08. In the result, the Writ Petition fails and same is dismissed. In the circumstances, parties shall bear their own costs.

(Sangitrao S. Patil)
JUDGE

(V.M. Kanade)
JUDGE

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