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

**COMPANY APPLICATION (L) NO. 250 OF 2017
IN
OFFICIAL LIQUIDATOR'S REPORT NO. 94 OF 2017
IN
COMPANY PETITION NO. 158 OF 2010
IN
COMPANY PETITION NO. 404 OF 2009**

Chandrakant Bhila Sonawane
(Original Purchaser) .. Applicant

In the matter between

Gopani Metal Industries Pvt. Ltd. .. Petitioner
Vs.
M/s. Shree Ghanshyam Auto Parts Pvt. Ltd.
(In Liquidation) Through Official Liquidator,
High Court, Bombay & Ors. .. Respondents

**WITH
COMPANY APPLICATION (L) NO. 197 OF 2017
IN
OFFICIAL LIQUIDATOR'S REPORT NO. 94 OF 2017
IN
COMPANY PETITION NO. 158 OF 2010**

Bhairav Industries .. Applicant

In the matter between

Gopani Metal Industries Pvt. Ltd. .. Petitioner
Vs.
The Official Liquidator,
Shree Ghanshyam Auto Parts Pvt. Ltd.
(In Liquidation) & Anr. .. Respondents

Mr. Bhavik Manek a/w. Mr. V. N. Ajikumar for the Applicant in CAL 250/17
and respondent No.2 in CAL 197/17.

Official Liquidator present.

Mr. C. N. Mehta i/b MMK Law Associates for the Applicant in CAL 197/17.

Mr. Mahendhar Aithe, Co-prosecutor present.

CORAM : A. S. GADKARI, J.
DATE : 30th JUNE, 2017.

P. C. :

1. Heard the learned counsel for the respective parties and perused the application. By an order dated 21.04.2017, the applicant in Application No. 250 of 2017 was declared as a successful bidder. He had offered for Rs.63,00,000/- as the price for the property in question. This Court while accepting the bid of applicant Mr. C. B. Sonawane had directed in paragraph 3 of the said order as under:

3. The reserve bid was fixed at Rs.60 lakhs. The revised offer made by Mr. C.B. Sonawane at Rs.63 lakhs is reasonable and is accepted, subject to said Mr. C. B. Sonawane complying with the other terms and conditions of sale. The Official Liquidator is accordingly directed to encash the cheque of Rs.15 lakhs deposited by Mr. C.B. Sonawane and return the cheques of the other three bidders. The successful bidder is directed to pay the balance consideration within 30 days from today. It is made clear that if the balance amount is not deposited by the successful bidder within the time prescribed, the amount of Rs.15 lakhs deposited by the successful bidder to stand forfeited without further reference to the Court.

2. The record indicates that in pursuance of the said order, the applicant Shri C. B. Sonawane has deposited an aggregate amount of Rs.15,75,000/- towards the purchase price. However, the direction to clear the balance amount within the stipulated period of 30 days from 21.04.2017 was not complied with by the applicant Shri. C. B. Sonawane. That, as per the Terms and Conditions of the Sale Agreement, the said

amount of Rs.15,75,000/- has been forfeited by the the Official Liquidator. The applicant has, therefore, prayed to recall the order dated 21.04.2017 to the extent of forfeiture of EMD amount of Rs.15,75,000/- deposited by the applicant and to permit him to participate in fresh bidding by giving credit of the amount of Rs.15,75,000/- which is already deposited with the Official Liquidator and for other consequential reliefs.

3. The applicant in Application No. 197 of 2017 M/s. Bhairav Industries has prayed to set aside the sale of the property in question and to accept its offer in the sum of Rs.70,00,000/- for purchase of the said property and for consequential reliefs.

The Official Liquidator has filed an affidavit-in-reply dated 13.06.2017 which is taken on record. The Official Liquidator has objected to prayer (a) of the applicant Shri C. B. Sonawane for recalling of the order dated 21.04.2017 to the extent of forfeiture of Rs.15,75,000/-.

The learned counsel for the applicant Shri C. B. Sonawane, on instructions, submitted that this Court may consider to appropriate some part from the said deposit at Rs.15,75,000/- towards the cost for the lapses on the part of the applicant and the applicant may be permitted to participate in the fresh bid by giving credit of the balance amount. Mr. Mehta, learned counsel for the applicant M/s. Bhairav Industries submitted that this Court may pass appropriate orders in that behalf. The learned counsel for the applicant Shri C. B. Sonawane submitted that there was a delay of 15 days on the part of the applicant in making the balance

payment of the bid amount and for the said lapse on the part of the applicant, the applicant could not be made to suffer by way of forfeiture of the entire amount deposited by him.

4. After taking into consideration the peculiar facts of the case, this Court is of the view that the ends of justice would meet, if an amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) from Rs.15,75,000/- (Rupees Fifteen Lakhs Seventy Five Thousand only) deposited by the applicant Shri C. B. Sonawane is forfeited in favour of the Official Liquidator and the applicant be permitted to bid afresh by giving credit of the balance amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to him.

5. This Court thereafter called upon the parties herein to submit their revised offers. Accordingly the applicant Mr. C. B. Sonawane gave offer of Rs.73,50,000/- (Rupees Seventy Three Lakhs Fifty Thousand only) and applicant M/s. Bhairav Industries gave offer of Rs.74,00,000/- (Rupees Seventy Four Lakhs only).

The revised offer made by M/s. Bhairav Industries is the highest and a reasonable offer and is accepted subject to said M/s. Bhairav Industries complies with the usual terms and conditions of sale of the property in question. It is informed by the Official Liquidator that the applicant M/s. Bhairav Industries has already deposited a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) by way of demand draft with the Official Liquidator. The Official Liquidator is accordingly directed to encash the said demand draft deposited by M/s. Bhairav Industries. The successful

bidder i.e. M/s. Bhairav Industries is directed to pay the balance consideration within a period of 30 days from today. If the balance amount is not deposited by the successful bidder within the time prescribed, the amount of Rs.70,00,000/- (Rupees Seventy Lakhs only) deposited by it, shall stand forfeited without further reference to this Court. Upon receipt of the entire consideration, the Official Liquidator shall hand over the possession of the property to the successful bidder i.e. M/s. Bhairav Industries and execute requisite documents expeditiously. The documents shall be executed by the Official Liquidator in favour of the successful bidder or his nominee as may be notified to the Official Liquidator by the successful bidder.

6. The Official Liquidator shall refund the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the applicant Shri C. B. Sonawane (CAL No. 250/17) within a period of two weeks from today without seeking any further extension.

7. Both the applications are disposed off in the aforesaid terms.

[A. S. GADKARI, J.]