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

WRIT PETITION No. 2509 OF 2008

Everest Fincap Pvt. Ltd.,)
a company incorporated)
under the Companies Act, 1956,)
formerly having its office at)
Everest Square Junction of)
Shraddhanand & Nehru Road,)
Vile Parle(East), Mumbai-400 057)
and now at Everest Developers,)
5th floor, Anand Nagar, Sai Vihar)
Complex, Ghodbunder Road,)
Kasar Vadavli, Thane (W), 400 601 ... Petitioner

Verses

1. Krishna Realtors,)
a sole proprietary concern of)
Mr. Dilip Hariyani, having its office
at 1, Homestead, 16, Dattatraya)
Road Santacruz (W), 400 054)
2. Premanarian Harinaranji Lakhani)
of Nagpur, Indian Inhabitant,)
residing at Old Sewa Sadan)

- Building, Dhantoli, Nagpur)
3. United Commercial Bank,)
a body corporate constituted under)
the Banking Companies)
(Acquisition & Transfer of)
Undertakings) Act 1970 having its)
head office at 10, Brabourne Road,)
Calcutta and its main office at UCO
Bank Building, Dr. D. N. Road,)
Mumbai 400 023)
4. Bank of India,)
a body corporate constituted under)
the Banking Companies (Acquisition
& Transfer of Undertakings))
Act 1970 having its head office)
at M.G. Road, Mumbai 400 001)
5. M. Ramnarian Private Ltd.,)
a Private Limited Company)
incorporated and registered under)
the provisions of the Companies Act,
1956 and having its Registered)
Office at Eucharistic Congress)
Building, 5th Convent Street, P. B.)

No.1800, Colaba, Mumbai-400 005)

- 5(i) Dr. (Mrs.) Nadini Atul Nathwani)
of Bombay Indian Inhabitant,)
residing at 8/A, Jeevan Nepeansea)
Road, Bombay 400 006.)
- 5(ii) Mrs. Uma Maharajsingh Mehta)
of Indian Inhabitant, residing at)
C/o. Dr. Maharajsingh Mehta,)
Senior Consultant (an employee))
The International Hospital, P.O. Box
No.1084, Bahrain)
6. Shyam Madanmohan Ruia,)
of Bombay Indian Inhabitant,)
residing at 96, L. Jagmohandas)
Marg, Bombay- 400 006)
7. Shyam Madanmohan Ruia,)
of Bombay Indian Inhabitant,)
residing at 96, L. Jagmohandas)
Marg, Bombay- 400 006)
8. Dr. (Mrs.) Nandini Atul Nathwani)
of Bombay Indian Inhabitant,)
residing at 8/A. Jeevan Nepeansea)
Road, Bombay-400 006)

9. Mrs. Uma Maharajsingh Mehta)
of Indian Inhabitant, residing at)
C/o. Dr. Maharajsingh Mehta,)
Senior consultant (an employee))
The International Hospital, P.O. Box
No. 1084, Bahrain.)
10. Kishnakumar Chatrabhujadas)
Karnani of Bombay Indian)
Inhabitant, residing at 19/13,)
Vithoba Lane, Vithalwadi,)
Bombay-400 002)
11. Madhusudan Dayal Karnani,)
of Bombay an adult Indian)
inhabitant, residing at 19 / 23,)
Vithoba Lane, Vithalwadi,)
Bombay 400 002)
12. Smt. Madhuri Madhusudan Karnani
of Bombay an Indian inhabitant,)
residing at 19/23, Vithoba Lane,)
Vithalwadi, Bombay 400 002)
13. Navneet Madhusudan Karnani,)
of Bombay an Indian inhabitant,)
residing at 19/23, Vithoba Lane,)

- Vithalwadi, Bombay 400 002)
14. Ms. Urvashi Madhusudan Karnani)
of Bombay an adult Indian)
inhabitant, residing at 19 / 23,)
Vithoba Lane, Vithalwadi,)
Bombay 400 002)
15. Bombay Municipal Corporation)
of Greater Bombay,)
a body corporate constituted under)
the Municipal Corporation Act,)
1888 having its Head office at)
Mahapalika Marg, Fort,)
Bombay 400 001)
16. The Official Liquidator,)
High Court, Bombay,)
being Liquidator of M/s. Bradbury)
Mills Limited (in liquidation having
his office at 5th floor SBI Building,)
M. G. Road, Fort, Mumbai 400 021... Respondents

Mr. P. Chidambaram, Sr. Counsel a/w Pravin Samdhani, Sr. Counsel,
a/w S. U. Kamdar, Sr. Counsel, Dhawal J. Mehta, Swapnil Khatri,
Chirag Kamdar, Krishna Moorthy, Abilash Pradhan, Amogh Singh i/b
M/s. Wadia Ghandy & Co. for the Petitioner.

Mr. S. S. Dube a/w Nagendra Dube, for the Respondent No. 1.

Mr. J. P. Cama, Sr. Counsel a/w Gautam Mehta, Devanshu P. Desai,
for Respondent No. 2.

Mr. Prasad Dani, Sr. Counsel a/w Bidan Chandran, Ms. Sarojini Patil
i/b Ms. Poonam Utekar, for Respondent No. 3.

Ms. Pooja Batra i/b M/s. Bodhanwalla & Co. for Respondent No. 4.

Ms. Pooja Kshirsagar Wagle, for Respondent Nos. 5 to 9.

Mr. Girish Godbole, Sr. Counsel a/w Karl Shroff, Bimal Bhabhda, for
Respondent No. 10.

Mr. B. B. Parekar a/w Dr. Deepti Mukesh for Official Liquidator for
Respondent No. 16.

CORAM : B. R. GAVAI, &
RIYAZ I. CHAGLA, JJ.

RESERVED FOR JUDGMENT ON : AUGUST 4, 2017

JUDGMENT PRONOUNCED ON : AUGUST 28, 2017

JUDGMENT [PER : B. R. GAVAI, J.]

1 The Petitioners have approached this Court being aggrieved by order dated 22nd August, 2008 passed by the Debt Recovery Appellate Tribunal, Mumbai (for short “DRAT”) in Misc. Appeal No. 36 of 2006 and 52 of 2006, arising out of the order dated 29th November, 2005 passed by the Debt Recovery Tribunal (for short “DRT”).

2. The facts in brief of which the present petition arises are

as under:

3. The immovable property, which is subject matter of the present petition, is situated at 51, Maulana Azad Road, Gadge Maharaj Chowk, Mumbai admeasuring 28,437.29 sq. mts. (hereinafter referred to as the “said property”) belonging to M/s. Bradbury Mills Ltd. (hereinafter referred to as the “said Company”). It appears from the record that originally the management of the said Company was with Ruia Group i.e. Respondent Nos. 5 to 9. The management of the said Company somewhere in June, 1975 came to be transferred to Karnani group i.e. Respondent Nos. 10 to 14. The said Company was advanced a loan by Respondent No. 3 – United Commercial Bank (for short “UCO Bank”) and Respondent No. 4 Bank of India (for short “BOI”). The Ruia group as well as Karnani group had executed security documents to secure the amounts advanced by the Respondent Banks. The Respondent Bank issued notices dated 28th April, 1978 to deceased Ashok Karnani as well as Respondent Nos. 10, 11 and Premnarayan Lakhani (Respondent No. 2 herein), demanding payment of the amounts mentioned in the said notices in the capacity as guarantors. On non payment of the said amount, UCO

Bank filed suit No. 597 of 1978 on 3rd May 1978 (hereinafter referred to as the “UCO suit”) in this Court, praying for a decree for recovery of Rs. 13.63 crores with further interest and for sale of mortgaged property, etc. In the said suit, the said Company, Ruia group and Karnani group, the BOI and the Municipal Corporation of Greater Mumbai (for short the “MCGM”) were added as defendants. Respondent No. 2 Premnarayan Lakhani was defendant No. 7, whereas Ashok Kumar Karnani was Defendant No. 9.

4. In the year 1984, BOI, which is another secured creditor also filed a suit being Suit No. 2648 of 1994 (hereinafter referred to as the “BOI suit”) against the Company and the guarantors for a decree for recovery of sum of Rs. 3.19 crores with interest @ 15% p.a. with quarterly rests.

5. Vide order dated 9th May, 1978 Court Receiver came to be appointed in the suit and he was directed to take possession in respect of all assets of the said Company, including the said property.

6. In the year 1982 Company Petition No. 1 of 1982 (hereinafter referred as the “Company Petition”) came to be filed

before this Court for winding up of the the Company by one Pravin G. Shah. Vide order dated 27th January, 1983 the Company was ordered to be wound up and the Official Liquidator was appointed. As such, in UCO suit and BOI suit in place of Defendant No. 1, Official Liquidator came to be substituted.

7. On 17th August, 1983 Court Receiver took physical possession of all assets of the Company including the said property.

8. On 20th September, 1984 the MCGM filed an application in UCO Suit praying that the Court Receiver be directed to discharge the statutory dues / arrears of taxes amounting to Rs. 30,98,129/-, or in the alternative it has prayed for permission to attach and sell the said property to recover the said dues. The said application came to be allowed on 29th March, 1985. The Court Receiver announced the auction of the said property, which was scheduled to take place on 21st of January, 1995. On 23rd December, 1994 the Court Receiver addressed a letter to the Advocates of UCO Bank about the auction sale on 21st January, 2005. On 16th December, 1994 deceased Ashok Kumar Karnani alongwith one Mr. Govind Sarda and another filed Notice of Motion No. 3066 of 1994 in UCO Suit (hereinafter referred

to as the “Revival Application”), proposing - (a) scheme for revival of the Company (in liquidation); (b) offer to deposit an amount of Rs.50 crores (Rs. 38 crores to UCO Bank and Rs.12 Crore to BOI); (c) for injunction restraining the Court Receiver from auctioning the said property.

9. In 1995 the Defendant No. 4 in the suit (Respondent No. 7 herein) filed an affidavit to oppose the revival application. On 12th January, 1995 an order was passed by the Company Judge in the Revival Application recording the undertaking of Ashok Kumar Karnani that – (a) he shall deposit a sum of Rs. 50 crores on or before 31st of May, 1995; and (b) out of said amount he was prepared to pay Rs. 2 crores in this Court prior to 19th of January, 1995. It was stated in the undertaking that in the event he fails to pay the balance Rs. 48 crores on or before 31st of May, 1995, the amount of Rs. 2 crores may be forfeited. Accordingly, Ashok Kumar Karnani deposited Rs. 2 crores on 18th January, 1995. On 19th January, 1995 the order was passed in the UCO suit allowing the revival application by directing Ashok Kumar Karnani to deposit balance amount of Rs. 48 crores on or before 31st of May, 1995. As such, auction of the property came to

be stayed and the Court Receiver was directed not to proceed with the auction and return all the offers received by it. Since Ashok Kumar Karnani failed to deposit amount of Rs. 48 crores, the learned Company Judge of this Court dismissed the Revival Application on 12th January, 1996.

10. After the enactment of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, the UCO suit as well as BOI suit came to be transferred to the learned DRT. UCO suit came to be numbered as Original Application No. 124 of 2001 (for short “UCO O.A.”) and the BOI suit came to be numbered as Original Application No. 745 of 2001 (for short “BOI O.A.”). On 21st March, 2001 since the amounts were outstanding for more than 26 years, the UCO Bank and BOI settled the matter with Ruia Group. Under the settlement UCO Bank accepted the amount of Rs. 1,50,00,000/- and BOI accepted an amount of Rs. 40,00,000/- and the Ruia Group was discharged as guarantors.

11. On 11th of March, 2003 the learned DRT passed an order that proceeding of UCO O.A. shall proceed exparte against Prem Lakhani (Respondent No. 2 herein).

12. It is the contention of the Petitioner that Ashok Kumar Karnani was spearheading the settlement / efforts so as to discharge the guarantees of the Karnani Group which owed maximum amount with guarantees to UCO Bank and BOI. In an attempt to discharge the liability of the Karnani Group, Ashok Kumar Karnani approached Everest Fincap Pvt. Ltd (Petitioner herein) and entered MOU with the Petitioner. On 11th August, 2003 the learned DRT passed the order directing the Court Receiver of this Court to hand over possession of the property to DRT Receiver.

13. In the UCO O.A., UCO Bank filed the valuation report of the said property wherein said property was valued at Rs. 76.46 crores by valuer Mr. Shekhar Thite. It is further contention of the Petitioner that on 27th July, 2004 Ashok Kumar Karnani again approached the UCO Bank with an OTS proposal to settle all outstanding dues of UCO Bank for Rs. 5.86 crores. On 25.10.2004 UCO Bank rejected the said proposal. In the said proceeding on 8th July, 2004 one M/s. Siddhesh Construction submitted a proposal to the DRT Receiver offering Rs. 70 crores for the said property subject to certain conditions.

14. On 28th August, 2004 the DRT Receiver took over possession of the said property from the High Court Receiver. It appears that to consider the proposal of the Karnani Group, the UCO Bank was directed to submit a valuation report of DRT empaneled valuer. Accordingly, the Petitioner obtained the valuation report from M/s. M. B. Sabnis & Co., who valued the property at Rs. 39.95 crores. On 24th January, 2005 Ashok Kumar Karnani submitted a revised offer of Rs. 22 crores. On 23rd February, 2005 the Board of Directors of UCO Bank agreed to accept Rs. 22 crores in full and final settlement if the payment was made by 31st of March, 2005. Similarly, on 24th March, 2005, BOI agreed to accept Rs. 5crores in full and final settlement of its dues only if the payment was done by 31st of March, 2005. The proceedings of UCO O.A. was adjourned for settlement.

15. On 31st of March, 2005 UCO Bank filed an application before the DRT in UCO O.A. being Exhibit 156 to bring on record the composite settlement and the payments and sale of the said property to Everest. Vide order dated 31st March, 2005, the Presiding Officer, DRT Hemant T. Sampat of the DRT confirmed the sale of the said Property to Everest. The order records that –

- (a) the Everest had paid sum of Rs. 22 crores to UCO Bank and a sum of Rs. 5 crores to BOI being the only two secured creditors ;
- (b) the undertaking of the Everest to pay a sum of Rs. 14 crores to the Official Liquidator towards the statutory dues and other liabilities of the Company;
- (c) undertaking of the Everest to pay further monies to the Official Liquidator if he makes the demand for the same within six months from the date of the order.

The learned DRT directed the Receiver to hand over possession of the said property to the Petitioner. It also directed the DRT Registrar to execute the deed of conveyance in favour of the Everest after it presents receipt from the Official Liquidator of payment of Rs. 14 crores. Accordingly, an amount of Rs. 14 crores was paid to the Official Liquidator on 11th of April, 2005. On 27th of April, 2005 Everest paid Rs. 41 lakhs as poundage fees to the DRT Receiver. On 27th April, 2005 Sale Certificate was issued by the DRT Registrar to the Everest. On 28th of April, 2005 Registrar DRT-1, Mumbai executed a deed of conveyance of the sad property in favour of Everest.

16. It appears that on 28th April, 2005, Respondent No. 1 filed Miscellaneous Application No. 88 of 2005 for its impleadment as party to the proceeding and for setting aside the sale in favour of the Petitioner. In the said application, it was stated that Respondent No. 1 was willing to purchase the said property for Rs. 45 crores.

17. Pursuant to the orders passed by the DRT dated 31st March, 2005, the DRT Receiver handed over possession of the said property to the Everest. The UCO bank also handed over the title documents of the said Property and share certificates of the Company to Everest on 3rd May, 2005. The Sub-Registrar of Assurances, Mumbai registered the conveyance of the said property in favour of Everest on 4th May, 2005. On 5th May, 2005 Ashok Kumar Karnani expired leaving behind him, his legal heirs. It further appears that on 23rd June, 2005 a letter came to be addressed by one M/s. Siddhesh Construction to the Official Liquidator offering Rs. 60 crores for the said Property. It further appears that after death of Ashok Kumar Karnani, a Memorandum of Understanding came to be executed between Everest (Petitioner herein) on one hand and the Respondent No. 10 Krishna Kumar Karnani and members of the Karnani family,

on the other hand for performance of obligations, as contained in MOU dated 2nd April, 2003.

18. On 1st of September, 2005 a Miscellaneous Application came to be filed by Respondent No. 2 herein which was numbered as Exhibit 183, praying for setting aside the order passed by the DRT dated 31st March, 2005 and the consequential reliefs. It was contended in the said application that Respondent No. 2 was in a position to bring purchaser for an amount of Rs. 80-85 crores for the said property. It was also contended that the Official Liquidator could not have given consent for sale of the said property by private treaty without obtaining permission from the High Court. It was contended that fraud was perpetuated upon the learned Tribunal and on him by rushing through the sale on the same day. It appears that in the meantime, the Official Liquidator had made an application in Company Petition for a direction to Everest to deposit Rs.54,67,014/- to discharge the dues towards MCGM. Accordingly, an order came to be passed on 15th September, 2005 by the Company Court. In pursuance of the said order, on 22nd September, 2005 the Petitioner made payment to the Official Liquidator of the aforesaid amounts.

19. The Petitioner opposed the application filed by Respondent No. 2. It further appears that in the meantime, Respondent No. 1 had also filed an application for intervention, which was exhibited as Exhibit 167. A common order came to be passed on 29th November, 2005, setting aside the order dated 31st of March, 2005. However, the DRT conditionally set aside the sale in favour of Petitioner, on the condition of Respondent No. 1 or Respondent No. 2 depositing Rs. 45 crores + Rs. 50,000/- in the DRT within two weeks from the date of the said order. It was further directed that on such an amount being deposited, the Recovery Officer shall invest the deposited amount in the fixed deposit receipt with the applicant Bank. The learned DRT further directed to put the said property for public auction after having the same valued from a panel valuer of the Tribunal. Various other directions were also issued with regard to disbursement of amount of Rs. 45 crores.

20. Being aggrieved by the order passed DRT, Respondent No. 2 filed Miscellaneous Appeal No. 52 of 2006 before the DRAT, challenging the condition of deposit of amount for setting aside the sale. Respondent No. 1 also filed Miscellaneous Appeal No. 36 of

2006. On 22nd August, 2008 impugned order came to be passed by the learned DRAT in Miscellaneous Appeal No. 36 of 2006 as well as Miscellaneous Appeal No. 52 of 2006. The learned DRAT set aside the condition of deposit of Rs. 45 crores imposed on both the appellants. However, insofar as appeal of Respondent No. 1 Krishna is concerned, the said appeal was allowed on a condition of giving bid in the sum of Rs. 76.50 crores at the public auction to be held, with a further condition that he should furnish bank guarantee in the sum of Rs. 7.65 crores within a period of one week from that date. The learned DRAT further directed that in the event Respondent No. 1 does not furnish bank guarantee within a period of one week, he shall be disqualified from giving bid at the public auction. Insofar as other clauses viz. 4 to 8 and 11 in the impugned order are concerned, they are retained by the learned DRAT.

21. Being aggrieved by the said order dated 22nd August, 2008, the Petitioner has approached this Court. On 15th of October, 2008 this Court issued notices and also granted stay to the orders passed in the appeals. Vide order 20th July, 2010 this Court granted rule in the petition, and the interim relief in terms of prayer clause (b).

It further appears from the record that on 12th February, 2014 the Division Bench of this Court had commenced hearing of the said petitions. However, it observed that in view of pendency of Special Leave to Appeal (Civil) No. 16116 of 2006 in the Apex Court, it would not be appropriate to proceed further with hearing of the petitions. It appears that vide order dated 9th May, 2014 Their Lordships of the Apex Court clarified that the matter pending in the Apex Court has no bearing on the issue, and therefore, required this Court to dispose of the pending writ petitions as expeditiously as possible.

22. It appears that in the meantime, the order passed by the learned DRAT impugned herein was also challenged in this Court by Respondent No. 1 in Writ Petition No. 2857 of 2008. The said petition came to be dismissed on 4th of August, 2010. It appears that in the meantime even during pendency of the proceeding before the DRAT in the appeals filed by Respondent Nos. 1 and the Respondent No. 2, the Present Petitioner had filed Misc. Application No. 70 of 2006 for setting aside the order dated 29th November, 2005 passed by the DRT. He filed an application for expunging various observations in the said

order. The said application was allowed by the DRT vide order dated 29th January, 2010. Respondent No. 2 herein being aggrieved by the said order filed Appeal No. 18 of 2010. Vide judgment and order dated 12th May, 2010 the said appeal came to be allowed by the learned DRAT. Being aggrieved thereby, the present petitioner has preferred Writ Petition No. 1486 of 2010. However, when the present petition on 3rd August, 2007 was being heard the learned counsel for the Petitioner on instructions of the Petitioner sought leave to withdraw the said petition. The said petition, as such, was disposed of as withdrawn. It is further to be noted that the present Petitioner had also preferred an appeal challenging the order dated 29th of November, 2005 before the DRAT by filing Appeal No. 90 of 2010 on 22nd March, 2010, alongwith an application for condonation of delay, being Miscellaneous Application No. 353 of 2010. Vide order dated 28th April, 2010 learned DRAT dismissed the said application for condonation of delay alongwith Appeal No. 90 of 2010. Being aggrieved thereby, the Petitioner has filed a petition, being Writ Petition No. 1487 of 2017. The Petitioner being aggrieved by the order of same date passed in Miscellaneous Application No. 371 of 2010

alongwith Appeal No. 96 of 2010 has also filed Writ Petition No. 1488 of 2010. The 4th petition i.e. Writ Petition No. 1444 of 2011 filed by Respondent No. 2 challenging that part of the order passed by the learned DRAT dated 29th of November, 2005, by which clauses 5, 6 and 7 of the said order have been confirmed and prayed for quashing and setting aside the said clauses.

23. We have heard the matter at length on 2nd, 3rd and 4th of August, 2017. Mr. P. Chidambaram, learned senior counsel has advanced the arguments on behalf of the Petitioner. Mr. P. Chidambaram has assailed the impugned order on several grounds. He submitted that Section 17 of the said Act enables only the banks and financial institutions to approach the DRT. The learned counsel further submits that perusal of Section 22 of the said Act provides that the tribunal and appellate tribunal shall not be bound by the procedure laid down by the CPC but would be guided by the principles of natural justice. The learned senior counsel further submitted that Order 23 of the CPC allows DRT to record the compromise entered into between the parties. He submits that the legislature by adding sub-section (20A) to section 19 has made legislative intent clear that when claim

of the applicant has been adjusted by a lawful agreement or compromise in writing and signed by parties, the Tribunal shall pass orders recording such agreement, compromise for the satisfaction of the claim. It is therefore, submitted that when a lawful compromise was entered into between the parties viz. the lender Banks, Ashok Kumar Karnani and the Petitioner, which was recorded in the order dated 31st of March, 2005, there was no occasion for the DRT to review the said order by passing order on 29th of November, 2005. Mr. P. Chidambaram also submitted that the learned Tribunal had also passed an order of proceeding *exparte* against Respondent No. 2. He submitted that unless Mr. Lakhani had applied for setting aside *exparte* order, and such an application was allowed, the review application could not have been entertained.

24. The learned senior counsel further submits under Rule 5A of the Debts Recovery Tribunal (Procedure), Rules 1993 (hereinafter referred to as the “said Rules”), a party could have applied for review of the order only if the order was made by the Tribunal on account of some mistake or error apparent on the face of the record, only when the order made was against such a party. The learned counsel submits

that there was no order against Respondent No. 2, but as a matter of fact, the order was in favour of the Respondent No. 2, inasmuch as by the order dated 31st March, 2005 the guarantee of the Respondent No. 2 stood discharged.

25. The learned senior counsel further submitted that Respondent No. 2 having filed an application for condonation of delay in filing the application for review, unless the said application was decided and allowed, the learned DRAT could not have proceeded to entertain application of Respondent No. 2. The learned senior counsel relying on sub-rule (2) of Rule 5A of the said Rules submits that unless the application for review is made within 60 days, the same could not have been entertained. The learned senior counsel further submits that in view of the judgment of this court in the case of – *Madhukar Govindrao Rao Vs. Central Bank of India*¹ this Court could not have condoned the delay and as such the order passed by the learned DRAT is without jurisdiction.

26. The learned senior counsel further submitted that even on merits the orders passed by both, viz. DRT as well as DRAT are not

1 2012(1) Mh.L.J. 209

sustainable. He submits that there is no finding of fraud. The only ground while reviewing the order given by the DRT is that the sale proceeds were rushed through the same day. The learned senior counsel further submits that since the order of the learned DRT dated 29th of November, 2005 was a conditional order directing deposit of Rs. 45 crores within a specified period, on account of Respondent No. 1 and Respondent No. 22 not complying the conditions, the said order became ineffective and the earlier order dated 31st of March, 2005 stood restored.

27. The learned senior counsel further submits that the orders passed by the learned tribunal are self contradictory. It is submitted that though the DRT observes that Defendant No. 7 (Respondent No. 2 - Lakhani) is beneficiary, still application (Exhibit 183) is entertained at his behest. The learned senior counsel further submitted that there is no word of “fraud” used by the learned DRT. The learned senior counsel further submits that insofar as the reasoning given by the learned tribunal that the Petitioner had not filed appeal challenging the order dated 29th of November, 2005 and therefore, it was not entitled to challenge the part of the order against it is also totally erroneous.

He further submits that since Respondent Nos. 1 and 2 had failed to deposit an amount of Rs.45 crores within a period of two weeks from the date of order dated 29th of November, 2005, the said order had become ineffective, and therefore, there was no occasion for the Petitioner to challenge the same. The learned senior counsel further submitted that in any case, in view of provisions of Order 41, Rule 22 and 33 of C.P.C., the Petitioners were entitled to challenge in an appeal filed by the other party that part of the order, which was against him. The learned senior counsel submits that the findings given by the learned DRAT that an offer of Rs. 50 crores was received earlier is also incorrect inasmuch as the Court Receiver has on 23rd of March, 2009 vide communication has stated that no such offer was received. The learned senior counsel further submits that the finding with regard to the offer given by M/s. Siddhesh Construction is also totally incorrect inasmuch as offer of Rs. 60 crores was conditional and he has not complied condition of deposit.

28. The learned senior counsel further submitted that insofar as the finding given with regard to contradictory report by Mr. Thite , the same is also incorrect. It is submitted that in any case the report

given by Mr. Thite was obtained by the UCO Bank. In the second report, he has given cogent reasons as to why he has reduced valuation to Rs. 36.34 crores. The learned counsel further submitted that the finding given by the DRAT with regard to concession of lawyer for the Petitioner, is also incorrect. It is firstly stated that no such concession was given, and secondly, no such concession given against the law is binding on the party.

29. The learned senior counsel further submitted that the guarantors and shareholders of a company cannot challenge the lawful compromise arrived at by the company. The learned senior counsel further submitted that the finding given that the Official Liquidator had not obtained permission of the High Court is also incorrect. He further submits that finding of fraud could not have been given only on the ground of suspicion and inadequacy of consideration. The learned senior counsel further submitted that official liquidator was present when the compromise was arrived at, and as such, the finding in that regard is also incorrect. The learned senior counsel has relied on judgments in the cases of – (i) *Bakul M. Kapadia Vs. Bank of*

*India*¹; (ii) *R. Dilip Kumar Vs. Karnataka State Finance Corporation & Ors.*² (iii) *Shyamlal Purohit & Anr. Vs. Jagannath Ray & Anr.*³ (iv) *N. G. George Vs. Shirley Varkey & Ors.*⁴ in support of his contention that Respondent Nos. 1 and 2 have no locus to approach the learned tribunal.

30. The learned senior counsel further submits that Respondent No. 2 having permitted lawful compromise to go ahead and having taken advantage of the lawful compromise, now cannot be permitted to approbate and reprobate. The learned senior counsel relied on the judgments in the cases of - (i) *Cauvery Coffee Traders Vs. Hornor Resources Company*⁵; (ii) *Rajasthan State Industrial Development and Investment Corporation Vs. Diamond & Gem Development Corporation Ltd.*⁶; (iii) *State of Punjab Vs. Dhanjit Singh Sandhu*⁷ in support of his proposition.

31. The learned senior counsel relied upon the judgments of the Apex Court in the case of – *Elizabeth Jacob Vs. District Collector*⁸

1 (1997) 88 Company Cases Volume 515

2 2009 (149) Company Cases 427

3 (1970) 40 CC 138 (Cal)

4 2009 (1) KLJ 899

5 2011 (10) SCC 420

6 2013 (5) SCC 470

7 2014 (15) SCC 144

8 2008 (15) SCC 166

in support of proposition that the suspicion cannot take place of a proof. He also relied on the judgment of the Apex Court in the case of – *Rajendra Singh Vs. Ramdhar Singh*¹ in support of the proposition that inadequacy of price cannot be a ground to set aside the sale.

32. The learned senior counsel further relied on the judgment of the Apex Court in the cases of - (i) *Naresh Kumar Vs. Department of Atomic Energy*²; (ii) *Ram Prakash Agrawal Vs. Gopi Krishnan*³; (iii) *Shivanand Baswanti Vs. Laxmi Vishnu Textile Mills*⁴ in support of the proposition that settled matters cannot be unsettled at the behest of the strangers.

33. The learned senior counsel further relied on the judgments of the Apex Court in the cases of - (i) *Rajasthan State Financial Corporation Vs. Official Liquidator*⁵; (ii) *Bank of Maharashtra Vs. Pandurang*⁶ in support of the proposition that consent of official liquidator is not required. The learned senior counsel relied on the judgment of the Apex Court in the case of

1 2001(6) SCC 213

2 2010 (7) SCC 525

3 2013 (11) SCC 296

4 2008 (13) SCC 323

5 2005 (8) SCC 190

6 2013(7) SCC 754

*Rajendra Prasad Gupta Vs. Prakash Chandra Mishra*¹ in support of the proposition that DRT can record a lawful compromise.

34. The learned senior counsel further relied on the judgment of the Division Bench of this Court in the case of – *Madhao Sarode Vs. Jotiba Dhyani Upasak Shikshan Sanstha, Dudhala*² in support of the proposition that without condonation of delay, substantive matter does not exist and as such cannot be heard.

35. Mr. P. S. Dani, learned senior counsel appearing on behalf of Bank of India submits that the said property was a custodia legis for more than 20 years. It is submitted that though certain offers were made for purchase of the said property, none of the offers were found to be bonafide. He submits that, finding that the offer was bonafide and that the claims of everyone, including the employees and the other creditors were being settled, the Bank took a decision to settle the matter. He submits that the highest authority of the Bank i.e. the Board of Directors had passed a resolution in that respect. It is submitted that one of the major factors for accepting the compromise was that Petitioner herein was willing to make a payment of a huge

1 2011 (2) SCC 705

2 2004 Vol. 106 (4) Bom. L.R. 407

amount within a short period i.e. prior to 31st March, 2005. He submits that 31st March, 2005 is a significant date insofar as the Banks are concerned, inasmuch as the said date is last date of the financial year. It is therefore, submitted that the order passed by the DRT on 29th of November, 2005 as well as the order of the DRAT, impugned in the present petition, are both not sustainable in law.

36. Mr. Cama, learned senior counsel appearing on behalf of Respondent No. 2 submits that the very conduct of rushing through the sale on the same day by the Petitioner alongwith the Bank and the deceased Ashok Kumar Karnani, disentitle them to equitable relief under Article 226 of the Constitution of India.

37. The learned senior counsel submits that the material placed on record would clearly reveal that the price at which the matter is settled is much less than the price at which the said property was agreed to be purchased by the present Petitioner. He further submits that few days earlier to the date on which the matter was settled, the Respondent UCO Bank had rejected the proposal for settlement. It is submitted that perusal of the order dated 31st March, 2005 would show that in the compromise arrived at between the

Petitioner, the banks and the said Ashok Kumar Karnani, there was much more than what meets the eye. The learned senior counsel submits that the value at which the property was sought to be sold vide order dated 31st of March, 2005 was grossly inadequate, and as such, the learned DRT had rightly passed the order dated 29th of November, 2005 . Reliance is placed on the judgment of the Apex Court in the case of – *Divya Manufacturing Co. (P) Ltd. Tirupati Wollen Mills Shramik Sangharsha Samity & Anr. Vs. Union Bank of India & Ors.*¹.

38. The learned senior counsel further submits that if the learned DRT found that the order passed earlier, was due to suppression, then there was no occasion for it to impose condition of pre-deposit. He therefore, submits that the order of the learned DRAT in setting aside the same warrants no interference.

39. The learned senior counsel further submits that notice to the official liquidator is necessary to ensure that the properties of the company are sold at the real market value, and not at an inadequate value. In this respect, learned senior counsel placed reliance on the judgments of the Apex Court in the cases of - (i) *Rajasthan State*

1 (2000) 6 Supreme Court Cases 69

*Financial Corporation & Anr. Vs. Official Liquidator & Anr.*¹; and (ii) *Pravin Gada & Anr. Vs. Central Bank of India & Ors.*² and the judgment of the learned Single Judge of this Court in the case of – *Engineering Workers Union Vs. Official Liquidator & Ors.*³.

40. The learned senior counsel further submits that conduct of the Petitioner itself disentitles it for equitable jurisdiction of this Court under Article 226 of the Constitution of India. The learned senior counsel further submits that the Petitioner even when it was contesting the appeal (filed by Respondent No. 2) had surreptitiously filed an application for review of the order of DRT dated 29th of November, 2005 and not only that but the said review application was allowed by the DRT on 29th January, 2010 after the appeals of Respondent No. 1 and Respondent No. 2 were decided by the learned DRAT on 22nd August, 2008. However, the learned DRAT rightly reversed the said order. It is submitted that not only that, but the Petitioner has subsequently filed an appeal challenging the order of DRT dated 29th November, 2005 alongwith application for condonation of delay. It is submitted that said application and appeal

1 (2005) 8 SCC 190

2 (2013) 2 SCC 101

3 [C. A. (L) No. 899/2004 in C. P. No. 613 of 1984, dated 20th January, 2005]

is rightly rejected by the learned DRAT. It is further submitted that Petitioner in collusion with deceased Ashok Kumar Karnani had suppressed the real value of the said property and got it sold at much lesser price so as to defeat rightful claim of nationalised banks. It is submitted that if the property was sold at the real market value, apart from the nationalised bank / public banks' getting their legitimate claim, the surplus would have gone to the company, which could have been distributed amongst shareholders. It is therefore submitted that present petition at the behest of such petitioner deserves to be dismissed. Reliance in this respect is placed on the judgment of the Apex Court in the cases of - (i) *MCD Vs. State of Delhi & Anr.*¹; (ii) *K. D. Sharma Vs. Steel Authority of India & Ors.*² (iii) *Dalip Singh Vs. State of Uttar Pradesh & Ors.*³; (iv) *Prestige Lights Ltd. V. SBI*⁴.

41. The learned senior counsel further submits that since part of the order dated 29th November, 2005 which is adverse to the Petitioner was not assailed by it before the DRAT, the contention that in appeal filed by Respondent No. 2, it could have assailed that part of

1 (2005) 4 Supreme Court Cases 605

2 (2008) 12 Supreme Court Cases 481

3 (2010) 2 Supreme Court Cases 114

4 (2007) 8 SCC 449

the decree, is also without substance. Reliance in this respect is placed on the judgment of the Apex Court in the cases of - (i) *Banarsi & Ors. Vs. Ram Phal*¹; (ii) *Harvinder Singh Vs. Paramjit Singh & Ors.*².

42. The learned senior counsel further submits that in the event this Court allows the petition and sets aside the order of the DRT and DRAT the effect would be restoring the order dated 31st of March, 2005 which order is *per se* illegal. The learned senior counsel further submits that in view of the judgment of the Apex Court in the case of – *Maharaja Chintamani Sarannath Shahdeo Vs. State of Bihar & Ors.*³, the same would not be permissible.

43. Mr. Girish Godbole, learned senior counsel appearing on behalf of Respondent No. 10 submitted that order of 31st March, 2005 is a nullity. He submitted that application made by Respondent No. 1 was governed by the provisions of sub-section (25) of Section 19 of the said Act. It is therefore, submitted that it would be governed by Article 137 of the schedule to the Limitation Act. The learned senior counsel further submits that in view of provisions of Section 537 of

1 (2003) 9 SCC 606

2 (2013) 9 SCC 261

3 (1999) 8 SCC 16

the Companies Act, notice to the liquidator was necessary. He further submits that since leave of the Company Court was not taken before the compromise was recorded vide order dated 31st of March, 2005, the said order would be nullity. He further submits that in view of provisions of Section 25, the sale-deed will have to be executed by the recovery officer, and as such the sale-deed executed by the Registrar of the DRT would not be valid in law. He further submits that in view of Section 29 of the Act, provisions of Second and Third Schedules to the Income -tax Act, 1961 will have to be followed., which is admittedly not done in the present case.

44. With the assistance of the learned counsel appearing for the respective parties, we have scrutinised the entire evidence.

45. Though elaborate submissions on various issues have been advanced by the learned counsel for the parties, we are of the considered view that petition deserves to be dismissed on short grounds which are discussed by us hereinunder.

46. It would be relevant to refer to the order passed by the learned Company Judge of this Court on 12th January, 1995 in revival

application of the UCO Bank. Paragraph 2 and 3 of the said order reads thus:

“2. Now the Defendant no. 9 has submitted a scheme. When the matter came before me on 12-1-1995 it was stated on behalf of the defendant No. 9 that he is prepared to deposit in this Court an amount of Rs. 50 crores before 31-5-1995 which would satisfy the claim of the Banks i.e. Plaintiff and defendant no. 10 – secured creditors. The claim of the Plaintiff in Suit No. 597/78 upto date would be about 3.8 crores and that of defendant no. 10 in two Suits, Suit No. 1011 of 1979 and Suit No. 2648 of 1984, would be about Rs. 12 crores. The statement was also made on behalf of the defendant no. 9 that his client will deposit an amount of Rs. 2 crores with the Prothonotary and Senior Master, High Court, Bombay in cash or by Demand Draft on or before 19-1-1995. A further statement was also made that defendant No. 9 would forgo the entire amount of Rs. 2 Crores on his failure to deposit the balance amount of Rs. 48 crores on or before 31-5-1995 and was ready to give an Undertaking to this Court to that effect on or before 19-1-1995. Some other statements such as reemployment of 1200 employees on revival etc. were also made and were recorded.

3. The defendant no. 9 has accordingly deposited an amount

of Rs. 2 Crores. He has also given an undertaking as contemplated by order dated 12-1-1995. There is an affidavit filed by one of the Directors of the Company – Shri Shyam Madanmohan Rui, defendant no. 4, inter-alia stating that M/s. Tata Economic Consultancy Services submitted a report dated 25-7-1991 valuing the property at Rs. 22 crores 18 Lacs and the same may now fetch at least about Rs. 40 to 70 Crores in view of escalation in the prices of immoveable property. It is further mentioned that M/s. Poonam Investment Company Ltd. had offered Rs. 35 Crores and he has learnt that some other person has offered Rs. 50 Crores. This at the most would satisfy the claim of 2 Secured Creditors i.e. Plaintiff and defendant no. 10. Further they shall be first required to obtain the decrees in their suits to get the decretal dues. On the contrary if the scheme propounded by defendant no. 9 goes through, the banks (Secured Creditors) are protected because of deposit as contemplated by order dated 1-1-1995, as well as unsecured creditors and workers shall also be benefited.”

47. It could thus be seen that as early as 1995, even according to the deceased Ashok Kumar Karnani, the value of the property was Rs. 50 crores. It is further to be noted that in the affidavit filed by Defendant No. 4 therein, who is Respondent No. 7 herein, the

valuation of the property as was done by the Tata Economic Consultancy Services in the year 1991 was Rs. 22,18,00,000, and according to him, it could fetch Rs. 40 to 70 crores, in view of the escalation of the price of the immovable properties. It could further be seen that at the instance of the UCO Bank, Mr. Shekhar Thate was approved valuer on the panel of valuer of High Court, who had valued the property and as per his valuation report dated 9th of March, 2004, the property was valued at Rs. 76,46,33,000/-. It is further to be noted that the said valuation was done on the basis of the site visit.

48 It is further pertinent to note that that the Petitioner herein has entered into MOU with Ashok Kumar Karnani on 2nd April, 2003. Perusal of the MOU would reveal that in the said MOU following claims against the company are specifically recorded:

“(j) Following are the claims against the Company, along with amount, shown against respective liabilities.

a)	Sr. No.	Name of the Liability	To be settled with	Amount in Crores
	1	PF. Labour liability, ESIC and ESIC Creditors, filed before Official Liquidator	Liquidator	11.93
	2	Mumbai Municipal Corporation	Liquidator	1.4

	3	Collector	Liquidator	0.1
	4	Government of Maharashtra	Liquidator	0.01
		Total (a)		13.44

b)	1	UCO Bank & Bank of India	Direct	21.06
		Total (b)		21.06
		Grand Total (a + b)		34.5

49. It would be relevant to refer to the following portion from the said MOU:

“2. As a result of negotiations between the parties hereto, Shri Karnani has agreed to make all the arrangements, to procure Development Rights of the above property, in favour of Developers, which the Developers have agreed to acquire, at or for the total purchase price of Rs.61,50,00,000/-(Rupees Sixty One Crores Fifty Lacs Only) and upon further terms mentioned herein.

3. Out of the said total Purchase Price of Rs.61,50,00,000 (Rupees Sixty One Crores Fifty Lacs Only), the sum of Rs. 34,50,00,000/- (Rupees Thirty Four crores Fifty Lacs only), shall be paid, to discharge the said Liabilities and subject to other terms mentioned herein remaining sum of Rs.27,00,00,000 (Rupees Twenty Seven Crores only) or any part thereof, upon terms mentioned herein, shall be paid to Shri Karnani.”

50. It could thus be clearly seen from the perusal of MOU

that the purchase price of the said property was at Rs.61,50,00,000/- and amount of Rs. 34,50,00,000/- out of the said price was to be paid to discharge liabilities of the company and the remaining amount of Rs. 27 crores was to be paid to Shri Karnani.

51. It would be further appropriate to refer to the affidavit filed by Dinesh Gopalkrishna Kamath, who was working as Assistant Manager of the Applicant Bank. The said affidavit is dated 11th of March, 2005 thereby opposing the request made by Ashok Kumar Karnani for grant of benefit of one time settlement. It is stated in para 14 of the said affidavit as under:

“14. I say that by his letter dated 10.3.2003, the Defendant N. 9 inter alia offered to pay the alleged balance amount about of Rs.5,86,83,628.52, which may allegedly remain due and payable after deducting the amount received by the original Applicant after filing of the suit. The Defendant No. 9 also sought transfer of said securities held by Original Applicant, to himself. I say that Original Applicant is holding immovable property situated at Jacob Circle, Mahalaxmi, Mumbai and belonging to erstwhile Bradbury Mills Ltd., a security (hereinafter referred to as the “suit property”). The suit property is presently in possession of the Receiver appointed by

this Hon'ble Tribunal. The suit property is admeasuring about 34,011 sq. yards and its market value is above Rs.70 crores as per Valuer's Report dated 9.3.2004 prepared by Mr. Shekhar L. Thite. The Applicant is therefore holding sufficient security against the amount due and payable by Defendant No. 1. The Defendant has on earlier occasions prevented sale of the said property by making false and frivolous applications. It is therefore obvious that the Defendant No. 9 has made the aforesaid offer of alleged settlement with malafide intentions and ulterior motives of usurping suit property, by paying a small percentage of its present market value and thus depriving the creditors of the Defendant No. 1 including workers, original applicant, Defendant No. 10, Official Liquidator etc. of their rightful dues. I say that the alleged offer is a devious scheme of profiteering at the costs of creditors who have waited for years to realize their dues.”

52. It could thus be seen that even according to the UCO Bank, value of the said property as on 11th March, 2005 was Rs.70 crores, and as such, it had opposed the proposal for one time settlement given by the Bank.

53. In this background, we will have to examine the facts of the present case. Perusal of the application, which is filed before the

learned DRT on 31st of March, 2005 would reveal that the valuation report from M/s. Sabnis & Co., approved valuer, was obtained by the present Petitioner, by which the said property was valued at Rs. 39,95,07,000/-. It is stated in the said report that Defendant No. 9 to the Application No. 124 of 2001 Ashok Kumar Karnani had approached Everest to make compromises with secured creditors and liquidator and take the said property of Defendant No.1. It is stated that present Petitioner had agreed to pay a sum of Rs. 41 crores for the said property. It is stated that the offer of the Petitioner is in the interest of everyone. Several prayers are made in the said application. It would be relevant to refer to the order passed by the learned DRT on the very same day of the application being filed i.e. 31st March, 2005. Paragraphs 3 to 7 of the said order reads thus:

“3. The Everest Fincap Pvt. Ltd. has already paid a sum of Rs.22,00,00,000/- to the Applicant herein and Rs. 5,00,00,000/- to Defendant No. 10 towards full and final settlement of their claims against 1st Defendant. Over and above this amount, he has undertaken to pay Rs. 14,00,00,000/- towards other statutory liabilities with further undertaking to pay anything over and above that pursuant to the order of Official Liquidator, if the Official

Liquidator makes the demand within 6 months. Taking into account the amounts paid and agreed to be paid by the Everest Fincap Pvt. Ltd. total consideration of Rs. 41,00,00,000/- is being paid for the property in question. As per the valuation report the property is worth Rs.39,95,07,000/-. In view of the fact that the Banks have already received the amount from M/s. Everest Fincap Pvt. Ltd. and that the total consideration being paid by him is over and above the valuation property in question. Moreover, the Defendant No. 1 is in liquidation since 1983 and also Defendant Nos. 6 to 10 as well as the Applicant have consented for the sale, the property described in Annexure-A is directed to be sold to M/s. Everest Fincap Pvt. Ltd.

4. The DRT Receiver is directed to forthwith hand over the quiet and peaceful possession of the property in question to M/s. Everest Fincap Pvt. Ltd. The fees of DRT Receiver are quantified at Rs.1,00,000/- payable by Everest Fincap Pvt. Ltd. The security charges till today shall be borne by the Applicant and Defendant No. 10 in proportion of their respective ratio 7:5. The DRT Receiver shall stand discharged on handing over the possession and on receiving his fees as stated hereinabove and without passing accounts.

5. The Registrar of the Tribunal or an officer appointed by him shall execute the Deed of Conveyance of the property described in

Annexure-A in favour of M/s. Everest Fincap Pvt. Ltd. after recovering the poundage fee and other statutory charges.

6. The Conveyance be executed after Everest Fincap presents the Receipt from the Official Liquidator that he has received a sum of Rs. 14,00,00,000/- (Rupees Fourteen crores only) towards other statutory liability of Defendant No.1.

7. The Official Liquidator, Applicant, Defendant No. 10 and Receiver shall hand over to M/s. Everest Fincap Pvt. Ltd. the documents of title of the property described in Annexure-A and the Applicant shall also hand over and transfer the Share Certificates of the 1st Defendant (in liquidation) to M/s. Everest Fincap Pvt. Ltd.”

54. It could thus be seen that the learned tribunal appears to have been impressed that as per the valuation report property is worth Rs.39,95,07,000/- and that total consideration to be paid by the present Petitioner was over and above valuation of property in question. It further goes on to record that Defendant Nos. 6 to 10 as well as applicants have consented for the same. Vide order passed on the same day, the UCO Bank O. A. is disposed of as the Bank have accepted a sum of Rs. 22 crores in its full and final settlement of its claim. Similarly, BOI O.A. is also disposed of since settlement is made and a

sum of Rs. 5 crore is received from the present Petitioner towards full and final settlement of the Applicants' claim.

55. The learned DRT in this background has considered the application filed by Respondent No. 2 as well as intervention application filed by Respondent No. 1. The learned DRT on 29th of November, 2005 finds that various important facts were not brought to the notice of the tribunal when it had passed order on 31st March, 2005. It further goes on to record that official liquidator had failed in its duties in not seeking time to consider proposal of the purchaser and also not pointed out to the tribunal that when the property was sought to be put for auction in the proceeding before the High Court at that time i.e. before 10 years back, it would have fetched price of Rs. 55 crores. The learned tribunal specifically observed that valuation of the property which was done in March, 2004 was at Rs. 76 crores and thus within a short period the value of the property could not have been reduced substantially. The learned tribunal found that it was made to believe by all the concerned that valuation report submitted by M/s. M. B. Sabnis & Co. was proper. The learned tribunal therefore, finds that it was misrepresented by the party.

56. No doubt, there are certain observations made by the learned DRT about the conduct of Defendant No. 7 i.e. Respondent No. 2 herein. The learned DRT therefore, vide order dated 29th of November, 2005 set aside the order of confirming sale in favour of Petitioner, on Respondent No. 2 depositing a sum of Rs. 45 crores. There are other directions in the said order. The recovery officer was directed to invest Rs. 45 crores for three months in fixed deposit with the applicant Bank and put the property for public auction after getting the same valued from the valuer. The amount of Rs. 50,000/- was directed to be utilised for auction and valuation (clause 4 & 5). The learned tribunal directed the recovery officer to issue notice of auction to M/s. Siddhesh Construction (clause 5). Present Petitioner was granted liberty to bid in the auction (clause 6). It is provided that if the Petitioner is outbided, the actual consideration paid by him, the charges and costs incurred by him on the property for securing and improving the same alongwith interest @ 6% be reimbursed from the consideration received from the successful bidder. Clause 7 provides that Petitioner shall provide necessary details of costs and expenses incurred by it. Clause 8 provides that if Petitioner is out bided, the

amount deposited shall be repaid to him with accrued interest excluding costs of Rs. 50,000/-. Clause 9 provides that if the amount is deposited by the guarantor, it be returned to him from the consideration received from the successful bidder alongwith interest @ 5% p.a. The recovery officer was directed to complete the process of auction within three months. If further directed that proceeding of Original Application 124 of 2001 would not be reopened.

57. The aforesaid order is challenged by way of appeal before the learned DRAT by both - Respondent Nos. 1 and the Respondent No. 2. The learned tribunal finds that purpose of Respondent No. 2 was to ensure that the property must receive the price commensurate with its market rate whereas purpose of Respondent No. 1 was to purchase the property for his own purpose. The learned tribunal finds that fact of suppression of material fact from the Presiding Officer, was not challenged by any of the parties, i.e. neither Bank nor the purchaser. The learned Tribunal therefore, holds that insofar as the condition with regard to deposit of Rs. 45 crores by Respondent No. 1 is concerned, the same was liable to be set aside. In this background, the learned DRAT has passed the order thereby setting aside the

condition of deposit of Rs. 45 crores. However, insofar as intervenor's appeal is concerned, his appeal is allowed on condition of his giving bid in the sum of Rs. 76.50 at the public auction and also furnishing bank guarantee in a sum of Rs.7.65 crores within a period of one week from the said date.

58. It could thus be seen that when the order was passed by the learned DRT on 31st of March, 2005, it was passed on the application made on the same date. Though the representative of the liquidator was present, it is clear that he was served with copy of the application on the same day. In the application only valuation report of M/s M. B. Sabnis & Co. was brought to the notice of the learned Tribunal. The earlier valuation report of Mr. Shekhar Thite, the MOU entered between Everest and Ashok Kumar Karnani dated 2nd April, 2003, the order of the learned Company Judge of this Court dated were not brought to the notice of the learned DRT. In this background, we will have to examine as to whether interference is warranted with the impugned orders. It would be relevant to refer to the observations of Their Lordships of the Apex Court in the case of Rajasthan State Financial Corporation & Anr. (supra) in para 17 and 18, which read as

under:

“17. Thus, on the authorities what emerges is that once a winding up proceeding has commenced and the liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the Official Liquidator and under the supervision of the company court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the Court which has been approached under Section [31](#) of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the company court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place. In the case on hand, admittedly, the appellants have not set in motion, any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the company court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The company court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We clarify that there is no inconsistency between the decisions

in *Allahabad Bank v. Canara Bank and Anr.*¹ (supra) and in *International Coach Builders Limited v. Karnataka State Financial Corporation*² (supra) in respect of the applicability of Sections 529 and 529A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution par passu with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the company court. In other words, the distribution of the sale proceeds under the direction of the company court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the company court, that a proper price is fetched for the assets of the company in liquidation. It was in that context that the rights of the Official Liquidator were discussed in ***International Coach Builders Limited*** (supra). The Debt Recovery Tribunal and the District court entertaining an application under Section 31 of the SFC Act should issue notice to the liquidator and hear him before ordering a sale, as the representative of the creditors in general.

18. In the light of the discussion as above, we think it proper to sum up the legal position thus:-

1 (2000) 4 SCC 406

2 (2003) 19 SCC 482

(i) A Debt Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in- liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application under Section [31](#) of the SFC Act will have the power to order sale of the assets of a borrower company-in- liquidation, but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.

(iii) If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the company court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the company court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation.

(emphasis supplied)

59. It could thus clearly be seen that the Hon'ble Apex Court upon considering its earlier judgments on the issue has held that once a winding up proceeding has commenced and liquidator has been put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be done with the association of the Official Liquidator and under the supervision of the Company Court. It has been held that though rights of the financial institutions or of the Recovery Tribunal or that of a financial Corporation or the court which has been approached under section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of section 529-A of the Companies Act takes place. It has been held that the Liquidator represents the entire body of creditors and also holds right on behalf of the workers to have a distribution *pari passu* with the secured creditors and the duty for further distribution of the proceeds

on the basis of the preferences contained in section 530 of the Companies Act under the directions of the Company Court. It has been held that distribution of the sale-proceeds under the direction of the Company Court is his responsibility. It has been held that to ensure proper working out of the scheme of distribution, it is necessary to associate Official Liquidator with the process of sale, so that he can ensure, in the light of the directions of the Company Court, that a proper price is fetched for the assets of the company-in-liquidation. It has been held that the Debt Recovery Tribunal and the District Court entertaining an application under Section 31 of the SFC Act should issue notice to the Liquidator and hear him before ordering a sale, as the representative of the creditors in general.

60. It could thus be seen that notice to the Official Liquidator is not an empty formality. The Official Liquidator is required to represent interest of all the creditors, including workmen of the company and to ensure that the assets of the company receive proper price.

61. We ask a question to ourselves as to whether giving a copy of application to the representative of the Official Liquidator and

DRT passing the order on the same day can be said to be compliance with the said provisions? Undoubtedly, it was the duty of the representative of the Official Liquidator to have sought time, examined the proposal and thereafter addressed the learned Tribunal to espouse interest of all the creditors and the workers and ensure that assets pay of proper price. It would be relevant to refer to observations of Their Lordship of the Apex Court in the case of *Pravin Gada (supra)* in paragraph 11 and 12, which read as under:

“11. The said order dated 3-3-2011 came to be assailed by the secured creditors and the workmen's union on the ground that the confirmation suffered from material irregularities. The High Court noticed that the DRAT had opined that the power of the official liquidator was restricted to participate at the stage of disbursement of the dues of the workmen but not in conducting of the sale. It did not agree with the said finding on the basis of the proposition of law laid down in *Rajasthan Financial Corporation and Anr. v. Official Liquidator and Anr.* AIR 2006 SC 755. While noting that aspect, the High Court proceeded to address the fundamental question whether the procedure that was followed in the sale of the property was fair and proper or whether there was any fraud and material irregularity. It adverted to the facts in a chronological manner and came to hold that the manner in which the sale proceedings had been conducted was neither fair nor transparent as a consequence of which the possible price that could be realized had become an unfortunate causality. It took note of the offer made by Umrah Developers after

a month of confirmation of sale and opined that the proper price had not been realized. The finding of the DRT that the Central Bank of India had remained absent could not be a justification to sustain the manner in which the sale had been conducted as it was manifestly contrary to the basic concept of fairness and transparency.

12. The High Court referred to number of authorities to highlight the conception that in every case, the duty of the court is to satisfy itself that the price offered is reasonable and the said satisfaction is to be based on the bedrock of the prevalent market value. Expressing the aforesaid view, the High Court allowed the writ petition, set aside the order of the DRAT dated 3rd March, 2011 and proceeded to direct as follows:

...”

(emphasis supplied)

The aforesaid observations have been approved by Their Lordships in paragraph 18 of the said judgment. It could thus be seen that their Lordships in clear terms held that duty of the Court is to satisfy itself that the price offered is reasonable and the said price is prevalent market value of the property.

62. We may also gainfully refer to a case decided by the learned Single Judge of this Court in the case of *Engineering Workers Union (supra)*. In this case the argument was sought to be advanced that the learned company court was bound to give consent to the

compromise which was sought to be effected in the consent terms to be filed in the proceeding pending before the DRT. The learned Single Judge of this Court (Company Court) observed in para 18 as under:

18. ... I have considered the aforesaid submission and in my opinion, if the consent of the Company Court is necessary for the purpose of filing of the consent terms in the Debt Recovery Tribunal proceedings then the Court must look into whether such a consent terms should be entered into for and on behalf of the company or not. ...”

After observing this, the learned Single Judge has observed in para 22 as under:

22. ... It is not in dispute that if higher amount is received then the banks and financial institutions would get the higher inflow of the sale proceeds as the secured creditors. I am perplexed with the contention that even if the higher amount is likely to be received from various auction purchasers still I must accept the depressed offer of the respondent no. 9. If the depressed offer is accepted, there is likelihood of a loss of around Rs. 4 and half crores. It could be to the banks and financial institutions. I am unable to discard this aspect of the matter and accept the one time settlement scheme. If the company would have been benefited by accepting the depressed offer by virtue of extinguishing all the liabilities then of course I would have taken into consideration the said aspect of the matter. But as stated above, that contention is totally misnomer and has no merit whatsoever. Apart

from the aforesaid reasoning of mine, I am also of the opinion that the duty of the Company Court while accepting the bid is to see that the highest offer is received by the company under liquidation and I am fortified in my view by the judgment of the Apex Court in the case of Divya Manufacturing Company (P) Ltd., Tirupati Woollen Mills Shramik Sangharsha Samitee and Another vs. Union Bank of India and others Official Liquidators and others, reported in (2000) 6 SCC 69 in which the Apex Court has stated as under :-

"From the aforesaid observation, it is abundantly clear that the court is the custodian of the interests of the company and its creditors. Hence, it is the duty of the court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud."

Thus, even looking from this angle of the matter, I am duty bound to see that the sale price for the said assets must be corresponding to the market value of the said property but not artificial and/or depressed market value arrived at by consensual method by and between the secured creditors, the guarantors and the purchaser. I do not, therefore, accept the contentions of the parties that the Court must give its imprimature on the one time settlement scheme by directing the Official Liquidator to be a party to the said consent terms. ..."

63. Though the said judgment is of the learned Single Judge of this Court, it may not be binding, still it has a persuasive

value. We are in complete agreement with the view taken by the learned Single Judge that the Court is bound to see that the sale price for the assets must be corresponding to the market value of the property of the company but not artificial and / or depressed market value arrived at by consensual method by and between the secured creditors, the guarantors and purchaser. We find that if we apply the said principle in the present case, compromise which is accepted by the learned DRT by the order of 31st of March, 2005 would not be at all sustainable in law.

64. In the case of *Divya Manufacturing Company (P.) Ltd.* (*supra*), highest bid accepted and confirmed by the High Court. However, certain other parties offered much higher price. The High Court directed them to deposit 20% of the amount of their offer and to pay certain amount each to the party whose bid had been accepted, and as such, the High Court set aside the confirmation of highest bid. Their Lordships observed in para 12 to 15 as under:

“12. The law on this subject is well-settled. In the case of *Navalkha and Sons* [1970] 3 SCR 1 (*supra*), after appellant's offer was accepted, a fresh offer from one *Gopaldas Darak* for higher amount was received by stating that he could not offer in time because he came to know of

the sale only 2 days prior to the date of the application 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 as between M/s. Navalkha and higher offerer Gopaldas Darak, M/s. Navalkha thereafter offered higher bid at Rs. 8,82,000 and its bid was accepted and the learned Judge concluded the sale in its favour with a direction to pay the balance amount. Thereafter an application was filed offering Rs. 10 lakhs. A contention was raised that due publicity of the sale of the property was not made, but that application was rejected by the Court. Hence, an appeal was filed by the applicant who made an offer of Rs. 10 lakhs and another by one contributory against the order of confirmation. Both appeals were allowed by the Division Bench and the order passed by the learned Judge was set aside with a direction to take fresh steps for sale of the property either by calling sealed tenders or by auction in accordance with law. That order was challenged before this Court by M/ s. Navalkha. It was contended that there was no justification for the Division Bench to interfere with the order of the learned single Judge. In that context, after quoting Rule 273 of the Companies (Court) Rules, 1959, the Court observed (SCC pp. 540-41, para 6):

“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. T. 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. Sadapathy Pillai* AIR 1925 Mad 318 and *S. Soundarajan v. Mahomed Ismail, Roshan & Co.* AIR 1940 Mad 42. In *A. Subbaraya Mudaliar v. K. Sundararajan* AIR 1951 Mad 986, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold 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.

(emphasis supplied)

13. From the aforesaid observation, it is abundantly clear that the Court is the custodian of the interests of the Company and its creditors.

Hence, it is the duty of the Court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. As stated above, in the present case, the sale proceedings have a chequered history. The appellant started its offer after having an agreement with the Employees Samity for Rs. 37 lakhs. This was on the face of it under bidding for taking undue advantage of Court sale. At the intervention of the learned single Judge, the bid was increased to Rs. 85 lakhs. Subsequently, before the Division Bench, the appellant increased it to Rs. 1,30 crores. At that stage, respondent No. 7, 'Sharma' was not permitted to bid because it had not complied with the requirements of the advertisement. It is to be stated that on 26th June, 1998, the Division Bench has ordered that offers of Eastern Silk Industries Ltd. and Jay Prestressed Products Ltd. would only be considered on 2nd July, 1998 and confirmation of sale would be made on the basis of the offers made by the two parties. Further, despite the fact that the appellant 'Divya' had withdrawn its earlier offer, the Court permitted it to take part in making further offer as noted in the order dated 2nd July, 1998. In these set of circumstances, there was no need to confine the bid between three offerers only.

14. In LICA (P) Ltd. (1) v. Official Liquidator (1996) 85 Comp Cas 788, this Court dealing with a similar question observed thus:

“The purpose of an open auction is to get the most remunerative price and it is the duty of the Court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The Court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and

circumstances in each case.”

15. The matter was again brought before this Court and in LICA (P) Ltd. (2) v. Official Liquidator and the Court held:

“Proper control of the proceeding and meaningful Intervention by the Court would prevent the formation of a syndicate, underbidding and the resultant sale of property for an inadequate price. The order passed by this Court yielded the result that the property which would have been finalised at Rs. 45 lakhs, fetched Rs. 1.10 crores and in this Court a further offer of Rs. 1.25 crores is made. In other words, the property under sale is capable of fetching a higher market price. Under these circumstances, though there is some force in the contention of Sri Ramaswamy that the Court auction may not normally be repeatedly disturbed, since this Court, on the earlier occasion, had limited the auction between the two bidders, the impediment will not stand in the way to direct sale afresh. Even today the parties are prepared to participate in the bid.”

After the above discussion, Their Lordships have held as under:

“16. ... Confirmation of the sale by a court at a grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the court may prevent, to some extent, underbidding at the time of auction through court. In the present case, the Court has reviewed its exercise of judicial discretion within the shortest time.” (emphasis supplied)

65. It could therefore be seen that Their Lordships have observed that if the sale is confirmed by the Court at an inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, it could be set aside on the ground that it was not just and proper exercise of judicial discretion. We find that in the present case what has been done by the learned DRT vide order dated 29th of November, 2005 is the same procedure which has been approved by Their Lordships of the Apex Court in the case of *Divya Manufacturing Co. (P) Ltd. (supra)* Their Lordships have held that even if there is no irregularity, fraud in the conduct of sale, if it is found that the confirmation of sale is at a grossly inadequate price, the sale could be set aside on the ground that it was not just and proper discretion. In the present case, as we have already discussed hereinabove when the order was passed by the learned DRT on 31st of March, 2005 an unlawful procedure was adopted, viz. making an application on the same day, though the representative of the official liquidator was present, he failed in his duty to represent interest of the creditors and shareholders of the company in not opposing the said

confirmation when the Karnani himself had offered to pay Rs. 50 crores for the same property 11 years earlier in 1994, the UCO Bank which had hardly a month ago opposed the application on the ground that value of the property was more than Rs. 70 crores, it had agreed for the offered sale at much lesser price. We find that within a short time by the order dated 29th of November, 2005, the unjust order dated 31st of March, 2005 is set aside, so as to ensure that the interest of the creditors and shareholders in order to fetch a price by fair and transparent manner. In our considered view therefore, no error could be found with the same.

66. No doubt, Mr. P. Chidambaram has rightly pointed out provisions of Section 17 and Rule 5 to contend that the review at the instance of the applicant would not be tenable and then unless the application for condonation of delay was allowed, the tribunal could not have gone into merits of the matter.

67. However, we may refer to sub-section (25) of Section 19 of the Recovery of Debts & Bankruptcy Act, 1993, which reads as under:

“19(25) The Tribunal may make such orders and give such

directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

68. It could thus be seen that the statute itself has given enormous powers to the tribunal, which are analogous to the powers of a civil court under Section 151 of the Civil Procedure Code, to make such orders and give such directions as may be necessary or expedient to give effect to its orders or prevent abuse of its process or to secure the ends of justice. We are of the considered view that by the order dated 29th of November, 2005 the learned Presiding Officer of the DRT has passed an order recalling his order dated 31st of March, 2005 to prevent abuse of its process and to secure ends of justice. We have no hesitation to hold that the jurisdiction exercised by it would fall under the ample powers vested in it under sub-section (25) of Section 19 of the said Act.

69. It would also be relevant to refer to the judgment of the Apex Court in the case of *Ram Kishun & Ors. Vs. State of Uttar Pradesh & Ors.*¹, more particularly observations in paragraph 15 to 17 thereof, which read as under:

¹ (2012) 11 Supreme Court Cases 511

“15. In case the property is disposed of by private treaty without adopting any other mode provided under the statutory rules etc., there may be a possibility of collusion/fraud and even when public auction is held, the possibility of collusion among the bidders cannot be ruled out. In *The State of Orissa and Ors. v. Harinarayan Jaiswal and Ors.* AIR 1972 SC 1816, this Court held that a highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

16. In *Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr.* AIR 2002 SC 834, this Court considered this aspect and while placing reliance upon its earlier judgment in *Chairman and Managing Director, SIPCOT Madras and Ors. v. Contromix Pvt. Ltd.* by its Director (Finance) Seeetharaman, Madras and Anr. AIR 1995 SC 1632 held that in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

17. Therefore, it becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price. Thus essential ingredients of such sale remain a correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them, as a moneyed person or a big businessman may not like to involve himself in small sales / deals.”

(emphasis supplied)

70. It could thus be seen that Their Lordships have held that if a property is disposed by private treaty without adopting any other mode provided under the statutory rules, etc. the possibility of collusion / fraud cannot be ruled out. It has been held that even while accepting the bid of highest bidder, the authority is required to be fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders. It has been held that it becomes legal obligation on the part of the authority to ensure that the property is sold in such a manner that it fetches the best price.

71. It is to be noted that insofar as Respondent No. 1 is concerned, it was interested in purchasing the property for himself, and therefore, his appeal was allowed with certain conditions. However, insofar as Respondent No. 2 is concerned, it was found that Respondent No. 2 was not interested in purchasing property for himself, but his interest lies in getting the price as per the market value of the said property, and as such, he was acting for the benefit of the company, its creditors and shareholders. In this background, the learned DRAT found that though certain conditions are required to be

imposed while allowing the appeal of Respondent No. 1, who was interested in getting the property for his own benefit, no conditions are required to be imposed while allowing the appeal of Respondent No. 2 who was not acting for his benefit but for the benefit of the company, its creditors and shareholders. In this view of the matter, the learned DRAT found that the order passed by the DRT of depositing a huge amount as a pre-condition for setting aside its earlier order was not justified. We find that no error could be found with the approach of the DRAT in passing the impugned order dated 22.8.2008.

72. In the present case it could be seen that the order which was passed by the DRT on 31st of March, 2005 was only on the basis of valuation report of M/s. M. B. Sabnis & CO., which was produced by the UCO Bank. It is pertinent to note that said report was obtained by the present Petitioner. It could thus be seen that though the reports of the valuer Mr. Thite, which was obtained by UCO Bank was very much available, the same was not placed before the learned DRT on 31st of March, 2005. If by the order dated 29th of November, 2005 the mistake committed by the learned DRT has been rectified and proper procedure, as is required to be followed under the law is directed to be

followed; in our view, the learned tribunal was totally justified in doing so. It is further to be noted that both orders passed on 31st of March, 2005 as well as 29th of November, 2005 are passed by the same learned Presiding Officer of the DRT Shri Hemant T. Sampat. It could thus be seen that while passing subsequent order dated 29th of November, 2005, the learned Presiding Officer could personally very well appreciate the manner in which the order dated 31st of March, 2005 was obtained from him.

73. There is another ground on which we find that present Petitioner is not entitled to invoke equitable jurisdiction of this Court. It is to be noted that the present Petitioner after settling the matter with both banks, Ashok Kumar Karnani approached the learned tribunal on 31st of March, 2005. On the same day, the orders were obtained on the basis of the valuation report of M/s. M. B. Sabnis & Co. The learned DRT was given an impression that, it is the only valuation report available. However, it is to be noted that the said valuation was done by M/s. M. B. Sabnis & Co. at the behest of the present Petitioner. The earlier valuation of Mr. Thite was not produced before the DRT. Not only that, but MOU between the present Petitioner and Ashok

Karnani dated 2nd April, 2003 was also not produced. In the said MOU itself, the price that was agreed was Rs. 61,50,00,000/-. It could thus be seen that under the order of 31st of March, 2005, the property was sought to be purchased and acquired by the present Petitioner at almost 2/3rd price of the one, which was agreed between it and Ashok Kumar Karnani in the year 2003. Not only this, but when appeal of Respondent No. 2 was being heavily contested by the present Petitioner, he had already filed review application before the learned tribunal and he chose not to disclose about the same to the appellate authority. The review was permitted to be kept pending till the decision of the appeal. The review application was pressed into service only after decision in the appeal, which was decided on 22.8.2008, the said review application was allowed on 29.1.2010. No doubt, the order passed in review has been rightly reversed by the learned DRAT.

74. It could thus be seen that conduct of the present Petitioner, in collusion with representative of the bank and representative of the official liquidator was not only of suppression of important material from the learned DRT, but it is also of such a nature which would amount to taking chances in the judicial proceedings.

We are therefore of the considered view that conduct of the Petitioner also disentitles him to invoke the equitable jurisdiction of this Court.

75. It would be relevant to refer to the following observations of the Apex Court in the case of *MCD Vs. State of Delhi & Anr.*¹:

“21. ... A litigant who approaches the Court is bound to produce all documents which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well on the opposite party. The second respondent, in our opinion, was not justified in suppressing the material fact that he was convicted by the Magistrate on an earlier occasion. Since the second respondent deliberately suppressed the crucial and important fact, we disapprove strongly and particularly, the conduct of the second respondent and by reason of such conduct, the second respondent disentitled himself from getting any relief or assistance from this Court. We, however, part with this case with heavy heart expressing our strong disapproval of the conduct and behavior but direct that the second respondent to pay a sum of Rs. 10,000/- by way of cost to the appellant herein.”

76. We may also gainfully refer to the following observations of the Apex Court in the case of *K. D. Sharma Vs. Steel*

¹ (2005) 4 Supreme Court Cases 605

*Authority of India Ltd. & Ors.*¹:

“38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, “the Court knows law but not facts”.

39. If the primary object as highlighted in *Kensington Income Tax Commissioners*, 86 LJKB 257 is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the Court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that

1 (2008) 12 Supreme Court Cases 481

ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.”

77. Similar view is taken by the Apex Court in the case of *Dalip Singh Vs. State of Uttar Pradesh & Ors.*¹ and in the case of *Prestige Lights Ltd. Vs. SBI*²

78. We find that there is another ground on which the petition deserves to be dismissed. For a moment even if we accept the arguments advanced by Mr. P. Chidambaram that the application for review could not have been heard on merits without the delay being condoned or that there was no provision for condonation of delay, and therefore the order dated 29th of November, 2011 is not valid in law, then the effect would be to restore the order dated 31st of April, 2005. If the said order is restored, the effect would be that the order which is obtained by collusion of the purchaser, the banks, deceased Ashok Kumar Karnani and the representative of official liquidator permitting sale of the assets of the property at much lesser price than its market value. In our considered view, it would amount to perpetuating the

1 (2010) 2 Supreme Court Cases 114.

2 (2007) 8 SCC 449

illegality which is committed by the order dated 31st of March, 2005, which was sought to be corrected by the order dated 29th of November, 2005.

79. In any case, while passing the said order, the learned DRT has also taken care to ensure that interest of present Petitioner is also protected. It has directed that not only the amount deposited by the present Petitioner, but the costs incurred by him including security, etc. should be refunded to him alongwith interest. It is not as if that the amount of investment made by the Petitioner is being forfeited.

80. It is also to be noted that the Official Liquidator after realizing the irregularities committed by its representative when the order was passed on 31st of March, 2005 has already filed an appeal before the learned DRAT.

81. It would be relevant to refer to the following observations of their Lordships of the Apex Court in the case of *Maharaja Chitamani Sarannath Shahdeo Vs. State of Bihar & Ors.*¹:

“10. The first point urged on behalf of the appellant was that the Act did not empower the Member of Board of Revenue to exercise any power and, therefore, the order of the Member of Board of

1 (1999) 8 SCC 16

Revenue directing the subordinate authority to take action for recovery of the additional compensation which was paid @ ten times was illegal. The learned Counsel for the respondent urged that under Bihar Practice and Procedural Manual, Member of Board of Revenue had power of Superintendence, direction and control in such matters.

11. But in the Act, authorities and their powers have been specified and we do not find any provision which vests power on the Board of Revenue, so we have to proceed on the assumption that the Board of Revenue has no power.

12. Therefore, the question is whether the order of the Member of Board of Revenue should be quashed on this ground. If the order is set aside, result would be that the notice directing the appellant to refund the additional amount of compensation assessed at ten times of net income would have to be quashed. In other words, the earlier re-assessment of compensation made by giving ten times of net income would revive. If under the law the appellant is not entitled to get compensation more than three times of the net income it would amount to restoring an illegal order.

13. In *Gadde Venkateswara Rao v. Government of Andhra Pradesh and Ors.* [1966] 2 SCR 172 this Court considered the action of the State Government under Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 and came to the conclusion that the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act but refused to interfere with the orders of the High Court on the ground that if High Court had quashed the said order, it would have restored an illegal order and, therefore, the High Court rightly refused to exercise its extraordinary jurisdictional power.

14. In *Mohammad Swallen and Ors. v. IIIrd Addl. District Judge, Meerut and Anr.* [1988] 1 SCR 840, similar view was also expressed by this Court. In that case the order passed by the Prescribed Authority under U.P. (Temporary) Control of Rent and Eviction Act, 1947 was set aside by the District Judge in appeal though the appeal did not lie. The High Court came to the finding that the order of the Prescribed Authority was invalid and improper but the District Judge had no power to sit in appeal. The High Court did not interfere with the Orders of the District Judge. The order of the High Court was affirmed by this Court on the ground that though technically the appellant had a point regarding the jurisdiction of the District Judge but the order of the Prescribed Authority itself being bad, refusal of the High Court to exercise powers under Article [226](#) no exception can be taken.

15. Therefore, in view of the above ratio laid down by this Court, we hold that even if the Member of Board of Revenue had no power to issue direction for giving notice for refund of the excess amount paid, no exception can be taken to the said order if it is found that legally the appellant was paid excess compensation under the Act.

16. Therefore, the question is whether under the provisions of the Act the appellant is entitled to get compensation @ of three times or ten times of the net income.”

After considering the facts of the case and provisions of law, Their Lordships have held thus:

“38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing the action to be taken for refund of the excess compensation was valid and proper

though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant.”

(emphasis supplied)

82 . We are of the considered view that the aforesaid principle equally applies with equal force in the present case also. If we set aside the order passed by the DRT dated 29.11.2005 and the impugned order of the DRAT on hyper technical ground, it would amount to restoring the illegal order dated 31st of March, 2005.

83. We are therefore, of the considered view that present writ petition has no merits and is liable to be dismissed and is accordingly dismissed with costs, which are quantified at Rs. 1,00,000/-.

Rule is accordingly discharged.

84. At this stage, Mr. Samdani, learned Senior Counsel for the Petitioner states that there is an ad-interim order operating since 15th October, 2008 and the same be continued for a period of 10 weeks. Mr. Mehta, learned Counsel for Respondent No.2 , submits that the ad-interim order passed by this Court is modified by the Apex Court by Order dated 28th March, 2011. He, therefore, submits that in

the event this Court inclines to grant interim protection, the same be granted in terms of the order passed by the Apex Court.

85. Taking into consideration the fact that ad-interim order as granted by this Court and modified by the Apex Court is continued for a long period, we are inclined to direct that the parties shall maintain status quo as directed by the Hon'ble Lordships of the Supreme Court vide order dated 28th March, 2011 for a period of eight weeks from today.

[RIYAZ I. CHAGLA J.]

[B. R. GAVAI, J.]

Vinayak Halemath