$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: February 14, 2017

% Decided on: April 03, 2017

\+ WP(C) 2651/2014

NATIONAL TEXTILE CORPORATION LIMITED

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Sanjoy Ghose, Mr. Rhishabh Jetley and Ms. Pratistha Vij, Advocates.

versus

D.V. EXPORTS AND ORS. ......Respondents

Through: Mr. Souhabho Ghosh and Mr. shrey Chathly, Advs. for R1.
Mr. Sanjib K. Mohanty, Senior Panel Central Government Counsel for R-5.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J

1. In this writ petition the petitioner, National Textile Corporation Ltd., hereinafter referred to as NTC, has challenged a judgment and order dated 26.03.2014 passed by the Appellate Authority for Industrial and Financial Reconstruction, hereinafter referred

to as AAIFR, dismissing Appeal No.67/2012 filed by NTC, against an order dated 18.01.2012 passed by the Board for Financial Reconstruction (BIFR) in the application being M.A. No.777/2011 and M.A. No.807/2011 in BIFR Case No.501/2008.

2. NTC and some of its subsidiaries were declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as the SICA. Hira Mills, Ujjain (MP) was declared a sick industrial undertaking under the SICA.

3. By an order dated 01.04.2006, the BIFR permitted the subsidiaries of NTC to be merged with NTC. On 04.09.2008, a modified rehabilitation scheme was sanctioned by BIFR in respect of NTC and on 14.09.2008, an Asset Sale Committee was constituted by the BIFR.

4. On 23.12.2009, BIFR passed an order extending the implementation of the sanctioned revival scheme till 31.03.2011. Thereafter on 12.10.2010 guidelines were issued for sale of properties by the Asset Sale Committee. On 18.11.2011, the Board of Directors of NTC took a policy decision that reserve

price for sale of assets, once fixed would remain valid only for six months.

5. Pursuant to a rehabilitation scheme sanctioned by the BIFR, the NTC advertised auction of its property at Hira Mills, Ujjain. As per the advertisement, the tender was for a sale of surplus properties on, 'as is where is' and 'as is what is', basis in compliance of the said rehabilitation scheme. The reserve price for the said property was kept at Rs.40.90 crores and all applicants were to make earnest money deposit of Rs.2.05 crores.

6. One M/s D.V. Exports, the respondent no.1 offered Rs.76.51 crores. The offer of M/s D.V. Exports which was almost double the reserve price, was the highest offer.

7. Even though as per terms and conditions of the tender documents, the successful bidder had to deposit a bank guarantee for the full amount excluding the earnest money deposit, within 15 days of receipt of intimation regarding acceptance of bid, no such intimation was received.

8. According to M/s D.V. Exports, D.V. Exports got bank guarantees amounting to Rs.75 crores sanctioned from the Bank of Baroda, Punjab National Bank and Bank of India.

9. D.V. Exports did not receive any intimation of confirmation of sale, allegedly inspite of reminders and requests. In the circumstances, D.V. Exports filed an application before the BIFR being M.A. No.777/2011 on 09.12.2011 for directions on the Asset Sale Committee to approve the bid of D.V. Exports and also sought orders restraining NTC from creating third party interest in respect of the property in question.

10. The said application, being M.A. No.777/2011 was listed before the BIFR on the same date on which the meeting of the Asset Sale Committee was scheduled to be held. The BIFR found the application premature as no final decision had been taken by the Asset Sale Committee.

11. By an order dated 20.12.2011, the Asset Sale Committee declined to approve the bid of D.V. Exports and decided to retender the property.

12. On 28.12.2011, NTC issued an advertisement for reauction of the said property, whereupon D.V. Exports filed another application being M.A. No.807/2011 seeking stay of the advertisement. Both the applications were listed on 18.01.2012.

13. In the meanwhile, NTC received an offer from M.P. State Industrial Corporation Limited for the said property which was much higher than the bid of respondent No.1.

14. On 13.01.2012, Muskan Estate Limited which was the second highest offerer in the earlier auction increased its bid amount to Rs.79 crores. While these applications were pending, M/s Abhinandan Ispat Pvt. Ltd. filed WP(C) No.2099/2012 in the Madhya Pradesh High Court, whereupon the High Court issued notice and restrained NTC from finalizing the sale. In the meanwhile on 18.01.2012, the BIFR set aside the advertisement for retender and confirmed the bid in favour of D.V. Exports. On 19.03.2012, NTC filed an appeal against the order dated 18.01.2012 before the AAIFR being Appeal No.67/2012 along with M.A. No.150/2012. By an order dated 23.04.2012, the

Madhya Pradesh High Court dismissed Writ Petition (C) No.2099/2012 with liberty to Abhinandan Ispat Pvt. Ltd. being the respondent No.2 to file a proper appeal in accordance with law.

15. Abhinandan Ispat Pvt. Ltd. filed an SLP No.167272/2012 before the Supreme Court which was dismissed by an order dated 03.07.2012, after which, on 30.07.2012, Abhinandan Ispat Pvt. Ltd. also filed an appeal before the Appellate Authority which was Appeal No.172/2012.

16. By an order dated 12.09.2012 the Appellate Authority directed that Appeal No.67/2012 of NTC be listed along with Appeal no.172/2012 of Abhinandan Ispat Pvt. Ltd. On 07.11.2013, Abhinandan Ispat Pvt. Ltd. gave an undertaking before the Appellate Authority to buy the property for an amount of Rs.90 crores. On 26.03.2014, the Appellate Authority passed the impugned judgment dismissing the appeal.

17. The short question involved in this writ petition is whether the BIFR ought to have interfered with the order of the Asset Sale

committee for re-auction and that too, after advertisements for re-auction were issued.

18. There can be no dispute that as per the policy decision taken on 08.11.2011 by the Board of Directors of NTC, any reserve price for sale of assets once fixed, was to remain valid only for six months.

19. It is well settled that an offer in an auction sale, until and unless accepted does not give any right to the bidders in the auction. No right had accrued to D.V. Exports since acceptance was never communicated to D.V. Exports. There being a long time gap, the Asset Sale Committee directed reauction.

20. Incidentally, even the BIFR did not proceed to accept the offer of D.V. Exports. It set aside the advertisement for reauction but directed that fresh auction be held amongst parties who had already submitted their bids.

21. When the properties of a public sector undertaking are sold, it is in public interest that the same should be sold at the highest possible price. It is reiterated at the costs of repetition that there

was no concluded contract between D.V. Exports and NTC. D. V. Exports had only submitted its bid at the auction, acceptance of its bids had not been communicated to D. V. Exports.

22. It is well settled that the highest offerer does not have any inherent right to be given the property until and unless there is a concluded contract. It is open to the owner of the property not to sell the property, if it so chooses. Moreover, it is not in public interest to direct confirm a sale in favour of an offerer several years after the offer, without revalidation of the properties.

23. While this writ petition was pending the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was enforced with effect from 01.12.2016 by a Notification issued in November 2016. Pursuant to the repeal, BIFR and AAIFR stand dissolved and all proceedings abate.

24. Section 5 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, however, provides as follows:

> "5. **Saving** – (1) The repeal by this Act of the repealed enactment shall not –

(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

(b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;

(d) affect any order made by the Board for sanction of the schemes;

(e) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

(f) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this Act had not been passed;

(g) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in, or from, the repealed enactment;

(h) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) Save as otherwise provided in section 4 and in sub-section (1) of this section, the mention of particular matters in the said section and sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal."

25. In view of Section 5, the sanctioned scheme would continue to operate, as also the orders pertaining to the sanctioned scheme that might have been passed before the repeal.

26. The impugned order dated 18.1.2012 of BIFR setting aside the advertisement, as also the impugned order dated 26.03.2014 of the AAIFR are both set aside. Should the sale no longer be necessary in view of the present health of NTC and its subsidiaries, the property need not at all be sold. Should any sale in terms of the scheme, in operation be necessary it will be open to the NTC to re-advertise the properties for sale.

27. The writ petition is disposed of accordingly.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

April 03, 2017/dr