

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.24021 OF 2017

Between:

M/s Pochiraju Industries Ltd.

... Petitioner

and

Punjab National Bank and others

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 19th JANUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

J.UMA DEVI, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

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<Gist:

>Head Note:

! Counsel for petitioner : Sri J.Ugra Narasimha

^Counsel for respondent Nos.1 to 3 : Sri Ambadipudi
Satyanarayana

^Counsel for respondent No.4 : Sri Ch.Ramesh Babu

? CASES REFERRED:

1. (2014) 5 SCC 651
2. (2014) 5 SCC 610

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMADEVI**

WRIT PETITION NO.24021 OF 2017

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

Proceedings initiated by the Punjab National Bank (*hereinafter*, 'the bank') against the petitioner company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act') culminated in the 'E-auction Sale Notice to General Public' dated 01.07.2017, whereby the bank proposed to auction the petitioner company's properties, *viz.*, the land admeasuring Ac.3.86 cents at Kolthur Village, Shameerpet Mandal, Ranga Reddy District, with buildings and plant & machinery, for realization of its dues, on 24.07.2017. The present writ petition was filed challenging this notice.

By order dated 20.07.2017, this Court observed that as the petitioner had come at the eleventh hour, no reason was made out to grant stay of the sale proposed to be held on 24.07.2017, but in the light of the allegation that the bank had undervalued the property, this Court directed it to receive 25% of the bid amount in the event a sale materialized on 24.07.2017 but restrained it from confirming the sale or taking further proceedings, until further orders.

The auction sale was knocked down in favour of a sole bidder on 24.07.2017 and the said auction purchaser company came on record as the fourth respondent.

WVMP No.3135 of 2017 was filed by the bank to vacate the order dated 20.07.2017 passed by this Court. Comprehensive arguments having been advanced by all the learned counsel, the matter is amenable to disposal at the admission stage.

Facts, to the extent relevant, are as follows: The petitioner company availed a term loan of Rs.30,00,00,000/- from the bank for financing Phase-I of its bio-pharmaceutical division. It claims that the first phase was completed by 31.03.2012 and an additional term loan was sought from the bank for the second phase of the project. This, however, did not come to pass, but a working capital loan of Rs.12,00,00,000/- for the petitioner company's bio-pharmaceutical division and Rs.8,00,00,000/- for its agro-division were sanctioned by the bank on 26.08.2013. The petitioner company claims that it was left without requisite finance to complete its second phase and lays the blame for its eventual failure at the bank's door.

Be that as it may, but the petitioner company's loan account was ultimately declared a non-performing asset and the bank issued demand notice dated 11.04.2015 under Section 13(2) of the SARFAESI Act, quantifying the total outstanding dues of the petitioner company at Rs.48,51,06,225/- with interest from 01.04.2015. Possession notice dated 13.07.2015 was then issued by the bank under Section 13(4) of the SARFAESI Act. The petitioner company's properties were thereafter brought to sale on several occasions by the bank but without result. Seven attempts were made by the bank in this regard earlier. The impugned e-auction sale notice dated 01.07.2017 represents the eighth attempt by the bank to sell the properties.

Significantly, the bank reduced the reserve price for the properties from stage to stage, in the course of its attempts to sell the same, and the reserve price in the impugned auction sale notice stands at Rs.17,25,00,000/-, as opposed to the reserve price of Rs.50,90,07,000/- in the first e-auction sale notice dated 25.08.2015. This is the cause for complaint by the petitioner company.

It is pertinent to note that e-auction sale notice dated 13.12.2016 preceded the e-auction sale notice dated 14.03.2017, which was issued immediately prior to the impugned e-auction sale notice. The reserve price in the e-auction sale notice dated 13.12.2016 was Rs.22,80,00,000/- and the sale thereunder was scheduled to be held on 18.01.2017. Challenging the said notice dated 14.03.2017, the petitioner company approached the Debts Recovery Tribunal, Hyderabad, *vide* S.A.No.186 of 2017. By Docket Order dated 30.03.2017, the Tribunal granted interim stay of further proceedings, including the auction sale to be held on 31.03.2017, subject to the petitioner company depositing 30% of the outstanding dues in two instalments – the first instalment of 15% on or before the time and date of the auction, and the second instalment of 15%, within two weeks thereafter.

Aggrieved by the conditions imposed by the Tribunal while granting this stay, the petitioner company filed W.P.No.11699 of 2017 before this Court. By interim order dated 24.04.2017, this Court directed the bank not to confirm the sale pursuant to the auction held on 31.03.2017. Significantly, the fourth respondent was the sole bidder who participated in the said auction held on 31.03.2017 and was declared successful. Owing to the interim order granted by this Court, the sale was not confirmed in its favour.

While so, when W.P.No.11699 of 2017 was taken up for hearing on 28.06.2017, the bank reported that after passing of the interim order restraining confirmation of the sale held on 31.03.2017, negotiations were held with the petitioner company for a one-time settlement but the same came to naught. Sri Ambadipudi Satyanarayana, learned counsel for the bank, further informed this Court that the auction held on 31.03.2017 would be cancelled due to

these intervening circumstances and that the bank would initiate measures afresh in accordance with the SARFAESI Act. Recording this statement, this Court observed that the grievance of the petitioner company with regard to the conditional order passed by the Tribunal in S.A.No.186 of 2017, in relation to the auction held on 31.03.2017, no longer survived for consideration and accordingly dismissed the writ petition, leaving it open to the petitioner company to take recourse to appropriate remedies available to it in law as and when a fresh cause of action arose. The bank then issued the impugned e-auction sale notice dated 01.07.2017, reiterating the same reserve price of Rs.17,25,00,000/-, and proposing to hold the auction on 24.07.2017.

The petitioner company claims that its properties have been deliberately undervalued and were being sold to its neighbouring industry, the fourth respondent, the sole bidder. Reference was made by the petitioner company to the Valuation Report of Precision Chartered Engineers and Valuers, estimating the fair market value of the land, buildings, civil works, plant & machinery of the petitioner company at Rs.5454.68 lakhs, with a distress value of Rs.4581.07 lakhs, and it asserted that the undervaluation of its properties by the bank was illegal and in violation of the rules.

The Authorized Officer-cum-Chief Manager, Asset Recovery Management Branch of the bank at Hyderabad, stated as follows in the counter: The bank obtained valuation reports from approved valuers from time to time and finally, before the auction held on 31.03.2017, Valuation Report dated 01.02.2017 was obtained from Maitreyi Asset Management Solutions, Hyderabad, which disclosed that the value of the petitioner company's properties was Rs.15,05,00,000/- (land and building) and Rs.1,46,00,000/- (plant

and machinery), in total - Rs.17,01,00,000/-. It was on the basis of this valuation that the bank fixed the reserve price at Rs.17,25,00,000/- in the e-auction sale notice dated 14.03.2017. Reference was made to the earlier attempts made by the bank to put the property to sale. Details thereof are as under:

Sl. No.	E-Auction date	Reserve Price fixed (in crores)	Outcome of auction
1.	17/10/2015	50.90	No bidders participated
2.	21/11/2015	50.90	No bidders participated
3.	28/12/2015	45.81	No bidders participated
4.	15/02/2016	41.23	No bidders participated
5.	12/04/2016	37.11	No bidders participated
6.	25/02/2016	33.40	No bidders participated
7.	18/01/2017	22.80	No bidders participated

The Authorized Officer stated that even after reduction of the reserve price from Rs.22,80,00,000/-, fixed in the e-auction sale notice dated 13.12.2016, to Rs.17,25,00,000/- in the e-auction sale notice dated 14.03.2017, only one bidder participated in the auction held on 31.03.2017 and quoted Rs.17,25,50,000/-. He pointed out that after the said sale and during the pendency of W.P.No.11699 of 2017 before this Court, the petitioner company approached the bank for settlement of its dues and the bank agreed to a one-time settlement for Rs.32,00,00,000/- on 09.06.2017. However, the petitioner company failed to make good its promise and did not pay the amounts as agreed. The bank thereupon decided to cancel the auction held on 31.03.2017 and make one more attempt to secure bidders for the properties. It was in these circumstances that the impugned e-auction sale notice dated 01.07.2017 was issued, fixing the date of the auction as 24.07.2017, with the same reserve price of Rs.17,25,00,000/-. The Authorized Officer asserted that the procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002')

was scrupulously followed and that the valuation of the properties, which formed the basis for fixation of the reserve price, was beyond reproach. He reiterated that the bank had taken the valuation as early as on 01.02.2017 and fixed the reserve price at Rs.17,25,00,000/- but despite the same, bidders did not participate in the earlier auction sale held on 31.03.2017 except for one bidder. He further stated that the bank was not required to take a valuation for every auction and as the latest valuation was taken on 01.02.2017, the fixing of the reserve price for the auction held on 24.07.2017, based thereon, was legal and valid. He stated that the fourth respondent was the only bidder in the auction sale held on 24.07.2017 with an offer of Rs.17,25,50,000/- and having no other go, the bank proceeded with the auction and requested it to enhance the amount. However, the fourth respondent stuck to its bid and was ultimately declared as the successful bidder. Letter dated 24.07.2017 was issued by the bank to that effect and the fourth respondent deposited the balance of the 25% of the sale consideration on 25.07.2017. However, pursuant to this Court's interim order, the sale confirmation letter was not issued to the fourth respondent. On the strength of these pleadings, the Authorized Officer sought vacating of the interim order and dismissal of the writ petition.

In its reply to the aforestated counter, the petitioner company attacked the Valuation Report dated 01.02.2017 procured by the bank. The petitioner company asserted that the said valuation was secured for the purpose of the auction held on 31.03.2017 which came to naught, but in a post-haste manner and only to aid the fourth respondent, the bank again issued the impugned e-auction sale notice with the same reserve price. The petitioner company alleged that the bank was aiding the sole bidder, the fourth

respondent, and selling away its property for a song at a throw-away price. It alleged various omissions and deletions on the part of Maitreyi Asset Management Solutions, Hyderabad, in its Valuation Report dated 01.02.2017 and asserted that the cost of civil structures was grossly undervalued, without considering structural and design specifications, and the plant and machinery were not taken into consideration in totality, while arriving at the fair market value. Various details were set out with regard to valuation of components such as electricals, fire hydrant system, etc. Reference was again made to the earlier valuation report of Precision Chartered Engineers and Valuers, which put the fair market value and distress value of the petitioner company's properties at a far higher figure and the petitioner company asserted that there was gross transgression of Rule 8(5) and (6) of the Rules of 2002 in the sale of its properties.

The fourth respondent filed an affidavit through its Manager-Legal & Corporate Services. Therein, he stated that in the light of the allegations made by the petitioner company to the effect that the bank and the fourth respondent were working hand-in-glove and that the bank helped it to purchase the properties at a lesser price, the fourth respondent, being a law abiding company with high moral values, did not wish to be subjected to such allegations. In these circumstances, the management of the fourth respondent company was stated to have decided to withdraw from the bid and sought a direction to the bank to refund the deposited amount of 25% of the sale consideration (Rs.4,31,25,000/-) with bank interest.

As the issue in the writ petition mainly turned upon the valuation of the petitioner company's properties, this Court directed the record pertaining to the subject auction sale to be produced. Perusal of the said record reflects as follows:

Valuation Report dated 24.01.2016 was secured by the bank from Servel Krishna Engineers Private Limited, Secunderabad, Government and Bank Approved Property Valuers, which put the fair market value of the subject properties at Rs.28,49,80,000/-, realizable value at 90% thereof - Rs.25,64,82,000/- and the distress sale value at 80% - Rs.22,79,84,000/-. Clearly, this valuation was not acted upon by the bank, as the e-auction sale notice dated 15.02.2016 put the reserve price at Rs.41.23 Crore.

Valuation Report dated 08.11.2016 furnished by G.D.Rao & Associate Engineers, Chartered Engineers & Government Registered Valuers, Hyderabad, basing on the inspection done on 04.11.2016, put the value of machinery, after depreciation, at Rs.1,57,50,500/-, the realizable value at 90% thereof - Rs.1,41,75,450/-, and the distress sale value at 75% -Rs.1,18,12,875/-. The industrial land and structures were assessed by G.D.Rao & Associate Engineers at Rs.15,56,93,258/-, *vide* Valuation Report dated 11.11.2016. The realizable value at 90% thereof was shown as 14,01,23,932/- and the distress value at 80% was shown as Rs.12,45,54,606/-.

Valuation Report dated 01.02.2017 of Maitreyi Asset Management Solutions, Hyderabad, Government Approved and Registered Valuers, based on the inspection done on 30.01.2017 on an 'as is where is' basis, indicates that the estimated value of the land, at the rate of Rs.50,00,000/- per acre, was Rs.1,93,00,000/-. The industrial building was valued at Rs.15,54,91,000/-, while the plant & machinery was valued at Rs.1,46,00,000/-. The summary of valuation put the fair market value of the land at Rs.1,93,00,000/-, the building at Rs.13,62,00,000/-, and the plant & machinery at Rs.1,46,00,000/-, totaling to Rs.17,01,00,000/-. The realizable market value of the land was fixed at Rs.1,64,05,000/-, the building

at Rs.11,57,70,000/- and plant & machinery at Rs.1,24,10,000/-, aggregating to Rs.14,46,00,000/-. The forced/distress sale value for the land was Rs.1,44,75,000/-, the building - Rs.10,21,50,000/- and plant & machinery - Rs.93,07,500/-, totalling to Rs.12,59,00,000/-. Significantly, the valuation report contained clear certification to the effect that it was valid for three months only. This valuation report was the basis for the earlier e-auction sale notice dated 14.03.2017.

Notably, the record also contains letter dated 27.06.2017 addressed by D.Lingaiah, Deputy Circle Head of the bank to the Circle Head, CO of the bank at Hyderabad, purporting to be a report of valuation of the petitioner company's properties. Therein, he stated that he visited the petitioner company's properties on 18.06.2017 and assessed the value of the land, buildings, structures, compound wall etc. as under:

- (1) The value of 3.86 acres of land at current market rate of approximately Rs.70,00,000/- per acre is approximately Rs.2,70,00,000/-.
- (2) Building structures as described of approximately 1,30,000 square feet 'as is where is' basis at the rate of Rs.800 per square feet on an average is assessed for value of Rs.10,40,00,000/- approximately.
- (3) Plant and machinery and other equipments including lifts is assessed for value of Rs.3,00,00,000/- in lump sum.
- (4) Compound wall and other utilities are assessed at Rs.1,00,00,000/- in lump sum.

The Deputy Circle Head put the total fair market value of the property with fittings and utilities as on the date of his visit at Rs.17,10,00,000/- approximately. Basing thereon, the Circle Office of the bank at Hyderabad resolved on 29.06.2017 to approve the auctioning of the properties, fixing the reserve price at Rs.17,25,00,000/- and the tentative auction date as 24.07.2017. The proceedings dated 29.06.2017 were signed by the Chief Manager-RD, Manager-Law, Deputy Circle Head and the Circle Head of the bank.

Sri J.Ugra Narasimha, learned counsel for the petitioner company, would contend that in the light of these admitted facts, valuation of the properties brought to sale on 24.07.2017 was grossly detrimental to his client and assert that its properties were sold for a song to the neighbouring fourth respondent company. He would point out that, even by its own admission, the bank relied upon the Valuation Report dated 01.02.2017 as the basis for fixing the reserve price in the impugned e-auction notice dated 01.07.2017, despite the fact that the said valuation was no longer valid.

Per contra, Sri Ambadipudi Satyanarayana, learned counsel for the bank, would assert that the prescribed procedure was duly followed in all respects and the very fact that the many attempts made by the bank to sell the petitioner company's properties had failed, clearly indicates that there were no *malafides* in the bank reducing the reserve price from stage to stage. He would further submit that there is no truth in the allegation that the bank went out of its way to support the fourth respondent.

Sri Ch.Ramesh Babu, learned counsel for the fourth respondent company, would state that in the light of the allegations made by the petitioner company, his client is ready and willing, even at this stage, to walk out provided the bank refunds the amount deposited by it along with interest.

At this stage, it may be noted that it was the fourth respondent company which was the sole bidder even in the earlier auction sale held on 31.03.2017. However, after institution of W.P.No.11699 of 2017 before this Court by the petitioner company, the bank entered into negotiations with it for a one-time settlement which fizzled out, but the bank chose to cancel the auction sale held on 31.03.2017. Significantly, having mentioned the fact that there was only one

bidder in the said auction held on 31.03.2017, the bank deliberately did not disclose the fact that it was the fourth respondent company. This fact was however disclosed by the fourth respondent company and is also evident from the record. The attempt on the part of the bank to withhold this piece of information does not reflect well upon it as the bank is expected to be forthright in all respects while placing the facts before this Court. However, that by itself is not sufficient to draw an inference that the bank and the fourth respondent company are in collusion to defeat the interest of the petitioner company. Further, the offer made by the fourth respondent company to withdraw from the sale even now clearly bears out its *bonafides*. This contention of the petitioner company is therefore without merit.

The essential issue, however, is whether the action of the bank in putting the petitioner company's properties to sale *vide* the impugned auction sale notice dated 01.07.2017 was lawful, valid and above board.

Section 13(4) of the SARFAESI Act empowers the bank, being a secured creditor, to take possession of the secured asset and sell it for realizing its dues. Rule 8 of the Rules of 2002 deals with sale of immovable secured assets by a secured creditor. Rule 8(4) and (5) of the Rules of 2002 are of relevance and are extracted hereunder:

'8 (4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) By inviting tenders from the public; or

(c) By holding public auction including through e-auction mode; or

(d) By private treaty

Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act 1977 shall apply to the person who acquires such property in the State.'

The statutory scheme, set out *supra*, demonstrates that merely because power is vested in a secured creditor to realize its dues from a defaulting borrower by taking recourse to the measures provided under the SARFAESI Act, it does not dilute the fact that such a secured creditor owes a fiduciary duty to protect the interest of such borrower, while putting his properties to sale. Reference in this regard may also be made to **J.RAJIV SUBRAMANIYAN V/s. PANDIYAS**¹, wherein the Supreme Court, while referring to **MATHEW VARGHESE V/s. M.AMRITHA KUMAR**², observed as under:

'13. This Court in Mathew Varghese case further observed that the provision contained in Section 13(8) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers inasmuch as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under Article 300-A of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset cannot deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in the SARFAESI Act, 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or anyone on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the SARFAESI Act, 2002.

18. It must be emphasized that generally proceedings under the SARFAESI Act, 2002 against the borrowers are initiated

¹ (2014) 5 SCC 651

² (2014) 5 SCC 610

only when the borrower is in dire straits. The provisions of the SARFAESI Act, 2002 and the 2002 Rules have been enacted to ensure that the secured asset is not *sold for a song*. It is expected that all the banks and financial institutions which resort to the extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure that such sale of the asset provides maximum benefit to the borrower by the sale of such asset. Therefore, the secured creditors are expected to take bona fide measures to ensure that there is maximum yield from such secured assets for the borrowers. In the present case, Mr Dhruv Mehta has pointed out that sale consideration is only Rs.10,000 over the reserve price whereas the property was worth much more. It is not necessary for us to go into this question as, in our opinion, the sale is *null and void* being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the 2002 Rules.'

(emphasis is ours)

Though Sri J.Ugra Narasimha, learned counsel, would contend on the strength of the reply-affidavit filed by the petitioner company that there are various errors and shortfalls in the valuation of the properties as set out in the Report dated 01.02.2017, this Court is neither equipped nor has the wherewithal to undertake verification of such valuation. Further, this aspect of the matter was not raised by the petitioner company in the first instance and it was only because the bank filed a copy of the said report along with its counter that the petitioner company launched this fresh attack. In any event, intricacies of such valuation do not constitute a judicially manageable issue, which can be gone into by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

That being said, this Court would still be justified in examining as to whether the bank fixed the reserve price for sale of the petitioner company's properties in a transparent and lawful manner. As stated above, the Valuation Report dated 01.02.2017 itself contained the rider that it was valid only for a period of three months. That being so, as it expired by efflux of the validity period and as it practically worked itself out upon the bank issuing the e-auction sale notice dated 14.03.2017, on the strength thereof, it could not have

been taken into consideration for fixing the reserve price in the subsequent e-auction sale notice dated 01.07.2017. Be it noted, Rule 8(5) of the Rules of 2002 mandates that before effecting sale of the immovable property under Rule 9(1) thereof, the Authorized Officer should obtain valuation of the property from an approved valuer and, in consultation with the secured creditor, fix its reserve price. The provision therefore requires that this step should be taken immediately before the proposed sale. The bank however admits that no such procedure was followed before issuance of the impugned e-auction sale notice dated 01.07.2017 and concedes that the reserve price was the same as was fixed in the earlier e-auction sale notice dated 14.03.2017.

Further, the record bears out that a fresh valuation was done by the Deputy Circle Head of the bank in June, 2017. The details of such valuation have already been set out hereinabove and demonstrate that there was variation between the values in the valuation report dated 01.02.2017 of Maitreyi Asset Management Solutions, Hyderabad, and the assessment by the Deputy Circle Head of the bank. There is no indication of this Deputy Circle Head having any technical qualification to undertake such valuation. Further, when Rule 8(5) of the Rules of 2002 categorically specifies that the Authorized Officer shall obtain valuation of the property from an approved valuer, the question of the bank falling back upon an in-house valuation done by its own officer cannot be countenanced.

No doubt, the bank may have attempted time and again to sell the petitioner company's properties, but its failure in doing so does not justify its action in cutting short the due procedure and resorting to reiteration of an earlier reserve price, without lawful foundation to support the same. The reserve price of Rs.17,25,00,000/- in the

impugned e-auction sale notice dated 01.07.2017, based on either the earlier valuation report dated 01.02.2017 or the internal valuation report dated 27.06.2017, therefore cannot be sustained. It was mandatory for the bank to secure a fresh valuation from an approved valuer in terms of Rule 8(5) of the Rules of 2002 before issuing a fresh sale notice, after the earlier sale notice dated 14.03.2017 came to naught. In consequence, the auction sale held on 24.07.2017, on the strength of this invalid reserve price in the e-auction sale notice dated 01.07.2017, cannot also be sustained.

The writ petition is accordingly allowed. The impugned e-auction sale notice dated 01.07.2017 is declared illegal, being in violation of Rule 8(5) of the Rules of 2002 in so far as the reserve price fixed therein is concerned. In consequence, the auction sale held on 24.07.2017 is also declared illegal. However, as the fourth respondent already parted with its monies to the extent of 25% of the sale consideration offered by it, the bank shall refund the same with interest at the highest rate applicable to its fixed deposits as on date. This order shall however not preclude the bank from initiating measures afresh in accordance with the prescribed procedure under the SARFAESI Act for realizing its dues from the petitioner company.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR,J

J.UMA DEVI,J

19th JANUARY, 2018

**Note: L.R. copy to be marked
B/o PGS**