IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2136 OF 2018
...

Dinesh Savji Sandha (Patel) ....Petitioner
V/S
Corporation Bank & Ors. ....Respondents

WITH
CIVIL APPLICATION NO.543 OF 2018
IN
WRIT PETITION NO.2136 OF 2018

Dinesh Savji Sandha (Patel) ....Applicant
V/S
Corporation Bank & Ors. ....Respondents

Mr. P.D. Jain a/w Ms. Yogita Goagr I/b M/s. P.D. Jain & Co. for the Petitioner/Applicant.
Mr. Rathina Maravaraman for Respondent No.1/Bank.
Mr. Raju U. Shinde for Respondent No.4.
Mr. J.S. Saluja a/w Mr. A.R. Varma for Respondent No.5/UOI (proposed)
…

CORAM : A.A. SAYED &
R.I. CHAGLA, JJ.
RESERVED ON : 04 APRIL 2019.
PRONOUNCED ON : 03 MAY 2019.

ORDER:

1 The Petitioner who is the highest and successful bidder at an auction conducted by the Recovery Officer, DRT, has filed this Writ Petition challenging the order dated 13 February 2018 of DRT-I, Mumbai, in Appeal. By that order, the Appeal of the Respondent No.4 was allowed, thereby setting aside the order dated 22 December 2017 of the Recovery Officer,

DRT which had rejected the Application (Exhibit 173) of the Respondent No.4 to consider his offer of purchase of the immovable property in question at 10% higher price than the price offered by the Petitioner. The DRT while allowing the Appeal directed interse bidding between the Petitioner and Respondent No.4. The dispute is thus essentially between two bidders for purchase of the immovable property in question pursuant to an auction sale.

2 On 7 November 2017, a Public Notice was issued by the Recovery Officer, DRT-I, Mumbai, for auction of several immovable properties of a company known as Astral Glass Private Limited (under Liquidation) pursuant to a Recovery Certificate issued in O.A. No.95 of 2011. The property listed at lot No.8 i.e. immovable property bearing Survey No.18, Hissa No.1, village Godbandhar, Bhayender (East), Thane, is the subject matter of the present Petition (hereinafter referred to as 'the said property'), The reserve price was fixed at Rs.4,63,81,000/-. Inspection of the said property was fixed on 7 December 2017. On 11 December 2017 the Petitioner submitted his bid which was the last date for online submission of bids and deposited EMD of Rs.1,16,00,000/-. On 12 December 2017, the Director of Respondent No.4 is stated to have gained knowledge about the auction and contacted the Bank officers telephonically for participating in

the auction to be conducted on 14 December 2017, who informed him that the last date for submission of on-line Application of the bid was on 11 December 2017. On 14 December 2017 the Petitioner was declared as the highest and successful bidder at Rs.4,79,81,000/- in respect of the said property in the e-auction after interse bidding between the Petitioner and one M/s. Anmol Infraprojects. On 15 December 2017 (Friday), the Respondent No.4 through its Director for the first time appeared before the Recovery Officer and submitted an offer letter dated 15 December 2017 offering 10% more than the highest offer for purchase of the said property. Meanwhile, on the same day i.e. on 15 December 2017 (Friday), the Petitioner deposited a further sum of Rs.4,00,000/- in accordance with the terms and conditions of the auction sale.

3 On 18 December 2017 (Monday), the Respondent No.4 filed an Application before the Recovery Officer stating that it was ready to offer 10% more than highest price offered for the said property in terms of clause 22 of the terms and conditions of the e-auction sale. In the said Application it was stated by the Director of Respondent No.4 that he came to know about the auction only on 12 December 2017 (i.e. 1 day after the last date of submission of bids on 11 December 2017) and contacted the concerned Officers, Mr. Sanjiv and Mr. Parimal, representatives of the Bank, who

informed him that the deadline for registration of online e-auction was on 11 November 2017 and the Respondent No.4 was late by one day and therefore could not participate in the bidding process. It was stated in the said Application that Respondent No.4 was offering to purchase the said property by paying a sum of Rs.5,28,00,000/- which is 10% more than highest bid and in order to show its bonafides deposited Pay Order/Demand Draft No.023256 dated 16 December 2017 for the sum of Rs.1,32,00,000/- drawn on ICICI Bank, Andheri Link Road Branch, which was 25% of the amount of Rs.5,28,00,000/- (as against offer of Rs.4,79,81,000/- of the Petitioner). Reference was made to it's letter dated 15 December 2017. It was pointed out that the auction sale in favour of the Petitioner is not confirmed. The prayer in the Application was to accept Pay Order/Demand Draft for sum of Rs.1,32,00,000/- and allow the Respondent No.4 to participate in the interse biding between the Petitioner and Respondent No.4 for the purchase of the said property.

4 On 19 December 2017, the Petitioner filed a Reply to the Application of the Respondent No.4. In the said Reply, the Petitioner averred as follows:

The said property was put in auction on several occasions and the auction had failed for want of bids. The publication of proclamation of sale was issued way back on 7 November 2017 in two leading newspapers i.e.

Free Press Journal and Nav Shakti and a corrigendum was also issued on 17 November 2017 in the said newspapers. As required under clause 22 of the terms and conditions of the auction sale, there were no bona-fides shown by the Respondent No.4 and there was no explanation as to how the Respondent No.4 got knowledge of the e-auction and who informed the same to them. There is no inspection of the property taken by Respondent No.4 and the Respondent No.4 had malafide and dishonest intentions. Clause 22 of the terms and conditions of the auction sale gives an opportunity to any person who has not timely submitted the bid who offer the bid by 10% more than the highest offer but not after the auction of the said property. Clause 22 therefore does not apply. The Regulations of Practice, 2010 provide for such provision giving an opportunity to participate in the bid during the process of bidding but not after the date of auction. The Respondent No.4 had made the Application after the date of auction i.e. 14 December 2017. On 12 December 2017 the Respondent No.4 had knowledge of the auction and the bid received in the auction and therefore such Application ought to have been made between 11 December 2017 and 14 December 2017. If such offers are accepted, the conducting of the auction and fixing deadlines to participate in the auction would be meaningless and would be an endless process and that is not the legislative intention. The Application of the Respondent No.4 be rejected.

5 On 22 December 2017, the Recovery Officer heard the parties and passed an order rejecting the Application of Respondent No.4. The Recovery Officer observed that there were three bids received of the said property out of which two bids were accepted i.e. one from the Petitioner who bid for a sum of Rs.4,79,81,000/- and the other from M/s. Anmol Infraprojects who bid for a sum of Rs.4,75,81,000/- and the Petitioner was declared highest and successful bidder. The EMD amount of Rs.1,16,00,000/- is already deposited by him and he was directed to make payment of Rs.3,95,250/- which is the balance amount of 25% of bid amount by 3 p.m. on 15 December 2017. The Recovery Officer observed that on 15 December 2017 before the auction was knocked down an offer to purchase the said property was received from the Respondent No.4 through Shri Samir Merchant, Director and they were willing to purchase the said property at 10% more than the highest bid and offered to deposit 25% of the purchase price on that day itself by RTGS, if allowed to do so. The Recovery Officer has stated that on 18 December 2017 the Petitioner filed an Application offering to purchase the said property a sum of Rs.5,28,00,000/- which is 10% more than the highest bid and to show their bonafides a Demand Draft dated 16 December 2017 for a sum of Rs.1,32,00,000/- i.e. 25% of Rs.5,28,00,000/- was also submitted. The contention of the Counsel for Respondent No.4 was also recorded that

since the e-auction conducted on 14 December 2017 is not confirmed they be allowed for inter-se bidding for the said property. The Recovery Officer after referring to clause 22 of the terms and conditions of the auction sale held as follows:

> "Thus, there are three conditions to be met before allowing inter se bidding between an auction purchaser and a proposed auction purchaser- 1) Proper bonafides of the proposed auction purchaser, 2) undertaking to be bound by the terms and conditions of the auction, and 3) offer of the proposed auction purchaser is atleast 10% higher than the highest offer. Though the proposed auction purchaser fulfils the conditions of Undertaking and offer of 10% more than the highest bid, but they fail to prove their bonafides to the satisfaction of the undersigned on the reasons as to why they could not submit their bid within the stipulated time.
>
> It has been submitted by the proposed auction purchaser that they came to know about the above auction only on 12.12.2017 and were informed by the representatives of the Bank that the last date for submission of bids was 11.12.2017 and being late by a day, they could not participate in the bidding process. Here, the Sale for the above properties was conducted after adequate publicity for the public at large in two leading newspapers Free Press Journal and the Navshakti and a Corrigendum in respect of the proclamation was also published on 16.11.2017.

> When the public notice for sale has been published twice in leading newspapers for the public at large, no justifiable answers have been given as to why the proposed auction purchaser did not come to know of the scheduled date or how they came to know on 12.12.2017. Further, upon having come to know about the auction on 12.12.2017, they should have immediately approached this Tribunal to be allowed to participate in the bidding which was scheduled on 14.12.2017. It appears that the proposed bidder seems to have chosen to adopt wait and watch approach and when the property got sold in the auction they immediately moved the present application. Hence, the contentions of the proposed auction purchaser are unsatisfactory and liable to be rejected.
>
> In view of the above, I proceed to pass the following order.
>
> ORDER
>
> Application of the proposed auction purchaser (Exh.173) is rejected."

6 Aggrieved by the aforesaid order of the Recovery Officer, the Respondent No.4 filed an Appeal before the DRT. On 10 January 2018, the DRT passed an interim order directing status quo to be maintained.

7 After hearing the learned Counsel for the parties, the DRT passed the impugned order dated 13 February 2018. In paragraph nos.3, 4 and 5 the DRT held as follows:

“3) In the light of the above contentions, the point that falls for consideration is-

Whether the impugned order dated 22nd December 2017 passed by the learned Recovery Officer suffers from any infirmity and is liable to be set aside?

As stated above, the last date for submission of bids is 11th December 2017 and the e-auction was scheduled on 14th December 2017. The Appellant came to know about the e-auction from the Bank official on 12th December 2017.

I have carefully perused th impugned order passed by the learned Recovery Officer. The main reason assigned by the Recovery Officer in dismissing the above Application is that the Appellant having gained knowledge on 12th December 2017 about the proposed e-auction on 14th December 2017 ought to have approached the Recovery Officer immediately and instead of doing so he adopted wait and watch tactics and filed the Application belatedly. The order passed by the learned Recovery Officer clearly refers the consent of the Applicant and Defendants for conducting interse bidding as the property is fetching Rs.50 Lacs above the highest price offered by the successful bidder. Normally the sales conducted by the Courts and Tribunals in accordance with the Rules shall not be disturbed nor interfered. Similarly a duty is cast upon the Court to fetch maximum price for the property to protect the interest of the Judgment Debtors. The offer of nearly Rs.50 Lacs more than the price offered by the successful bidder itself speaks that the property is capable of fetching more price. To add this, both parties gave their consent for conducting interse bidding in order to fetch more price. Therefore, the learned Recovery Officer ought to have conducted interse bidding instead of dismissing the above Application on the ground that the Applicant approached this Tribunal with a delay of two days as she has discretion as per clause (22) of the terms and conditions of the sale.

4) For the reasons stated above, this Tribunal is of the considered opinion that the learned Recovery Officer has failed to exercise her discretion properly and the impugned order is liable to be set aside.

5) Accordingly the above Appeal is allowed setting aside the e-auction dated 14th December 2017 conducted by the learned Recovery Officer and the Recovery Officer is directed to conduct interse bidding in between the successful bidder and the present Appellant."

8 Aggrieved by the aforesaid order of the DRT, the Petitioner filed the present Writ Petition on 16 February 2018 as the DRAT was then not available. On 22 February 2018 this Court passed the following order:

"1 We are informed that the interse bid before the Recovery Officer is tomorrow i.e. on 23 February 2018. We direct that the interse bidding may proceed, however no further steps be taken including finalization of the sale until the next date.

2 Stand over to 1 March 2018."

9 On 23 February 2018 the Recovery Officer conducted the interse bidding and passed the following order:

> "M/s. Laxmi Dental Exports Pvt. Ltd. today submitted two DD/POs bearing No.041799 dated 22.2.2018 for Rs.3,00,00,000/- and No.272916 dated 23.2.2018 for an amount of Rs.96,00,000/-. Earlier on 18.12.2018 they had submitted DD/PO No.023256 dated 16.12.2017 for Rs.1,32,00,000/-. Thus in all D.D. 5,28,00,000/- deposited by M/s. Laxmi Dental Exports Pvt. Ltd. Inter se Bidding conducted between Mr. Dinesh Sandha and Mr. Rajesh Khakhar, Representative of M/s. Laxmi Dental Export Pvt. Ltd.
>
> M/s. Laxmi Dental Exports is the highest bidder for Ghodbunder property at offer price of Rs.8,40,00,000/-. Further steps in the matter including finalization of sale shall be taken as per orders of the Hon'ble High Court in W.P. No.2136/2018.
>
> Adj. for ….. order of Hon'ble High Court, Bombay."

10 It may be stated here that in the interse bidding, the Petitioner's last bid was for Rs.8,36,00,000/-. However, since the Respondent No.4's bid of Rs.8,40,00,000/- was higher, the Respondent No.4 was held to be the highest bidder. Thus, as against the amount of Rs.4,79,81,000/-, the Petitioner himself had upped his bid to Rs.8,36,00,000/- in the interse bidding with the Respondent No.4.

11 It is required to be noted that at the relevant time the Chairperson of DRT was on leave and therefore this Petition was filed in this Court. Learned Counsel for the parties insisted that instead of relegating the parties to the DRAT, the Petition may disposed of by this Court as this Court had passed the interim order interalia directing that the interse biding between the Petitioner and Respondent No.4. We also record the statement of the learned Counsel for the Petitioner that the Civil Application taken out by the Petitioner challenging the validity of clause 22 of the terms and conditions of the auction sale as appearing in the Regulations of the Practice, 2010, may be disposed of alongwith the hearing of the Petition.

12 We have heard learned Counsel for the parties.

13 Learned Counsel for the Petitioner has taken us through the record. He submitted that the Application of the Respondent No.4 was not bonafide. He submitted that it is not stated by the Director of the Respondent No.4 in the Application filed before the Recovery Officer, as how the auction came to his knowledge on 12-12-2017 and why the bid could not be submitted before 11-12-2017 which was the last date of submission of the bid. It is submitted that inspection of the said property was not taken on behalf of the Respondent No.4. The learned Counsel submitted that under clause 22 of the terms and conditions of the e-auction sale, the Petitioner, could have

offered 10% more than the highest offer only during the process of bidding i.e. between 11-12-2017 (i.e submission of the bid) and 14-12-2017 (the date of the auction) but not thereafter. Since the Petitioner's purchase offer vide it's letter was only on 15-12-2017 and the Application before the Recovery Office was made only on 18-12-2017, the offer of the Respondent cannot be considered and the Petitioner had lost the opportunity under the said clause 22 after 14-12-2017. It is contended that if such offers are entertained even after the auction, the sanctity attached to a public auction would be lost and the process of action sale would be endless and against public policy and public interest. He submitted that since the Petitioner was admittedly the highest and successful bidder and had deposited the entire purchase price with the Recovery Officer, it is impermissible to re-open concluded auction proceedings and the auction sale is required to be confirmed in favour of the Petitioner. The learned Counsel submitted that the Recovery Officer had rightly rejected the Application of the Respondent No.4 on the ground that the Application of the Respondent No.4 was not bonafide and the DRT has erroneously set aside the order of the Recovery Officer interalia directing initer-se bidding between the Petitioner and the Respondent No.4. It is pointed out that the DRT in the impugned order has incorrectly observed that the order of the Recovery Officer refers to consent of the 'Applicant and Defendants' for conducting inter-se bidding as the

Petitioner (Defendant No.1 in the Application of Respondent No.4 before the Recovery Officer) had never consented to inter-se bidding. It is contended that clause 22 of the terms and conditions of the e-auction sale is bad in law. The learned Counsel submitted that the Writ Petition be allowed by setting aside the order of DRT. Learned Counsel for the Petitioner in support of his submissions has placed reliance upon the following judgments:

i) Central Inland Water Transport Corporation Limited vs. Brojo Nath Ganguly, (1986) 3 SCC 156;

ii) Chinnammal vs. P. Arumugham, (1990) 1 SCC 513;

iii) Meerut Development Authority vs. Association of Management Studies, (2009) 6 SCC 171;

iv) State of Orissa vs. Harinarayan Jaiswal, (1972) 2 SCC 36;

v) Nagar Nigam, Meerut vs. Al faheem Meat Exports (P) Ltd.. (2006) 13 SCC 382;

vi) Rapti Commission Agency vs. State of U.P., (2006) 6 SCC 522;

vii) R.K. Jain vs. Union of India, (1993) 4 SCC 119;

viii) M/s. Dagi Ram Pandi Lall vs. Trilok Chand Jain, (1992) 2 SCC 13;

ix) Bhabhi vs. Sheo Govind, (1976) 1 SCC 687;

x) Vedica Procon Private Limited vs. Balleshwar Greens Private Limited, (2015) 10 SCC 94.

14 Learned Counsel for the Respondent No.4, on the other hand submitted that the Director of Respondent No.4, Rajesh Khakhar, came to know of the e-auction only on 12-12-2017 and contacted Mr. Sanjeev and Mr. Parimal, officers of the Respondent Bank on telephone and he was informed that the deadline of the submission of the bid was 11-12-2017 and that Respondent No.4 was late by 1 day. The Respondent No.4 after coming to know the highest bid at the auction held on 14-12-2017 had approached the Recovery Officer with an offer letter on 15-12-2017 (acknowledged by the Department), however since the offer letter was not in proper format, the Respondent No.4 was asked to submit it's offer by making proper Application alongwith Affidavit in support. Accordingly on 18-12-2017 (Monday), the Respondent No.4 filed the Application alongwith Affidavit in support to accept 25% of offer price of Rs.5,28,00,000/- which was 10% more than the highest bid of Rs.4,80,00,000/- of the Petitioner and to permit it participate in inter-se bidding. It is submitted that to show it’s bonafides, the Respondent No.4 also deposited with the Recovery Officer, the Pay Order/Demand Draft dated 16-12-2017 for a sum of Rs. 1,32,00,000/- (i.e 10% of 5,28,00,000/-). It is submitted that the offer was as per clause 22 of the terms and conditions of the e-auction sale. It is submitted that the Petitioner is misinterpreting Clause 22 of the terms and conditions of the e-auction sale. The Director of the Respondent No.4 had

inspected the said property on an earlier occasion and it was not necessary to inspect it again. It is submitted that the Respondent Bank, the Borrower and the Official Liquidator had not objected to the offer of the Respondent No.4. The learned Counsel submitted that DRT had rightly allowed the Appeal considering the huge amount of public money involved and had rightly concluded that the said property was capable of fetching more price and the Petitioner was also given an opportunity to participate in auction and inter-se bidding to fetch the maximum price. The learned Counsel submitted that it is in public interest that the said property derives its full potential value. The learned Counsel submitted that no interference is called for in the impugned order of DRT. The learned Counsel in support of his submissions has placed reliance on the following judgments –

(i) Mardia Chemicals Ltd vs. Union of India, (2004) 4 SCC 311;

(ii) Sharad Keshao Ghonge vs. State of Maharashtra, 2006 (2) MhLJ 356; and

(iii) State Bank of India vs. Airport Authority of India, 96 (2002) DLT 299.

15 We have considered the rival contentions. The entire controversy revolves around clause 22 of the terms and conditions of the e-auction sale. Clause 22 reads thus:

> “22. Any one interested to purchase the property but who has not timely submitted tender/bid may, on showing bonafides to the

satisfaction of the Recovery Officer and upon an undertaking to be bound by all the terms and conditions of sale, be permitted to offer bid with earnest money by demand draft/pay order provided that this offer is at least 10% more than the highest offer. However, the Recovery Officer reserves right to refuse to accept any such offer for reasons to be recorded in writing."

16 On a plain reading of Clause 22 quoted above, we have no manner of doubt that it applies only to an offer made by any person after the auction sale is conducted. Clause 22 speaks of such offer being ateast 10% more than the **highest offer**. Unless such highest offer is known to the person making this offer, it would not be possible to offer 10% more than the highest offer. This highest offer is declared only after the auction is conducted. In the present case, the auction was held on 14-12-2017. As a matter of fact after the initial bids were opened on 14-12-2017, there was inter-se bidding between the Petitioner (who was not the initial highest bidder) and one M/s. Anmol Infraprojects (who was the initial highest bidder) and the Petitioner was declared as the highest and successful bidder after the inter-se bidding. It is therefore inconceivable that before the auction held on 14-12-2017, the Respondent No. 4 could have offered 10% more than the highest bid. The learned Counsel for the Respondent Bank also confirms that before the bids are opened on the date of the auction, it is not possible for anyone to know the highest bid. Thus, the contention of

the Petitioner that Clause 22 of the terms and conditions of the auction sale would apply only prior to the auction sale conducted on 14-12-2017 is without merit and rejected.

17 Learned Counsel for the Petitioner then contended that Clause 22 of the terms and conditions of auction sale itself is bad in law. We are afraid this contention cannot be entertained. The case of the Petitioner in his pleadings before the Recovery Officer, the DRT and even in the present Writ Petition has throughout been that Clause 22 would not apply in present case inasmuch as the Respondent No.4 ought to have made his offer prior to the date of the auction i.e 14-12-2017. No objection was raised as regards Clause 22. The Petitioner had bid in the auction and is deemed to be aware of the terms and conditions of the auction sale and cannot be now allowed to take an inconsistent stand. Clause 15 of the terms and conditions of the auction sale specifically states that all bidders shall be deemed to have read and understood the conditions of sale and are bound by the conditions. The judgment of the Division Bench of this Court in **Sharad Keshao Ghonge** (supra) supports the case of the Respondent No.4. It is therefore not open for the Petitioner to now challenge Clause 22 of the terms and conditions of the auction sale.

18 It is interesting to note why the Petitioner has now taken this inconsistent stand. After the impugned order passed by the DRT allowing the Appeal of the Respondent No.4 and directing the Recovery Officer to conduct inter-se bidding between the Petitioner and the Respopndent No.4, the Petitioner had approached this Court by filing the present Writ Petition. On 16 February 2016, when the matter was moved for seeking urgent reliefs this Court directed that the inter-se bidding may proceed and further directed that no further steps including finalization of the sale shall be taken. The Petitioner thereafter participated in the inter-se bidding without protest or demur before the Recovery Officer and during the inter-se bidding upped his bid upto Rs.8,36,00,000/- against his earlier highest and successful bid of Rs.4,79,81,000/-. However, the Respondent No.4 having bid for Rs.8,40,00,000/- was declared as the highest bidder in the inter-se bidding. It is in these circumstances, in that, the Petitioner having been unsuccessful in the inter-se bidding that the Petitioner has taken out a Civil Application for amendment of the Petition to interalia incorporate a prayer in the Petition to quash Clause 22 of the terms and conditions of auction sale, which is stated to form part of Regulations of Practice, 2010, in so far as permits entry of any person or intending purchaser after the auction has been held. In our view, the Civil Application in the backdrop narrated above is abuse of process of law and liable to be rejected and we decline to entertain the

challenge to Clause 22 which in nothing but an afterthought and is inconsistent with the pleadings of the Petitioner. Perhaps, the validity of this clause 22 can be considered in some other case, some other time, not however, at the instance of this Petitioner in the present set of facts.

19 The Respondent No.4 had approached the Recovery Officer immediately on the next day of the auction held on 14-12-2017 vide it's letter 15-12-2017 (Friday) with the purchase offer of 10% more than the highest offer of the Petitioner and on 18-12-2017 (Monday) filed an Application alongwith Affidavit in support and also deposited with DRT a Pay Order/Demand Draft of Rs.1,32,00,000/- being 25% of the offer price of Rs.5,28,00,000/-. The purchase offer of the Respondent No.4 was as per Clause 22 of the terms and conditions of the auction and it cannot be said that the action of the Respondent No.4 was not bonafide particularly when it had deposited the amount of 25% of the offer price with DRT. In absence of any contrary material being brought on record, it is not possible to discard the case of the Director of the Respondent No.4 that he came to know about the e-auction sale only on 12-12-2017. The reference in the impugned order of DRT to the consent for interse bidding is clearly the reference to the consent of the learned Counsel for the Bank, learned Counsel for the Official Liquidator and the learned Counsel for the

Respondent No.4 as there was no question of any consent being given by the Petitioner who was the contesting party. The Petitioner cannot be allowed to take undue advantage of typing error in the impugned order of DRT (which error was as a matter of fact of the Recovery Officer).

20 As stated earlier, the Petitioner was declared as the highest and successful bidder at Rs.4,79,81,000/-. After the impugned order passed by DRT directing inter-se bidding between the Petitioner and the Respondent No.4 and after the ad-interim order of this Court, in the inter-se bidding which took place, the Petitioner had upped his bid to Rs.8,36,00,000/- and the Respondent No.4 to Rs.8,40,00,000/-. It shocks the conscience of the Court that when the said property can fetch Rs.8,40,00,000/- it was being sold only for a sum of Rs.4,79,81,000/-. It is equally curious why there were no bids received in the earlier attempts to auction the said property. The present is a case in point where Clause 22 has come to the rescue to realize the potential value of the said property. We may hasten to add that we may not be understood to have in manner considered the validity or otherwise of Clause 22. It is required to be noted that it is not as if the Respondent No.4's purchase offer was simplicitor accepted by the DRT inasmuch as the DRT granted an opportunity to the Petitioner as well as Respondent No.4 to bid inter-se.

21 In a 3-judge Bench of the Supreme Court in **Mardia Chemicals Ltd** (supra), the Supreme Court while examining the challenge to the validity of the SARFAESI Act, in paragraph 66 observed thus:

> "66. …. As discussed earlier as well, it may be observed that though the transaction may have the character of a private contract yet the question of great importance behind such transactions as a whole having far-reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions, more particularly when financing is through banks and financial institutions utilizing the money of the people in general, namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country. The two aspects are intertwined which are difficult to be separated…"

22 It is an admitted position that the sale has so far not been confirmed in favour of the Petitioner and the Sale Certificate has not been issued. We are informed that the outstanding dues of the Borrower (in liquidation) to the Respondent Bank is more than 132 crores. Therefore, a sizeable amount of public money is involved and it is in public interest that the maximum value

of the said property is realized particularly when the Respondent No.4's purchase offer was well within Clause 22 of the terms and conditions of the auction sale.

23 In the present case, the reserve price was fixed at Rs.4,63,81,000/-. The last date of submission of the bid was 11-12-2017. The auction was held on 14-12-2017. As indicated earlier, the Petitioner had initially bid for an amount of Rs.4,63,81,001/- and one M/s Anmol Infraprojects had bid for an amount of Rs.4,67,81,000/-. However after an inter-se bidding between the Petitioner and M/s. Anmol Infraprojects, the Petitioner was declared as the highest and successful bidder at Rs. 4,79,81,000/-, though the Petitioner's initial bid was less than that of M/s Anmol Infraprojects.

24 We have perused the judgments relied upon by the learned Counsel for the Petitioner. The said judgments do not assist the care of the Petitioner in any manner. In none of the judgments the auction sale was under the provisions of the Recovery of Debts Due to Bank and Financial Institution Act or SARFAESI Act. There was no Clause 22 involved in any of the said cases. Heavy reliance was placed on the judgment of the Supreme Court in **Central Inland Water Transport Corporation Limited** (supra) to contend that Clause 22 being unconscionable, the same is void. In that case, the Supreme Court was considering clause (1) of Rule 9 of the Service,

Discipline and Appeal Rules, 1979 of the Central Inland Water Transport Corporation which was a Government Company and which conferred upon the Corporation a right to terminate a permanent employee of a Corporation by giving him a 3 month's notice or pay in lieu of notice. We do not see how that case can be equated with the case in hand. Moreover, in that case, the issue of constitutional validity of the said Rule 9(1) was specifically raised. In the present case, we have already held that it is not open for the Petitioner to challenge Clause 22 of the terms and conditions of the auction sale.

25 Strong reliance is also placed on **Vedica Procon Private Limited** (supra) by the learned Counsel for the Petitioner to contend that subsequent higher offer cannot constitute a ground for refusing confirmation of sale or offer already received. In that case, the auction was held in open Court. The Appellant in the SLP was the highest bidder having bid for a sum of Rs.148 crores. The 1st Respondent therein was the second highest bidder who had raised his offer to Rs.160 crores in an Appeal before the Division Bench of the High Court challenging the extension of time given to the Petitioner by the learned Single Judge of Company Court to deposit the balance amount. The Division Bench modified the order of the learned Single Judge by permitting the 1st Respondent to make an Application to the

learned Single Judge showing his desire to apply afresh for the bid and directed the 1st Respondent to handover the draft of Rs.160 crores to the Dy. Official Liquidator without prejudice to the rights and contentions of the parties. The Division Bench held that it was open for the learned Single Judge to decide the Application on merits. The learned Single Judge allowed the Application which was subsequently filed by the 1st Respondent and set aside the sale and directed a fresh auction and also directed the 1st Respondent to pay an amount of Rs.25 lacs to the Appellant. Aggrieved by the order of the learned Singe Judge, the matter was carried in Appeal. The Division Bench dismissed the Appeal. The order of Division Bench was carried in Appeal to the Supreme Court by filing an SLP. The Supreme Court noted that after the 1st Respondent had applied for and received refund of his EMD and that the FSI of the property had increased. The Supreme Court in paragraph 53 noted that there is no specific format in which a sale conducted by the Official Liquidator is to be confirmed by the Company Court. It is in these circumstances, the Supreme Court after surveying earlier decisions allowed the Appeal and observed that in none of the decisions the Supreme Court had laid down the principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceeding. The Supreme Court concluded that the sale was confirmed in favour of the Appellant by the order dated 17-12-2013 of the learned Single Judge and even assuming the sale was not confirmed, in absence of any legally tenable ground for not confirming the sale, it cannot be declined to the Appellant. The aforesaid judgment of the Supreme Court, in our view, would have no application to the facts of the present case. In the instant case, the terms and conditions of auction sale are in place including clause 22, which specifically permits any person to make a purchase offer of 10% more than the highest offer. The aforesaid decision of the Supreme Court does not in any manner help the Petitioner.

26 Neither it is contended by anyone, nor in our view, this would be an appropriate case for directing a re-auction of the said property inasmuch the earlier attempts to auction the said property had failed for want of bids. We may state here that to test the bonafides of the Petitioner we put it to the learned Counsel for the Petitioner whether the Petitioner was still willing to purchase the said property at the price of Rs.8.36 crores which was his bid in the interse bidding between the Petitioner and the Respondent No.4, to which the learned Counsel candidly stated that the Petitioner is not willing to purchase the said property at that price.

27 For all the aforesaid reasons, no fault can be found in the impugned order of DRT warranting interference by this Court. There is no merit in the

Petition. The Petition is accordingly dismissed. For the reasons stated in paragraphs 18 and 19 of this judgment, the Civil Application is also dismissed. There shall be no order as to costs.

28 The Recovery Officer shall not pass final order for a period of 10 weeks from today.

(R.I. CHAGLA, J.) **(A.A. SAYED, J.)**

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