

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8572 OF 2014
WITH
CIVIL APPLICATION NO.2214 OF 2014
IN
WRIT PETITION NO.9078 OF 2014

Rockline Construction Company a)
 Sole Proprietor firm of Mrs. Saranga)
 Anil Agarwal and having its place of)
 business at RNA Corporate Park,)
 Near Enterprise Officer, Kalanagar,)
 Bandra (East), Mumbai – 400 051.) Petitioners

Versus

1. Doha Bank, QSC, a Bank within)
 meaning under the Recovery of)
 Debts Due to Banks and)
 Financial Institutions Act, having)
 its office at 201 Raheja Centre,)
 Free Press Journal Marg,)
 Nariman Point, Mumbai – 400)
 021.)
2. Mr. Mahendra Kumar Kawad,)
 adult, Indian Inhabitant, having)
 his office at 32/34 Bombay)
 Chambers, 5th Floor, Anandlal)
 Paddar Marg, Near Metro)
 Theatre, Mumbai – 400 002.)
3. M/s. Lodestar Slotted Angles)
 Limited, Killick House, Killick)
 Estate, Baji Pasalkar Marg,)
 Chandivali, Mumbai – 400 072.) Respondents

ALONG WITH

WRIT PETITION NO. 9078 OF 2014
WITH
INTERIM APPLICATION NO.1 of 2019
IN
WRIT PETITION NO.9078 of 2014

Doha Bank QSC (Erstwhile Oman)
 International Bank SAOG, a Banking)
 Company incorporated in Sultanate of)
 Oman, having a Branch Office in)
 Mumbai at 201, Raheja Centre, Free)
 Press Journal Marg, Nariman Point,)
 Mumbai – 400 021.) Petitioners

Versus

1. Rockline Construction Company,)
 having its office at RNA House,)
 Level III, Veer Nariman Road,)
 Fort, Mumbai – 400 023.)
2. M/s. Lodestar Slotted Angles)
 Ltd., Killick House, Killick)
 Estate, Baji Pasalkar Marg,)
 Chandivali, Mumbai – 400 072.)
3. Mr. Mahendra Kumar Kawad,)
 having office at 32/34, Bombay)
 Chamber, 5th Floor, Anandilal)
 Poddar Marg, Near Metro)
 Theatre, Mumbai – 400 002.) Respondents

ALONG WITH

WRIT PETITION NO. 10703 OF 2014

Lodestar Slotted Angles Ltd., a Company)
 registered under the Companies Act, and)
 having its office at Killick House, Killick)
 Estate, Baji Pasalkar Marg, Mumbai –)
 400 072.) Petitioners

Versus

1. Doha Bank QSC, having its Branch)
 Office at Ground Floor, Plot)
 No.230, Sakhar Bhavan, Backbay)
 Reclamation, Block No.III, Nariman)
 Point, Mumbai – 400 021.)
2. Rockline Construction Company, a)
 Company incorporated under the)
 provisions of the Companies Act,)
 1956, having its office at RNA)
 House, Level III, Veer Nariman)
 Road, Fort, Mumbai – 400 023.)
3. Mr. Mahendra Kumar Kawad,)
 having office at 32/34, Bombay)
 Chamber, 5th Floor, Anandilal)
 Poddar Marg, Near Metro Theatre,)
 Mumbai – 400 002.)
4. Mr. Gopi Didwania, 903-A, Aster)
 Tower, Film City Road, Malad)
 (East), Mumbai – 400 097.)
5. M/s. Preeti Enterprises, 30, Bharat)
 Industrial Estate, LBS Marg,)
 Bhandup (West), Mumbai – 400)
 078.)
6. Mr. Yatindra S. Pairaikar, 1601/B)

Wing, Hill View Park, Thakur)
 Village, Kandivli (East), Mumbai –)
 400 101.)

7. Mr. Deepoo Vaswani, Flat No.301,)
 Tropicana, Near Taj Birdy, Nana)
 Nani Park, 7 Bungalow, Mumbai –)
 400 053.)

8. Mr. B.S. Bhesania, Partner of M/s.)
 Mulla & Mulla Craigie & Blunt &)
 Caroe, Advocates & Solicitors,)
 having their office at Mulla House,)
 51, M.G. Road, Fort, Mumbai – 400)
 023.)

.... Respondents

...

Mr. Parimal Shroff with D.V Deokar, Sachin Pandey, Ms.Siddhi Paradkar I/b M/s.Parimal K. Shroff for petitioner in WP No. 8572/14 and appliant in CAW 2214/14 and Respondent No.1 in WP 9078/14, Respondent No.2 in WP 10703/14.

Mr.Pravin Samdani, Senior Advocate with Rajeev Panday, Rushabh Sheth and Ms.Sakshi Sharma I/b M.S. Bodhanwalla and Co. for petitioner in WP 9078/14 and Respondent No.1 in WP 8572/14 and WP 10703/14 and applicant in IA No.1/19.

Mr.C.J. Doveson with Ms.Poornnima Utekar I/b Global Law Officer for respondent no.2 in WP 8572/14 and Respondent No.3 in Wp 9078/14 and WP 10703/14.

Mr.Vijay Nene for petitioner in WP 10703/14 (now appeared) and respondent no.2 in WP 9078/14 and Respondent no.2 in WP 8572/14.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

RESERVED : 05th DECEMBER, 2019

PRONOUNCED : 17th DECEMBER, 2019.

JUDGMENT :- (Per Smt.Bharati Dangre, J)

1. The three Writ Petitions revolve around same set of facts and, therefore, are disposed of by this common judgment. Writ Petition No.8572 of 2014 is filed by the auction purchaser – M/s. Rockline Construction Company and the credit holder bank, the guarantor – M/s. Lodestar Slotted Angels Limited and the intervener Mahendra Kawad are the Respondents in the said Writ Petition. Writ Petition No.10703 of 2014 is filed by M/s. Lodestar Slotted Angels Limited. Writ Petition No.9078 of 2014 is filed by the creditor bank. In order to appreciate the controversy involved, we deem it appropriate to glean the facts from Writ Petition No.8572 of 2014.

2. Exactly two decades back, the Doha Bank QSC, formerly known as HSBC Bank, Oman, SAOG instituted two suits against Mrugank Investment Limited and one Geekay Exim Limited which came to be transferred to the DRT-II, Mumbai and numbered as O.A. Nos.1144/1999 and 1139/1999, for recovery of its dues and enforcement of the securities. The bank was accoutered with Recovery Certificate No.99/2002 and

100/2002 dated 30th April 2002 by the Debt Recovery Tribunal, Mumbai in the aforesaid Original Applications. Lodestar Slotted Angels Limited, being owner of a piece and parcel of land admeasuring 5635 sq. yards (equivalent to 4961 sq.m) bearing Survey No.36, Hissa No.52 and CTS No.689 at Village, Marol, Mumbai had mortgaged the property and acted as a Guarantor to the credit availed by the Investment company.

3. Recovery Proceedings No.100 of 2002 before the Recovery Officer in the Debt Recovery Tribunal-II at Mumbai resulted into issuance of a public notice dated 26th February 2007 for recovery of sum of ₹ 16,45,032,827.46 + interest @ 15 % per annum till its realization from the certificate debtor, the same being recoverable together with interest, cost, charges as per the recovery certificate. As on the date of sale i.e. 29th March 2007, the due under recovery certificate was in the sum of ₹ 35,27,83,613.16 inclusive of cost and interest thereon. The public notice declared that some third party is in possession of the building as tenant on the subject land which has been sold by the Special Court to one M/s. Gama Construction (Pvt.) Ltd and the proposed sale was made subject to encumbrances of M/s.Oman International Bank on land only. The property was valued by the Recovery Officer at ₹ 4,57,72,405/- and the reserve price was fixed at ₹ 5 crore whereas ₹ 1 crore was stipulated as earnest money deposit.

4. The proclamation of sale was published in the newspaper on 14th March 2007 and 29th March 2007 was slated to be the date for sale of the property mortgaged with the Oman International Bank. On the said date, the Recovery Officer received four bids for the auctioned property from the following bidders; (a) Ms.Shobha Kapoor, (b) Rajat Pharma Limited, (c) Mahendra Jain and (d) M/s.Aims Promoters. The highest offer received was from Ms.Shobha Kapoor for ₹ 5.05 crores. The bidders were given opportunity to raise their offer by minimum amount of ₹ 10 lakhs and the final offer of M/s.Aims Promoters was accepted as the highest bid.

5. The petitioner, Rockline Construction Company, a sole proprietary firm came on the scene at this stage, as it submitted its “on the spot” offer of ₹ 5.50 crores. An inter-se bidding was held between the rival bidders and the petitioner emerged as the highest bidder for ₹ 8.50 crores. The petitioner was directed to deposit 25% of the bid amount including Earnest Money Deposit and the remainder was directed to be deposited within 15 days. The petitioner deposited amount of ₹ 1,12,30,000/- on 30th March, 2007 and balance on 12th April 2007. The second highest bidder was restricted from withdrawing his EMD till 30th March 2007 by making it clear that in case the highest bidder did not deposit the amount, the opportunity would be afforded to him.

6. On 30th April 2007, one M/s.Screen Test India Co. submitted an offer of ₹ 9.35 crores. On 1st May, 2007, one Blessings Bio-Tech Pvt. Ltd (the alleged representative of Mahendra Kumar Kawad impleaded as respondent no.2 in the Writ Petition No.3572/2014) gave an offer for ₹ 9.41 crores. In light of the aforesaid development, the Recovery Officer scheduled *inter-se* bidding between the parties on 11th May 2007. The date '11/5/2007' is marked by two events; first - The petitioner M/s.Rockline Construction raised its bid to ₹ 9.56 crores and was declared as the highest and successful bidder. He was directed to deposit the balance payment immediately and the Recovery Officer posted the matter for confirmation of sale. The second event was an escrow agreement executed by the petitioner, on being declared as the successful bidder and the case of the parties before us hinges on this escrow agreement which finds place at Exhibit-F of the Writ Petition No.8572/14. For convenience, we deem it appropriate to reproduce the entire agreement :

“1 We, Rockline Constructions Co. have been declared as a successful bidder of the above property in the DRT auction held on 29th March 2007 and on 11th May 2007, during re-bidding.

2 Mr.Gopi Didwani, (2) Messrs Preet Enterprises (3) Mr.Yatindra Pairaikar and (4) Mr.Deepoo Vaswani, who are all in the business of buying/selling properties, have offered their services to MESSRS

ROCKLINE CONSTRUCTIN CO. in successful bidding and acquiring the property and secure the early demarcation and possession of the above property.

3 In the circumstances, MESSRS ROCKLINE CONSTRUCTIONS CO. have agreed to pay the four of us a fixed sum as brokerage, consultancy fees, plus compensation for services on the following understandings.

4 Pursuant to the said understanding, we, MESSRS ROCKLINE CONSTRUCTION CO. are hereby depositing with you Rs.2,50,000/- (Rupees Two fifty lacs only) by pay order No.346905 dated 11th may 2007 issued by Oriental Bank of Commerce, JVPD Scheme branch, Mumbai 400056 to hold and to be invested in a scheduled Bank the same in escrow and to pay to (1) Mr.Gopi Didwania, a sum of Rs.67,00,000/- (Rupees Sixty Seven Lakhs Only) (2) Messrs Preet Enterprises, a sum of Rs.76,00,000/- (Rupees Seventy Six Lakhs only), (3) Mr.Yatindra S. Pairaikar, a sum of Rs.77,00,000/- (Rupees Seventy Seven Lakhs only) and (4) Mr.Deepoo Vaswani, a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) against the happening of the following events (i) Confirmation and completion of sale of the above property at or below Rs.9.66 crores (Rupees Nine Crores Sixty Six Lakhs only) in favour of MESSRS ROCKLINE CONSTRUCTION CO. (ii) Issuance of Sale Certificate in favour of Messrs Rockline Construction Co. and (iii) demarcation at site and delivery of actual and physical possession of the said property of Messrs Rockline Construction Co. Provided that if the possession is delayed beyond a period of one year from the date thereof, Messrs Rockline Construction Co. will have the light to

*terminate the escrow agreement and ask for refund of the said amount. The communication in regard to the completion of the aforesaid obligations/ formalities shall be communicated to you in the format as annexed hereto and marked **Annexure "A"**.*

5 However, in the event of Messrs Rockline Construction Co. not being declared as successful bidders, and in the event of conditions (I) to (iii), not being fulfilled, otherwise you will refund the above sum of Rs.2,50,000/- (Rupees Two crores Fifty lacs) together with interest accrued thereon to Messrs Rockline Construction Co. The intimation for failure of condition and refund of escrow amount shall be in the format annexed hereto and marked Annexure "B".

6 Upon the payments as per clause 4 above or refund as per clause 5 above, the above Escrow Agreement shall come to an end.

7 Any claim, controversy or dispute arising out of or in connection with this Escrow Agreement shall be settled by mutual agreement between the parties involved within 30 days failing which the same shall be referred to arbitration by a sole arbitrator Mr.S.K. Desai, retired Judge of the Hon'ble High Court, Mumbai under the Arbitration and Conciliation Act, 1996.

8 Mr.Gopi Didwania hereby agrees to pay your charges.

Yours faithfully,

- 1. Rockline Construction Co. Sd/*
- 2. Mr.Gopi Didwania Sd/-*
- 3. M/s.Preet Enterprises Sd/-*

4. *Mr.Yatindra S. Pairaikar Sd/-*
5. *Mr.Deepoo Vaswani Sd/-*

Witnessed by me
T.N. Tripathi, Advocate Savita Gupte.

We confirm
Mulla & Mulla Craigie & Blunt & Caroe

7. The sale of the property in favour of Rockline Construction Co. was confirmed and sale confirmation was issued on 16th May, 2007. A certificate of sale came to be issued by the Recovery Officer, DRT-II, Mumbai on 4th June 2007. The sale certificate mentioned that the land belonging to Mugrank Investment Ltd. which was mortgaged to the bank and the third party being in possession of the building as tenant in the subject land which has been sold to M/s.Gama Construction (Pvt) Ltd, has been purchased by Rockline Construction Co. and on the same being duly confirmed, it has become the absolute owner of the said land. The petitioner was put in possession of the said land by executing a panchnama on 13th June 2007 and the schedule of the property contained the specifications of the land purchased by the petitioner.

8. On 15th November, 2007, one Shri Mahendra Kumar Kawad, (the Respondent No.2 in WP No.8572/2014) filed an application before the Recovery Officer seeking an investigation

into the public auction conducted on 29th March 2007 qua the piece and parcel of land admeasuring 5365 sq.yards bearing Survey No.36, Hissa No.52 and CTS No.689 at Village Marol, Saki Naka, Mumbai i.e. the land which was purchased by the petitioner. In the application, he alleged that he was interested in purchasing the property but he could not participate in the public auction due to certain ambiguity as regards the title of the property which was not clear from the sale notice published in the newspaper since it was mentioned that some third party is in occupation/possession of the said land and the same was sold by the High Court. It was alleged by Mr. Kawad that though the property is worth much more, the same was sold for ₹ 9.56 crores as per the understanding developed among the bidder with other four persons whose names were mentioned in clause 4 of Annexure-A. The application proceed to state that the applicant was surprised as to how the said land was sold for a meager price and on inquiry, it was revealed to him that few parties interested in the deal connived together for their benefit and formed a cartel and decided not to bid for higher price, resultantly, the auction went in favour of Rockline Construction Co. for ₹ 9.56 crores. It was also alleged that there was an agreement executed between the parties i.e. Gopi Didwani, Ms.Preet Enterprises, Mr.Yatindra Pajraikar, Mr.Deepoo Vaswani and Rockline Construction Co. to manage the auction held initially on 29th March 2007 and subsequently on 11th May 2007 and it was the Petitioner who

invested sum of ₹ 2.5 crores in an escrow account, to be distributed amongst the four persons. It was averred that because of the pooling and the cartel formation, the transaction is per-se illegal since the agreement was executed with a mala fide intention to prejudice the rights of the borrower company, secured and unsecured creditors, workers and the statutory departments. It was specifically alleged that by the aforesaid transaction, considerable amount of public money which the Bank was entitled to recover, could not be recovered and therefore, it was prayed that the sale be set aside and appropriate inquiry be initiated. Pertinent to note that in the said application, the applicant also made a statement that the property be put for re-sale immediately, for which he had a party who was ready to offer ₹ 10 crores. Pertinent to note that the said offer was subsequently increased to ₹ 12 crores.

9. The said Application filed by Mahendra Kumar Kawad was responded to by the petitioner as well as the Oman International Bank. The petitioner contested the application by responding that the application is barred by limitation since it has been filed after expiry of 173 days after confirmation of sale. The application came to be opposed on the ground that he is not a person whose interests are affected by sale as he is neither a secured creditor in whose favour the purchased property was given as a security nor he is a defaulter, nor the owner of the

purchased property and that he had not even participated in the bidding which took place on 11th May 2007. Without prejudice, it was also averred that he had failed to deposit an amount specified in the proclamation of sale with interest @ 15% thereon, as stipulated by Rule 60A of Schedule II of the Income Tax Act, 1861 as also an amount equivalent to 5% of the purchase money, if at all he wanted to interject the sale in favour of the petitioner. The application filed by the intervenor was therefore, clamped as extortion technique and abuse of process of the authority. The escrow agreement with M/s. Mulla & Mulla entered into by the petitioner was sought to be justified by submitting that when the petitioner purchased the property, there were certain structures by third parties standing on the same and in order to resolve the said issues and to have full and complete possession of the purchased property, the petitioner Company in consideration of the same and subject to the compliance placed an amount of ₹ 2.5 crores in an escrow account, to be paid to the parties in proportion as agreed between the parties upon fulfillment of their obligations. Since the obligations remained unfulfilled, the amount of ₹ 2.5 crores has not become due and payable and the said transaction of an escrow account is irrelevant in determining the sale of the property in question.

10. An affidavit was also filed by Oman International Bank SAOG, which spelt out that the Bank has already

appropriated the amount received, towards the decretal dues and there was no collusion on part of the Bank as alleged in the application and in any contingency, the Bank ought not to be called upon to return any amount pursuant to the intervention application even if it is assumed that some buyer is being brought in to clear the dues and the Bank is to receive a higher price.

11. On consideration of the application and the responses, application preferred by the respondent no.2, Mahendra Kumar Kawad and responses received pursuant thereto, the Recovery Officer on 12th December 2007 passed the following order :

“Regarding Exh. 260 (Submission of M/s. Mulla and Mulla dated 26.11.2007 consenting interalia to deposit the sum of Rs.2.5 crores plus interest with the Tribunal) all the parties present have submitted that they do not have any dispute on the documents filed by the said Advocate and Solicitor M/s. Mulla and Mulla. In view of this, I find it appropriate to pass the following order:

1. M/s. Mulla and Mulla are directed to deposit Rs.2.5 crores along with upto date interest in the Tribunal in the name of R.O. DRT-II, Mumbai.

2. I also find it appropriate to appoint a local Commissioner to look into the issuance of Demand Drafts for Rs.2.5 crores and enquire with concerned parties including persons named therein with direction to submit his report within 15 days.”

12. Being aggrieved, the Petitioner filed an Appeal before the Debt Recovery Tribunal-II, Mumbai along with an Application for Condonation of Delay, which was numbered as Appeal No.69 of 2008. The DRT dealt with the opposition in form of limitation and recorded a finding that the Appeal is liable to be entertained on merits by condoning 14 days' delay in filing the same. As far as the merits of the matter are concerned, while dealing with the challenge to the sale in favour of the appellant, on the ground that there was a cartel between the appellant and four others, in which they had agreed not to bid above ₹ 9.56 crores, in lieu of an amount of ₹ 2.50 crores being deposited with the escrow agent, the Presiding Officer very cryptically recorded that the amount of ₹ 2.50 crores is not part of sale consideration and if the Recovery Officer could not have passed any order forfeiting it, there was no reason for him to direct deposit of the said money with this only reason being cited, the Appeal was allowed and the order passed by the Recovery Officer on 12th December 2007 directing M/s.Mulla and Mulla to deposit ₹ 2.50 crores along with upto date interest in the recovery proceedings was set aside. This was done on 13th January 2009.

13. The application filed by Shri Mahendra Kumar Kawad was addressed by the Recovery Officer in his separate order dated 22nd October 2009. At the outset, the Recovery Officer recorded that the application dated 7th December 2007

which is supported by an affidavit, intervenor as Constituted Attorney/authorized representative of M/s. BEC Impex International Pvt. Ltd, intending purchaser stated that the intervenor is offering a sum of ₹ 12 crores for the property in question and he has already deposited an amount of ₹ 1 crore with the Tribunal for showing his bona fides. The Recovery Officer also made a reference to the affidavit in rejoinder filed by the Credit holder Bank on 18th March, 2009, where the Bank took a stand that it was unaware about the alleged fraud by the auction purchaser and therefore, it did not challenge the said sale earlier. The Bank had stated in its affidavit dated 18th March 2019 that if the fraud is proved and established, the amount of Rs.9.56 crores deposited by the auction purchaser deserves to be forfeited by the Tribunal. The Affidavit also contained a statement that the sale proceeds which are appropriated are towards satisfaction of a certificate amount and the bank is a public institution dealing in public money it is interested in recovery of its dues and by formation of cartel and entering into an agreement, the property has fetched comparatively lower price and the bank is deprived from recovering correct price of the security. It was therefore prayed that the Intervention Application filed by Mr. Mahendra Kawad be decided on merits.

14. On consideration of the intervenor's case that as compared to the first auction held on 29th March 2007, in a

rebidding held on 11th May 2007, an amount of ₹ 1.06 crores more has been received and in absence of any cartel being formed, the property could have fetched a price much more than the highest bid and it was only on account of this unlawful arrangement between the parties the price of the property was pegged down to ₹ 9.56 crores, the Recovery Officer noted that the intervenor has offered a sum of ₹ 12 crores for the property in question and has deposited an amount of ₹ 1 crore. The Recovery Officer relied on an Affidavit dated 7th January, 2008 filed by Mr. Mahinder Pal Singh, one of the signatories of the Agreement, who admitted its contents and deposed that the Agreement was executed to peg down the auction price of the property and to have sale confirmed for ₹ 9.56 crores in favour of Rockline Construction Company.

The order recorded that a cartel has been formed by the auction purchaser to share the profit with four persons in the form of ₹ 2.50 crore for pegging down the bid amount on 11th May 2007 and to avoid further offers from prospective buyers. The Recovery Officer was satisfied that the auction sale is liable to be set aside on the ground of fraud and inadequate sale price realised in the auction sale due to formation the cartel and directed fresh auction to be conducted with the reserve price of ₹ 12 crores. As regards the amount of ₹ 2.50 crores lying with M/s. Mulla and Mulla, the Recovery Officer restrained from dealing with it since the Appeal was pending before the DRAT. As far as

the sale consideration of ₹ 9.56 crores is concerned, in spite of the strenuous opposition from the Bank, that it has appropriated the money, the Recovery Officer directed return of the amount to the auction purchaser and also set aside the sale conducted on 29th March, 2007 and the rebidding dated 11th May, 2007 on the ground of perpetuation of fraud on part of Rockline Construction and inadequacy of receipt of sale price due to formation of cartel. It also issued the following directions:

“(iii) C.H. Bank is appointed as DRT Receiver to take back the possession of property in question from Auction Purchaser (M/s. Rockline Construction) subject to filing of nomination of one of their officer’s name for execution of job and filing the requisite indemnity bond in DRT.

(iv) Intervener / M/s. BEC Impex International Private Limited, to deposit further Rs.11.00 crores so as to make their deposit equal to their offer (Rs.12.00 crores – Rs.1.00 crores already deposited in the name of R.O., DRT-II, within 15 days.

(v) Public Auction is to be held in respect of property in question with reserve price of Rs.12.00 crores and EMD amount of Rs.1.20 crores and fresh R-17 is to be issued.

(vi) This order will come into force on expiry of 15 days from today i.e. from 22.10.2009.”

15. The Petitioner again knocked the doors of the DRT-II, Mumbai by filing Appeal No.5 of 2010 which sought quashment of the order of the Recovery Officer. Along with the

Appeal of the Petitioner, two other appeals were also instituted, one by Oman International Bank SAOG, Mumbai (Appeal No.4 of 2010) and another by Mr. Mahendra Kumar Kawad (Appeal No.51/2009).

By a common judgment delivered on 20th October 2010, the Appeal filed by the Petitioner was allowed and the order dated 22nd October 2009 passed by the Recovery Officer below Exhibit-250 in Recovery Proceedings No.99 of 2002 setting aside the confirmation of sale, was quashed and set aside. The other two Appeals were disposed of as infructuous with a clarification that the monies as ordered by the learned Recovery Officer in the impugned order shall not be deposited and the amount of ₹ 1 crore deposited by Mahendra Kumar Kawad should be refunded with any interest, if it has accrued. The learned Member of the DRT recorded as under :-

“There is also nothing to show which specific or concrete service the other three persons were to do in lieu of their receiving respective monies. Thus, I am persuaded to endorse the contention of the Respondents that the money was not to be given to the four parties in lieu of any services but was to be given for their not appearing and increasing the bid beyond Rs.9.66 crores at the time of the confirmation of the sale. Apprehending that they or any of them may increase the bid, by the agreement, the Appellant ensured the four parties non participation in the bid at the stage of confirmation of the sale.”

16. On the issue as to whether such an agreement is fraud and/or in the breach of public policy, on considering the contours of the term 'fraud' as regards the contract, the following observation were made:

"It can not be said that by the agreement the Appellant had restrained all the interested parties in giving the bid. M/s. Gama Constructions who had given bid for Rs.5.90 Crores – and who by virtue of having some structure over the land can be said to be more interested in the property had not increased the bid. The other two parties who had given the bid in excess of Rs.9 crores also had increased the bid. Nobody prevented them or others to increase the amount at the time of confirmation. Coupled with this, if it is noted that the property was sold for the amount which is almost double than the valuation and the reserve bid and the absence of any evidence showing that the market price was in excess of Rs.9.56 crores, the conclusion that the agreement was not aimed at and did not bring down the price of the property is inevitable.

26. The settled legal position appears to be that the combination amongst bidders would not ipso facto amount to fraud in conduct of auction sale. There is distinction between honest combination among intending purchasers and concert for the suppression or deprivation of all other competitors. Where the object of such combination is to obtain the property at a sacrifice by artifice, the combination is fraudulent since it prevents fair bargain but not otherwise. The combination between the Appellant and the four parties cannot be said to have prevented or restrained all the participants so as to bring down the sale for less than fair price."

By relying on the decision reported in AIR 1949 Nag. 113 (Mohafazul Rahim Vs. Babulal) where two bidders by an Agreement agreed that one of them would not bid at an auction sale, in consideration of ₹ 500 and the Agreement was held to be enforceable, the DRT allowed the Appeal filed by Rockline Construction Company.

17. This order was once again subjected to an Appeal being filed before the DRAT and this time by the Oman International Bank SAOG by invoking Section 20 of the RDDBI Act, 1993. The bank on the basis of its affidavit tendered before the DRT-II in response to the application filed by Mahendra Kumar Kawad in Recovery Proceedings No. 99 of 2002 questioned the order of the DRT in the backdrop of the cartel which was formed to reduce the auction amount. It argued that the bidders who assembled at the Attorney's Office, drafted the cartel agreement, fixing the upper ceiling limit for the price at the auction before Recovery Officer to be held on a future date by fixing the limit as ₹ 9.61 crores, for which the remaining four bidders would be compensated by paying ₹ 2.50 crores and this came to the knowledge of the bank at a later stage. It was, therefore, alleged that the auction price did not reflect the real saleable marketable price of the property and therefore, the order of the Recovery Officer should be restored.

18. On taking note of the chronology of events which were unfolded before the Appellate Tribunal, the Tribunal observed thus :-

“Thereafter the parties for Cartel Agreement as well as Escrow Agreement in between them which had taken place came to light after lapse of months. The Cartel Agreement entered into came into light, by which all four bidders, who filed the Application before the Recovery Officer, were party to the agreement. It is pertinent to note that after confirmation of sale, after handing over the possession of the property, these facts came to the knowledge of the Recovery Officer since one individual filed an application before the Recovery Officer. The Recovery Officer, before opening the matter, ordered to deposit sum of Rs.1 crore and the undertaking before the Recovery Officer that in any event he will procure the buyer to buy the property which was purchased by the applicant, in turn re-opened the matter and adjudicated.

While considering the submissions made by the 1st respondent, it has been seen that the fraud has been committed by the parties and they using rowdism, they themselves fixing the price and selecting person who would be a successful bidder. Once it came to the light, their dealings which is against the public policy and against the judicial system, it cannot be tolerated and it should be curbed with bud itself. Without looking at the technicalities it is the duty of the Court to put the Clock back to give strong message to all the persons. Therefore, the order of Recovery Officer in setting aside the sale is confirmed by setting aside the order of the DRT. Further, it has been directed that the auction purchaser to restore and deliver possession within 15 days to enable the Recovery Officer brought the possession again for

sale.

The amount deposited by 1st Respondent is ordered to be returned with accrued interest, if any, after deducting mense profits, since he is in possession of the property from the date of purchase. Therefore, for the wrongful possession, he has to pay the mense profits and the loss has to reimbursed by the 1st Respondent. The original Applicant who is Respondent No.2 Mahendra Kumar Kawad, who has brought to the knowledge of the court how the events which were going on among the parties with entire details. Even after this court ignores this, it will be presumed that this type of method will be encouraged by the court and the middle man will make use of loopholes of the auction method by forming syndicate and by showing the rowdiness. This court does not want to say anything more on author of the Cartel Agreement. Therefore, this court has ordered to return the amount of Rs.1.00 crore with accrued interest to Respondent No.2 the person concerned. Hence, the following order.

ORDER

(1) The appeal is allowed with no orders as to costs. The order of the DRT is set aside and order of the Recovery Officer has been restored so far the Original Application is concerned.

(2) The Recovery Officer is directed to return Rs.1 Crores deposited by 2nd respondent Mahendra Kumar Kawad with accrued interest within 7 days from the copy of receipt of the order.

(3) The Original Applicant / 1st respondent is also entitled to withdraw the entire sale amount with

accrued interest, if any, (after deducting mense profits or loss) for his wrongful purpose on surrendering the entire possession of the property to the Bank.

(4) The mense profits can be ascertained by appointing the Advocate / Counsel before the DRT on the application filed by the respective parties.

(5) The Bank is directed to take appropriate steps to recover the amount as per the procedure known to law.”

19. Though the Writ Petitions filed by the auction purchaser and the bank involve counter arguments, the Writ Petition No.10703 of 2014 seeks a relief of setting aside the order passed by the DRAT on 6th June, 2014 thereby dismissing in default the appeal filed by the petitioner, Lodestar Slotted Angels Limited challenging the order dated 20th October, 2010 passed by the DRT and seeking intervention in Appeal No.51 of 2009 filed by Mr. Mahendra Kawad. Pertinent to note that Appeal No.51 of 2009 was disposed of as infructuous by the DRT-II, Mumbai on 20th October, 2010 while allowing Appeal No.5 of 2010 filed by Rockline Construction Company.

20. In the backdrop of the aforesaid chain of events, we are called upon to examine the correctness of the impugned order through two writ petitions, Writ Petition No.8572/14 being filed by Rockline Construction Company and Writ Petition No.9078/14 being filed by the Bank. We have extensively heard

the learned senior counsel Shri Shroff representing the Petitioner in WP No.8572/14 and learned counsel Shri Samdhani representing the lender Bank in the said Petition and the Petitioner Bank in WP No.9078/14. Shri Samdhani at the very outset made it clear that the Bank is aggrieved by the impugned order to a limited extent, being the direction to return the sale proceeds to Respondent No.1- the auction purchaser with accrued interest when the amount has in fact been appropriated. It is also aggrieved by the order reversing the order of the Recovery Officer directing Mr. Mahindra Kumar Kawad to bring in additional amount of ₹ 11 crores and instead refunding the amount of ₹ 1 crores deposited by Mr. Kawad.

We have carefully perused the Writ Petitions along with their annexures including the impugned orders, which would assist us in adjudicating the issues.

21. The order sheet placed on record disclose that in pursuant to the proclamation of sale and notice inviting offers, four bids were received and it is so recorded in the proceedings before the DRT dated 29th March 2007. The highest bid received was ₹ 5.05 crores and Shri Mahendra Jain @ Mahendra Kumar was also one of the bidder. The petitioner jumped in the fray and walked away with the bid on offering ₹8.5 crores. The sale was kept for confirmation on 30th April 2007. On that day, one Screen Test India offered its bid for ₹ 9.35 crores. On 1st May

2007, one M/s.Blessings Bio-Tech Pvt.Ltd through Mahendra Jain @ Mahendra Kawad submitted an offer of ₹ 9.41 crore. The petitioner in his Memo of Appeal filed before the DRT has urged that this Mahendra Kawad who failed to bid on 29th March 2007 made a fresh bid through a Company called M/s.Blessing Bio-tech for a sum of ₹ 9.41 crores and it is also asserted that Mahendra Jain and Mr.Mahendra Kawad is the same person. On a later date, the Recovery Officer on rejecting the bid of M/s.Screen Test for an amount of ₹ 9.35 crores undertook the exercise of inter-se bidding between the petitioner and the intending purchaser i.e. Blessing Bio-Tech Pvt.Ltd who offered a bid of ₹ 9.41 crores.

Everything proceeded in a translucent manner till this date. On 11th May 2007, the bid of M/s.Rockline Construction of ₹ 9.56 crores was declared to be the successful one and he was directed to deposit the balance payment immediately since in the earlier round of bidding of 29th March 2007, the same bidder was already directed to deposit 25% of the bid amount being declared as the successful bidder at ₹ 8.50 crores. It is this allotment in favour of the petitioner which is sought to be disgraced initially by Mahendra Kawad i.e. respondent no.2 and subsequently by the Bank when it discovered that a cartel was formed between the appellant and four other entities where an agreement was reached not to bid for an amount more than ₹ 9.56 crores and an amount of ₹ 2.50 crore came to be deposited in an escrow account on the very same day when the petitioner was declared successful in the

bidding which took place on 11th May 2007. The contention of the Bank as well as Mahendra Kawad, an intervener is to the effect that the cartel agreement put a restriction on the price of the property which was put for auction and prevented the bank from realizing the amount in accordance with its true value. The Bank has assailed the order to the limited extent, which directs the return of the money appropriated by the Bank from the sale proceeds in favour of the Petitioner and directing the deposit of the said amount with the Recovery Officer. M/s. Lodestar Slotted Angels Ltd raise a challenge to the impugned orders and alleged that Rockline Construction Co. with respondent nos.4 to 7 to the said Writ Petition as Member of cartel has controlled the auction by limiting and fixing the bid to ₹ 9.56 crores and thus played fraud upon the DRT to keep the said sum of ₹ 2.5 crores under an illegal agreement beyond the reach of the Recovery Officer and the certificate holder.

22. The pivotal document in the whole proceedings is the escrow agreement which we have already reproduced in the proemial part of the judgment. The said document is executed on the same date on which the Petitioner was declared as successful bidder i.e. 11th May 2007. It is the case of the petitioner that the petitioner Company had engaged the parties in the escrow agreement as their consultants/brokers since it was brought to its notice that the property purchased by it had some standing

structures by third parties and this demanded a solution. The parties to the agreement promised to negotiate with the third parties and resolve the issues and in consideration of the same, an amount of ₹ 2.5 crores was placed in an escrow account with M/s. Mulla & Mulla by the petitioner company and to be paid upon fulfillment of their obligations contained in the said agreement. The Recovery Officer who had relied on an affidavit filed by one Mohinder Pal Singh which alleged a gross illegality and it was the stand of the petitioner that Mohinder Pal Singh who was representing M/s.Preet Enterprises, one of the signatory to the escrow agreement had acted with vengeance since he did not receive the money under an agreement dated 11th May 2007 and that he was neither a party to the proceedings nor he was called upon by the Recovery Officer to file such an affidavit.

23. In the backdrop of the various orders passed by the Recovery Officer till the order dated 7th July 2014 passed by the DRAT with contradictory findings recorded on the escrow agreement, let us focus on the said agreement. It is the case of the petitioner that the said agreement was executed after the petitioner was declared as a successful bidder in the auction conducted on 11th May 2007. Shri Shroff, the learned counsel for the Petitioner has asseverated that the auction was over by 4.30 p.m. on 11th May, 2007 and the said document is executed thereafter. We may accept the contention of the petitioner to that

effect since the very first paragraph of the escrow agreement record that M/s.Rockline construction Company have been declared as a successful bidder of the secured property mortgaged with the Bank. Recital No.2 of the said document proceeds to state that four individuals named therein are in the business of buying/selling properties and they have offered their services to M/s.Rockline Construction co, in venturing successful bidding and acquiring the property and securing its demarcation and possession. Recital No.3 convey that M/s. Rockline Constructions have agreed to pay the four parties mentioned in Recital No.2, a fixed sum as brokerage, consultancy fees plus compensation for services subject to the understanding which is drawn in Recital Nos.4 to 8. Going by the first recital that Rockline Construction is declared as a successful bidder in the re-bidding which took place on 11th May 2007, stipulation no.4 which set out that M/s.Rockline Construction Co. is depositing with Mulla and Mulla & Craigie Blunt & Caroe, an amount of ₹ 2.50 crore by Pay Order to hold and to be invested in the scheduled Bank in escrow and to pay the amount carved out against the name of each of the party against happening of the events being (a) confirmation and completion of sale of the above property in favour of Rockline Construction Co. (b) issuance of sale certificate and (c) demarcation at site and delivery of actual and physical possession. Pertinent to note that the sale certificate came to be issued in favour of the petitioner on 4th June 2007 and

on 13th June 2007 possession of the property was handed over to the petitioner and the possession receipt is placed on record. All the three contingencies of confirmation and completion of sale resulted into issuance of sale certificate and possession of the property being handed over did happen within a period of 33 days of executing the escrow agreement. On the three stipulations contemplated in the escrow agreement occurring, it is not the case of the petitioner that the amount came to be disbursed in favour of the four parties. On the other hand, we have noted that it is pleaded by the petitioners that on account of some dispute between the parties, the matter has been referred to an arbitrator and an Award is also passed in the year 2009 itself.

Our attention was also invited to an order dated 22nd March, 2011 passed by the Competition Commission under Section 26(2) of the Competition Act, 2002, on the complaint filed by M/s. Lodestar Slotted Angles Limited, thereby recording on a prima facie basis that the Agreement dated 11th May, 2007 is clear indication of bid rigging. The interference was however refused on the ground that it could not be examined under Section 3 of the Competition Act since it was a prior agreement before Section 3 came into force.

24. It is this agreement which needs to be carefully browsed to find out whether it was a simple agreement which plainly contemplate some assistance being offered by the four

parties to the petitioner in the process of bidding and assisting him in securing the possession of the property for which the bid was raised or it was an attempt to procure the property at an unfair price, in that contingency, the sale would be termed as fraudulent or in breach of public policy. Escrow agreement dated 11th May, 2007 is in the nature of a consultancy agreement. The Agreement is to provide service and it refers to compliance of conditions before the amount deposited with the escrow agent can be released to the four parties nominated in the escrow agreement. All four parties to the escrow agreement were not the bidders at any point of time for the property in question. Argument in the alternative was that assuming but not conceding that the amount kept in escrow is to be treated as payment for preventing the four persons nominated in the escrow agreement, even then the escrow agreement is not hit by the provisions of Section 17 of the Contract Act read with Section 23 of the Contract Act.

25. Section 23 of the Indian Contract Act, 1872 adumbrates that the consideration or object of an Agreement is lawful unless it is forbidden by law or is of such nature that if permitted, it would defeat the provisions of any law or is fraudulent or involves or implies injury to a person or property of another or when the Courts regard it as immoral or opposed to public policy. In each of these cases, the consideration or object

of an agreement is unlawful. The three well settled principles by the application of which the enforceability of a contract can be determined are viz. a contract is void if its purpose is to commit an illegal act; a contract which is expressly or impliedly prohibited by law and the contract which cannot be performed without disobedience to law. If the consideration or object of an agreement is opposed to public policy, the agreement becomes invalid. In Halsbury Laws of England, 4th Edition, Vol.9 in para 392, the principle is stated as “Any agreement which tends to be injurious to public or against the public good is invalidated on the grounds of public policy. The question whether a particular agreement is contrary to public policy is a question of law to be determined like any other question by proper application of prior decisions”.

26. An agreement which is merely an honest combination between two bidders to purchase the property at an advantageous price and when this agreement was prompted out of necessity, that individual bidders could not afford the bid or do not possess the expertise to enforce the agreement, the agreement may not be hit by Section 23 but where an agreement goes further by resorting to secret artifice for the purpose of defrauding a third person, such an agreement would surely fall within the preface of Section 23 and being fraudulent is void. An agreement between two bidders not to bid against each other at an auction, being not

opposed to public policy is not illegal. In Bhagwant Genuji Girmi Vs. Gangabisan Ramgopal AIR 1940 Bom. 369, where an auction held by the Collector of Ahmednagar in respect of right of Government to collect toll on two public roads under the Tolls on Roads and Bridges Act, 1875, the plaintiff and defendants entered into a partnership, shortly before the auction, to acquire the lease from the Government, agreeing not to bid against each other and the lease of these tolls was secured by the plaintiff and defendant no.1 in respect of one of these roads and by the defendant nos.1 and 2 in respect of other, while answering the question whether the agreement between the parties not to bid against one another was illegal, it was held that the agreement was not illegal as not opposed to public policy. The fulcrum of the submissions on behalf of the counsel for the petitioner Mr. Shroff as well as Mr. Samdhani, the learned Senior Counsel appearing for the Bank is the judgment of the Apex Court in case of Gurumukh Singh Vs. Amar Singh (1991) 3 SCC 79. The facts involved in the backdrop of which the judgment came to be delivered disclose that the appellant and the respondent entered into an agreement to the effect that the appellant would participate in public auction for sale of evacuee property on his and respondent's behalf. The appellant agreed to convey half the property purchased at the auction. At the auction, the highest bid of the respondent came to be accepted and the appellant and the respondent contributed their respective shares. The sale was

confirmed and the sale certificate was issued by the custodian of evacuee properties. The dispute arose when the appellant failed to perform his part of the contract, resulting in the respondent praying for a suit for specific performance of the contract of respective amounts advanced by him. The appellant pleaded that the contract was void being opposed to public policy. The Trial Court decreed the suit and it was confirmed by the District Court as well as the High Court. The Hon'ble Supreme Court while appreciating the arguments of the appellant that the agreement was to knock out the public property at a minimum price and therefore, the object of the agreement being opposed to the public policy, is hit by Section 23, turned down the said contention. It held as under :

“An agreement between A & B to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. But if there is an agreement between all the competing bidders at the auction sale, be it of the court sale or revenue sale, or sale by the government of its property or privilege and formed a ring to peg down the price and to purchase the property at knock out price, the purpose or design of the agreement is to defraud the third party, namely, the debtor or Govt. whose property is sold out at the court auction or revenue sale, or public welfare. The object or consideration of the contract, oral or written, to share such property is unlawful. There is also implied "injury to the debtor" within the meaning of [Section](#)

23. Thereby the contract was fraudulent. The contract thus is also opposed to public policy and is void. Take for instance four persons participated at an auction sale; pursuant to their previous agreement, they made a pretext of participation in the auction; bid upto an agreed price though the real value of the property is much more than what they had offered for. Here the design or object of their forming a ring is to knock out the property for a song to defraud the debtor or public.”

27. The position of law which flows from the aforesaid binding precedent neatly answers the question raised before us. An agreement entered into by the parties not to bid against each other is not opposed to public policy and, therefore, it is not void. Further, the agreements which are likely to prevent the property put up for sale in not realizing its fair value and to pin down the value which could be realized at the auction, would certainly be against public good and therefore is void, being opposed to public policy and hit by Section 23 of the Contract Act. Further, an Agreement between the intending bidder, that one should keep away from bidding is neither unlawful nor opposed to public policy. However, an agreement by the prospective bidders at an auction forming a ring to share the profit resulting into the 'knock out' is against public policy. Thus a pure business agreement where two parties join to purchase anything at an auction cannot fall within the mischief of Section 23 if it was a bona fide business arrangement, benefiting the parties involved and not intended to

harm the seller, selling the property.

28. The escrow agreement which is a tell-tale of the intention of the parties came to be executed on the very same day i.e. 11th May 2007. The events preceding this Agreement, which emerge from the facts placed before us, bring forth that the Special Court by an Order dated 24th November, 2004 had sold the structure on the property subject to the mortgage of the Bank and the Petitioner Rockline Construction Company was one of the bidders. It can thus be inferred that it had the knowledge of the mortgage and the Recovery Certificates in favour of the Bank. The Petitioner emerged as the highest bidder on the auction of the secured assets held on 29th March, 2007 as well as on 11th May, 2007. The intervening developments, though strange, but are important. On 1st May, 2007, the Recovery Officer received an offer from one Blessing Biotech Limited represented by Mr. Mahendra Jain. Direct bidding took place between the Petitioner and Blessing Biotech Limited represented by Mr. Mahendra Jain. On 11th May, 2007, on re-bidding between the Petitioner and the Blessing Biotech Limited, Rockline emerges as the highest bidder. It is an admitted position that Blessing Biotech Limited was represented through Mr. Mahendra Jain, who participated in the bidding on 29th March, 2007 and in the auction on 11th May, 2007 he was representing Blessing Biotech Pvt. Limited though in personal capacity remained out of the fray. Another character

of great significance is Mr. Mohinder Pal Singh, Sole Proprietor of M/s. Preet Enterprises, an Agent of Mr. Mahendra Jain, who was a signatory to the cartel agreement. Mr. Mahendra Jain remained out of the re-bidding which took place on 11th May, 2007 on a flimsy ground. Very surreptitiously on the sale being confirmed in favour of M/s. Rockline Construction Company, he filed an Application approximately after six months for setting aside the sale and raised an alarm about the cartel agreement. The reason being apparent that something went wrong with the cartel agreement.

The escrow agreement creates a doubt as to the exact time of its execution. Subjected to criticism as a conspiracy on part of the petitioner with four other parties who are in the business of buying/selling properties and who are compensated for offering their services to the petitioner in successful bidding and acquiring the property and it is not known as to what is that which the four parties could have done which the petitioner could not have. It can only be seen as a conspiracy which is always hatched in the darkness of secrecy, no direct evidence being available as a proof of the same. It necessarily has thus to be determined on preponderance of probability and all the relevant facts which Section 10 of the Indian Evidence Act would be sufficiently considered as an evidence for the things said or done by a conspirator in regards to common design, as a relevant fact should be looked into. The escrow document refers to a Pay

Order of ₹ 250 lakhs dated 11th May 2007 issued by the Oriental Bank of Commerce, JVPD Scheme Branch, Mumbai and by the agreement the petitioner company deposited the said Pay Order with the Advocates and Solicitors to hold and invest it in a scheduled Bank in escrow. Surprising to note that the auction process was over by 4.30 p.m. and if we accept the contention of the learned counsel for the petitioner that after the bidding process was over, the escrow agreement was entered into, which would convey that the Pay Order was obtained from the Oriental Bank of Commerce after 4.30 p.m. We may only take judicial note of the fact that the Banks close its dealing before lunch time and no business is transacted post lunch except effecting the book entries, which is a part of its internal working. The petitioners were able to procure a Pay Order by depositing an amount of ₹ 2.50 crores and this all happened pursuant to the agreement being executed, accompanied with a Pay Order. We are surprised at the agile pace at which the things have worked out. We need not say anything more.

29. From the record, the case of the petitioner which can be discerned and this is going as per the pleadings of the petitioner company before the Debt Recovery Tribunal in Appeal No.5 of 2001 that Mr.Mahendra Kawad through his agent Mr.Mohinder Pal Singh (one of the parties of the escrow agreement) through Mr.Singh started claiming the share of ₹ 76

lakhs payable to Mr.Singh under the agreement and when it was informed that the obligations under the agreement dated 11th May 2007 has not yet been complied with by the four parties, Mr.Mahendra Kawad thought of this innovative and malicious idea to create a nuisance for the appellant who had purchased the property from the Recovery Officer by following the procedure of DRT. This assertion speaks for itself. Worth it to note that Mr.Mahendra Jain did not participate in the re-bidding process on 11th May 2007 on the pretext of certain ambiguity as regards the title of the property. However, no attempt was made to resolve the so-called alleged ambiguity when it was clearly mentioned in the sale notice that some third party is in occupation/possession of the land and the same was sold by the High Court of Bombay. The purpose of the escrow agreement being to compensate the four parties for their consultancy and getting the things done, could have been done prior to 29th March 2007 when Mr.Jain participated in the auction. Mr. Kawad chose not to bid on 11th May 2007 at the fresh auction and then suddenly surfaced alleging fraud by moving an application on 15th November, 2007 praying for setting aside the auction sale. The effect of the escrow agreement in the proceedings can very well be seen to be reflective of pegging down the price of the secured asset and Mahendra Jain himself has appeared before the Recovery Officer and even deposited an amount of ₹ 1 crore to prove his bonafides when he made a statement that he has a buyer of ₹ 12 crores for

the said property. The amount of ₹ 1 crore was taken back and the buyer for ₹ 12 crore was never brought. The property was therefore required to be sold for an amount of ₹ 9.56 crores. The cartel agreement enabled the parties to peg down the prices at the auction and the amount of ₹ 2.50 crores would be shared by the four participants for not participating in the bid. We have no hesitation in holding that the escrow arrangement was not for any consultancy being offered but to keep the four parties to the agreement who are in the business of development out of the competition. This clearly falls within the catch situation perceived by the Apex Court in case of Gurmukh Singh (supra). Such an agreement being opposed a public policy and against public interest, is therefore, hit by Section 23 and is void.

30. The Recovery Officer in his order dated 22nd October, 2009 found that the Agreement dated 11th May, 2007 was entered into with an object to peg down the price and held that the sale was vitiated and set it aside. In appeal, this Order of Recovery Officer was set aside by the DRT, though holding that there was a cartel agreement but it is not fraudulent and/or in breach of public policy. The DRAT by order dated 7th July, 2014 restored the order of the Recovery Officer permitting the Rockline Construction Company to withdraw the entire amount. As we have noted that the attack mounted about the said order by the Bank is for a limited purpose and so also the challenge of M/s.

Lodestar to the impugned order. In the backdrop of the observations made by us, we do not find the view taken by the DRAT to be erroneous, in contrast, we record that the order passed by the DRT, the Fora of original jurisdiction on 20th October, 2010 suffers from egregious flaws and has been rightly set aside by the Appellate Fora.

In the result, while upholding the impugned order dated 7th July, 2014 passed by the DRAT, we dismiss all the three aforesaid Writ Petitions.

In view of the dismissal of the Writ Petitions, the connected Applications are also disposed of.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE