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

INTERIM APPLICATION NO.1 OF 2019
IN
COMPANY PETITION NO.492 OF 2015

Edelweiss Asset Reconstruction
Company Ltd. ... Applicant.

IN THE MATTER BETWEEN

Mane Finance Private Ltd ... Petitioner.
V/s.
Sri Waterfront Health Farms
Pvt. Ltd ... Respondent

Dr. Birendra Saraf a/w Ziyad Madon, Mr. Sunil Tilokchandani, Ms. Subhasree Chatterjee, i/by M/s Manilal Kher Ambalal & Co., for the applicant in Interim Application No.1 of 2019

Ms. Mamta Sadh a/w Mr. Mathan Unadkat i/by Unadkat & Co., Petitioner in Company Application
Mr. Sachin Mahagavkar a/w Adv. Darshit Shah, for respondent.

CORAM : R. I. CHAGLA, J.

DATE : 4th October, 2019.

P.C. :

1] Not on board. Taken on board.

2] This Interim Application has been taken out, by the applicant for an order of injunction restraining the petitioner from acting in any manner on the sale notice dated 19th September, 2019 upon which the petitioner is conducting auction. Further relief has been sought for direction that fresh auction be conducted for the said property (1) with a reserve price of not less than Rs.157,79,73,600 only and specifying therein the contents of clause 13.4 of the Consent Terms i.e. that any bids would be subject to the applicant's right to find a purchaser willing to pay a higher price.

3] The learned counsel for the applicant has drawn attention of this Court to the said notice dated 19th September, 2019; wherein the indicated price is Rs.75 crores and earnest money deposit is Rs.75 lacs. He states that as per the valuation which had been carried out by the applicant, through valuer M/s Kishore Karamsey & Co dated 5th July, 2018, the distress value itself comes to Rs.157,79,73,600/- which is twice the indicated price mentioned in the sale notice dated 19.9.2019, which has been annexed by the petitioner at Exhibit N to the Interim Application. He has further relied upon clause Nos. 13.3 and 13.4 of the Consent Terms and submitted that the applicant is a second charge holder and lender to the judgment debtor and as per clause No.13.4 of the Consent Terms, 15 days notice is required to be given to the applicant to get a better valuation. He submits that the 15 days period should not start from the sale being conducted by public auction as the indicated price is much less than the distress value as per valuation report relied upon by the applicant. However, the learned counsel for the applicant states that the applicant is not seeking a stay of the auction from being held. It has been mentioned in the sale notice that the bids are to be invited on 4th October, 2019, and the opening of the bids would be after auction which is to be conducted on 5th October, 2019. He submits that the sale and/or the bids should not be finalized till the next date and the petitioner be directed to file a reply to the interim application disclosing the valuation which has been carried out by the petitioner to support the indicated price of Rs.75 crores.

4] The Learned counsel for the petitioner has stated that in terms of clause No.6.6, of the Tender Document and the Terms and Conditions of Auction of Sale, it has been provided that after the bidding process is complete, the three highest bids will be kept and such bids will be valid for thirty days from the auction date. The EMDs of the three highest bids will be retained for a period of thirty days from the auction date. The letter of Acceptance will be issued within a period of thirty days from the auction date. She has accordingly submitted that there is no question of bids being immediately finalized as a period of 30 days is provided in the Tender Document and the Terms and Conditions of the auction. She has also referred to the valuation report which has been carried out by the valuer

Khandekar Architects & Surveyors, in which the estimated value has been shown as Rs.76,21,17,690/- for sale of the said property. She has submitted that the petitioner will file reply to the Interim Application; wherein these documents shall be annexed in support of the petitioner's case that the valuation indicated as Rs.75,00,00,000/- is backed up by the valuation report and that the sale will not be finalized for a period of 30 days by finalizing the bids.

5] Considering that there is no opposition so far as the holding of the action is concerned and the only anxiety on the part of the applicant is that the bid should not be finalized on the basis of the indicated price and further considering that in the terms and conditions of the auction a period of 30 days has been provided for finalizing the bids, it would not be appropriate to grant any ad-interim order at this stage.

6] As per clause No.13.4 of the Consent Terms, the petitioner has to give 15 days notice to the intervener to get a better valuation than the one finalized by the petitioner and hence the applicant is adequately protected. The petitioner is directed to file affidavit-in-reply to the Interim Application within a period of one week from this order; wherein the valuation reports relied upon by the petitioner and the Tender Documents containing the terms and conditions of the auction sale shall be annexed. Accordingly the Interim Application shall be placed under the caption of, "**for interim relief" on 16.10.2019.**

7] The learned counsel for the petitioner states that the highest bids which will be received in the auction sale to be held on 5th October, 2019, will be informed to the applicant immediately upon the opening of the bids. The Statement is accepted.

[R. I. CHAGLA, J]