

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT PETITION Nos.43368 OF 2018 AND 4994 OF 2019

COMMON ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Challenging a conditional order of stay passed by the Debts Recovery Tribunal (DRT) in an application for stay of auction, the borrower company came up with one writ petition in W.P. No.43368 of 2018.

2. On 29.11.2018, when the writ petition, W.P. No.43368 of 2018, came up for orders as to admission, this Court passed the following order:

“Smt. V. Dyumani, learned Standing Counsel, takes notice for the Bank.

By a conditional order, dated 29.10.2018, the Debts Recovery Tribunal permitted the auction to go on 30.10.2018, but the confirmation was stayed subject to a condition that a sum of Rs.4.00 crores was deposited by the petitioner within a week and another sum of Rs.8.00 crores was deposited within a further period of eight (8) weeks. After making a deposit of a total amount of Rs.1,90,80,000/-, the petitioner has come up with the above writ petition just for the purpose of extension of time to comply with the conditional order.

According to the learned counsel for the Bank, the auction was held on 30.10.2018 and four properties were sold and the buyers have deposited the money. The learned counsel for the Bank shall file a statement on 03.12.2018, indicating the following particulars:

1. The description of property sold.
2. The upset price.

3. The number of bidders.
4. The highest bid amount.
5. The amount so far deposited by the highest bidder and the name of the highest bidder.

The above tabulation will enable this Court to come to a conclusion whether any extension of time could be granted or not.

Post on 03.12.2018 for orders.

Till then, the sale shall not be confirmed.”

3. Subsequently the matter came up on 13.12.2018, and this Court directed the impleadment of the highest bidders in the auction sale. The order passed on 13.12.2018 reads as follows:

“The learned counsel for the Bank shall furnish the details of the names and addresses of the highest bidders in respect of the properties at serial Nos.5, 9 and 10, in which only confirmation letters have been issued and also in respect of the property at serial No.7 for which a sale certificate has also been issued. The details shall be furnished to the counsel for the petitioner within two days. Immediately upon the details being furnished, the counsel for the petitioner shall file necessary application for impleading the highest bidders and also the parties in whose favour the sale certificate is issued in respect of one property.

Post on 18.12.2018.”

4. The auction purchasers were later impleaded and thereafter the matter came up on 30.01.2019. At that time it was brought to the notice of this Court that in respect of one of the properties, a sale certificate had already been issued. It was also represented on the said date that one of the auction-purchasers had filed an application. Therefore, this Court passed an order on 30.01.2019 which reads as follows:

“In respect of the property bearing House Plot No.17 in Survey No.150, admeasuring 632.86 square yards, situate in Rock Garden, Yapral village, Alwal, Malkajgiri Mandal, Ranga Reddy District, respondent No.3 became the highest bidder and she has been issued with a sale certificate on 26.11.2018. It is stated that she is a Widow suffering from cardiac problem and that her son was also hospitalized due to cardiac arrest. Since the sale certificate has already been issued, it is not possible to consider the offer made by the petitioner in respect of this property. Hence, the bank is permitted to register the sale certificate in respect of this property alone.

Post on 31.01.2019 along with I.A. said to have been filed by Mr. Sourab Agarwal, learned counsel for respondent No.4.

Office to print the name of Mr. Sourab Agarwal, learned counsel for respondent No.4.”

5. Thereafter, it was brought to the notice of this Court that the provisions of Insolvency and Bankruptcy Code (IBC), 2016 were invoked as against the borrower company viz., RCM Infra Structure Limited, and that a resolution professional had been appointed. Therefore, in the light of the subsequent development that had taken place on 03.01.2019, we found that the company could not maintain the writ petition any further.

6. However, contending that the guarantors' properties may not be covered by the resolution process pending before the National Company Law Tribunal (NCLT) under the IBC, 2016, the individual guarantors have come up with the next writ petition, W.P. No.4994 of 2019, seeking a direction to the bank to release at least the properties

other than the one in respect of which sale certificate has already been issued.

7. We have heard Mr. L. Ravichander, learned senior counsel, appearing for the petitioner in W.P. No.4994 of 2019, Mrs. V. Dyumani, learned counsel appearing for the bank and Mr. Venkata Nagaraju, learned counsel appearing for the auction purchaser.

8. Since W.P. No.43368 of 2018 cannot be pursued any further, in view of the proceedings pending before the NCLT, the same is closed.

9. Insofar as W.P. No.4994 of 2019 is concerned, there were actually four properties that were involved in the sale that took place on 30.10.2018. Out of the four properties brought to sale on 30.10.2018, the sale in respect of one has already been confirmed and a sale certificate issued by the bank after receiving the entire sale consideration. Therefore, the offer, now sought to be made by the guarantors in respect of that property viz., House Plot No.17, in Sy.No.150, measuring 632.86 square yards, situate in Yapral village, Malkajgiri Mandal, R.R.District, cannot be accepted. Hence, the prayer in relation to house Plot No.17 is rejected.

10. Insofar as the other three properties are concerned, the stage of confirmation of sale has not reached. The learned counsel appearing for the successful bidder in respect of one property contended that the highest bidder would now like to undertake a due diligence. But, the same cannot be permitted after the auction, since the sale is always in “AS IS WHERE IS CONDITION”.

11. Today, the guarantors, who are the petitioners in the second writ petition, are offering to pay amounts higher than the highest bids in respect of three properties viz., (i) House Plot Nos.56 and 57, admeasuring 611 square yards in Sy.No.924 of Bramarambika Enclave, situate in Koheda village, Hayathnagar Mandal, Rangareddy District; (ii) Plot No.75, H.No.4-106/16, admeasuring 336 square yards situate in Sy.No.9 (2), Bahadurguda village, L.B. Nagar, Hyderabad East, Ranga Reddy District; and (iii) Open Plot at Matrusri Co-op. Housing Society Limited, admeasuring 1625 square yards in Sy.No.44/1 and 42 of Miyapur and Sy.No.54 of Hafeezpet, Rangareddy District. The bank has no objection, if payments are made on or before 31.03.2019.

12. Therefore, W.P. No.4994 of 2019 is disposed of permitting the petitioners to make payment of the amounts now offered over and above the highest bid amounts in respect of the aforesaid three properties. The petitioners shall make payments on or before 31.03.2019 to avail this benefit. If the petitioners fail to make payment, it will be open to the bank to proceed further. In the event of the petitioners complying with this order, the bank shall refund the moneys paid by the highest bidders in the auction. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 12, 2019
Mgr

