IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.24749 of 2018 (O&M)
Date of Decision: February 25, 2019.

M/s Silver Oaks Township Pvt. Ltd. .....Petitioner

versus

Punjab State Industrial Development Corporation and others.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER.
HON'BLE MR.JUSTICE LALIT BATRA.

***

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.A.S.Talwar, Advocate, for the ptitioner.

Mr.V.M.Gupta, Advocate, for respondent Nos.1, 9 & 10.

Mr.I.P.Singh, Advocate, for respondent Nos.3 to 7.

-.-

Mahesh Grover, J. (Oral)

The present petition has been filed with a prayer that the auction proceedings dated 12.09.2018 made in favour of respondent Nos.3 to 7 be quashed being a result of collusion between the authorized officials of the respondent-Corporation and the auction purchaser. Further prayer is made that the Corporation be directed to consider the case of the petitioner in terms of the One Time Settlement Policy which in fact fructified during the pendency of the writ petition in December, 2018 and accepted in favour of the petitioner.

The facts, as set-out in the petition, reveal that respondent No.11 had availed loan from respondent No.1 and mortgaged certain properties as secured assets. The petitioner obtained the second charge in respect of the property on account of assignment in its favour by State Bank of Patiala and has infused a substantial sum in the project.

Respondent No.1 proposed a One Time Settlement Scheme,

MOHINDER KUMAR KAMBOJ
2019.02.28 15:05
I attest to the accuracy and
integrity of this document
Chandigarh

that was awaiting approval of the Government even though permission was sought to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short 'SARFAESI Act'), 2002. The petitioner was making intensive efforts to retrieve the property and satisfy the liability.

Suffice it to say that for the purpose of this petition, the controversy is that there was an outstanding amount of liability against the property which has been mortgaged. The petitioner stepped in as an assignee from the bank while the Corporation was pursuing its lawful course for the recovery of its amount and thus put up the property to auction. A public notice was issued for the purpose and scheduled the auction for 11.09.2018 with proper schedule intimating the auction time as 3.00 p.m.

It is at this stage that the petitioner came to this Court by way of this writ petition to question the auction and contended that the whole exercise is malafide as efforts of the petitioner to satisfy the liability of the Corporation has not yielded results, even though the petitioner made a representation which was replied to by the Corporation on 17.09.2018 declining its request for keeping in abeyance the sale of assets, though the petitioner had submitted three bank drafts totaling Rs.65,05,000.00/- meant to be an indicator of its readiness to settle the accounts. According to the petitioner, the auction was held clandestinely after 4.00 p.m. with the active collusion of officials of the Corporation and respondent Nos.3 to 8, 9 & 10 who are members of the same family. Immediately after the auction, the petitioner even submitted representation regarding the fraudulent exercise. The petitioner received reply from the Corporation on 20.09.2018

MOHINDER KUMAR KAMBOJ
2019.02.28 15:05
I attest to the accuracy and
integrity of this document
Chandigarh

where it was said that without commenting upon the allegations made in the representation, if they wanted to purchase the property, to show their bonafide deposit Rs.11.87 crores. For the purpose of reference, the relevant portion of the reply is reproduced hereunder:-

> "... However, without commenting upon the allegations made in the said representation, as you have represented that you were willing to participate in the bid scheduled for 12.09.2018 for which you had also prepared drafts total amounting to Rs.111.55 lacs and you were also willing to redeem/purchase the property for Rs.11.87 crores, you are hereby called upon that if you are willing to redeem/ purchase this property at Rs.11.87 crores, deposit the said amount henceforth to show your bonafide and on receipt of Rs.11.87 crores, Corporation shall take further steps...."

This Court on 27.09.2018 issued notice to respondent Nos.1 to 10 only and passed an interim order to the following effect:-

> "Meanwhile, having regard to the nature of allegations, the auction in favour of private respondents may not be confirmed..."

During the pendency of this petition, proposed One Time Settlement Scheme was accepted by the Government and thus on 15.12.2018, we passed an order directing the Corporation to consider the claim of the petitioner as this was one of the primary prayers made in the petition.

An affidavit has now been filed by the Corporation stating that they have accepted the OTS bid offered by the petitioner to the tune of Rs.11.87 crores. It is necessary to state that auction bid made by respondent Nos.3 to 7 was to the tune of Rs.11.37 crores which the Corporation was in any case ready to accept from the petitioner when it gave its response upon

MOHINDER KUMAR KAMBOJ
2019.02.28 15:05
I attest to the accuracy and
integrity of this document
Chandigarh

the representation made by the petitioner, referred to above.

In this view of the matter when the bank had made assignment in favour of the petitioner and Corporation has considered the plea under OTS Scheme, the matter would indeed deserve closure as all the parties relevant to the transaction have satisfactorily resolved their issues.

However, the auction purchaser has seriously opposed this petition by contending that the petitioner has no locus to file the petition.

We would disagree with this as the auction process could have been questioned by anyone on the ground of malafide. The petitioner is on a better footing as it has acquired some stake in the property which it wants to retrieve by satisfying the outstanding amount of the Corporation. Private respondent Nos.3 to 7 have questioned that One Time Settlement could not have been arrived at. We are of the opinion that this is not the matter for the auction purchaser to agitate particularly when the Corporation being alive to the auction proceedings has taken a decision in its own interest and also for the reason that the auction purchaser is merely respondent in the writ petition and has not come up as petitioner to impugn the resolution between the petitioner and the Corporation.

Learned counsel for the respondents has placed reliance on a judgment reported as **"Valji Khimji & Company versus Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and others, 2008(9) SCC 299",** to the effect that auction proceedings normally should not be interfered with unless fraud and collusion is proved. There would be no quarrel with this proposition. Even the facts of the present case suggest inferential collusion of the official respondents and the respondents No.3 to 7 who have participated in the bid and are closely related to each other and

MOHINDER KUMAR KAMBOJ
2019.02.28 15:05
I attest to the accuracy and
integrity of this document
Chandigarh

further the auction statedly took place beyond the time prescribed for it in the public notice. Be that as it may, the petitioner had approached this Court at the earliest point of time and before the sale could be finalized, an order was passed against the sale confirmation on 27.09.2018.

For the reasons that the Corporation has on its own accepted the One Time Settlement offered by the petitioner, there would be no reason for us to interfere with the auction process particularly when there are shades of grey to it and the Corporation in any case has gained more than what it was getting in the auction.

As a consequence, we direct the Corporation which has retained the amount of Rs.11.37 crores, to refund the same to the auction purchaser alongwith interest which was accrued on it as it was deposited in a Fixed Deposit.

The writ petition stands disposed of accordingly.

(MAHESH GROVER)
JUDGE

February 25, 2019
mohinder

(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

MOHINDER KUMAR KAMBOJ
2019.02.28 15:05
I attest to the accuracy and
integrity of this document
Chandigarh