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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.02.2019

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W.P.(C) 2083/2019

G. L. BAJAJ EDUCATIONAL TRUST (REGD.) AND ORS.

..... Petitioners

Through Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Rahul Gupta, Mr. Shekhar Gupta, Mr. V. K. Jain,
Ms. Priyal Jain, Ms. Mehtaab Singh Sandhu
and Mr. Pratishth Kaushal, Advs.

versus

STATE BANK OF INDIA AND ORS.

..... Respondents

Through Mr. Rajeev Mehra, Sr. Adv. with Mr. A.K.
Singh, Mr. S.N. Kapoor, Mr. Rajiv Kapur, Ms. Khushboo
Kapur, Ms. Alisha Kalra and Mr. Sourjya Das, Advs. for
R-1 with Mr. Kishan Lal, SBI AGM and Mr. Saurabh
Singh, SBI, DM (Law).
Mr. S.K. Garg, Advocate for the respondent no.2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

Caveat No.208/2019

1. Since the Caveator has entered appearance, Caveat stands discharged.

C.M. No.9699/2019

2. Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 2083/2019 & C.M. No.9698/2019

3. We have heard the writ petition at the admission stage. We proceed to dispose it of.

4. There are four petitioners in the present writ petition. The first petitioner is G.L. Bajaj Educational Trust and the petitioners no.2 to 4 are the family members. Petitioner no.1 is represented through Mr.Pankaj Agarwal, who is the son of the petitioner no.2.

5. The brief and general background of the relevant facts may be stated to understand the controversy. The respondent no.3 i.e. the Gee Cee Corporation Pvt. Ltd. is the corporate borrower of respondent no.1/ State Bank of India. The liability of respondent no.3 qua respondent no.1 is stated to be to the tune of Rs.55.0 crores. In respect of the said liability, the respondent no.1 has initiated action by filing an Original Application before the Debt Recovery Tribunal against respondent no.3 – the corporate borrower, and respondent no.4 to 8 in the present writ petition, who were impleaded as guarantors. Respondent no.4 to 7 are individuals, namely, Mr.Madan Mohan Mittal, Mr.Gaurav Mittal, Mrs.Rekha Mittal, Mr.Akhil Mittal and respondent no.8 [M/s.Gee Cee Metals Pvt. Ltd.] is a corporate entity.

6. The State Bank of India/ respondent no.1 has, in its favour, security of two immovable properties, viz. one property situated in Preet Vihar, Delhi belonging to and mortgaged by respondent no.6/ Ms.Rekha Mittal, and one property in Uttarakhand, which is owned and mortgaged by respondent no.3 – the corporate borrower. The State Bank of India, with a view to liquidate part of its claim, initiated proceedings under SARFAESI Act in May, 2014. The corporate borrower of State Bank of India, i.e. M/s.Gee Cee Corporation Pvt. Ltd./ Respondent no.3 made an offer for one time settlement (OTS) dated 03.10.18 to the State Bank of India, which was also accepted by the State Bank of India. However, the terms and conditions of the offer were not complied with by the borrower / respondent no.3 and, consequently, that offer was withdrawn by the State Bank of India on 17.11.2018.

7. Consequently, SBI sought to put the Preet Vihar property of respondent no.6/ Mrs.Rekha Mittal, mortgagor/ guarantor to auction on 08.01.2019. The reserve price fixed for the Preet Vihar property was 10.60 crores and the highest bid received in response was 10.63 crores. The auction was notified well in advance of the auction date.

8. The corporate guarantor, Respondent no. 8 [M/s.Gee Cee Metals Pvt. Ltd.] owned a property situated at Maharani Bagh, Delhi. The said property of respondent no.8 [M/s.Gee Cee Metals Pvt. Ltd.] was not mortgaged with the State Bank of India to secure the loans advanced to Respondent No.3. In respect of an independent loan transaction between respondent no.8 [M/s.Gee Cee Metals Pvt. Ltd.] and Kotak Mahindra Bank Ltd. i.e.

respondent no.2, respondent no.8 mortgaged the said property situated at Maharani Bagh with respondent no.2/ Kotak Mahindra Bank Ltd.. In respect of the said loan transaction, as there were defaults, Kotak Mahindra Bank Ltd./ Respondent No.2 initiated proceedings under the SARFAESI Act.

9. The State Bank of India learnt of the property owned by respondent no.8 [M/s.Gee Cee Metals Pvt. Ltd.] – its corporate guarantor, at Maharani Bagh. In July, 2018, the State Bank of India moved an application i.e. I.A. No. 1125/18 before the DRT (wherein its OA was already pending), for attachment of the property at Maharani Bagh, on which notice was issued by the DRT on 18.07.2018.

10. On 03.12.2018 Kotak Mahindra Bank issued an advertisement for sale of the Maharani Bagh property by e-auction. The last date for receipt of bids was 04.01.2019 till 5:00 PM. The reserve price fixed was Rs. 33.71 crores. When the State Bank of India learnt of the fact that the Maharani Bagh property was mortgaged to Kotak Mahindra Bank, and that the loan amount owed by respondent No. 8 to respondent no.2/ Kotak Mahindra Bank Ltd. was to the tune of Rs.13.5 cores only, whereas the property at Maharani Bagh was worth much more, and that the said property at Maharani Bagh had been put up for auction by Kotak Mahindra Bank Ltd, the State Bank of India moved another application i.e. I.A. No. 1876/18 before the Debt Recovery Tribunal on 3.12.2018, to seek attachment of the excess sale proceeds of the property at Maharani Bagh, which shall remain un-appropriated after satisfaction of the claim of Kotak Mahindra Bank Ltd.

11. Notice on this application was issued on 12.12.18, returnable on 18.12.18. On 18.12.18, Kotak Mahindra Bank and the defendants in the O.A. were all represented, and sought time to file their reply. The matter was adjourned to 07.01.2019. However, no orders were passed regarding attachment of, either the Maharani property, or part thereof, or the excess sale proceeds.

12. It appears that in the e-auction process conducted by the Kotak Mahindra Bank Ltd. for the Maharani Bagh property, the bid received was for 33.75 crores, which was above the reserve price of 33.71 crores. Pertinently, the petitioners did not make any offer in the said e-auction process. However, after the close of the last date for receipt of the bids and deposits of Earnest Money Deposit, it appears that the petitioners represented that they are interested in buying the entire Maharani Bagh property for Rs.35.0 crores in the aggregate. Pertinently, the bid made by the petitioners was entertained in the light of the order dated 23.10.2018 passed by a learned Single Judge of this court in WP(C) Nos. 11441/2018 and 11432/2018 preferred by Respondent Nos. 3 and 8 herein respectively. In so far as it is relevant, that order stated:

“6. It is seen from the above that the dispute relates to enforcement of security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the respondent bank has already initiate proceedings under the said Act. In this view, no interference by this Court is warranted in the said proceedings. Admittedly, the petitioner owes an amount of Rs 13.50 crores to the respondent bank and the respondent bank is entitled to enforce its security interest by sale of the mortgaged property.

7. At this stage, Mr Wali learned counsel appearing for the petitioner states that the petitioner is willing to discharge its entire liability to the respondent bank, within a period of two months from today. Considering that the mortgaged property is a residential house, it would be apposite if the respondent bank considers this offer and refrains from taking any steps for sale of the said property for the said period.

8. The bank would consider the aforesaid observation and take an appropriate decision. It is, however, clarified that this Court had not issued any direction to the respondent bank but merely expressed a view that may be considered by the bank given the circumstances of the case. It would also be open for the petitioner to raise such submissions before the DRT.

9. It is also open for the petitioner to locate a buyer for the part of the property for discharge of its debt towards the respondent bank. In such event, the petitioner shall produce the prospective buyer before the DRT/the respondent bank for finalising the sale of the property or part thereof. The respondent bank or the DRT may consider the sale of the mortgaged property (or a part thereof) at the instance of the petitioner”.

13. Reference to the “respondent bank” in the above extract is to Kotak Mahindra Bank; “mortgaged property” is the Maharani Bagh property and; to “the Petitioner” are respondent Nos. 3 and 8 herein.

14. In the aforesaid background, the matter came up before the Debt Recovery Tribunal on 5.1.2019. These proceedings took place in the background that the two attachment applications of SBI were already pending before the same DRT. On 5.1.2019, the State Bank of India, Kotak Mahindra Bank Ltd., respondent no.3 [M/s.Gee Cee Corporation Pvt. Ltd.] i.e. the corporate borrower of SBI; M/s.Gee Cee Metals Pvt. Ltd., the corporate borrower qua Kotak Mahindra Bank Ltd. and the guarantor qua

SBI, as well as the proposed buyers i.e. the petitioners were represented. It was submitted by the buyers before the Tribunal – who were described as the “strategic buyers”, that they would deposit Rs.13.5 crores in the account of Kotak Mahindra Bank Ltd. towards the full and final settlement of the claim of the Kotak Mahindra Bank, and they would also deposit the amount of Rs.19.0 crores in the account of State Bank of India, which would be kept in a no lien account. The apprehension of the strategic buyers, that the sale may not be perfected, despite their parting with the entire sale consideration, was also put to rest by the tribunal, while passing its order. The order passed by the Tribunal on 5.1.2019 reads as under:

“Dated: 5.1.2019

*Present:- Sh.Anand Aggarwal & Ms.Reena Jain Malhotra,
counsel for the applicant in both SAs.*

*Sh.S.K. Garg, counsel with Sh.Sudhir Kumar, Chief
Manager of the respondent / Kotak Mahindra Bank in both
SAs.*

Mr.A.K. Singh, counsel for SBI.

*Sh.Rahul Gupta and Sh. Rajesh Rattan counsel for
the 3rd party interveners*

*Heard the counsels representing M/s.GEE CEE Corp. Pvt. Ltd.,
M/s.GEE CCEE Metal Pvt. Ltd, Kotak Mahindra Bank, State
Bank of India and interveners. **It is submitted that the strategic
buyers will deposit Rs.13.50 crs. in the account of the Kotak
Mahindra Bank towards the full satisfaction of the claim of
the Kotak Mahindra Bank and an amount of Rs.19.00 crs in
the account of State Bank of India.** The apprehension of the
strategic buyer is that if the sale deed is not executed the
amount may not be released to the respective accounts of the
SBI and Kotak Mahindra Bank. The counsel for the Kotak
Mahindra Bank submitted that if the sale is not materialized the*

*bank will be deprived of the proceeds of the auction. In the facts and circumstances the Kotak Mahindra Bank can proceed with the auction but does not confirm the auction. If the sale deeds are executed and the amounts Rs.13.50 crs is released to the Kotak Mahindra Bank the auction conducted will be null and void. **In so far as SBI is concerned if the strategic buyer deposits Rs.19.00 crs with SBI the same shall be kept in no lien interest bearing account. The sale between the corporate borrower and strategic buyer shall be completed within 15 days** and if the sale is not materialized within 15 days the strategic buyers is entitled for refund of the amount from the respective banks. In the meanwhile the amount deposited shall be kept in interest bearing no lien account. Once the sale in favour of strategic buyers failed, the Kotak Mahindra Bank is at liberty to confirm the sale. If the sale is materialized the Kotak Mahindra Bank shall release the original title deeds and possession of property to the strategic buyers – 1. G.L. Bajaj Educational Trust, 2. Sh. Ram Kishore, 3. Sh. Vinay Agrawal and 4. Mrs. Anshu Agarwal.*

For appropriate orders posted to 29.1.2019. A copy of this order be also placed in SA/168/2018.” (emphasis supplied)”

15. After the said order had been passed, respondent no.3 moved an application i.e. S.A. No.04/2019 on 07.01.2019, claiming that on 5.1.2019, when the proceedings were held before the DRT, the alleged broad understanding was that the OTS in relation to the debt owed to the State Bank of India would be revived, and the auction of the property at Preet Vihar would not be confirmed. It was claimed that the alleged understanding was that the amount of Rs.19.0 crores agreed by the petitioners herein to be deposited with the State Bank of India in a no lien account, would be utilized to enforce the OTS, once revived.

16. As noticed above, on 08.01.2019, auction of the Preet Vihar property was held by SBI and it came to be sold for Rs. 10.63 crores to one Mrs. Sudha Agarwal and, on the following day, an order was passed by the DRT in S.A. No. 04/19 (dated 08.01.2019), that the sale of the Preet Vihar property, if any, would be subject to the result of the said S.A. No. 04/19.

17. Two more applications, I.A. No. 55/19 in S.A. 168/2018, & I.A. No. 56/19 in S.A. 169/2018 were moved on 09.01.2019 by respondent nos. 8 & 3 respectively, to seek modification of the order dated 05.1.2019, to the effect that respondent no.8 – the owner and proposed seller of the Maharani Bagh property, should not be called upon to deposit the amount of Rs.19.0 crores with the State Bank of India.

18. On 10.1.2019, the tribunal disposed of the said applications moved by respondent no.3 and respondent no.8. The order dated 10.1.2019 passed by the tribunal reads as under:

*“I.A.55/19 in GEE CEE METALS PVT LTD AND ORS.
SA/168/2018 VS.KOTAK MAHINDRA BANK*

*I.A.56/19 in GEE CEE CORP. PVT LTD AND ORS.
SA/169/2018 VS.KOTAK MAHINDRA BANK*

*SA No.04/2019 GEE CEE CORPORATION PVT LTD Vs.
STATE BANK OF INDIA*

Dated: 10.1.2019

*Present: Sh.Anand Aggarwal and Ms.Reena Jain Malhotra,
counsel for the applicant in all SAs*

Sh.Rahul Gupta, Sh. V.K. Jain an Sh.Shekhar Gupta, counsel for the strategic buyers in SA No.168 & 169/2019

Sh.A.K. Singh, counsel for Sh.Kishn Lal, AGM and Sh.Rajiv Khanna, Manager (Law) of respondent SBI in all SAs.

Sh.S.K. Garg, counsel for Kotak Mahindra Bank in all SAs.

Heard all the parties in I.A. No. No.55/18 (in SA No.168/2018) & I.A. No. No.56/19 (in SA NO.169/2018). In compliance of order in SA NO.168/18 and SA No.169/18 on 5.1.2019 this Tribunal, after hearing the counsels for M/s.CEE Corporation Pvt. Ltd., M/s.GEE CEE Metals Pvt. Ltd., Kotak Mahindra Bank Ltd., SBI and the strategic buyers, directed the strategic buyers to deposit Rs.13.50 cr with the Kotak Mahindra Bank. The strategic buyers deposited Rs.13.50 crs. in the account of Kotak Mahindra Bank towards full satisfaction of its claim. It is submitted that the said amount was accepted by the Kotak Mahindra Bank. So far as the property mortgaged to the Kotak Mahindra Bank is concerned, the debtor can execute the sale deed in favour of the strategic buyer(s), mentioned in order dated 5.1.2019.

In so far as the offer of strategic buyers to deposit Rs.19.00 crs in the no lien account with the SBI, subject to same terms and conditions imposed on 5.1.2019, the said offer is not accepted by the SBI and went ahead with the auction which was made subject to the result of the SA. In the facts and circumstances of the case, the counsel for the strategic buyer submits that they are withdrawing their offer of depositing Rs.19.00 crs with the SBI as they are going ahead with the sale. The attachment before judgment in the pending OA of SBI will be decided on the given date.

Posted to date already fixed i.e. 29.1.2019. A copy of this order be also placed in SA NO.169/18 & SA No.04/2019.

DASTI.” (emphasis supplied)”

19. From the above, it would be seen that the strategic buyer i.e. the petitioners sought to withdraw their offer of depositing Rs. 19 crores with the SBI in a no lien account – even though, it should have been none of their concern that the said amount was going into the coffers of SBI in a no-lien account in terms of their statement made on 05.01.2019, and not into the hands of respondent No. 8.

20. On the very next date i.e. 11.1.2019 – which was a Friday, the State Bank of India rushed to prefer its appeal against the order dated 10.01.2019 before the Debt Recovery (Appellate) Tribunal, wherein the impugned orders have been passed. The appeal was listed before the Debt Recovery (Appellate) Tribunal on Monday, the 14.1.2019. The order dated 14.1.2019 reads as under:

“Learned counsel for the appellant has argued that appellant has to recover a sum of Rs.55 crores odd from respondent no.1 to 6 herein and for recovery of those dues, the appellant had filed an O.A. in which an application for attachment of one of the properties belonging to the respondent no.6 (corporate guarantor) was sought to be attached before judgment. However, learned DRT is not even taking up that application for consideration and in the meanwhile has permitted some private parties to purchase the property of which an order for attachment before judgment was being sought, merely on payment of Rs.13.50 crores even though value of that property was around Rs.33.0 crores odd and the appellant is in any event entitled to recover the amount in excess of the recoverable dues of the Kotak Mahindra Bank. However, the property has been permitted by the learned DRT to be sold to some third party who however not in any way concerned with the pending S.As. filed by the Kotak Mahindra Bank’s borrowers for a mere sum of Rs.13.50 crores.

Issue notice to the respondents, returnable on 21.01.2019.

In the meanwhile, status quo shall be maintained in respect of the title as well as possession of property no.D-8, Maharani Bagh Colony, New Delhi – 100065 and no title documents shall be executed in particular by the appellant bank's borrowers in respect of the aforesaid property in favour of so called strategic buyers namely, G.L. Bajaj Educational Trust, Sh.Ram Kishore, Sh. Vinay Agrawal and Mrs.Anshu Agarwal.

As requested, appellant will be at liberty to submit a copy of this order in the office of the Sub-Registrar concerned also, so that no title documents in respect of the aforesaid property is got registered by the so called strategic buyers in order to defeat the recovery of public dues of the appellant bank.

Dasti.” (emphasis supplied)

21. From the above, it would seem that DRAT directed that *status quo* shall be maintained with regard to the title and possession of the Maharani Bagh property, and no title documents shall be executed in respect of the Maharani Bagh property in favour of the strategic buyer i.e. the petitioners herein. A copy of the order was permitted to be served on the Sub-Registrar concerned, so that no title documents in respect of the said property are registered.

22. It transpires that on 11.1.2019 itself, the petitioners proceeded to make payment of the entire consideration for the purchase of Maharani Bagh property, and to get the sale deeds executed and registered in the office of Sub-Registrar. A couple of applications were then moved by the present petitioners before the DRAT, primarily to seek vacation of the order dated 14.01.2019; for impleadment, and; for early hearing.

23. Since the sale deeds in respect of the Maharani Bagh property had been got executed and registered, and the balance sale consideration, after payment of Rs. 13.50 crores to Kotak Mahindra Bank – which included the amount of Rs. 19 Crores, had been paid by the petitioners directly to respondent No.8, the State Bank of India moved another application i.e. I.A. No. 175/2019 on 29.1.2019, wherein the following reliefs were sought:

“a. Allow the present application without prejudice to the rights and contentions of the appellant.

b. Ex-parte direct the Respondent no.1 to 6 to file on Affidavit about the status of Rs.21.15 Crores paid by the strategic buyers to the Respondent no.6.

c. Ex-parte direct the Respondent no.6 to deposit Rs.21.50 Crores with the Registrar, Debts Recovery Appellate Tribunal till the present appeal is decided.

d. Ex-parte attach the accounts of the Respondent No.6 as mentioned in Para 7 of the Application or any other account, where Rs.21.15 Crores have been transferred by the Respondent No.6.

e. Or in alternative/ and Set-aside the Sale dated 11.01.2019 conducted by the Respondent No.6 in favour of the Strategic buyers namely, G.L. Bajaj Education Trust, Sh. Ram Kishore, Sh. Vinay Aggarwal and Mrs. Anshu Agarwal.”

24. By the impugned order dated 12.2.2019, the DRAT has disposed of the appeal. The operative portion of the impugned order reads as under:

“31. Considering all the facts and circumstances, the impugned order of the learned DRT permitting the sale of property in Maharani Bagh without payment of Rs.19 crores to

State Bank of India cannot be sustained. In fact, because of that order the 'strategic buyers' and the mortgagor, who can also now be called as 'strategic mortgagor', have started taking advantage of that order of the DRT by claiming that they have done nothing illegal by going ahead with the sale transactions since the DRT itself had given green signal to them. Consequently, the order dated 10.1.2019 is set aside. However, the setting aside of the order dated 10.1.2019, complete and substantial justice cannot be said to have been done and further consequential directions will also have to be given, as was also submitted by Mr.Mehra, not only to respondents who are sitting pretty with payment of Rs.21 crores in their pockets as well as against the 'strategic buyers' who have been successful in hoodwinking the system by buying three floors for a sum of Rs.21 crores even though the understanding between all the parties right from the beginning was that the property in Maharani Bagh was to be sold to the 'strategic buyers' only to clear the outstanding dues of Kotak Mahindra Bank and not to confer a fortune upon them.

32. Thus, respondents 1 to 6 are directed either to pay to State Bank of India or to deposit in the Registry of this Tribunal a sum of Rs.21 crores which they have received in excess of the amount which was payable to Kotak Mahindra Bank. This deposit should be made within one week. Since this Tribunal has also come to the conclusion that this is a case of connivance between the owner of the property in Maharani Bagh and so-called 'strategic buyers' to defeat the efforts of State Bank of India to recover huge amount of public money from its defaulting buyer / guarantor M/s.Gee Cee Metals Pvt. Ltd, the buyers shall not be entitled to get the physical possession of the properties sold by M/s.Gee Cee Metals Pvt. Ltd. on 11.1.2019 from Kotak Mahindra Bank, nor will this

Bank hand over the title deeds to them. In case the aforesaid directions are not complied with within a period of one week, the appellant Bank will be at liberty to take appropriate steps for ensuring implementation of the same of the same in accordance with law.

33. *This appeal stands disposed of accordingly.”*
(emphasis supplied)

25. The petitioners have a limited grievance in relation the directions issued by the Tribunal. Firstly, the petitioners submit that the finding returned by the DRAT that the petitioners have “hoodwinked” the system in collusion with, inter alia, respondent Nos. 3 and 8, is unfounded and not justified. The submission is that the petitioners are bona fide purchasers of the property at Maharani Bagh for full consideration, and having paid the entire consideration in terms of the order passed by the DRT on 10.01.2019, and having got the sale deeds executed in their favour, the direction issued by the Tribunal that the buyers, namely, the petitioners shall not be entitled to the title documents and the physical possession of the property sold by respondent No. 8 on 11.01.2019, is illegal and unjustified.

26. The submission of Mr. Nigam, learned senior counsel for the petitioners is that so far as the petitioners are concerned, they were only interested in buying the property at the price they offered, and their bona fides can be judged from the fact that they had even got the pay orders for Rs. 19 crores prepared in favour of the State Bank of India after the passing of the order dated 05.01.2019. However, that order was modified by the

Tribunal at the instance of respondent No. 3 and 8 on 10.01.2019, whereby the Tribunal directed the petitioners to deposit Rs. 13.05 crores with Kotak Mahindra Bank towards full satisfaction of their claim. In terms of the order dated 10.01.2019, the petitioners were relieved of their statement made on 05.01.2019, that they would deposit Rs. 19 crores with State Bank of India.

27. The submission of Mr. Nigam is that the petitioners were bound to pay the entire sale consideration to get respondent No.8 to execute the sale deed and, consequently, the balance sale consideration was paid to respondent No.8. Mr. Nigam submits that the sale deed could be got executed after 05.01.2019 within 15 days, and there was nothing abnormal about the sale deeds being got executed, and the transaction completed on 11.01.2019. In support of his submission, Mr. Nigam places reliance on the decision in ***Sadashiv Prasad Singh v. Harendar Singh and Others***, (2015) 5 SCC 574 and in particular on paragraph 17 of the said decision which reads as follows:

“17. The learned counsel for the auction-purchaser Sadashiv Prasad Singh, in the first instance vehemently contended, that in terms of the law declared by this Court, property purchased by a third party auction-purchaser, in compliance with a court order, cannot be interfered with on the basis of the success or failure of parties to a proceeding, if the auction-purchaser had bona fide purchased the property. In order to substantiate his aforesaid contention, the learned counsel representing Sadashiv Prasad Singh placed emphatic reliance, firstly, on a judgment rendered by this Court in Ashwin S. Mehta v. Custodian [Ashwin S. Mehta v. Custodian, (2006) 2 SCC 385] . Our attention was drawn to the following observations recorded therein: (SCC p. 407, para 70)

“70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan [(1887-88) 15 IA 12] .) The said decision has been affirmed by this Court in Gurjoginder Singh v. Jaswant Kaur [(1994) 2 SCC 368] .”
(emphasis supplied)”

28. Mr. Rajeev Mehra, learned senior counsel for the respondent SBI/ caveator, has vehemently opposed the submissions of Mr. Nigam. Mr. Mehra submits that the collusion and connivance of the petitioners with the borrowers/ guarantors is writ large in the present case. He submits that, firstly, the petitioners did not participate in the e – Auction process for which bids had to be made by 05.00PM on 04.01.2019. He submits that this was a deliberate and calculated move on the part of the petitioners in collusion with respondent Nos. 3 & 8 and the other guarantor respondents, and the purpose of this move was to outbid the highest bidder in the e– Auction process marginally, so that the petitioners remain out of the e– Auction process in the matter of deposit of the sale consideration. Had the petitioners participated in the e–Auction process, they would have had to abide by the e–Auction terms, which required the successful bidder to deposit the entire sale consideration with the Kotak Mahindra Bank in the first instance. In that eventuality, after adjusting the outstanding liability of respondent No.8, the Kotak Mahindra Bank would have subsequently transferred the excess consideration received by it in terms of orders that the

Tribunal would have passed in the applications moved by the SBI – to seek attachment of the Maharani Bagh property and the sale proceeds remaining after settlement of the claim of Kotak Mahindra Bank. He submits that since the attachment applications of the State Bank of India were pending, with a view to circumvent the impending attachment, and to flee with the balance sale consideration, the petitioners were introduced post the closing of the last date for making of the bids under the e – Auction Process, with a marginally higher bid.

29. Mr. Mehra submits that the petitioners had made a statement on 05.01.2019 that they would deposit Rs. 13.05 crores in the account of Kotak Mahindra Bank towards full satisfaction of the claim of the said bank. The petitioners had also made the statement that they would deposit Rs. 19 crores with State Bank of India which would be kept in no lien interest bearing account, in view of the fact that the two applications of State Bank of India for attachment of the property and for attachment of the excess sale consideration were pending before the Tribunal, and this statement was made, obviously, with the agreement and consent of the borrowers/guarantors, including respondent Nos. 3 and 8. This arrangement was accepted by the State Bank of India, since its rights were safeguarded and this arrangement was in consonance with the 2nd attachment application moved by the State Bank of India. Mr. Mehra submits that, thereafter, respondent No. 3 and 8 sought to resile from the agreed order passed on 05.01.2019, by falsely claiming that it had been understood between the State Bank of India and respondent No. 3 that the OTS offered to respondent No.3 would be revived, and that the amount of Rs. 19 crores would be

adjusted against payment under the OTS, and that the property at Preet Vihar shall not be sold in auction. He submits that no such understanding was ever arrived at. If such an understanding were to exist, the same would have found recorded in the order dated 05.01.2019. Mr. Mehra submits that the conduct of the petitioners shows their blatant collusion with respondent Nos. 3 to 8 herein, since it was the petitioners, who submitted before the DRT on 10.01.2019 *“that they are withdrawing their offer of depositing Rs. 19.00 crores with the SBI as they are going ahead with the sale.”* The sale in this quotation refers to the sale of the Preet Vihar property. He submits that the petitioners had absolutely no concern with the outstanding liabilities of respondent No.3 or with the *inter se* rights and liabilities of State Bank of India on the one hand and respondent Nos. 3 to 8 on the other hand. They had no justification to withdraw their offer to deposit Rs. 19 crores with the State Bank of India in terms of the order dated 05.01.2019, which had been made keeping in view the fact that the SBI’s application for attachment of the Maharani Bagh property, and its balance sale proceeds was pending before the DRT.

30. He submits that the order dated 10.01.2019 was patently laconic, since the Tribunal sacrificed the interest of the State Bank of India, despite its dues being to the tune of Rs. 55 crores; the sale price of the Preet Vihar property being only Rs. 10.60 crores; respondent No.8 – the owner of the Maharani Bagh property being the corporate guarantor of the State Bank of India and; the two applications of the State Bank of India for attachment, being pending. He submits that the Tribunal returned no finding with regard to the alleged understanding of the borrower respondent No. 3 with the State

Bank of India; with regard to the revival of the OTS; the adjustment of the amount of Rs. 19 crores towards payment under the alleged OTS and; the non- confirmation of the sale of the Preet Vihar property. He submits that the order passed by the DRT on 10.01.2019 would shock the conscious of any Court, and the fact that it was a patently illegal order, would and should have been known to the petitioners.

31. He submits that the petitioners deliberately rushed to pay the entire sale consideration on 11.01.2019, and to have the sale deeds executed and registered, so as to frustrate the rights of the State Bank of India in collusion with respondent Nos. 3 to 8, and to enable the borrowers, including respondent Nos. 3 & 8, to flee with the balance sale consideration, after settlement of the dues of Kotak Mahindra Bank. He points out that the collusion between the petitioners and respondent Nos. 3 to 8 is also evidenced by the fact that the respondent No.8 sold the entire Maharani Bagh property to the petitioners, even though there was no need to do so. He points out that the sale of only the Basement and the Ground Floor would have sufficed to meet the liability owed to Kotak Mahindra Bank since the said portion was sold for Rs. 14 crores. But the petitioners were interested in acquiring the entire property, which was not possible without the cooperation of respondent Nos. 3 to 8. He submits that had the conduct of the petitioners been *bona fide* and prudent, they would have either deposited the balance sale consideration with the Kotak Mahindra Bank, or with the State Bank of India, or in the DRT, or at least waited for a couple of days to enable the State Bank of India to approach the DRAT to assail the order dated 10.01.2019. Not having acted *bona fide*, and at their own peril,

the petitioners are not entitled to enjoy the fruits of their collusive actions with the borrowers. Thus, they should not be permitted to take over the possession of the Maharani Bagh property, or the sale deeds in respect thereof, unless respondents no.3 to 8 deposit the balance sale consideration – after settlement of the dues of Kotak Mahindra Bank, with State Bank of India. He submits that the said sale deeds should be cancelled in the event of the excess sale consideration not being deposited with the State Bank of India.

32. We have heard the submissions of Mr. Nigam, learned senior counsel for the petitioners as well as the submissions of Mr. Mehra, learned senior counsel for the caveators/ SBI/ Respondent No.1. We have also perused the record, including the impugned order. The primary submission of Mr. Nigam is that the Tribunal was not justified in concluding that the petitioners have not acted bona fide, or that they have acted in collusion and connivance with respondent Nos. 3 to 8 when they proceeded to pay the entire consideration in respect of Maharani Bagh property, and to get the sale deeds registered in their favour on 11.01.2019. The submission is that the petitioners acted bona fide, and with prudence in accordance with the order dated 10.01.2019 passed by the Tribunal, which modified the order dated 05.01.2019 – whereunder a part of the sale consideration to the extent of 19 crores were to be deposited with the State Bank of India in a no lien interest bearing account. Since the property at Maharani Bagh was purchased by the petitioners, they were obliged to make payments therefor to the owner i.e. respondent No.8, or on behalf of respondent No. 8 to Kotak

Mahindra Bank, who had initiated action under the SARFAESI Act and put the property to auction.

33. Thus, the issue that arises for our consideration is whether the conduct of the petitioners could be described as bona fide or prudent. If the petitioner acted bona fide and with prudence, their grievance could be justified – that having paid the entire consideration for the Maharani Bagh property and got the sale deed executed and registered in their favour, they cannot be denied either the delivery of the title deeds, or the physical possession of the property, merely because respondent No.1 SBI claims, inter alia, attachment of a part of the sale proceeds which were pocketed by respondent No.8.

34. The expression “*bona fide*” is employed to describe human conduct in a variety of situations and in different legal context. We may refer to ***P. Ramanatha Aiyar’s Advanced Law Lexicon, 3rd Edition*** (***Extensively Revised and Enlarged***) (***Reprint 2009***), which compends the meaning of the expression “*bona fide*”, as expounded in various situations by the Courts. We pick up the meaning ascribed to the said expression, without reference to the case law, since the source is already disclosed.

35. When one says that the conduct of a person is “*bona fide*”, or that he has acted “*bona fide*”, all that it means is that he has acted in good faith; without fraud or deception; honestly, as distinguished from bad faith. It means that he has acted openly and sincerely. When we say that something is done “*bona fide*”, it means that it is done really with good faith, without any fraud or deceit. “*Bona fide*” is latin for “*in good faith*”. It usually

appears in reference to contracts. It is also used simply to mean honest and trustworthy. In the context of banking, it means genuine, in good faith, non fraudulent and honest action. The expression “*bona fide*” means only “good faith” or “honesty of dealing”. In the context of Rent Control Legislation, the word “*bona fide*” is understood to mean that the requirement of the landlord must be honest and not be tainted with any oblique motive. In the context of trademark law and passing off, the word “*bona fide*” normally means honest use by the person of his own name, without any intention to deceive anybody, or without any intention to make use of the goodwill which has been acquired by another trader. Nothing is “*bona fide*”, which is not done with due care and attention. An action is said to be done in, or with good faith, when it is done honestly, openly and sincerely; without deceit or fraud. For an action to be “*bona fide*”, it should be done innocently, in the attitude of trust and confidence without notice of fraud etc.

36. In ***Penn v. Alexander***, (1893) 1 QB 522, the Court held that a person who travelled the prescribed distance of three miles, but only for the purpose of obtaining a drink during prohibited hours, was not a “*bona fide traveler*”. Dishonesty could perhaps be imputed in the sense that, the person must have known that the intention of the exemption for travelers was not to require people to travel in order to drink, but to permit the provision of drinks to facilitate travelling undertaken for other reasons.

37. In ***R.K. Mohammed Ubaidulah and Others v. Hajee C. Abdul Wahab (D) by LRS. and Others***, (2000) 6 SCC 402, the respondent plaintiff entered into an agreement to purchase the suit property, a godown, of which

he was a tenant since about 1962. The property was owned by Defendant No.1. The respondent plaintiff issued a notice expressing his readiness and willingness to perform his part of the bargain and to seek execution of the sale deed. However, defendant No.1 - the owner, sold the property to defendant Nos. 2 to 5 – the appellants before the Supreme Court, for a slightly higher consideration. The respondent plaintiff filed a suit to seek a specific performance contending that defendant Nos. 2 to 5 i.e. the appellants/ subsequent agreement purchasers had prior knowledge of the earlier agreement, and that the defendant No.1 had acted dishonestly in selling the property to defendant Nos. 2 to 5/ appellants. The plaintiff/ defendant No.1 claimed that the second sale transaction was, therefore, not bona fide. The defence of the appellant/ defendant Nos. 2 to 5 was that they were bona fide purchasers without notice of the earlier agreement to sell executed between plaintiff and defendant No.1. They claimed that though they were aware of the fact that the plaintiff/ respondent was a tenant in the suit premises for many years, they did not enquire as to whether he had any other interest in the suit property. They claimed that they had informed the plaintiff/ respondent of their intention to buy the suit property, and even sought his permission to inspect the same.

38. The Trial Court rejected these defences and decreed the suit holding that the respondent plaintiff was always ready and willing to perform his part of the contract, and that the appellants/ defendant Nos. 2 to 5 are not bona fide purchasers without notice of the earlier agreement. The High Court dismissed the appeal. While dismissing the appeal, the Supreme Court tested the claim of the appellant/ defendant Nos. 2 to 5 that they had acted

bona fide and with prudence in paragraph 13 and 19. The Supreme Court observed:

“13. In para 6 of the written statement Defendants 2 to 4 stated that they had purchased the property only after contacting the plaintiff; they sought the permission of the plaintiff to inspect the suit godown informing him of their intention to purchase the same from the first defendant. The trial court did not accept this contention and rightly so in our opinion. In the ordinary course a reasonable prudent person placed in the position of the plaintiff would not have failed to mention about the existence of the prior agreement in his favour particularly when he is using the very same godown as a tenant under the first defendant for the last 20 years prior to the filing of the suit. Similarly Defendants 2 to 4 intending to purchase the property in possession of a tenant would not have failed to make inquiry as to any further interest in relation to possession or title of the plaintiff over the suit property. It is not uncommon that where a tenant is in possession of the property, that too for a long time, using it for business purpose, he would always like to purchase the property getting all advantages if offered for sale. Normally the landlord or owner of the property would also be interested in selling the property to a person in possession if a reasonable price is given to avoid litigation and to have smooth transaction. In certain statutes provisions are even made to give first option to a tenant to purchase the property. In such situation Defendants 2 to 4 would have made inquiry with the plaintiff about the nature of his possession and title under which he is in possession on the date of sale deed (Exhibit B-1) executed in their favour. If they had made enquiry the plaintiff would have certainly revealed about Exhibit A-3, the prior agreement in his favour. If such enquiry was not made it only means that Defendants 2 to 5 wilfully abstained from making such inquiry or they grossly neglected to do so. The defence of Defendants 2 and 4 is not consistent with regard to contacting the plaintiff and informing of their intention to purchase the

property. Once they took a stand that they directly contacted the plaintiff seeking his permission to inspect the suit property and in the evidence of DW 1 it is stated that they sent their clerk to the plaintiff seeking permission to inspect the suit property. Neither the name of that clerk was given nor was he examined nor is it stated about the same in the written statement.

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19. In view of what is stated above, it is clear that Defendants 2 to 5 were not bona fide purchasers for value without prior notice of the original contract and that they were required to make inquiry as to the nature of possession or title or further interest, if any, of the plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the plaintiff was in possession of the property as the tenant. What is material is the inquiry at the time when the subsequent sale transaction was entered into.”
(emphasis supplied)

39. Thus, to test whether the conduct of a person is bona fide, it is not sufficient to say that it is not illegal. The conduct under scrutiny would have to be closely examined to see whether it displays good faith; is not laced with fraud, deceit and deception; is honest and not in bad faith; is devoid of oblique motive; is done with due care and attention.

40. We may now look at as to how the word “*prudence*” is understood in law. According to *Advanced Law Lexicon* (supra), *prudence* means that degree of care, as is required by the exigencies or circumstances under which it is to be exercised. A person is said to be prudent, who has sound judgment in practical affairs and who is circumspect. Conduct which is imprudent may, or may not, be *bona fide*. Imprudence, even if *bona fide*, may be sufficient to visit the person with adverse consequences, for which

he himself may be held responsible. However, when a person acts with imprudence, and recklessly, and/ or there are other circumstances which show lack of bona fides on his part, then he must suffer the consequences, and such a person cannot be allowed to get away with his conduct – which lacks good faith and exhibits bad faith; fraud; deceit and collusion.

41. When one views the conduct of the petitioners in the aforesaid light and in the background of the facts and circumstances taken note of hereinabove, it leaves us with absolutely no doubt that the petitioners neither acted bona fide, nor with prudence when they proceeded to make payment of the entire sale consideration, and to get the sale deeds executed and registered in respect of the entire Maharani Bagh property on 11.01.2019. The Maharani Bagh property was owned by respondent No.8. Respondent No.8 was indebted to Kotak Mahindra Bank with outstanding dues to the tune of Rs. 13.05 crores. Respondent No.8 was also the Corporate Guarantor in respect of the outstanding liabilities of respondent No. 3 to the tune of Rs. 55 crores owed to State Bank of India. Respondent No. 3, at one point of time, had made an offer to the State Bank of India for OTS of dues, which was accepted by the State Bank of India with conditions. Those conditions were not complied with by respondent No. 3 and, consequently, the OTS offer was withdrawn by State Bank of India on 17.11.2018. State Bank of India invoked the SARFAESI Act in respect of the Preet Vihar property of respondent No. 3. However, its market value was far less than the amount owed by respondent No.3. The State Bank of India learnt of the fact that the Maharani Bagh property was owned by respondent No. 8 – it's Corporate Guarantor. Accordingly, State Bank of India sought attachment

of the said property since its original application against respondent No. 3 for recovery of its dues was already pending before the DRT. The State Bank of India also learnt that the Maharani Bagh property was proposed to be sold under SARFAESI Act by Kotak Mahindra Bank and that the reserve price far exceeded the amount owed by respondent No.8 to Kotak Mahindra Bank. The State Bank of India then moved a second application for attachment of the balance sale proceeds. Pertinently, in the e Auction process conducted by Kotak Mahindra Bank for sale of the Maharani Bagh property, the petitioners did not participate till the close of the bid on 04.01.2019 at 05.00 P.M. Thereafter, after they had learnt of the highest bid received in response to the e Auction, they offered to buy the Maharani Bagh property for Rs. 35 crores i.e. marginally higher than the base offer received in response to the e Auction. The offer made by the petitioners was entertained in the light of the order passed by the learned Single Judge of this Court in W.P.(C.) Nos. 11441/2018 and 11432/2018, on 23.10.2018 – permitting respondent Nos. 3 and 8 to locate a buyer for a part of the property for discharge of its debt towards the Kotak Mahindra Bank. Pertinently, even though the order dated 23.10.2018 permitted respondent No. 3 and 8 (who were the petitioners in the aforesaid writ petitions) to locate a buyer for a part of the property for discharge of the debts owed to Kotak Mahindra Bank, they purported to locate the petitioners to buy out the entire Maharani Bagh property in parts, even though it was not necessary for them to sell other portions of the said property – other than the Basement and the Ground Floor to liquidate the liability of Kotak Mahindra Bank. Thus, the sale of the other portions of the Maharani Bagh property is the

entire first floor, Second floor and Third floor with terrace to petitioner Nos. 2, 3 and 4 for Rs. 21 crores was a voluntary sale by respondent No. 8, and not necessitated under SARFAESI to liquidate the liability owed to Kotak Mahindra Bank.

42. In the aforesaid background the matter was taken up by the Tribunal on 05.01.2019 in the presence of all concerned, including the petitioner, State Bank of India, Kotak Mahindra Bank, respondent No. 3 and respondent No. 8. It is pertinent to note that it was the petitioners – who were introduced as the “strategic buyers”, who stated that they would deposit 13.05 crores in the account of Kotak Mahindra Bank towards full settlement of the claim of the said bank, and an amount of Rs. 19 crores in the account of State Bank of India to be kept in a no lien interest bearing account. The sale was to be completed within 15 days and, if so, completed the e Auction held by Kotak Mahindra Bank was not required to be confirmed. Only if the sale in favour of the “strategic buyers” i.e. the petitioners failed, Kotak Mahindra Bank was at liberty to confirm the sale to the highest bidder in the e Auction process. It is obvious that the offer made by the petitioners to, inter alia, deposit Rs. 19 crores with State Bank of India in a no lien interest bearing account was made keeping in view the aforesaid circumstances, else, respondent No. 3 & 8 would have faced the prospect of either the sale not being permitted in respect of portions of the Maharani Bagh property which were not required to be sold to liquidate the outstanding liability owed to Kotak Mahindra Bank, or the excess sale consideration being attached before judgment at the behest of State Bank of India. It is obvious that the petitioners were aware of all the facts taken note

of in preceding paragraph. Only after being aware about the aforesaid background, the petitioners offered to deposit Rs.19 Crores with the State Bank of India in a no lien interest bearing account.

43. Respondent Nos. 3 and 8 sought to resile from the understanding recorded in the order dated 05.01.2019 and moved one application after another as taken note of hereinabove. One of the consequences of one such application moved by respondent 3 was that the auction sale in respect of the Preet Vihar property was directed not to be confirmed. On 10.01.2019, the Tribunal passed the order which was assailed before the DRAT by SBI. We have reproduced that order hereinabove. The said order shocks us beyond belief, and we simply cannot understand how the DRT could have passed such an order. It would suffice for us to say at this stage, that no prudent or cautious person, who is looking to buy an immovable property for Rs. 35 crores – which is litigation locked, would rush to complete the transaction by paying the entire sale consideration on the very next day of the order being passed by the Tribunal, and make payment of the entire sale consideration, when the person is aware of the fact that there is a serious claim made by a nationalized bank in respect of the balance sale consideration in already pending in proceedings before the DRT.

44. Is the conduct of the petitioners bona fide in the circumstances of the case? We feel, certainly not. Pertinently, when the matter came up before the Tribunal on 10.01.2019, it was the petitioners who made a statement that they are withdrawing their offer of depositing Rs. 19 crores with the State Bank of India *“as they are going ahead with the sale.”* It was of no concern

to the petitioners that the State Bank of India was going ahead with the sale of the Preet Vihar property. That was a matter between SBI and respondent No.3. Clearly, the petitioners acted as the spokespersons of respondent Nos. 3 to 8 and they were seeking to protect and advance the interest of respondent Nos. 3 to 8. It is the petitioners who withdraw their offer. It was not that they were directed by the Tribunal to do so. The Tribunal did not reject the applications of the State Bank of India to seek attachment before the judgment. In fact, the Tribunal went on to observe that the applications for attachment before judgment in the pending OA of the State Bank of India will be decided on the given date. It certainly cannot be said, in these circumstances, that the petitioners acted in good faith when they sought to withdraw their offer to deposit Rs. 19 crores with State Bank of India, who had, inter alia, sought attachment of the Maharani Bagh property/ its balance sale consideration. Pertinently, different sale deeds were executed in respect of different portions of the Maharani Bagh property on 11.01.2019, particulars whereof are as follows:

Sl. NO.	Name of the Buyer	Sale Consideration	Portion of the property sold.
1.	Petitioner No. 1– G. L. Bajaj Educational Trust (REGD.)	Rs. 14 crores	Entire basement and ground floor.
2.	Petitioner No. 2 – Mr. Ram Kishore Agrawal, petitioner No. 3– Mrs. Vinay Agarwal and petitioner No. 4– Mrs. Anshu Agarwal	Rs. 21 crores	Entire first floor, second floor and third floor with entire terrace.

45. Thus, to satisfy the claim of Kotak Mahindra Bank, it was not even essential that the entire Maharani Bagh property be put to sale. That the entire Maharani Bagh property would be put to sale to a buyer located by respondent No. 3 and 8, was not even in contemplation when the order dated 23.10.2018 was passed by the learned Single Judge of this Court in WP(C) Nos. 11441/2018 and 11432/2018.

46. The mala fides in the conduct of the petitioners becomes even more glaringly and lacking in good faith, when we examine the manner in which the petitioners and respondent No.8 proceed after the passing of the order dated 10.01.2019. On the very next day, they got together and rushed to complete the sale transaction of the Maharani Bagh Property. The petitioners, obviously, were very keen to pay the entire sale consideration on 11.01.2019 itself. They paid Rs. 13.05 crores to Kotak Mahindra Bank and the remaining sale consideration to respondent No. 8. They were well aware of the applications moved by State Bank of India and the endeavour of the State Bank of India to seek attachment before judgment of the Maharani Bagh property, or the balance sale proceeds. They had ample time to await the taking of legal recourse by State Bank of India against the order dated 10.01.2019. They had been granted 15 days time to complete the transaction vide order dated 05.01.2019. Thus, they could have easily waited to execute the sale transaction up to 16.01.2019.

47. The submission of Mr. Nigam that the petitioners acted in terms of the order dated 10.01.2019 and, therefore, the conduct of the petitioners is bona fide, has absolutely no merit. It is one thing to say that their conduct was

not legally prohibited, and another thing to say that it was bona fide. Every legally permissible conduct is not, necessarily, bona fide. The overall circumstances may render legal conduct mala fide and lacking in good faith. This is demonstrated by the decisions cited above, particularly in ***Penn Alexander*** (supra) and ***R.K. Mohammed Ubaidulah & Ors.*** (supra). Their conduct was neither bona fide nor prudent. As noticed above, a prudent buyer for such a large immovable property, for such high consideration, would want to make doubly sure that he does not act in haste, such that his purchase itself comes into question.

48. Pertinently, the petitioners were represented through counsel, both on 05.01.2019 and 10.01.2019, and they had good legal counsel available to them, who would and should have informed them of the risks involved in rushing into the transaction without waiting for State Bank of India to avail of the legal remedy against the order dated 10.01.2019. Only reason why the petitioners appear to have rushed to complete the transaction on 10.01.2019, and to part with the entire sale consideration on the same day – including over Rs. 21 crores in favour of respondent No.8, appears to be to facilitate the respondent No. 8 fleeing with the balance sale consideration. They, in collusion with respondent No. 8 contrived to present *fait accompli* to the State Bank of India.

49. In view of the above, we find merit in the submission of Mr. Mehra that the petitioners appear to have been introduced as prospective purchasers with the design of keeping the sale of the Maharani Bagh property out of the e Auction process conducted by Kotak Mahindra Bank. Otherwise, there is

no acceptable and reasonable explanation coming forth as to why, the petitioners did not participate in the e Auction process for which the bids could be made till 05.00 P.M. on 04.01.2019, and how is that they suddenly emerged with a higher offer of Rs. 35 crores on the very next day i.e. 05.01.2019. This is coupled with the fact that the petitioners themselves made their statement that they would deposit Rs. 19 crores with the State Bank of India in a no lien interest bearing account on 05.01.2019, and on 10.01.2019, they sought to resile from their earlier statement on the ground that the State Bank of India are going ahead with the sale of the Preet Vihar property (with which they had no concern whatsoever). These aspects clearly bring out the collusion between petitioners on the one hand, and respondent Nos. 3 to 8 on the other hand. Thus, we find that there is absolutely no bona fide in the conduct of the petitioners when they proceeded to make payment of the entire sale consideration for the purchase of the Maharani Bagh property on 11.01.2019 to respondent No. 8 and to get the sale deed executed and registered.

50. We are also clear in our mind that they not having acted with prudence of a common man, have no equity in their favour to demand that the title deeds of the Maharani Bagh property and the actual physical possession thereof be given to them, irrespective of whether, or not, respondent Nos. 3 to 8 comply with the conditions imposed upon them by the DRAT while passing the impugned order. We are thus of the view that there is no justification to interfere with the impugned order and we affirm the said view of the DRAT.

51. The present writ petition is, accordingly, dismissed and the impugned order passed by the learned DRAT is upheld.

52. The order passed by the Presiding Officer – Mr. G.V.K. Raju, Presiding Officer, DRT-II, Delhi, as noticed above, shocks our conscious and we wish to examine as to what steps are called for at our end, if any.

53. We have requested Mr. Rajeev Mehra, Sr. Advocate to assist us on this aspect.

54. List the matter on 28.03.2019 for that purpose.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 28, 2019