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

\+ W.P.(C) 3508/2020, CM APPL. 12449/2020, CM APPL. 12450/2020 & CM APPL. 12451/2020

SAM (INDIA) BUILT WELL PVT. LTD. .....Petitioner

Through: Mr. J.P. Sengh, Senior Advocate with Mr. Anshuman Jain and Mr. Amol Sinha, Advocates.

versus

INDIAN OVERSEAS BANK ....Respondent

Through: Mr. Kunal Tondon and Mr. Surendra Kumar, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**<u>O R D E R</u>**

% **12.06.2020**

1. The hearing was conducted through video conferencing.
2. Issue notice. The learned counsel named above accepts notice on behalf of the respondent.
3. At joint request, the petition is taken up for disposal.
4. The petitioner is a successful bidder for purchase of property bearing Plot No. 17B & 17C, Sector - 16A Film City Noida, District Gautam Budh Nagar, Uttar Pradesh – 201301. It has paid the initial 25% of the bid amount. Later an amount of Rs.1.40 crores was also paid. An amount of Rs.33 crores is still outstanding. The bid was accepted on 09.03.2020 and confirmation of the same was communicated to the petitioner on 12.03.2020. Monies were payable within 15 days thereof or otherwise within 90 days from the date of sale of confirmation under Rule 9 (4) of the Security Interest (Enforcement)

Rules 2002. In the interim, because of the global pandemic, the nationwide lockdown was announced on 24.03.2020 effective from 25.03.2020. The position obtains even today, although it has been partially lifted. After the partial lifting of the lockdown, the petitioner has arranged for the remaining amount of Rs.33 crores through its bank on 04.06.2020 and has duly intimated the respondent about the same. In other words, the money is ready and available to be paid to the respondent. However, the petitioner has a reservation about paying the same to the respondent because in the property purchased in the auction bid, some rooms have been locked by the Official Liquidator in which perhaps some records have been kept. The petitioner would rather have the property without any encumbrance which is what it understood from the E-auction Notice. According to the learned Senior Advocate for the petitioner, the auction was '*As is where is', 'As is what is' and 'Whatever there is'* basis, however, it did not specify that there was encumbrance in some rooms which have been locked by the Official Liquidator. He submits that in the Auction Notice in the column of non-encumbrance, if any, it clearly shows '*none*'. Therefore, today if there is an encumbrance in existence, it cannot be the obligation of the successful bidder to have the encumbrance removed.

5. Evidently, the petitioner had to arrange the monies within the 90 days' period which otherwise constrained it from arranging because of the lockdown. The interest of the respondent is secured. An amount of Rs.33 crores is approved through loan from HDFC bank and shall be treated as an Escrow Account to be appropriated by the respondent

from the day the rooms which have been locked are opened and made available to the petitioner without any *lis* and encumbrance of any party.

6. In view of the above, the respondent shall take appropriate measures to have the said rooms vacated by the Official Liquidator. Till such time, the respondent gets the rooms vacated and delivers unencumbered physical possession of the same to the petitioner, the bid sale shall be deemed as continuing. Since the E-auction did not specify that the rooms were locked and that there was some material lying inside it, the petitioner cannot be asked to store the said material at some other place.
7. The petition, alongwith pending applications, stands disposed-off in terms of the above.
8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

**NAJMI WAZIRI, J**

**JUNE 12, 2020**/RW