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

Date of Decision: 13.02.2020

\+ CO.APP. 19/2019, CM APPLs. 42613/2019 & 42615/2019

NARENDER KUMAR NEHRA ..... Appellant

Through: Mr. Abdhesh Chaudhary, Mr. Om Prakash Shukla, Mr. Manav Sharma and Mr. Ajit Rajput, Advocates.

versus

BHUPINDER SINGH & ORS. ..... Respondents

Through: Mr. Amit Kumar Chadha, Senior Advocate with Mr. C.S. Gupta and Ms. Shristi Gour, Advocates for R-3. Mr. Sandeep P. Agarwal, Senior Advocate, Advocate for R-1. Ms. Ruchi Sindhwani, Senior Standing Counsel with Ms. Megha Bhargava, Advocate for Official Liquidator.

\+ CO.APP. 21/2019, CM APPL. 44407/2019 & 479/2020

NARENDER KUMAR NEHRA ..... Appellant

Through: Mr. Abdhesh Chaudhary, Mr. Om Prakash Shukla, Mr. Manav Sharma and Mr. Ajit Rajput, Advocates.

versus

BHUPINDER SINGH & ORS. ..... Respondents

Through: Mr. Amit Kumar Chadha, Senior Advocate with Mr. C.S. Gupta and Ms. Shristi Gour, Advocates for R-3. Mr. Sandeep P. Agarwal, Senior Advocate, Advocate for R-1. Ms. Ruchi Sindhwani, Senior

Standing Counsel with Ms. Megha Bhargava, Advocate for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (Oral):

CO.APP. 19/2019, CM APPLs. 42613/2019 & 42615/2019 & CO.APP. 21/2019, CM APPLs. 44407/2019 & 479/2020

1. We have heard learned counsel for the Appellant in both the appeals as well as Ms. Sindhwani, learned Senior Standing Counsel representing the Official Liquidator and Mr. Amit Kumar Chadha learned Senior Advocate who represents Respondent No.3 – Fashion Accessories.

2. In CO.APP. 19/2019, the Appellant has assailed the order dated 25.07.2019 passed by the learned Company Judge in CA No. 611/2019 in CO. PET. 329/2011. The aforenoted application had been moved by Respondent No.1 – Bhupinder Singh, the Ex-Director of Koutons Retail India Ltd. – the company in liquidation, to make a better offer of Rs. 26 crores without disclosing the name of the prospective bidder. The application had been made with a view to seek recall of the confirmation of sale of the property in favour of the Appellant herein for an amount of Rs. 21.83 crores, which amount had already been deposited by the Appellant. On 30.05.2019, the Court while issuing notice in CA No. 611/2019 passed the following order:

"***CA No. 611/2019***

1. By this application, the applicant who states himself to be one of the former directors and promoters of the respondent company, seeks to set aside the sale of the property being Plot Nos.539-539A, Sector 37, Udyog Vihar, Phase-II, Gurgaon and rejection of the bid of Sh.Narender Kumar Nehra.

2. The grievance of the applicant is that the reserve price of the said property of Rs.21.83 crores was below even the circle rate. The learned senior counsel appearing for the applicant states that the applicant is ready to pay much higher than the reserve price of Rs.21.83 crores.

3. This court on 06.09.2018 accepted the bid of Sh.Narender Kumar Nehra for Rs.21.83 crores.

4. The learned counsel for the Official Liquidator informed that the bidder has already paid the full bid amount on 09.04.2019. It is also pointed out that the possession of the said property has not been handed over to the bidder.

5. In my opinion, it would be in the interest of the respondent company that the bidding may be held between the applicant and Sh.Narender Kumar Nehra. However, till then the Official Liquidator may not hand over the possession of the said property to Sh.Narender Kumar Nehra. This is also subject to the applicant handing over a banker cheque for a sum of Rs.2.183.00 crores as earnest deposit to the Official Liquidator within two weeks from today.

6. In case, the necessary earnest deposit has not received by the Official Liquidator, the Official Liquidator is free to take steps in accordance with the order dated 06.09.2018.

7. In case, the earnest deposit is made by the applicant, an auction shall take place between the applicant and Sh.Narender Kumar Nehra on the next date of hearing.

8. Notice of this application be also sent to Sh.Narender Kumar Nehra, returnable for 25.07.2019. Bidding shall take place in court of the said property on the same terms for which the sale notice was issued.

9. A copy of this order be given dasti under the signatures of the court master."

3. The Appellant preferred CO.APP. 16/2019 being aggrieved by the order dated 30.05.2019. The said appeal was disposed of on 23.07.2019 by the Division Bench in the following terms:

"***CM Appl. No. 32811/2019 (Exemption)***

1. Exemption allowed, subject to all just exceptions.

CM Appl. No. 32809/2019 (delay)

2. For the reason stated in the application, the delay of 12 days in filing the appeal is condoned and the application is disposed of.

Co. App. No. 16/2019 & CM Appl. No. 32810/2019 (stay)

3. This is an appeal against an order dated 30 th May, 2019 whereby the bid sale of the property belonging to the company in liquidation located at Udyog Vihar, Gurgaon in favour of the present Appellant has been kept in abeyance. As is seen from the impugned order dated 30th May, 2019 this was on account of another person, described by the Appellant herein as a shareholder of the company, coming forth to offer a higher amount for the same property.

4. All that the learned Single Judge has done by the impugned order is to list the matter on 25th July, 2019 for a bidding to *happen in the Court in the presence of the said Applicant and the present Appellant.*

5. The Court sees no reasons to interfere in the matter at this stage.

6. Any submission that the present Appellant has to oppose the said sale can be raised before the learned Single Judge in accordance with law at the appropriate stage. The bona fides of the fresh bidder will be examined by the learned Single Judge.

7. The appeal is dismissed."

4. It is clear that the Division Bench did not rule upon the submissions of the Appellant with regard to his grievance regarding the reopening of the sale, which stood confirmed in his favour. All issues were left to be decided by the learned Single Judge.

5. Thereafter, the impugned order dated 25.07.2019 came to be passed, which reads as follows:

"*CA No.611/2019*

1. Pursuant to the order of this court dated 30.05.2019, the learned counsel for Mr.Narender Kumar Nehra has appeared. He has denied the contention of the learned senior counsel for the applicant about any wrong doing by the said bidder. He, however, states that though this court has power to enhance the sale realisation/consideration of the sale of assets of the respondent company but in terms of the order dated 30.05.2019, Mr.Narender Kumar Nehra would not like to participate in any bidding process. He also states that he denies the allegation made against Mr.Narender Kumar Nehra in this application. He also states that in the application moved by the applicant, the *applicant has stated that they have a prospective buyer and they are willing to pay a sum of Rs.26 crores. Hence, the bid of the applicant be accepted only at Rs.26 crores.*

2. This court had on 30.05.2019 directed that the bidding will take place between Mr.Narender Kumar Nehra and the prospective buyer today. However, it transpires that Mr.Narender Kumar Nehra is not interested in further bidding.

3. In the light of this, learned senior counsel for the applicant states that the bid of the applicant may be accepted at Rs.23 crores.

4. Keeping in view of the fact that additional sum of Rs.1.20 crores approximately is being realised for sale of the assets of the respondent company, the bid of the prospective buyer - M/s. Fashion Accessories is accepted. They have already paid a sum of Rs.2.183 crores to the OL as earnest deposit. In terms of the terms and conditions of auction, M/s Fashion Accessories will deposit 25% of the bid amount (excluding earnest deposit) within 7 days from today. The balance bid amount shall be paid within 60 days from today.

5. At this stage, the learned counsel appearing for Mr.Narender Kumar Nehra submits that this court may retain the consideration paid by Mr.Narender Kumar Nehra till the new bidder pays the entire bid amount. He states that in case there is any default by the new bidder, Mr.Narender Kumar Nehra would be ready to take the property at the original amount of Rs.21,83,24,000/-.

List on 14.11.2019.

A copy of this order be given Dasti under the signatures of the court master."

6. In CO.APP. 21/2019, the Appellant has assailed the order dated 18.09.2019 passed by the learned Single Judge in C.A. No. 975/2019 in CO.PET. 329/2011. The aforenoted application was moved by Respondent No.3 – Fashion Accessories, seeking a direction to the Official Liquidator to handover the vacant and peaceful possession of the property in question. By the said order, the sale was confirmed in favour of Respondent No. 3 – Fashion Accessories, and the Official Liquidator was directed to handover physical possession of the property to Fashion Accessories within a period of three weeks from the date of the said order and to also execute the necessary sale deed.

7. It appears that property No. 539-539A, Sector-37, Udyog Vihar, Phase-IV, Gurgaon, Haryana was advertised for sale by auction by the Official Liquidator with a view to liquidate the assets of the company under liquidation. The auction notice was published on 22.03.2018 by the Official Liquidator. The reserved price of the said property was fixed at Rs. 21,83,24,000/-. It appears that no tenders were received and, consequently, no auction took place on the fixed date i.e. on 03.05.2018. As a result, the property could not be sold and the auction failed. At that stage, the Appellant proposed to purchase the property at the reserve price of Rs. 21,83,24,000/- by moving an application i.e. CA No. 976/2018 in CO.PET. 329/2011 on 23.08.2018. This application was allowed by the learned company Judge on 06.09.2018 in the presence of and with the consent of the Official Liquidator. It appears that the Appellant made partial deposit of the sale amount and repeatedly sought extension of time to make the balance deposit. Initially, the Court granted the extension, subject to payment of

interest at the rate of 8% per annum. However, it appears that subsequently, the interest was waived, presumably, since neither the Court nor the Official Liquidator were able to find any buyer for the said property even at the reserve price. In any event, there is no dispute about the fact that the Appellant made the complete deposit of the amount of Rs. 21,83,24,000/- on or before 09.04.2019. Nearly after fifty days of the receipt of the entire sale consideration from the Appellant, Respondent No. 1 – a former Director of the company in liquidation, moved CA No. 611/2019 on the premise that there are bidders available who would offer Rs. 26 crores for the purchase of the property. However, no identified bidder was disclosed. In that application, the learned Company Judge passed an initial order on 30.05.2019, as taken note of hereinabove. Since the Appellant's appeal being CO. APP. No. 16/2019 against the order dated 30.05.2019 was rejected, though all his rights and pleas were preserved, he appeared before the Court on 25.07.2019, but did not participate in the bidding *inter se* the Respondent No. 3 and himself. According to the Appellant, the same was unjustified. Consequently, the learned Company Judge proceeded to pass the impugned order dated 25.07.2019, as taken note of hereinabove. This led to the passing of the second impugned order in CO.PET. 329/2011 on 18.09.2019.

8. The submission of learned counsel for the Appellant is that in the facts of the present case, there was no justification for the learned Single Judge to entertain CA. No. 611/2019 preferred by Respondent No. 1. The Appellant offered a price that no other bidder had offered till the date the tender was open, and even till the date when Appellant's application being CA No.

976/2018 was considered and allowed. In fact, even thereafter, till the time that the Appellant deposited the entire consideration i.e. 09.04.2019, no better offer was received. It is much later i.e. on 29.05.2019, that CA No. 611/2019 was moved by Respondent No. 1, which did not even disclose an identified bidder willing to offer a higher amount of Rs. 26 crores. Learned counsel further submits that eventually, Respondent No. 3 offered a lesser amount of Rs. 23 crores and, keeping in view the fact that the Appellant had already deposited the amount of Rs. 21.83 crores, the difference between the amount offered by Respondent No. 3 for purchase of the property in question was only about 5%, and not substantial.

9. Learned counsel for the Appellant has placed reliance on the decisions of the Supreme Court in ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others,*** (2008) 9 SCC 299 and in ***Vedica Procon Private Ltd. v. Balleshwar Greens Private Ltd. and Ors.,*** (2015) 10 SCC 94 to submit in in the aforesaid background, that there was no justification for undoing the confirmed sale in favour of the Appellant when he had already deposited the entire amount and all that remained to be done was the handing over of the vacant and peaceful physical possession of the property by the Official Liquidator and completion of the sale transaction by execution of the relevant sale deed.

10. On the other hand, Ms. Sindhwani has placed reliance on ***Divya Manufacturing Company (P) Ltd. Tirupati, Woolen Mills Shramik Sangharsha Samiti and Anr. V. Union Bank of India and Ors.***, (2000) 6 SCC 69 to submit that even after confirmation of sale, the Company Court is

not powerless to recall the sale. Therefore, there is no established principle that in every case, once the sale is confirmed, the same cannot be recalled.

11. Mr. Chadha, who represents Respondent No.3 submits that Respondent No. 3, made a *bona fide* offer of Rs. 23 crores. Respondent No. 3 decided to purchase a property to expand its business and since the sale of the property in question has got entangled in the present litigation, the Respondent No. 3 would be happy to receive its amount and let go of the property in case the appeal of the Appellant is allowed.

12. Mr. Agarwal learned counsel for the Respondent No.1 submits that the Appellant repeatedly sought time to make the entire deposit of the offer amount of Rs. 21.83 crores which was granted by the Court. Appellant also obtained waiver of partial interest. In this regard, he has placed before the Court, the orders dated 04.12.2018, 08.02.2019 and 09.04.2019 passed by the Company Court. These orders read as follows:

"ORDER
04.12.2018

CA No. 1426/2018

By this application, the applicant seeks various reliefs including extension of two months for making the balance payment.

The sale notice was issued on 22.03.2018. The applicant made a bid at the reserve price of Rs.21,83,24,000/-. The bid was accepted.

Learned counsel for the applicant submits that they have already paid a total amount of Rs.7,65,00,000/-. He seeks two months *extension w.e.f. 06.12.2018.*

In the interest of justice, extension is granted for a period of two months w.e.f. 06.12.2018. However, the applicant will pay simple interest @ 8% per annum w.e.f. 06.12.2018 till the date of payment on the unpaid amount.

Regarding division of plots into three, it is for the applicant to approach the lessor, namely, HUDA for the needful. It is not for the OL to enter into this exercise. The OL may however execute three separate sale deeds for the plot in question i.e. being 1/3rd undivided share, if permissible.

The application stands disposed of.

ORDER
08.02.2019

CA 141/2019

By this application the applicant seeks enlargement of the time for balance sale consideration amount with the OL on or before 31.3.2019. It also seeks waiver of Simple Interest @ 8% per annum w.e.f. 6.12.2018. The case of the applicant is that on 6.9.2018 this court had accepted the bid of the applicant to the tune of Rs.21,83,24,000/- for property located at Plot No.539-539A, Sector-37, Udyog Vihar, Phase-VI, Gurugaon, Haryana. Part sale consideration of Rs.7,65,00,000/- has been deposited with the Official Liquidator. On 4.12.2018 this court granted further extension of two months w.e.f. 6.12. 2018 to the applicants to deposit the balance sale consideration to the tune of Rs.14,18,24,000 with directions that the applicants would pay simple interest @ 8% per annum w.e.f. 6.12.2018.

In the interest of justice, time is granted till 31.3.2019 to pay the balance amount. Applicant will also pay the necessary simple interest @ 8% per annum, for the period. The above order to the extent it directs payment of simple interest @ 8% per annum *w.e.f. 6.12.2018 would stand satisfied in case the necessary payment is made by 31.3.2019.*

Application stands disposed of.

ORDER
09.04.2019

CA No. 355/2019

By this application, the applicant-Mr.Narendar Kumar Nehra seeks extension of time for depositing the balance sale consideration of Rs.14,18,24,000/-.

This court had on 08.02.2019 directed the applicant to deposit the necessary bid amount on or before 31.03.2019 failing which the interest was payable.

Learned counsel for the applicant states that the demand drafts were ready on 03.04.2019 but the Official Liquidator did not accept the same as they were beyond the time stipulated of this court in the order dated 08.02.2019.

In the interest of justice, the said demand drafts have been handed over to the learned counsel appearing for the Official Liquidator. The interest amount as on directed 08.02.2019 is waived off. In view of the above, full bid amount of Rs. 21,83,24,000/- has been received for the property being Plot No. 539-539A, Sector 37, Udyog Vihar, Phase IV, Gurgaon, Haryana. The possession of the premises may be handed over to the applicant. Other consequential steps may also be taken.

The application stands disposed of."

13. The controversy in the present case revolves around the rights of the Appellant arising out of the acceptance of its bid for the purchase of the

property in question. Indisputably, the complete sale consideration has been deposited by the Appellant and the same has also been accepted by the OL. Although the payments were made in installments after seeking extensions from the Court, yet, this cannot detract the fact that the entire payment of Rs. 21,83,24,000/- stood deposited on or before 09.04.2019. The delay in payment was condoned by the Court and no objection was raised by the OL. Thereafter, necessary steps for completing the said transaction were not undertaken and there is no clarity as to why that did not happen. The Appellant states that there was bereavement in his family and, thus, the matter got delayed. Be that as it may, the fact remains that the sale documents for the transfer of the property were not executed despite the payment of the entire sale consideration. This fact cannot dilute the rights that stood crystallized in favour of the Appellant. The transaction was complete and attained finality on the deposit having been made in terms of orders of the Court.

14. The Learned Single Judge embarked upon an exercise to invite fresh offer from another party. The intent of the learned Single Judge was, perhaps, to get a better price for the property in question. However, in our opinion, such a course was improper and contrary to the settled legal position in the facts of the present case. Undeniably, there is no allegation of fraud or illegality in the sale process that was undertaken by the Company Court in favour of the Appellant, or in the acceptance of the bid of the Appellant. In absence of any such allegations, there was no ground for recalling the order accepting the appellant's bid, especially at the instance of the party, who on a later date was willing to offer only a marginally higher

price. If we are to permit such a practice, it would imply that a completed transaction can be reopened merely because a slightly better price is available. The certainty and finality attached to the bidding process undertaken by the court, would be adversely affected. Such a course of action undermines the sanctity of the sale process. Adopting such a path is also bound to have serious repercussions that could be detrimental to the process of public auction and also to the public interest. Merely because there is a possibility of getting a marginally better offer, it cannot be a valid ground to upset a concluded transaction. The situation may be different if a substantially higher genuine offer is received, as that would itself be indicative of the earlier successful bidder making a considerably lower offer compared to the market price on fair value of the property. Thus, in the absence of any ground of fraud or illegality, we are of the opinion that the learned Single Judge has erred in inviting offers from Respondent No.3.

15. At this stage it is relevant to note the judgement of the Supreme Court in the case of ***Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.,*** (2008) 9 SCC 299 wherein it was held as under:

> ***"28.*** *If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid*

for the same, and they are themselves to be blamed if they do not come forward to bid at the time of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. ***However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done****."*

(*emphasis supplied*)

16. Further, in case of ***Navalkha & Sons v. Ramanya Das*****,** (1969) 3 SCC 537 it was held as under:

"6. *The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In Gordhan Das Chuni Lal v. S. Sriman Kanthimathinatha Pillai [AIR 1921 Mad 286] it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected* *to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in Rathnaswami Pillai v. Sadapathi Pillai [(1925) Mad 318] and S. Soundarajan v. Roshan & Co. [AIR 1940 Mad 42] In A. Subbaraya Mudaliar v. K. Sundarajan [AIR 1951 Mad 986] it was pointed out that the condition of confirmation by the Court being a safeguard against the property being said at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud.* ***It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received.*** *(See the decision of the Madras High Court in Roshan & Co. case).”*

(*emphasis supplied*)

17. Having regard to the aforesaid view of the Supreme Court, we hold that the Company Court was not justified in passing the impugned order dated 25.07.2019, whereby the bid of Rs.23 crores of prospective buyer (Respondent No.3) was accepted, thereby setting aside the earlier order dated 06.09.2018, accepting the bid of the Appellant. The Company Court failed to take into consideration that vide the aforesaid order dated 06.09.2018, the OL was directed to hand over the possession of the property once the entire bid amount was paid by the Appellant. On the date of passing of the impugned order dated 25.07.2019, the entire amount stood

deposited and the transaction stood concluded. No doubt, the bid of Respondent No.3 would result in realizing an amount of Rs.1.16 crores (approx.) more for the property in question and that would enure to the benefit of the creditors of the company. At the same time, one cannot lose sight of the fact that the appellant would be entitled to refund of the amount deposited with interest accrued thereon. Thus, the OL would lose the interest on the amount deposited by the Appellant upto 09.04.2019. Moreover, financial gain that may result, cannot be the sole criteria for deviating from the sale process. The auction reserve price for the sale of the property was fixed after taking into consideration the valuation report of the valuer of Punjab National Bank and, therefore, the offer of the Appellant which was accepted was in conformity with the auction reserve price so fixed. The objection of the Respondent No.1 regarding the property being undervalued is without merit, since neither Respondent No 3 nor any bidder came with a substantially higher offer. The difference in the amount offered by the Appellant, and that offered by Respondent No.3 is not more than 5%. The Supreme Court in the aforesaid decisions i.e. ***Valji Khimji and Co*** (supra) and ***Navlakha and Sons*** (supra) has carved out an exception of fraud for annulling the bidding process. The Court has observed that if subsequent to an auction, an offer is made, which is substaintially higher than what has been finalized, the situation may indicate fraud or some collusion. However, if the price offered is only little over the auction price, that cannot, by itself, suggest that fraud has been done. Concededly, in the present case, the difference between the two bids is only about Rs.1.16 crores which is not more than 5 % of the bid amount of the Appellant. Hence, the reopening of the auction bid of the Appellant, was improper and unlawful and the impugned order deserves to be set aside.

18. Further, we may add that we also do not find anything improper in the conduct of the Appellant. Much has been said about the fact that after having been unsuccessful in the first round, the Appellant had by its conduct waived its objection to the re-bidding of the property. We do not perceive any waiver on the part of the Appellant. In the appeal proceedings, the Court found the action to be premature in as much, as, it was observed that the order impugned in the first appeal had only called upon Respondent No.3 to make a bid and therefore the matter had not attained finality. In this view of the matter, the order dated 23.07.2019 passed in Co. APP. 16/2019, permitted the Appellant to oppose the said sale before the learned Single Judge. Thereafter, the Appellant categorically refused to join the bidding process and better his offer. This was apparently for the reason that the Appellant, conscious of its rights, elected to hold on to his plea that the sale transaction stood concluded and could not be reopened. Since the Company Court proceeded to accept the bid of Respondent No.3, he has now approached this Court. Thus, we do not find any waiver on the part of the Appellant that would disentitle him to challenge the impugned order. Also, adverse conclusion can be drawn against the Appellant, founded on the observations made by learned Single Judge in the impugned order dated 25.07.2019, wherein he observed that the Appellant is not interested in further bidding. The Appellant did not participate in the bidding, as he was opposing the call of fresh bidding by learned Single Judge on various legal and factual grounds. The Appellant has throughout maintained that the sale in his favour was confirmed by virtue of the orders of this Court.

19. Lastly, we may also note that learned Single Judge has also not taken into consideration the fact that the additional amount of Rs.1.16 crores, which could have been realized by way of sale of the property in question to Respondent No.3, is not substantial. Appellant has already deposited the entire amount as on 09.04.2019 and if one were to also take into consideration the interest that would have accrued on the deposits made by the Appellant with the OL upto the date of passing of impugned order, there would be hardly any difference in the two bid amounts. Startlingly, the application filed by Ex-Management, on the basis whereof, the learned Single Judge proceeded to invite fresh bids, stated that an unnamed prospective buyer was willing to pay Rs.26 Crores. As it transpired, on 25.07.2019, the bid amount of Respondent No.3 was substantially lower and was only Rs.23 crores. Yet, the learned Single Judge proceeded to permit the prospective buyer to make the payments in installments.

20. For the aforegoing reasons, we are inclined to allow the present appeals and set aside the impugned orders. Accordingly, all the pending applications are disposed of. We, therefore direct the Official Liquidator to proceed to handover the vacant and peaceful physical possession of the property No. 539-539A, Sector-37, Udyog Vihar, Phase-IV, Gurgaon, Haryana to the Appellant within two weeks from today. The Official Liquidator shall execute the sale transaction in favour of the Appellant within two weeks. The Appellant shall take necessary steps in this regard so that the sale is completed within the said period.

CM. APPL. 5145/2020 in CO.APP. 21/2019

21. This application has been moved by Respondent No. 3 to alternatively seek refund of the amount deposited by it alongwith interest. The application is allowed. The Official Liquidator is directed to refund the said amount of Rs. 23 crores along with the interest at the rate of 6% from the fixed deposit created by the Official Liquidator, within a period of two weeks.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 13, 2020

nk/Pallavi