

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1200 OF 2021

M/s. Pavan Enterprises

...Petitioner

V/s.

Jitendra Kumar Jain and anr.

...Respondents.

Mr. Sanjay Jain a/w. Ms Prachi Wazalwar and Mr. Ishan Srivastava
i/b. Gurdeep I. Sachar for the Petitioner.

Mr. Amir Arsiwala a/w. Vidit D. Kumat for Respondent No.1.

Mr. Pankaj Vijayan for Respondent No.2.

CORAM : K.K.TATED &
N.R. BORKAR, JJ.
DATE : 6.5.2021.

P.C. :

1. Heard learned counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner who is successful bidder of the e-auction held on 22.3.2021 in respect of property i.e., Plot No. B/15, Mirjole Block, MIDC, Village Mirjole, Tal and Dist. Ratnagiri, seeks 45 days time period to deposit balance consideration.

3. It is the case of the petitioner that as per Clause 12 - Schedule - I to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator ought to have granted 90 days to deposit balance sale consideration. It is

submitted that the Liquidator refused to grant the said time for no valid reasons.

4. During the course of arguments, the learned counsel for the contesting respondent has pointed out that for the same relief, the petitioner has filed an interim application before the National Company Law Tribunal, Mumbai Bench, Mumbai (for short "NCLT") on 19.4.2021 and the said application is still pending.

5. We have perused the prayers in the said application and they are as follows:

"INTERIM PRAYERS"

- a) To direct the NCLT registry to list this I.A. before this Hon'ble bench for urgent interim reliefs.*
- b) To grant an extension of 45 days and allow the Applicant to make complete payment of the balance consideration.*
- c) To grant stay on the prospective re-auction of the said property.*
- d) To direct the liquidator to not to act, accept and/or further pursue any interest, if any, incidental to the prospective e-auction.*
- e) To declare the para 3.6 of the Terms and Conditions repugnant and/or in violation to the para 12 of Schedule I of Insolvency And Bankruptcy Board of India Liquidation Process Regulations, 2016."*

"FINAL PRAYERS"

- A. To allow the Applicant for an extension of 45 days for the purpose of depositing the balance amount.*
- B. For such further and other orders/directions as the facts and circumstances of the case may warrant.*
- C. Any other order this Hon'ble Tribunal deems fit to pass in the interest of justice, equity and good conscience."*

6. The learned counsel for the petitioner has not disputed that the aforementioned application is still pending. It is apparent from the prayers made in the aforementioned application that the petitioner has prayed for identical relief before the NCLT. Apart from it, the respondent No.1 in his affidavit-in-reply dated 5.5.2021 has stated that Survival Technologies Private Limited agreed to purchase the property in question for sum of Rs.2,77,00,000/-. It is stated that Survival Technologies Private Limited has already deposited Rs.27,00,000/- with the liquidator. The learned counsel for respondent No.1 submits that in view of subsequent developments, the petitioner is required to implead Survival Technologies Private Limited as party respondent to the present proceedings.

7. Considering the facts and circumstance and as the interim application dated 19.4.2021 for the same relief is pending before

the NCLT, we are not inclined to entertain the present petition.

Hence, the following order is passed.

- a. The petitioner is at liberty to move NCLT for hearing of it's Interim Application dated 19.4.2021 and the NCLT shall endeavour to decide the said application expeditiously.
- b. With aforesaid liberty, the petition is disposed of.
- c. All contentions of both the parties are kept open.
- d. No order as to costs.

[N.R.BORKAR, J.]

[K.K.TATED, J.]