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WPA 26410 of 2022

Brahm (Alloys) Limited (formerly known as Brahm (Alloys) Pvt. Ltd. & Anr.
-Vs-
West Bengal Financial Corporation & Ors.

Mr. Joy Saha,
Mr. Ishaan Saha,
Mr. A. K. Awasthi,
Mr. Y. Bhattacharyya,
... for the petitioners

Mr. Joydip Kar,
Mr. Aritra Basu,
Mr. Abhijit Sarkar
... for the respondents

The petitioners have challenged an E-Auction Sale Notice dated 11th November, 2022. The Sale Notice was published in 'Bartaman' and was issued by the West Bengal Financial Corporation. The subject matter of the Sale Notice (the petitioner's name appearing in serial no. 1 of the impugned Notice) is the petitioners' Pig Iron Plant along with factory shed and other constructions. The petitioners pray for stay of the impugned Notice on the ground that the Notice suffers from under-valuation and other procedural irregularities.

The petitioners, through learned counsel, also say that the petitioners have paid a substantial amount of money to the respondents even after an order passed by a learned Judge in the 1st writ petition filed by the petitioners in 2018. The writ petition contains a chart of repayments made by the petitioners to the respondents. The chart indicates that as against a loan of Rs. 54.61 crores, the petitioners have repaid an amount of Rs. 70.89 crores till date. The petitioners dispute the present claim of 16.68 crores made on behalf of the respondents.

Learned counsel appearing for the respondents places orders of coordinate Benches and of a Division Bench in two writ petitions filed by the petitioners against a Notice for Sale issued under Section 29 of The State Financial Corporations Act, 1951. Counsel submits that the petitioners were given sufficient opportunity to make repayments in accordance with the repayment plan submitted by the petitioners but have failed to do so till date.

The present matter involves allegations and counter-allegations of claims by the West Bengal Financial Corporation and repayments made by the petitioners. According to the respondents, the outstanding amount as on date is of Rs. 16.68 crores while the petitioners insist that the petitioners have made a payment of Rs. 13.5 crores after the order of a coordinate Bench passed on 12th February, 2018. It transpires that the order of rejection of the relief sought by the petitioners with reference to the Notice under the 1951 Act, was modified by the Division Bench on 13th February, 2018. The Division Bench directed that the petitioners should pay the Corporation in accordance with the proposal for repayments as of 7th February, 2018 given by the petitioners. The Division Bench also directed that the Corporation would have symbolic possession of the petitioners' factory and assets until the petitioners repay the entire amount to the Corporation. The amount as of 13th February, 2018, i.e. the date of the Division Bench order, was Rs. 6.5 crores. The records before the Court after 13th Febuary, 2018 show that the petitioners made a commitment of Rs. 8.28 crores to the Corporation to be paid in a phased manner as represented by a communication dated 19th February, 2021.

Admittedly, the petitioners failed to pay that amount to the Corporation. This would be evident from the chart of repayments, which is a part of records. The chart indicates that the financial commitment made by the petitioners of Rs. 8.28 crores in 2021-2022 was not honoured. The petitioners paid 4.4 crores instead. Hence as on date, the petitioners owe an amount in excess of Rs. 4 crores even by the petitioners' own representation dated 19th February, 2021.

This Court is not inclined to go into the rival claims of the parties. The undisputed position is that as opposed to the petitioner's offer of Rs. 1.50 crores for stay of the E-Auction Sale Notice, the outstanding amount is much more.

The orders passed in the earlier two proceedings filed by the petitioners are significant. Both the orders have noted that the petitioners have failed to live up to their financial commitment. The coordinate Benches have also noted that the return of public money cannot wait for an uncertain period of time.

The contention of the petitioners with regard to the irregularities in the E-Auction Sale Notice in terms of a fall in the Reserved Price and absence of particulars for the remaining sale consideration after payment of the EMD are not sufficient for the Sale Notice to be stayed. The respondents have been in symbolic possession of the factory since February, 2018 and have waited long enough for the petitioners to repay the balance amount. In any event, as directed by a coordinate Bench, the petitioners will be given a right of first refusal after receiving the offers from prospective purchasers. The petitioners can very well match the amounts at that time.

This Court is not inclined to interfere with the impugned E-Auction Sale Notice which is due to be held tomorrow, i.e. 1st December, 2022 for the reasons as stated above,

WPA 26410 of 2022 is accordingly dismissed without any order as to costs.

(**Moushumi Bhattacharya, J.)**