IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO.2027 OF 2022

BHAIRAVNATH SUGAR WORKS LTD.
THROUGH ITS MANAGING DIRECTOR
DHANANJAY UTTAM SAWANT
VERSUS
M/S TWENTYONE SUGARS LTD.
REPRESENTED THROUGH RUSHIKESH BHASKARRAO MORE
AND OTHERS

...

Advocate for Petitioner: Mr. V. A. Thorat, Senior Advocate a/w. Mr. Vaibhav Sugdare, Advocate a/w. Mr. Pankaj Sawant, Advocate a/w. Mr. Pranil Sonawane, Advocate i/b. Mr. Anant R. Devakate
Advocate for Respondent No.1: Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon
Advocate for Respondent No.2: Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal
Advocate for Respondent No.3: Mr. R. N. Dhorde, Senior Advocate a/w. Mr. P. S. Dighe, Advocate i/b. Mr. V. R. Dhorde

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AND

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913 WRIT PETITION NO.2562 OF 2022

THE OSMANABAD DISTRICT CENTRAL CO-OPERATIVE BANK LIMITED THROUGH ITS AUTHORIZED OFFICER
VERSUS
M/S TWENTYONE SUGARS LTD.
REPRESENTED THROUGH RUSHIKESH BHASKARRAO MORE
AND OTHERS

...

Advocate for Petitioner: Mr. R. N. Dhorde, Senior Advocate a/w. Mr. P. S. Dighe, Advocate i/b. Mr. V. R. Dhorde
Advocate for Respondent No.1: Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon
Advocate for Respondent No.2: Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal
Advocate for Respondent No.3: Mr. V. A. Thorat,

Senior Advocate a/w. Mr. Vaibhav Sugdare, Advocate a/w. Mr. Pankaj Sawant, Advocate a/w. Mr. Pranil Sonawane, Advocate i/b. Mr. Anant R. Devakate

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AND

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913 WRIT PETITION NO.2543 OF 2022

M/S TWENTYONE SUGARS LTD.
REPRESENTED THROUGH RUSHIKESH BHASKARRAO MORE AND OTHERS
VERSUS
THE OSMANABAD DISTRICT CENTRAL CO-OPERATIVE BANK LIMITED THROUGH ITS AUTHORIZED OFFICER AND OTHERS

...

Advocate for Petitioner: Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon
Advocate for Respondent No.1: Mr. R. N. Dhorde, Senior Advocate a/w. Mr. P. S. Dighe, Advocate i/b. Mr. V. R. Dhorde
Advocate for Respondent No.2: Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal
Advocate for Respondent No.3: Mr. V. A. Thorat, Senior Advocate a/w. Mr. Vaibhav Sugdare, Advocate a/w. Mr. Pankaj Sawant, Advocate a/w. Mr. Pranil Sonawane, Advocate i/b. Mr. Anant R. Devakate

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CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.

DATE: 26th FEBRUARY, 2022

PER COURT:

1. The Osmanabad District Central Co-operative Bank Limited took over the possession of the secured assets of M/s. Terna Shetkari Sahakari Sakhar Karkhana Ltd. under the provisions

of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(hereinafter referred to as 'Act-2002')*. The Bank decided to lease the Sakhar Karkhna by way of a long lease for 25 years. The public notice was issued inviting tenders. Bhairavnath sugar Works Ltd. is declared as successful bidder. Another bidder namely M/s. Twentyone Sugars Ltd., assailed the acceptance of the bid of Bhairavnath Sugar Works Ltd. by filing application U/Sec.17 of the Act-2002. The Debts Recovery Tribunal, Aurangabad under the impugned order allowed the Securitisation Application thereby setting aside the tender notice document, aggrieved thereby the present Petitions.

2. Writ Petition No.2027 of 2022 is filed by the successful bidder. Writ Petition No.2562 is filed by the Bank and Writ Petition No.2543 of 2022 is filed by the unsuccessful bidder who had filed an application U/Sec.17 of the Act-2002 before the Debts Recovery Tribunal.

3. Pursuant to the public notice, tender of Bhairavnath Sugar Works Ltd. was accepted. The Tribunal set aside the tender notice document on the ground that one month's public notice was not issued before finalisation of the tender. The Tribunal relied upon Rule 9 of the Security Interest (Enforcement) Rules-2002 *(hereinafter referred to as 'Rules-2002')*. Relying upon the same, it was held by the Tribunal that the tender documents were opened only after the 12th day and as 30 days notice was not given, the process of tender cannot be held to be legal and valid.

4. Mr. Thorat, learned Senior Advocate for the successful bidder, Mr. Dhorde, learned Senior Advocate for the Bank, Mr. Sapkal, learned Senior Advocate for the borrower contend that the Tribunal committed an error of law in relying upon Rules 8 and 9 of the Rules-2002. The Tribunal lost sight of the fact that the tenders were invited for lease of the property and not for sale of the property. Rules 8 and 9 of the Rules-2002 would apply only if the property is put for sale. They

further contend that even the applicant in an application U/Sec.17 of the Act-2002 never raised the issue of violation of Rules 8 and 9 of the Rules-2002. The Tribunal on its own held that the tender process does not stand to the test of Rule 9 of Rules-2002.

5. The learned Senior Advocates submit that U/Sec.13(4) of the Act-2002, various measures are prescribed such as sale, lease, taking over of management, possession. For taking over of management and executing lease provisions of Rules 8 and 9 of Rules-2002 are not applicable.

6. It is further contended that, the unsuccessful bidder has not deposited the EMD before 04:00 O'clk nor has submitted the tender by 04:00 O'clk. It was only submitted at 04:15 P.M. The Tribunal has rightly held in that regard. In view of that the Securitization Application ought to have been rejected.

7. The learned Senior Advocates further contend that only because the unsucessful bidder has quoted more price cannot be a consideration as his tender was after the scheduled time. The same ought to be rejected outrightly and the same was rightly rejected by the Bank. Mr. Thorat, learned Senior Advocate, on instructions, submits that the successful bidder Bhairavnath Sugar Works Ltd. is ready to match the offer of the unsuccessful bidder.

8. Mr. Hon, learned Senior Advocate for the unsuccessful bidder agrees that in the Securitisation Application the Petitioner had not raised the ground that 30 days notice was not given as per Rule 9 of the Rules-2002. He submits that the Tribunal failed to consider the case putforth by his Petitioner that the unsuccessful bidder was prevented and obstructed by the Bank Officials and others. The amount was remitted by his Petitioner through RTGS at 03:30 P.M. and before 04:00 PM his Petitioner was present for submission of the tender but his clients were

asked to wait and then the time was put of 04:15 PM on the tender document. According to the learned Senior Advocate, the Tribunal has committed an error while observing that admittedly the tender document could not be submitted in time is an admitted position. His Petitioner had categorically contended that he was present for submission of the tender before 04:00 P.M. The Bank malafidely was making delay and put an endorsement on the tender document of 04:15 P.M. According to him, the said finding is not in tune with the contentions. The contentions of his Petitioner are not at all discussed in the impugned order.

9. We have considered the submissions canvassed by the learned Senior Advocates for the parties.

10. It was informed that this was the 6th notice published inviting offers for lease of the property. Each time the public notice could not be fructified, the fresh public notice was required

to be issued. Though the contention is raised that the amount received from lease of the secured assets was to be paid within the time bound manner to the Provident Fund Department, we do not find it necessary to enter into the said rigmarole.

11. It appears from the Securitisation Application filed by the Petitioner of Writ Petition No. 2543 of 2022 that he had never raised the ground that 30 days notice is not given. The borrower has also not raised that ground. In fact, the successful bidder and the unsuccessful one had submitted to the tender notice and had participated. It appears that the Tribunal *suo motu* has raised the said ground. For 5 times notice inviting tenders were issued but to no avail. As none of the parties raked up the issue of 30 days notice not given according to us it was unnecessary for the Tribunal to enter into the said debate and the Tribunal ought to have considered the contentions of the applicant in the Securitisation Application and dealt with the matter considering the plea of the applicant in

the Securitisation Application and the defence of the Respondents in the said application.

12. In light of that the finding to the effect that the tender notice document is bad in law is set aside.

As we have set aside the finding and the order of the Tribunal quashing the tender document, we have not entered into the debate as to the applicability of Rules 8 and 9 of the Rules-2002 for lease.

13. The Tribunal did not dilate in detail about the case putforth by the applicant before it. The Tribunal in Paragraph No. 8 has observed as under-

> ***"8. The applicant has purchased the bid form and has even shown to me RTGS being made at 15.31 (3.30 p.m.) much before 4.00 P.M. deadline of 24th November, 2021. He has made an allegation that his representative was obstructed by the bank officers on one pretext or the other and as such he could not given the tender form in time. This is an admitted position though the EMD money was given in time, tender documents could not be submitted in time."***

14. As far as the case putforth by the applicant before it, the finding and observations appears to be only in Paragraph No.8. In the Securitisation Application the said applicant had contended as under-

> ***"5.4 The applicant company being interested in the tender process had purchased the tender form on 20.11.2021. All details as required in the tender form were filled in. On 24.11.20211 at about 3.31 p.m. the applicant company deposited a sum of Rs.5.50 Crores with the respondent bank in terms of clause 3.1 of the terms and conditions of tender. Hereto annexed and marked as <u>Exhibit"C"</u> is the copy of the receipt of RTGS payment made by the applicant.***
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> ***5.5 The applicant respectfully submits that the tenders document were required to be submitted physically in two envelopes i.e.(i) information and declaration of tender and (ii) Bid amount. The applicant company accordingly prepared its tender documents and its representatives reached to the office of respondent No. 1 Bank well before 4.00 p.m. on 24.11.2021. The EMD amount was received in terms of the tender notice by the bank. The bank officials had informed the representative of the applicant company to wait for some time. Accordingly he was very much in the office of the bank eagerly waiting for the acceptance of the tender forms. The tender forms were accordingly accepted by the bank; however, the timing mentioned was at 4.15 p.m. on 24.11.2021.***
>
> ***5.6 The applicant respectfully submits that on 25.11.2021 to the utter shock and***

surprise of the applicant company, it is learnt that the bid submitted by the applicant company would not be considered by the bank as the same was submitted after deadline of 4.00 p.m. on 24.11.2021. The applicant accordingly had served legal notice to the bank pointing out the above stated facts and again requested the bank authorities to consider the tender documents of the applicant company. The respondent No. 1 Bank which is acting hand in gloves with respondent No. 3 company has refused to consider the tender documents submitted by the applicant and have proceeded to consider the tender of respondent No.3 which is the sole tenderor. The applicant in these premises submits that the respondent No.1 bank and respondent No.3 have malafide and with ulterior motive have not considered the tender of the applicant and have considered the tender of respondent No.3. This act of respondents is contrary to the provisions of law; malafides and are writ large on record.

5.7 The applicant respectfully submits that the respondent bank had given tender notice in the newspaper for inviting bids from public at large. The bank ought to have conducted the tender process in fair manner without showing any favour to any of the tenderor. The respondent No.1 bank in the tender process has totally made a mockery of the tender process by not considering the tender of the applicant and proceeded to consider only sole tenderer i.e. respondent No. 3. The applicant had collected necessary information and it would be evident that the applicant in the tender has quoted higher price than that offered by respondent No.3. The difference between the rate quoted by the applicant and that of the rate quoted by respondent No.3 is almost for Rs.13,65,12,500/- Respondent No.1 bank by accepting the applicant's tender could have

gained Rs.13,65,125/- as an additional amount by accepting the applicant's tender. The applicant submits that the respondent No.1 bank therefore, has leased out the property of the Karkhana at lower rate by accepting tender of respondent No.3 and by depriving the applicant herein from participation in the tender process. Hereto annexed and marked as <u>Exhibit"D"</u> is the copy of statement showing the rates quoted by the applicant and respondent No3 company.

5.8 The applicant respectfully submits that the applicant reliably learnt that the respondent No.1 bank with malafide intention not accepted the tender of the present applicant, this fact has been clearly shown from the act of respondent No.1, when the representative of the applicant reached to the office of respondent No.1 bank in time but they directed him for waiting some time and after lapse of time, they said that due to lapsing of time their tender cannot be accepted. But it is matter of record that the applicant has submitted the EMD amount prior to the time, therefore, there is no delay as such at the hands of the applicant.

5.9 The applicant stats that the respondent No.1 hand in gloves with the respondent No.3 has not accepted the tender of the applicant, in view of the settled law that the single tender is not acceptable. Therefore, considering this aspect, it is necessary to cancel the tender of the respondent No.3 as he is the only tenderer in the said process. The applicant states that it is manifestly clear from the record that the bid of the applicant is higher than respondent No.3. It is necessary to mention here that the respondent No. 1 is the District Central Co-operative Bank wherein the public funds are involved in the transaction therefore, considering the

> ***benefit of public at large the impugned action at the hands of respondent authorities are not sustainable in the eyes of law.***
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> ***5.10 The applicant submits that for this chaotic situation one man is responsible who is seating MLA and who is also one of the Director of the respondent No.3 company and therefore, with malafide intention the respondent No. 1 has refused to accepts the tender submitted by the applicant only with intention to give tender in favour of the respondent No. 3. The applicant submits that the entire money involved in the bank is the public money which cannot be taken away in such a fashion because the applicant has quoted more amount than the respondent No. 3, therefore, considering the benefit of the public at large, it needs to be handed over to the applicant sugar factory for the proper and effective functioning of the sugar factory at its strength and actual value for which respondent No.1 Bank is entitled as the tender is given for 25 years which is long term. Therefore, considering the bid price and benefit of the public at large, it is necessary to quash and set aside the impugned tender process or in alternatively the applicant be permitted to participate in the tender process. Hereto annexed and marked as Exhibit"E" (Collectively) are the copies of documents i.e. news paper items and list of director body of the respondent No.3 Company."***

15. In fact, the aforesaid grounds were the only grounds for challenge in the Securitisation Application. The Tribunal was expected to consider the same. The Tribunal, it appears has failed to

apply his mind to the contentions of the Applicant before it.

16. The Tribunal being the original Court was expected to consider the same threadbare and arrive at a conclusion, more particularly, when the averments were made about the malafides. It ought to have given finding on the factual matrix being the first fact finding Court.

17. We have entertained this Writ Petition as all the learned Senior Advocates have said that Debts Recovery Appellate Tribunal, Mumbai is still not functioning.

18. In light of the above, we pass the following order.

ORDER

[I] The impugned order is quashed and set aside.

[II] The parties are relegated before the Tribunal. The parties shall appear before the Tribunal on 08.03.2022.

[III] The Tribunal shall decide the Securitisation Application afresh in light of the observations made in the present order, preferably, within two (02) months from the date of appearance of the parties. The Tribunal is not required to give separate notices to the parties as this Court has already given the date for appearance.

[IV] Till the Securitisation Application is decided on merits, *status-quo* as on today with regard to the property be maintained.

19. The Writ Petitions accordingly stand disposed of. No costs.

[S. G. DIGE, J.] **[S. V. GANGAPURWALA, J.]**

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