Comp.A.No.35 of 2022
in C.P.No.57 of 1998

SENTHILKUMAR RAMAMOORTHY, J.

This application is presented for re-opening the auction held on 11.01.2022 in respect of Item 14 thereof, which pertains to the properties forming the Duraisamypuram project of Maxworth Orchards Private Limited (Maxworth).

2. The auction sale of 24 projects of Maxworth, which is a company in provisional liquidation, was ordered by this Court. The said order permitted the Official Liquidator to publish the sale notice in the Times of India and Dhina Thanthi on 05.12.2021. Prospective bidders were provided time to physically inspect the property and also inspect the title and revenue records available in respect thereof. Pursuant thereto, the sale notice was duly published on 05.12.2021 and the last date for submission of bids was fixed as 03.01.2022. As scheduled, the auction sale took place on 11.01.2022. On the said date, four parties, namely, T. Murugesan, Sri Kanagavalli Enterprises and Realty, N. Ravichandran and S.Velapandi, who had complied with the terms of the sale notice, participated in the auction sale. At the end of the auction, Mr.T.Murugesan offered the original highest bid of Rs.1,18,00,000/-. It is

pertinent to state that the applicant, S.Chezian, submitted a bid in relation to another item which was also brought to sale on the same date. However, he did not submit a bid in respect of this property. In spite of not submitting a bid, he endeavoured to participate at the auction and even offered Rs.5,00,000/- more than the amount originally offered by the bidder. Mr.Murugesan immediately agreed to match such higher offer and, in this manner, made a revised bid for Rs.1,26,00,000/-. As per the terms and conditions of the sale, the highest bidder is required to pay the sale consideration, after deducting the earnest money deposit (EMD) therefrom, within 30 days from the date of being declared as the highest bidder. In accordance therewith, the highest bidder remitted the entire sale consideration within the said 30 day period.

3. The present application was filed sometime in late January 2022. In the application, the offer made by the applicant is for a sum of Rs.1,40,00,000/-. However, in course of oral submissions, the said offer has been revised upward to Rs.1,76,00,000/-.

4. Learned senior counsel for the applicant submits that the interest of the company concerned and its stakeholders is paramount and not the interest of the highest bidder. In support of this contention, the judgment of the Hon'ble

Supreme Court in *Divya Manufacturing Company (P) Ltd. Tirupati Woollen Mills Shramik Sangharsha Samity and another v. Union Bank of India and others Official Liquidator and others, (2000) 6 Supreme Court Cases 69* ***(Divya Manufacturing)****,* and, in particular, paragraphs 12 to 15 thereof are relied upon. On such basis, it is contended that the sale may be interfered with at the instance of a person making a higher offer even in the absence of fraud or irregularity.

5. These contentions are refuted by learned senior counsel for the auction purchaser. After referring to the list of relevant dates and events, learned senior counsel submits that the auction purchaser duly complied with the terms and conditions of the auction and that no case has been made out for interference with the sale process. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court in *Vedica Procon Private Limited v. Balleshwar Greens Private Limited and others, (2015)10 Supreme Court Cases 94* ***(Vedica Procon)****,* and, in particular, paragraphs 33, 36, 37, 39, 40, 47 and 54 thereof. On such basis, it was submitted that an auction sale should not be interfered with except on grounds of fraud or irregularity or sufficient basis to conclude that the price was grossly inadequate. It was also pointed out that the Court held in ***Vedica Procon*** that the judgment in ***Divya Manufacturing***

had departed from the principles laid down in the earlier judgment of the Hon'ble Supreme Court in *Navalkha and sons v. Ramanya Doss (1969) 3 SCC 537*.

6. The admitted position in this case is that the sale took place under the supervision of Court. The auction sale was advertised in newspapers with wide circulation and adequate time was provided to prospective bidders to physically inspect the property and title and revenue records pertaining thereto. The applicant was fully aware of the auction sale process, as evidenced by participation with regard to the auction sale of another item of property on the same date. In spite of such knowledge, the applicant opted not to submit a bid in respect of this item of property. Even without submitting a bid, the applicant endeavoured to participate in the auction sale and offered a price which was Rs.5,00,000/- higher than that received in course of the auction. The successful bidder increased his offer so as to match the said higher offer. Thereafter, the successful bidder remitted the entire sale consideration in compliance with the order passed in such regard.

7. As regards the applicant, as on date, even the EMD remitted in relation to the other item of property was refunded to and received by him. He

has not produced any evidence of his capability to pay the offered price of Rs.1.76 Crores or even the offered first installment of Rs.70,00,000/-. The submission made at the bar is that he would pay the sum of Rs.70,00,000/- now, a sum of Rs.30,00,000/- within about a week, and the remainder about 4 weeks thereafter. This process is fraught with considerable risk and uncertainty to Maxworth, the company in provisional liquidation, and its stakeholders. It should also not be lost sight of that the successful bidder duly participated in an auction sale process conducted by this Court and remitted the entire sale consideration. The judgments cited at the bar instruct that the Court may interfere if the sale process was tainted by fraud, irregularity or for any other cogent reason such as gross inadequacy of price. In my view, although the Court has considerable discretion in such matters and it is not advisable to endeavour to exhaustively catalogue the grounds for interference, the value of preserving the sanctity of the auction sale process, especially a Court supervised process, should not be underestimated. Indeed, in order to preserve the public's faith in such process, the irreducible minimum is that such process should not be undermined unless there are valid reasons to do so and the mere assertion by a non-bidder, after the auction, that he is willing to pay a higher price does not meet the threshold. In this case, it is pertinent to state that the upset price was fixed on the basis of the guideline value by providing for a mark-up thereon. Thus, there is no indication or evidence that the price paid by the successful bidder to purchase the property is inadequate. For all these reasons, I am not inclined to interfere with the sale process at the instance of the applicant. Therefore, Comp.A.No.35 of 2022 is dismissed. As a corollary, the sale is confirmed and the Official Liquidator is directed to execute the sale certificate in favour of the successful bidder or his nominees within two weeks from the date of receipt of a copy of this order. Upon execution of the sale certificate, all available title and revenue records relating to the property shall be handed over to the auction purchaser and vacant possession shall also be handed over. If necessary, for purposes of handing over vacant possession, the Official Liquidator is directed to take the assistance of the appropriate revenue and police officials.

15.06.2022

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