IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11023 of 2022 (O/M)
Date of decision : November 16, 2022

Manish Batra ... **Petitioner**

Versus

State of Punjab and others ... **Respondents**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand Mahajan and
Mr. Gautam Sehgal, Advocates for the petitioner.

Mr. V.G. Jauhar, Additional A.G. Punjab.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.2.

Ms.Anu Chatrath, Senior Advocate with
Mr.Nishant Maini, Ms.Divya Sharma and
Ms. Alka Chatrath, Advocates for respondent No.3.

Mr. Manuj Nagrath, Advocate
for respondent No.4.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for respondent No.5.

HARINDER SINGH SIDHU, J.

This petition has been filed for setting aside the E-auction conducted from 25.04.2022 to 28.04.2022 pursuant to e-auction notice dated 30.03.2022 (Annexure P-2) including the confirmation of sale if any. It is also prayed that official respondent No.2 be directed to re-auction the property (Lot-1).

The petitioner is the sole proprietor of his firm registered in the name of CY International, New Delhi which is engaged in the business of manufacture of motor, controller and differential etc.

Respondent No.4 is the company whose property was put to E-auction by respondent No.2 - Punjab State Industrial Development Corporation (PSIDC) through respondent No.3 Punjab Urban Development Authority (PUDA) by invoking the provisions of Section 29 of the State Financial Corporation Act, 1951.

As per the of E-auction notice dated 30.03.2022 the property to be sold for recovery of dues was to be sold in two lots. Lot No.I comprised Plot No.B-1, Focal Point Jalandhar measuring 4028 sq. yards on 99 years lease from PSIEC along with building and plant and machinery. As per the auction notice the covered area of the building was 34686 sq. ft. The Plant and Machinery was a Forging Plant. The Reserve price was Rs.616.84 lakh.

The E-auction notice specified that if Lot-I was sold, no auction was to be conducted for Lot-II.

E-auction for the sale of Lot-I was to be conducted from 10.00 AM on 25.04.2022 till 3.00 PM on 28.04.2022.

As per the Terms and Conditions specified in the e-auction notice the intending bidders were required to deposit Earnest Money in advance. The bidders not depositing the required Earnest Money would not be allowed to participate in the E-Auction.

The other relevant Terms and conditions of E-auction notice dated 30.3.2022 (Annexure P-2) are reproduced as under :-

> *"9. Original promoters/borrowers/guarantors and second charge holders may join sale proceedings on the date and time mentioned above or they may also make*

their offers or bring other parties to bid for auction in response to this advertisement as per the schedule indicated above alongwith demand draft of EMD. No Separate notice shall be given to the original promoters/guarantors and their not joining at this stage shall automatically be deemed that they are not interested in the purchase of the captioned assets.

10. The highest bid will be subject to approval of the Secured Creditor(s).

11. The successful bidder shall bear GST or any other tax, Stamp Duty, registration fee, incidental expenses etc. for getting the Sale Deed Registered etc. The Corporation reserves the right to accept or reject any bid or postpone or cancel the sale process without any reason and also to notify any Terms and Conditions of the sale without any prior notice.

12. The possession will be handed over on "As is where is and Whatever there is basis" after receipt of entire sale consideration.

15. During the E-Auction bidders will be allowed to offer higher bid in inter-se bidding over and above the last bid quoted and the minimum increase in the bid amount must be of Rs. 0.50 lac to the last higher bid of the bidders.

16. The e-Auction will start and close at stipulated date and time at the portal https://puda.e-auctions.in. However, in case a bid in respect of a property is received 10 minutes prior to time fixed for closure of the bids, then the time for closure of the auction would be extended automatically by 10 minutes, until a time when no bid is received in extended time for any property under that auction event.

17. The competent authority shall reserve to itself the

> *right to accept any bid or reject any bid or withdraw any or all the properties from auction or cancel/postpone the e-auction, without assigning any reason thereof.*
>
> *19. After finalization of E-auction by the Corporation, only successful bidder will be informed through SMS/email (on mobile no/email address given by them/registered with the service provider).*
>
> *20. If the offer made is accepted by the Corporation and offerer does not deposit the 25% of the bid amount within stipulated period, the earnest money deposited by the offerer shall stand forfeited."*

The petitioner deposited the required earnest money (EMD) which is more than Rs.61 lacs and participated in the E-auction bid from 25.04.2022 to 28.04.2022.

The case of the petitioner is that he gave his last bid at 16.50:24.413 hours of Eighteen thousand seven hundred and ninety one point four only which comes to Rs.7,56,91,760/- (Seven crore Fifty six lakh Ninety one thousand Seven hundred and Sixty Rupees only). No other bidder made a bid above the bid of the petitioner. Till 16:59 the name of the petitioner was reflected as the highest bidder. The petitioner called the assistance number of respondent No.3 after 17.00 (5.00 PM) after waiting for 10 minutes for the confirmation of its bid as last/highest as no other bid was shown on the screen/device of the petitioner. Respondent No.3 advised the petitioner to refresh and confirm the same. The petitioner was shocked when about 1/10th second before 5 O' Clock, respondent No.5 raising the bid amount by Rs.50,000/- was shown to be the highest bidder at 16:59:54.

The next day i.e. 29.04.2022 after verifying the facts and having received no response from the respondents No.2 and 3, the petitioner sent a representation to respondent No.2 through e-mail. In the e-mail the petitioner explained that at the close of the E-auction there had been flickering at the website screen/portal at the end of the auctioneer/department/respondent No.2. He also stated that he was ready to offer a bid of Rs.8.50 crore i.e., Rs.93 lacs more than respondent No.5. He also stated that he would offer even more than that if required.

However, without looking into the complaint of the petitioner, the respondents, in a tearing hurry, with a view to favour respondent No.5, confirmed the auction in its favour. This was done without even seeking the approval of the secured creditors which was an essential pre-condition in terms of Clause 10 of the Terms and Conditions of the E-auction.

The respondents have denied the allegations of the petitioner. In the written statement filed by Respondent No.2 – PSIDC it is stated that in the auction process which commenced w.e.f. 25.04.2022, four different bidders participated. The auction process continued for four days. The details including the bidders name, bid price submitted by them, the details with regard to the time on which higher bids were submitted by the bidders has been appended as Annexure R-2/1. It is stated that a perusal of the Annexure R-2/1 reveals that the petitioner submitted his last bid at 16:50:24.413 hours, whereas, respondent No.5 submitted its last bid at 16:59:54.935 hours on 28.04.2022. The bid process was open from 10:00 AM on 25.04.2022 till 03:00 PM on 28.04.2022. As per clause 16 of the Terms and Conditions of the e-auction process if any bid is received 10 minutes prior to the time fixed for closure of the bid, then the time for closure of auction would automatically get extended by 10 minutes, until such time when no bid is received in extended period of time. In view of this condition since the petitioner submitted its last bid at 16:50:24.413 hours and respondent No.5 submitted its last bid at 16:59:54.935 hours and as no other bidder submitted any higher bid within 10 minutes thereafter as per clause 16 the bid process was closed at 17:10 hours on 28.04.2022. It is asserted that there was no violation of any terms and conditions of the e-auction process.

The next day i.e., on 29.04.2022 itself the highest bid of respondent No.5 which was much more than the reserve price was confirmed. A communication Annexure R-2/2 dated 29.04.2022 was sent to respondent No.5.

The allegations of the petitioner regarding the technical error/glitch in the e-auction process have been denied. It is stated that the representation/ e-mail (Annexure P-9) was sent by the petitioner on 29.4.2022 at 23:07 hours i.e., after the office had closed. Prior to that the sale in favour of respondent No.5 had been confirmed. 29.04.2022 was Friday. The office of respondent No.2 was closed on the next two days i.e., 30.04.2022 and 01.05.2022 being Saturday and Sunday. The representation came to the knowledge of the respondent No.2 on 02.05.2022. Immediately, the said representation was sent for the comments of the auction handling agency i.e. Nextenders (India) Pvt. Ltd., who vide their report dated 02.05.2022 submitted that there was no technical glitch/error and the portal of e-auction was running in a fine condition and the e-auction process of the property in question was completed successfully on 28.04.2022 at 17:10:00 hours. The copy of reply submitted by e-auction handling agency has been appended as Annexure R-2/3. It is as under:

> *"Subject: Re: Auction of Land Building and Assets of M/s Krishna Engineering Works Ltd., B-1, Focal Point, Jalandhar*
> *From : Punjab Support <support.punjab@nextenders.com> on Mon. 02 May 2022 16:30:42*
> *To : PSIDC <psidc@rediffmail.com>*
> *Cc : Punjab Support <Support.punjab@nextenders.com>*
>
> *Dear Sir,*
>
> *In reference to your email and discussion with you today, we have checked the reported issue at our end and found that the portal was running fine and the said event no.4079 was concluded successfully at 2022-04-28 17:10:00 as per closure rule set by the competent authority.*
> *As soon as after receiving bid at 2022-04-28 16:50:11.606 by M/s Ambika Traders the time get extended for next 10 min as per closure rules set by the department thereafter next bid received at 2022-04-28 16:50:24.413 by CY International and the final bid received was at 2022-04-28 16:59:54.935.*
> *Since the last bid was received at 2022-04-28 16:59:54.935 by M/s Ambika Traders in the said event and accordingly the bidders had sufficient time to revise their bid till end time i.e. 2022-04-28 17:10:00.*
> *Hence, no issue found at portal level as mentioned by the complainant.*
>
> *On Mon. May 2, 2022 at 11:22 AM PSIDC <psidc@rediffmail.com> wrote :*
> *Dear Mam,*
> *Below is the mail from second highest bidder for the Auction of M/s Krishna Engineering Works Ltd. concluded on 28.4.2022. You are requested to look into the matter and revert at the earliest.*
> *Thanks.*
> *Sushil Maini*
> *System Manager*
> *PSIDC"*

Thereafter, the reply was sent to the petitioner inter-alia mentioning that there had been no error/ glitch at the portal. A copy of the report received from the auction handling agency was also sent alongwith the said reply. It is asserted that M/s Nextenders (India) Pvt. Ltd. had again vide their email dated 31.5.2022 (Annexure R-2/4), while confirming that the sale was concluded successfully also shared the health monitoring logs of the e-auction server for the time duration from 28.4.222 09:00 hrs to 18:00 hrs showing that the portal was working fine. The email dated 31.5.2022 (Annexure R-2/4) is as under:

> *Subject: Re: Dispute regarding inability of M/s CY International to place the bid during the closing hrs of e-auction of M/s Krishna Engineering Ltd. concluded on 28.4.2022*
>
> *From:Anujeet Gill <anujeet.gill@nextenders.com> on Tue, 31 May 2022 at 16:23:51*
> *To : PSIDC <psidc@rediffmail.com>*
> *Cc : supportpunjab <support.punjab@nextenders.com>*
>
> *2 attachment(s) – report_for_puda_4079.xls (54.50KB), Health_monitoring_logs_of_the_eAuction_server.docx*
>
> ---
>
> *Dear Sir,*
> *This is in reference to your letter no. PSIDC:ADMN:355 dated 30.5.2022 regarding the above subject matter. In this regard, we hereby certify and confirm to you by email that we have checked the reported issue at our end and found that the portal was running fine and the said event no. 4079 was concluded successfully at 2022-04-28 17:10:00 as per the closure rule set by the competent authority.*
> *The complete bidding report with time stamping is available on the portal at the front end which the department user or the participated bidders can download it by using their credentials on the portal. However, the same bidding report is also being enclosed for your reference.*
> *As per the above bidding report, as soon as on receiving the bid at 2022-04-28 16:50:11.606 by M/s Ambika Traders the time was auto extended for the next 10 min as per closure rules set by the department thereafter next bid received at 2022-04-28 16:50:24.413 by CY International and the final bid was at 2022-04-28 16:59:54.935.*
> *As the last bid was received at 2022-04-28 16:59.54.935 by M/s Ambika Traders in the said event and accordingly the said bidder had sufficient time to revise their bid till the end time i.e. 2022-04-28 17:10:00.*
> *Apart from the bidding report, we are also sharing with you the health monitoring logs of the eAuction server for the time duration from 28.04.2022 09:00 hrs to 18:00 hrs which clearly*

shows that the portal was working fine.
Hence, no issue found at the portal level as mentioned by the complainant.
On Tue, May 31, 2022 at 3:35 PM 'PSIDC via chandigarh <chandigarh@nextenders.com> wrote :
Sir /Madam
Please find attachment here.
Thanks
PSIDC.
Thanks and regards
Anujeet Kaur
Nextenders (India) Pvt. Ltd.

In the reply it is further asserted that after the intimation was sent to the petitioner on 9.5.2022, no further action was taken by the petitioner. Now as an afterthought, the writ petition has been filed on 16.05.2022 which as per the facts of case would be hit by delay and latches.

It is also stated that as per terms and conditions of the e-auction in case payment of entire sale consideration is made within one month no interest is to be charged. Respondent No.5 being the highest bidder has deposited the entire amount. Last such payment of Rs.5.68 crores was received on 27.05.2022.

The allegations of the petitioner that consent of the secured creditors was not obtained before confirming the sale in favour of respondent No.5 have been denied. It is stated that the consent of the secured creditors namely SASF (IDBI) and UTI-MF was obtained before confirming the sale. Copy of the communications sent to and received from the secured creditors have been annexed.

The following communication (R-2/7) was sent on 29.04.2022 at 10:41 by the PSIDC to the Deputy General Manager Stressed Assets Stablization Fund (SASF), IDBI Tower, Mumbai :

> *"Reg: M/s Krishna Engineering Works Ltd. (KEWL) – Sale of assets*
>
> *Dear Sir,*
>
> *As you are kindly aware the fixed assets i.e. Land, Building and Plant & Machinery of M/s Krishna Engg. Works Ltd. (KEWL) located at B-1, Focal Point (old), Jalandhar were advertised for sale and a copy of the said advertisement is available in your record. The sale was conducted by way of e-auction and against the reserve price of Rs.616.84 lacs, the highest bid of Rs.757.41 lacs (approx.) has been received from M/s Ambika Traders (Sh.Sachin Sehgal). A copy of the relevant documents as downloaded from the website which includes the highest price, names and addresses of the bidders (04 Nos.) as well as the bid sheet is enclosed herewith for your perusal. Needless to mention the said details are available with the Corporation only after the bid is closed.*
>
> *We would further like to mention that M/s Krishna Engineering Works Ltd. has filed a writ petition in the Hon'ble Punjab & Haryana High Court on 22.04.2022 with PSIDC as a respondent seeking stay of auction notice dated 04.04.2022. However, the said matter is yet to be listed.*
>
> *Thanking you,*
> *Yours faithfully*
> *Sr.Dy.General Manager*
> *For Punjab State Industrial*
> *Development Corporation Ltd.":*

The PSIDC sent a similar communication on the same date at 10:44 to the Vice President, Department of Fund Management, UTI Asset Management Company Ltd., Mumbai.

The IDBI responded to the above communication on 29.04.2022 at 13:59 as under:

> *"Dear Sir,*
>
> *Please refer to your trail mail on the captioned subject.*
>
> *As informed by you, we understand that the highest bid of Rs.757.41 lakh (approx.) received against reserve price of Rs.616.84 lakh in the auction sale of assets of land, building and plant & machinery of Krishna Engineering Works Ltd. located at B-1, Focal Point, Jalandhar, where 4 bidders*

participated in the public auction on April 28, 2022. We have gone through the copy of the bid documents (e-auction process) provided by you.

In this connection, we advise that we give our consent on behalf of SASF for accepting the H1 bid of Rs.757.41 lakh received from M/s Ambika Traders (Shri Sachin Sehgal) and for issuance of sale certificate, subject to receiving the entire bid amount and complying all other terms and conditions of the sale auction process."

The UTI replied to the communication on 29.04.2022 at 13.14. The reply is as under:

"Dear Mr.Abhay Gupta Ji,

Noted your preceding email and appreciate efforts taken by PSIDC.

Sir, kindly also mark your emails to Mr.Rajnish Kumar, Head of Dealing – EVP, Dept of Dealing, UTIMF, Mumbai. His email Id is rajnish.kumar@uti.co.in."

An Additional Affidavit dated 15.09.2022 of Sh. A.P. Gupta Senior Deputy General Manager, PSIDC was filed on 15.09.2022 in which it has been asserted that that the Corporation vide its e-mail dated 14.09.2022 to UTI sought clarification with regard to its e-mail communication dated 29.04.2022 and whether its appreciation of the efforts taken by PSIDC was an approval of the auction sale. In reply thereto, the said secured creditor has acknowledged that the e-mail sent on 29.04.2022 was an approval to the successful auction proceedings vide which highest bid of Rs.757.41 lacs (approximately) was received against the reserve price of Rs.616.84 lacs from M/s Ambika Traders (respondent No.5). The communication dated 14.09.2022 as sent by Corporation as well as reply by the said secured creditor (UTI) which have been appended as Annexure R-2/9 and Annexure R-2/10 with the affidavit. They are reproduced below:

"*Reg. M/s Krishna Engineering Works Ltd. (KEWL) – Sale of assets*

Dear Sir,

The Corporation had vide its mail dated 29.04.2022 while informing the highest bid of Rs.757.41 lacs (approx.) received against the reserve price of Rs.616.84 lacs from M/s Ambika Traders in respect of sale of fixed assets (land, building, plant & machinery) of M/s Krishana Engg. Works Ltd. forwarded the names and addresses of the bidders as well as the bid sheet. You had vide your mail of the same date appreciated the efforts taken by PSIDC. The Corporation had then also forwarded a copy of the sale letter issued in favour of M/s Ambika Traders and the subsequent correspondence was also made, inter-alia, informing about the petitions filed by the company as well as the second highest bidder. You had again vide your mail dated 13.05.2022 while appreciating the efforts taken by PSIDC desired that the distribution of the money be done as early as possible.

As you are kindly aware Mr.Manish Batra, one of the bidders filed a petition in the Hon'ble Court of Punjab & Haryana challenging the sale of fixed assets of the captioned Company and a copy of the interim order dated 23.05.2022 passed by the Hon'ble Punjab & Haryana High Court was also sent by mail dated 15.06.2022 which was also acknowledged by your office. One of the contentions raised by Mr.Manish Batra in this petition is that the Corporation has not sought consent of the secured creditors while confirming the sale in favour of M/s Ambika Traders. The captioned petition was listed on 13.09.2022 when it was brought to the notice of the Hon'ble Court that UTI Mutual Fund has given its consent by way of appreciating the efforts taken by PSIDC (mail dated 29.04.2022). However, the Hon'ble Court has desired that a clear consent by way of clarification of the earlier referred to hereinabove be sought from UTI. The matter is now listed for 15.9.2022. You may kindly issue a clarification so that the Hon'ble Court is informed, accordingly. As desired, a copy of the consent received through mail dated 29.04.2022 from SASF (IDBI) Mumbail is also attached for your perusal.

Regards,
Supdt.-II/PSIDC"

....

"*Subject: FW/ M/s Krishna Engineering Works Ltd. (KEWL) – UTIMF Consent*

Dear Sir,

This is in continuation of our earlier/trailing email dated 29.04.2022, UTIMF hereby clarify that kindly read trailing email as UTIMF's consent to PSIDC towards acceptance to the highest bid of Rs.757.41 lacs (approx.) received against the reserve price of Rs.616.84 lacs from M/s Ambika Traders in respect of sale of fixed assets (land, building, plant & machinery) of M/s Krishana Engg. Works Ltd. located at B1, Focal Point, Jalandhar, Punjab.

Thanks & Rgds

xxx xxx xxx
Sujit Pote
Dept of Dealing
UTI Mutual Fund"

It is also stated that in terms of communication received from UTI (MF) secured creditor dated 29.4.2022 at 13:14:44 hrs, e-mail (Annexure R-2/11) was also sent to Mr. Rajnish Kumar, Head of Dealing-EVP, UTIMF, Mumbai at his e-mail id i.e. rajnish.kumar@uti.co.in at 13:51:51 hrs..

It is further stated that the sale confirmation letter dated 29.04.2022 (Annexure R-2/2) was also sent vide e-mail dated 04.05.2022 to UTI. Similar e-mail was also sent to the other secured creditor to SASF (IDBI). The copy of stay order dated 23.06.2022 passed by the Court in the instant writ petition was also sent to the secured creditors. They were informed about the proceedings. Till date no objection whatsoever has been received from either of the secured creditors with regard to the confirmation of the auction communicated vide letter dated 29.4.2022 (Annexure R-2/2) in favour of respondent No.5.

In the written statement of respondent No.3- Punjab Urban Development Authority (PUDA) it has been stated that respondent No.2

(PSIDC) through respondent No.3 issued a notice for e-auction of immovable assets of M/s Krishna Engineering Works Ltd. of Plot No.B-1, Focal Point, Jalandhar measuring a total area of 4028 sq. yards on 99 years lease alongwith building and plant and machinery. As per the terms and conditions of the public notice for e-auction (P-2) the auction was to be held from 10.00 AM on 25.04.2022 till 3.00 PM on 28.04.2022. Four applicants placed their bids for the auction, which are as under :-

Sr. No.	Bidders
1.	Issho Tradex Private Limited
2.	CY International (Petitioner)
3.	Ambika Traders (Respondent No. 5)
4.	Avtar Singh Junior

On the last date of bidding i.e. 28.04.2022 and in continuation of the bids being placed, on receiving the bid on 28.04.2022 at 16:50:11.606 by M/s Ambika Traders (respondent No.5) the time was auto extended for another next 10 minutes as per closure rules set by the department. Thereafter, next bid was received on 28.04.2022 at 16:50:24.413 by CY International (petitioner). The final bid was received on 28.04.2022 at 16:59:54.935 by respondent No.5. On receiving the said last bid, the time for placing the bid was automatically extended till 17:10:00 on 28.04.2022. Meaning thereby, the petitioner had enough time to revise its bid. The details of the bid alongwith time, bid price, quantity were annexed as Annexure R-3/1.

With regard to the allegations of the petitioner that there was a technical glitch because of which it could not submit its bid, it is asserted that the respondent has checked out its logs for the E-auction server from 28.04.2022 to 29.04.2022. The same reflects that the server was working fine and that no server breakdown occurred. Copy of the reports have been annexed.

It is stated that the role of respondent No.3 was limited to providing online portal to the applicants for placing their bids through its server.

As per the case set up by the petitioner in the writ petition Mr. Kanwaljeet Singh, Ld. Senior Counsel for the petitioner has contended as under:

(i)The petitioner gave its last bid at 16.50:24.413 of Rs.7,56,91,760/- (Seven crore Fifty six lakh ninety one thousand seven hundred and sixty Rupees only). No other bidder made a bid above the bid of the petitioner. Till 16:59 the name of the petitioner was reflected as the highest bidder. The petitioner called the assistance number of respondent No.3 after 17.00 (5.00 PM) after waiting for 10 minutes for the confirmation of its bid as last/highest as no other bid was shown on the screen/device of the petitioner. Respondent No.3 advised the petitioner to refresh and confirm the same. The petitioner was shocked when about 1/10th second before 5 O' Clock respondent No.5 by raising the bid amount by Rs.50,000/- was shown to be the highest bidder at 16:59:54. At the close of the E-auction there had been flickering at the website screen/portal at the end of the auctioneer/department/respondent No.2 which deprived the petitioner the chance of submitting a higher bid.

(ii) The next day i.e. 29.04.2022, after verifying the facts, the petitioner sent a representation to respondent No.2 through e-mail complaining about the flickering at the website screen portal at the end of the auctioneer. In his representation the petitioner had stated that that he was ready to offer a bid of Rs.8.50 crore i.e., Rs.93 lacs more than respondent No.5. He also stated that he would offer even more than that if required. He stands by his offer even today.

(iii) The sale was confirmed in a tearing hurry without looking into his representation and without getting the prior approval of the secured creditors.

Mr. Vikas Mohan Gupta for respondent No. 2, Ms. Anu Chatrath Sr. Advocate for respondent No.3 and Mr. D.S.Patwalia Sr. Advocate for respondent No.5 have countered the submissions of Sh.Kanwaljit Singh. They argued on the basis of the replies of respondent No.2 and 3 that there was no fault in the server. Before approving the sale, approval of the secured creditors was obtained. In respect of contention of the petitioner that he was willing to offer a higher bid it was argued that this is an afterthought. The representation was sent by the petitioner at 23: 07 hours on 29.04.2022. Before this the sale had already been confirmed in favour of respondent No.5. They contended that there being no irregularity in the auction process it is not permissible to re-open the process after the confirmation of sale.

Having heard Ld. Counsel for the parties we are of the view that the petition deserves to be dismissed.

The allegations of the petitioner regarding the technical error/glitch in the e-auction process have been denied in the replies of respondents No.2 and 3. It is stated that the representation/ e-mail (Annexure P-9) was sent by the petitioner on 29.04.2022 at 23:07 hours i.e., after the office had closed. Prior to that the sale in favour of respondent No.5 had been confirmed. 29.04.2022 was Friday. The office of respondent No.2 was closed on the next two days i.e., 30.04.2022 and 01.05.2022 being Saturday and Sunday. The representation came to the knowledge of respondent No.2 on 02.05.2022. Immediately, the said representation was sent for the comments of the auction handling agency i.e. Nextenders (India) Pvt. Ltd., which vide report dated 02.05.2022 submitted that there was no technical glitch/error and the portal of e-auction was running in a fine condition and the e-auction process of the property in question was completed successfully on 28.04.2022 at 17:10:00 hours. The petitioner has not been able to controvert this.

Hence, we conclude that there was no error or glitch in the e-auction portal at the end of the e-auction handling agency and the contention of the petitioner that it was prevented from making a higher bid on account of some glitch at the end of the auction handling agency cannot be accepted.

The other ground of the petitioner that the auction was finalized without seeking prior approval of the secured creditors also cannot be accepted.

In the reply of respondent No.2 it has been stated that on 29.04.2022, PSIDC had addressed identical communications to the Deputy General Manager, Stressed Assets Stablization Fund (SASF), IDBI Tower, Mumbai and the Vice President, Department of Fund Management, UTI

Asset Management Company Ltd., Mumbai (the secured creditors) at 10:41 hours and 10:44 hours respectively informing them about the auction sale conducted the previous day and the highest bid received.

Replies were received from both of them. The IDBI responded on 29.04.2022 at 13:59 specifically giving its consent for accepting the H1 bid of Rs.757.41 lakh received from M/s Ambika Traders and for issuance of sale certificate. The UTI replied on 29.04.2022 at 13:14 in which it appreciated the efforts taken by PSIDC. After receiving these replies the auction sale was confirmed in favour of respondent No.5.

In order to clear any doubt as to whether the communication dated 29.04.2022 of UTI constituted consent, the Corporation vide its e-mail dated 14.09.2022 addressed to UTI sought clarification with regard to its e-mail communication dated 29.04.2022, whether it was an approval of the auction sale. In reply thereto, UTI has acknowledged that the e-mail sent on 29.04.2022 was an approval to the successful auction proceedings vide which highest bid of Rs.757.41 lacs (approximately) was received against the reserve price of Rs.616.84 lacs from M/s Ambika Traders (respondent No.5).

It is also borne out from the additional affidavit dated 15.09.2022 of Sh. A.P. Gupta, Senior Deputy General Manager, PSIDC that the sale confirmation letter dated 29.04.2022 was sent by e-mail dated 4.5.2022 to UTI. Similar e-mail was also sent to the other secured creditor SASF (IDBI). The secured creditors were also informed about the proceedings in this writ petition and the interim order passed therein. Till date no objection whatsoever has been received from either of the secured creditors with regard to the confirmation of the auction in favour of respondent No.5.

Thus, the contention of the petitioner that the sale had been confirmed without seeking approval of the secured creditors cannot be accepted.

The third argument that the petitioner was and is still willing to offer a bid of Rs.8.50 crore i.e., Rs.93 lacs more than respondent No.5 and hence the auction sale be re-opened, also cannot be accepted.

The petitioner claims that he had called the assistance number of respondent No.3 after 17.00 (5.00 PM) after waiting for 10 minutes for the confirmation of its bid as last/highest and that respondent No.3 advised the petitioner to refresh and confirm the same. There is nothing on record from which this can be substantiated. In any event the petitioner submitted his representation alleging the fault at the server end of the auctioneer the next day i.e., 29.04.2022 which was a Friday at 23.07 hours (after the close of office hours). Clearly, the petitioner did not display any urgency in putting forth his objections which would have been evident if he had sent the representation immediately after knowing that respondent No.5 had been recorded as the highest bidder a fraction of a second before 17.00 hours on 28.04.2022. Not only that, he let the entire next day pass and sent his representation after close of office hours on 29.04.2022 which was a Friday. Before this the auction sale had already been confirmed in favour of respondent No.5. It clearly appears that the objection of the petitioner was an afterthought.

It is well settled that a sale made pursuant to a public auction can be set aside only where it is established that the property has been sold at a throwaway price because of any fraud or irregularity in the conduct of the auction.

Hon'ble Supreme Court in ***K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple, (2022) 5 SCC 710***, observed as under:

> ***"17.*** *The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throwaway price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of the highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction-sale pursuant to the public auction is set aside on the basis of such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected."*

In the present case, there appears to be no irregularity in the auction process. The sale price received is well above the reserve price. The sale has been made with the approval of the secured creditors. Moreover, respondent No.5 being the highest bidder has deposited the entire amount. Last such payment of Rs.5.68 crores was made on 27.05.2022.

We find no justification to re-open the auction at the instance of the petitioner.

Dismissed.

(HARINDER SINGH SIDHU)
JUDGE

(LALIT BATRA)
JUDGE

November 16, 2022
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