

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.12301 of 2020 (O&M)**

**Reserved on 10.05.2022.**

**Date of Decision: 18.05.2022**

***M/S SKY TONE ELECTRICALS (INDIA) LIMITED*** .....Petitioner

***V/s.***

***CANARA BANK AND OTHERS*** .....Respondents

**CORAM:** **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**  
**HON'BLE MR. JUSTICE HARMINDER SINGH MADHAN**

Present: Mr. Aalok Jagga, Advocate and  
Mr. Diwan Sharma, Advocate for the petitioner.

Mr. Nitin Grover, Advocate,  
for the respondents No.1 and 2.

Mr. Atul Sharma, Advocate  
for respondent No.3.

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**M.S. RAMACHANDRA RAO, J.**

**Background facts**

Petitioner No.1 is a company incorporated under the Companies Act, 2013.

Certain credit facilities were offered to the petitioner by the Canara Bank (respondents No.1 and 2).

The loan account of the petitioner was declared as Non Performing Asset (NPA) on 30.09.2016 by the respondent-Bank, and it issued on 19.01.2017, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Act”) claiming ₹26,91,23,862.81 as on 31.12.2016.

Though the petitioner filed objections under Section 13(3A) of the Act on 23.03.2017 requesting the respondent-Bank for rehabilitation

instead of initiating coercive action, the same was not accepted by the respondent-Bank on 07.04.2017.

Thereafter on 22.06.2017, the respondent-Bank issued notice under Section 13(4) of the Act taking symbolic possession of the mortgaged properties.

It also obtained on 25.10.2017 an order under Section 14 of the Act from the District Magistrate, Faridabad to take physical possession of the mortgaged properties.

Certain OTS proposals were made by the petitioner in the years 2017 and 2018 which were rejected on 05.06.2018.

**The various sale notices**

A sale notice Annexure P-13 dt.26.06.2018 was issued by the respondent-Bank putting the mortgaged properties to sale for a consolidated reserve price of ₹27.16 Crores, but no bids were received.

The respondent-Bank then issued *second* sale notice Annexure P-14 on 06.08.2018 putting the properties to sale with the same reserve price as earlier, but again no bids were received.

It thereafter obtained a valuation report on 05.01.2019 with regard to immovable property, and another valuation report on 06.03.2019 with regard to movable property for fixing reserve price as per Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “the Rules”).

It then issued a *third* sale notice Annexure P-16 dt.22.07.2019, and fixed the reserve price of ₹2804.65 Lakhs. No bids were received even for this sale which was proposed to be held on 28.08.2019.

Thereafter, no further valuation of the movable and immovable properties was obtained by the respondent-Bank, and it issued a *fourth* sale notice on 30.01.2020 (Annexure P-19) fixing the date of sale as 29.02.2020 for a reserve price of ₹2524 Lakhs.

**The result of the fourth auction**

Respondent No.3 (Auction Purchaser) became the highest bidder in the said e-auction and deposited 10% of the bid amount on that day and on 02.03.2020, he deposited 15% more. Thereafter, respondent-Bank confirmed his bid vide Annexure R-4 dt.03.03.2020, and directed him to deposit 75% balance bid amount by 18.03.2020 i.e. within the 15 days' period prescribed in Rule 9(4) of the Rules.

**Various extensions granted to the Respondent No.3 by the Bank for paying the bid amount**

**a) The First extension**

However, this was not complied with by respondent No.3, and respondent No.3 sought for an extension of time for depositing the balance amount of 75% till 18.04.2020 vide Annexure R-7 dt.12.03.2020. Such extension was granted by the respondent-Bank to respondent No.3 till 18.04.2020 vide Annexure R-8 dt.13.03.2020.

**b) The Second extension**

Even in this extended time, respondent No.3 could not make an deposit, and he again sought extension for the second time for three months vide Annexure R-9 dt.20.04.2020.

On the same day, the respondent-Bank granted the second extension to respondent No.3 till 25.05.2020 vide Annexure R-10.

**c) The Third extension**

In spite of being granted the second extension, respondent No.3 did not make the deposit of balance 75% of the bid amount, and it again made a request on 22.05.2020 vide Annexure R-11 for extension of time for making the deposit of the balance 75% of the bid amount till 25.08.2020.

The respondent-Bank again agreed to the said request, and granted extension of time for the third time till 06.08.2020 vide Annexure R-12 dt. 30.05.2020.

**The sale certificate d.5.8.2020**

On 05.08.2020, vide Annexure R-5, Sale Certificate was issued to respondent No.3 by the respondent-Bank after the balance amount was deposited on that date.

**Contentions of counsel for the petitioner**

In this Writ Petition, the petitioner challenges the sale certificate issued to respondent No.3 on the ground that such a sale is in violation of Rule 8 and Rule 9 of the Rules.

Counsel for the petitioner contended that it was incumbent on the part of the respondent-Bank to obtain a fresh valuation *before* conducting the sale on 29.02.2020 as required by Rule 8(5) of the Rules, and the respondent-Bank could not have relied upon the valuation report dt.05.01.2019 obtained for immovable property and valuation report dt 06.03.2019 for movable property for fixing the reserve price for the said sale.

Reliance is placed on the decisions in the case of **Pochiraju Industries Ltd. Vs. Punjab National Bank and others<sup>1</sup>** and **Anita Sadana Vs. Baljinder Kaur and others<sup>2</sup>**.

It is also contended that there was no material adduced to show on what basis the reserve price was reduced from ₹2804.65 Lakhs fixed in the third sale notice dt.22.07.2019 to ₹2524 Lakhs in the fourth sale notice dt.30.01.2020.

It is also contended that there was no consultation between the Secured Creditor and the Authorized Officer before fixing the reserve price, that Bankers are not experts in fixing reserve price in the absence of valuation, and the consultation mandated by Rule 8(5) of the Rules has to be proved by documentary evidence which is absent in the instant case. Reliance is placed on the decision in the case of **IAA Hospital Pvt. Ltd. and another Vs. The Authorized Officer, UCO Bank and Others<sup>3</sup>**.

Counsel for the petitioner also contended that as per Rule 9(4) of the Rules, only one extension can be granted, and not multiple extensions, and such extension cannot be granted for a period *exceeding* three months. It is pointed out that extension was granted to respondent No.3 by the respondent-Bank for 153 days i.e. from 03.03.2020 till 06.08.2020, though the 3 months (90 days) period w.e.f. 03.03.2020 expired on 03.06.2020.

It is further contended that if the period of lockdown/curfew on account of COVID-19 pandemic (which was enforced w.e.f. 22.03.2020 till

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<sup>1</sup> 2018 (2) ALT 128 (DB)

<sup>2</sup> 2017 (7) RCR (Civil) 773

<sup>3</sup> 2014 AIR (Punjab) 161

02.05.2020) is also excluded, and those 41 days are deducted, still respondent No.3 can be said to have been granted extension of 112 days, which is more than 90 days, and is impermissible.

**Response of the Bank (respondents No.1 and 2)**

Reply affidavit was filed by respondent No.1 and 2 (Bank) wherein it is contended that this Court ought not to have entertained this Writ Petition since the petitioner has an effective alternative remedy under Section 17 of the Act for redressal of the grievances with respect to the sale conducted under the Act.

It is asserted that the respondent-Bank had acted strictly in accordance with the Rules.

It is further asserted that there was consultation between the Secured Creditor and the Authorized Officer for fixing the reserve price.

According to the Bank, it obtained valuation report of two panel SARFAESI Valuers with respect to the mortgaged properties, and one valuation report of panel SARFAESI Valuer with respect to hypothecated plant and machinery.

According to it, on the basis of the valuation dt.05.01.2019 given by M/s. Space (India) Technical Associates, and the valuation report M/s. S.K. Wadhwa and Associates dt.06.03.2019 in respect of the hypothecated plant and machinery, the reserve price was initially fixed at ₹2804.65 Lakhs, but later it was reduced to ₹25.24 Crores by giving 10% reduction to the reserve price by the Authorized Officer as per the guidelines of the Bank.

It is also contended that the Act did not stipulate obtaining of a fresh valuation report prior to fixing of reserve price before every sale.

As regards the extensions granted to respondent No.3 beyond the period of three months, it is stated that the first extension was sought by respondent No.3 till 18.04.2020 as funds of his customers were stuck in the Yes Bank; that the second, third and fourth extensions were sought on account of nationwide lockdown due to spread of COVID-19 pandemic.

It is stated that the entire bid amount of ₹25,25,50,000/- was paid by 05.08.2020, and the Sale Certificate was issued to respondent No.3 (Auction Purchaser).

It is further stated that the Supreme Court had passed an order on 23.03.2020 in a *suo moto* Writ Petition (Civil) 3 of 2020 extending the period of limitation till 15.03.2020; and the Government of India issued a Office Memorandum bearing No.F.18/4/2020-PPD dt. 19.02.2020 through Procurement Policy Division, Department of Expenditure, Ministry of Finance, Government of India stating that the disruption of the supply chain due to spread of corona virus should be considered as a case of natural calamity and Force Majeure Clause (FMC) may be invoked wherever considered appropriate following due procedure.

It was denied that Rule 9(4) of the Rules prohibited grant of more than one extension to the Auction Purchaser for payment of balance sale consideration.

**Response of the Auction Purchaser (respondent No.3)**

The Auction Purchaser, who was impleaded as respondent No.3 in the Writ Petition, also filed the reply affidavit supporting the stand taken by the Bank (respondents No.1 and 2).

Counsel for the respective parties supported the contentions of their parties.

**The consideration by the Court**

Having regard to the aforesaid submissions, the first question which arises for consideration before this Court is:-

(1)“*Whether this Court should have entertained this Writ Petition when there is an alternative remedy available for the petitioner to avail under Section 17 of the Act ?*”

Though counsel for respondents have placed reliance on the decision of the Supreme Court in the case of **United Bank of India Vs. Satyawati Tondon and others**<sup>4</sup> to contend that the Writ Petitions under Article 226 of the Constitution of India cannot be entertained when effective statutory remedy is available to the aggrieved person, in a later judgment rendered in the case of **Authorized Officer, State Bank of Travancore and Another Vs. Mathew K.C**<sup>5</sup>, the Supreme Court held that there are well defined exceptions to the rule of exhaustion of alternative remedy as laid down in decision of **Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal**<sup>6</sup> and one of such exceptions mentioned in Para 15 of the said judgment is “*where the statutory authority has not acted in accordance with the provisions of the enactment in question.*”

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<sup>4</sup> 2010 (8) SCC 110

<sup>5</sup> 2018 (3) SCC 85

<sup>6</sup> 2014 (1) SCC 603

In the instant case when there is an allegation of violation of provisions of the Statute by the Bank which is expected to act in accordance with the provisions of the Statute, it cannot be said that this Court cannot entertain this Writ Petition, and ought to compel the petitioner to avail the alternative remedy.

We may also point out that the Writ Petition had been filed in August, 2020 when there was limited functioning of the Courts and the Tribunals on account of COVID-19 pandemic, and on 20.08.2020, the matter was taken up through Video Conferencing by this Court, and notice of motion was issued. Even subsequent thereto, in the later half of 2021, on account of vacancies of the Presiding Officer in the office of the DRTs, the Supreme Court itself directed the High Courts to entertain Writ Petitions.

At any rate, at this point of time when almost 2½ years elapsed after the Writ Petition was entertained by this Court, it would be a travesty of justice to dismiss this Writ Petition on the ground of availability of the alternative remedy with the petitioner.

We may also point out that the Supreme Court itself had held in the case of **United Bank of India** (Supra 4) and also in the case of **Sh. Sidheshwara Cooperative Bank Ltd. and Another Vs. Ikbali and Others**<sup>7</sup> (also in a case arising under the Act) that an alternative remedy is not absolute bar to the exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

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<sup>7</sup> 2013 (10) SCC 83

Therefore, we reject the plea of the respondents that this Writ Petition should be dismissed on the ground of availability of the alternate remedy with the petitioner.

The second question to be considered:-

(2) *“Whether there was necessity to have a fresh valuation before the fourth sale was conducted by the Bank on 29.02.2020 and whether it could validly rely upon valuation report dt.05.01.2019 obtained regarding immovable property and another report dt.06.03.2019 regarding the hypothecated plant and machinery for fixing the reserve price for the fourth sale held on 29.02.2020 ?”*

We shall refer to Rule 8 of the Security Interest ( Enforcement) Rules, 2002 framed under the Act which states:

**“8. Sale of immovable secured assets.-**

(1) ...

(2) ...

(3) ...

(4) ...

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

*(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or*

*(b) by inviting tenders from the public;*

<sup>24</sup>*[(c) by holding public auction including through e-auction mode; or]*

*(d) by private treaty.*

<sup>25</sup>*[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]*

(emphasis supplied)

Thus Rule 8(5) mandates that the secured creditor should obtain a valuation of the secured asset from an approved valuer *before* putting it for sale.

In this regard, we may point out that in the decision of **Mathew Varghese Vs. M. Amritha Kumar and Others**<sup>8</sup>, the Supreme Court held the ownership of the secured asset is constitutional right vested in the borrowers, and protected under Article 300-A of the Constitution of India, and the Secured Creditor should act as a *Trustee* of the Secured Asset. It held that Secured Creditor cannot deal with the Secured Asset in any manner it likes, and *such an asset can be disposed of only in the manner prescribed in the Act*. It held that *any sale effected without complying Rule 8 and 9 of the Rules framed would be unconstitutional, and therefore, is null and void*.

It declared:

*“43. ...though the recovery of public dues should be made expeditiously, it should be in accordance with the procedure prescribed by law and that it should not frustrate a constitutional right, as well as the human right of a person to hold a property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside.” (emphasis supplied)*

This was reiterated in the decision of the Supreme Court in the case of **J. Rajiv Subramaniam & Another Vs. M/s. Pandiyas & Others**<sup>9</sup>. The Supreme Court emphasizes that generally proceedings under the Act against the borrowers are initiated only when the borrower is in dire straits; that the provisions of the Act and the Rules have been enacted to

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<sup>8</sup> 2014 (5) SCC 610

<sup>9</sup> 2014 (5) SCC 651

ensure that the Secured Asset is not sold for a song; that it is expected that all the Banks and the Financial Institutions which is resort to the extreme measures under the Act for sale of the Secured Assets, and would ensure that such sale of the Asset provides maximum benefit to the borrower by the sale of the such Asset, and they are expected to take *bona fide* measures to ensure that there is maximum yield from such Secured Asset from the borrower.

**The decision in Vasu P.Shetty**

The importance of a valuation of the property being made before the sale was held under the Act was emphasized once again in **Vasu P.Shetty Vs. Hotel Vandana Palace**<sup>10</sup>. In that case, the High Court had set aside a sale conducted by the Syndicate Bank *inter alia* on the ground that fresh valuation of the property was not obtained by the Bank before bringing the property for sale. The Supreme Court approved the said decision and reiterated that any secured creditor may be entitled to enforce the security interest created in its favour on its own without resorting to any Court proceedings or approaching the Debt Recovery Tribunal, but such enforcement *should be in conformity with the other provisions of the Act such as Rule 8(5)*.

**The decision in Pochiraju Industries of the Telangana High Court**

In **Pochiraju Industries Ltd.** (1 Supra), the Telangana High Court was considering a case, where, on the basis of the valuation report dt. 01.02.2017, an e-auction sale notice dt.14.03.2017 was issued initially,

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<sup>10</sup> 2014 (5) SCC 660

but there were no bidders, and so a second sale notice was issued on 01.07.2017.

The Division Bench referred to Rule 8(5) of the Rules, and held that before affecting the sale of immovable property under Rule 9(1) of the Rules, the Authorized Officer should obtain valuation of the property from the approved valuer, and in consultation with the Secured Creditor fix its reserve price. It declared that the provision requires that this step should be taken before the proposed sale and since such procedure was not followed before issuing the sale notice dt. 01.07.2017, the sale deserved to be set aside.

**The decision of the Madhya Pradesh High Court in Anita Sadana**

Similar view was taken by the Madhya Pradesh High Court in **Anita Sadana** (Supra 2).

The Madhya Pradesh High Court relied upon the decision of the Supreme Court in **Kerala Finance Corporation Vs. Vineet Paul**<sup>11</sup> where the Supreme Court had given certain guidelines for the sale of properties by the State. The Supreme Court had emphasized that essential ingredients of the same are *correct valuation report* and fixing of reserve price. It held that if proper valuation was not made, the reserve price is fixed taking into consideration an inaccurate valuation report, and intending purchasers may not come forward treating the property not worthy of purchase by them, and this would defeat the dominant consideration in the sale which is to secure the best price for the property to be sold by having maximum public participation in the process of sale.

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<sup>11</sup> 2011 (4) SC 171

In the instant case, no valid reason is assigned by the respondents as to why they not only relied upon the old valuation report dt.05.01.2019 with regard to the immovable property for a sale to be held on 29.02.2020 more than a year later, and why a fresh valuation report was not be obtained in the intervening period when there would have been undoubtedly a rise in prices. Had such valuation report been obtained before the sale was conducted in the year 2020, the reserve price would have been fixed properly and the reserve price would not have been reduced to ₹25.24 Crores from ₹28.04 Crores for the previous sale held on 28.08.2019, which failed.

The plea raised by the respondents basing on the decision of the Supreme Court in **Arce Polymers Pvt. Ltd. Vs. Alphine Pharmaceuticals Pvt. Ltd. and Others**<sup>12</sup> that a valuation report cannot be challenged at all cannot be countenanced because in that case in spite of a gap between the valuation certificate dt.09.02.2018 and the fourth auction held on 11.09.2018, the Auction Purchaser had offered ₹30 Lakhs more than the reserve price. So the Supreme Court did not interfere with the sale in the said case. No principle of law was laid down in the said decision that there is no necessity for the Secured Creditor to obtain valuation report proximate to the date of sale.

In the instant case, not only was the reserve price reduced to ₹2524 Lakhs for the sale held on 29.02.2020, respondent No.3 had offered his bid for a mere ₹25,25,50,000/- inclusive of TDS. This amount is barely ₹1.50 Lakhs more than the reserve price.

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<sup>12</sup> 2022 (2) SCC 221

In our considered opinion, failure on the part of the respondents to obtain a fresh valuation before conducting the fourth sale in spite of the mandate contained in Rule 8(5) of the Rules vitiates the sale in favour of respondent No.3, and the sale certificate issued to respondent No.3 is liable to be set aside on the said ground.

The third question which arises for consideration before this Court is:-

- (3) ***“Whether it was permissible for the Bank to extend the time for making payment of 75% of the balance consideration which was due and payable by 18.03.2020 till 05.08.2020 i.e. for a period of 153 days from the date of confirmation of the sale on 3.3.2020 ?”***

The issue of grant of extension of time to an auction purchaser whose bid was accepted by a secured creditor is dealt with by Rule 9 (4) of the Rules. It states:

“Rule 9 :

(1)...

(2)...

(3) *On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;]*

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period<sup>32</sup> [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].

(5) *In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited<sup>33</sup> [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.*

(6) *On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a*

*certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.” (emphasis supplied)*

Thus the maximum period for which time for paying the balance sale consideration of 75% may be granted by the secured creditor to an auction purchaser is 3 months i.e 90 days.

The reason why Rule 9(4) of the Rules had fixed the period of three months only for grant of extension to the Auction Purchaser is that the interest liability for this period would be collected from the borrower by the Secured Creditor. But if the period is extended beyond three months, as in the instant case, it would be unreasonable to make the borrower pay the interest for this period on account of the delay in making full payment by the Auction Purchaser.

Counsel for the respondents placed reliance on the decision of the Delhi High Court in **Sanjay Kumar Vs. Central Bank of India**<sup>13</sup>. In the said case, there was a mere 5 days delay in making the deposit of the balance sale consideration by the Auction Purchaser. The said delay was occasioned on account of the lockdown imposed because of COVID-19 pandemic. In the said case, the Bank expressed that it had no objection for condoning the delay. The said decision having proceeded on a concession, cannot be treated as a precedent.

That apart, the Office Memorandum No.F.18/4/2020-PPD dt. 19.02.2020 issued by the Government of India merely directed that the *disruption of supply chains should be considered as a natural calamity and Force Majeure Clause may be invoked wherever considered appropriate,*

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<sup>13</sup> Order dt. 08.05.2020 in WP (C)3067 of 2020 and batch

*following the due procedure.* It thus only permitted termination of contracts by invoking the Force Majeure Clause but did not permit extensions of time to perform the contracts.

Therefore, it was not open to the Bank to grant any extension of time for making deposit of the balance bid amount of 75% beyond 03.06.2020 i.e. 90 days from the date of the confirmation of the sale on 03.03.2020.

Even if the period of lockdown of 41 days from 22.03.2020 to 02.05.2020 is (for the sake of argument without conceding that it can be done) is excluded, still the extension granted is of 112 days, much more than the 90 day period permitted by Rule 9(4) of the Rules.

It appears that the Bank had gone out of it's way to favor the auction purchaser by giving him such a long extension of time contrary to the Rules.

Therefore, on this count also, the sale in favour of respondent No.3 by the Bank vide sale certificate issued on 05.08.2020 is liable to be set aside.

**Conclusion:**

For the aforesaid reasons, the Writ Petition is allowed and the sale certificate dt.05.08.2020 issued by the Bank to the respondent No.3 is set aside; possession of the Secured Assets be restored back to the Bank within two weeks by the respondent No.3, if it had been inducted into possession; the respondent No.3 shall be treated as having defaulted in payment of the balance sale consideration as mandated by Rule 9 (4) of the Rules, and the initial amount deposited by it i.e. ₹6,31,37,500/- shall be

forfeited under Rule 9 (5) of the Rules and the balance be refunded to the respondent No.3 within 4 weeks from today.

Liberty is given to respondents 1 and 2 to conduct fresh sale of the Secured Assets after obtaining a fresh valuation thereof in strict compliance with the provisions of the Act and the Rules made thereunder.

No costs.

**(M.S. RAMACHANDRA RAO)**  
**JUDGE**

**(HARMINDER SINGH MADAAN)**  
**JUDGE**

**May 18, 2022**  
*Ess Kay*

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|------------------------------------|---|---------------|
| <i>Whether speaking / reasoned</i> | : | <i>Yes.</i>   |
| <i>Whether Reportable</i>          | : | <i>Yes/No</i> |