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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th July, 2023

+ **CO.PET. 510/2014 & CO.APPLs. 398/2023, 401/2023, 407/2023**

SH. NARESH JAIN

..... Petitioner

Through: Mr. Abhishek Singh, Adv. for Applicant in CO.APPL.407/2023 (M-99102 91290).

Mr. Manik Dogra, Mr Atul Sharma, Mr Aditya Vashisth and Ms. Himanshi Rajput, Advocates for Applicant - CA 398/2023.

versus

M/S SHAURYA HOUSING LIMITED & ANR. Respondents

Through: Mr T. Singhdev, Mr. P. S. Narang, Mr. Abhijit Chakravarty, Ms. Ramanpreet Kaur, Mr. Bhanu Gulati, Mr. Aabhas Sukhramani, Ms. Anum Hussain, Mr. Tanishq Srivastava, Advocates along with Mr. Robin Aggarwal in person. (M-9999912345).

Mr. Chandra Shekhar & Mr. Prashant Shekhar, Advocates for R-2 (M-9810333257).

Ms Ruchi Sindhwani, Sr. Standing Counsel, Ms Megha Bharara, Adv. for OL.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CO.APPLs. 481/2023, 401/2023, 407/2023

2. By way of the present order the Court will be disposing the above three applications which have been filed in respect of auction and sale of



land admeasuring 11,477 sq. mtrs. bearing khasra number 357 & 358, village Mauja Tehra, Vrindavan (*hereinafter 'subject property'*) which is owned by Shaurya Housing Limited, the company under liquidation. The Court had vide order dated 3rd February, 2023 permitted the Official Liquidator (OL) to conduct e-auction of the subject property.

3. The said land was put to auction by the OL vide advertisement dated 5th May, 2023 with a reserve price of Rs.7,96,79,187/-. A bid to the tune of Rs.8,04,75,979/- was placed by one Robin Agarwal and he was declared the highest bidder. Mr. Robin Aggarwal deposited Rs. 79,67,918/- on 17th May 2023 as Earnest Money Deposit and further Rs.1,24,00,000/- was deposited on 24th May, 2023 in favour of the OL by way of a demand draft.

4. Thereafter, **CO APPL. No.401/2023** came to be filed on 30th May, 2023 before the Court by one Ahuja and Anand Buildwell Pvt. Ltd. (*hereinafter 'Ahuja and Anand'*) seeking consideration of its bid of Rs.10.05 crores for purchasing the subject property. It was the case of Ahuja and Anand that it could not come to know about the sale of the subject property. The application further emphasises that its bid is 25% higher than the accepted bid.

5. Another application being **CO APPL. No.398/2023** was filed on 30th May, 2023 by one Delux Constructions Pvt. Ltd. The said Applicant is stated to have a portion of land which is situated behind the subject property. By way of the application, free right of way was sought from the common approach road on the subject property. **CA No. 407/2023** was also filed on 30th May, 2023 by the OL seeking approval of Mr. Robin Agrawal's bid.

6. **CA. No. 481/2023** has been filed on 7th July, 2023 by one of the ex-directors of the company under liquidation seeking cancellation of the



auction and directions for fresh valuation of the subject property.

7. On 2nd June, 2023, the Court passed the following order:

*“1. In the e-auction of Company's land admeasuring 11,477 sq. meter situated at Khata No. 12 and Khasra No. 358 and Khata No. 227 and Khasra No. 357, Village Tehra, Vrindavan [hereinafter, "subject property"] held on 19th May, 2023, bid of Rs. 8,04,75,979/- of one Mr. Robin Agarwal has been declared the highest. **Ahuja and Anand Buildwell Pvt. Ltd. (Applicant in CO. APPL. 40112023) contends that the said bid does not reflect the true value of the subject property and has offered Rs. 10.05 crores for purchase of the property.** To show their bona fides, Mr. Abhishek Singh, counsel for Ahuja and Anand Buildwell Pvt. Ltd., has handed over cheque No. 580466 for 25% of the offered amount to Ms. Ruchi Sindhwani, Senior Standing Counsel for Official Liquidator ['OL'], which has been accepted without prejudice to her rights and contentions. The OL is permitted to put this amount in a Fixed Deposit Receipt.*

2. Mr. Singh, on instructions, states that his client is agreeable to protecting the right of way of Applicant in CO. APPL. 39812023 in the common approach road at subject property, as claimed by them.

*3. **Counsel for Mr. Robin Agarwal (successful auction bidder), without prejudice to his rights and contentions, states that he will take instructions regarding his client's willingness to accept the condition mentioned above. He will further confirm whether his client is inclined to offer a higher amount than what is proposed by Ahuja and Anand Buildwell Pvt. Ltd.**”*

8. The Court, on the said date recorded the submission on behalf of Ahuja and Anand that they have offered to purchase the subject property for Rs.10.05 crores as also the submission of the Id. Counsel for the highest



bidder in the auction, as to whether he wished to seek instructions if his client is inclined to offer to higher amount than what is proposed by Ahuja and Anand.

9. Today, Id. Counsel for ex-director of the company under liquidation- Mr. S.P. Bajaj submits that the circle rate of this property is approximately Rs.13,500/- per square meter. However, on a perusal of the notification which is relied upon Mr. Bajaj to substantiate the said assertion it is seen by the Court that the said notification does not have a date. Thus, the circle rate claimed by the Applicant is not established before the Court.

10. Further to the previous order dated 2nd June, 2023, Id. Counsel for the successful bidder - Mr. Robin Agarwal today submits that his client is willing to match the offer of Rs.10.05 crores made by Ahuja and Anand. However, the submission on his behalf is that the bid of M/s Ahuja and Anand is not a *bona fide* bid inasmuch as there is some commonality of interest between the said bidder and the Applicant in **CO.APPL. 398/2023** who is claiming right of way. It is further submitted on the basis of the judgments of the Supreme Court in ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple and Others 2022 SCC 710*** that once a public auction is held and the highest bid is received, the same ought not to be permitted to be disturbed by third parties who may subsequently wish to give a higher bid, after having not participated in the auction proceedings.

11. In addition, the Id. Counsel also relies upon a decision of a Id. Single Judge in ***SBI Capital Markets Limited. v. Aravali Infrapower Limited [Co. PET. 698/2015, decided on 24th April, 2023]***. It is further argued by the Id. Counsel that since a new bidder has come before the Court and has also deposited 25%, as recorded in order dated 2nd June, 2023 the Court can



conduct an open bid and the highest bidder may be taken as final.

12. It is finally submitted by Id. Counsel that in **CO.APPL. 398/2023**, Mr. Robin Aggarwal, the successful bidder wishes to file a reply inasmuch as the right of way is being contested as the same was not part of the e-auction notice.

13. On behalf of the Official Liquidator (OL), Ms. Sindhwani, Id. Senior Standing Counsel placed reliance upon two decisions, namely- ***Vedica Procon Private. Ltd. v. Balleshwar Greens Private Ltd. and Ors. (2015) 10 SCC 94*** and ***Narender Kumar Nehra. v. Bhupinder Singh and Ors. [C.O. APP 19/2019, date of decision 13th February, 2020]*** to the effect that once there is a public auction which is conducted, every higher bid that is received cannot result in reopening a concluded auction.

14. On behalf of Ahuja and Anand, Mr. Abhishek Singh, Id. Counsel submits that the intention ought to be to obtain the highest amount in respect of the property concerned.

15. After hearing the submissions of the parties, before proceeding to pass orders, the Court gave a final opportunity to all the parties, i.e., both the bidders i.e., Mr. Robin Aggarwa and M/s Ahuja and Anand, as also to Mr. Bajaj, considering the position taken by him, to give their highest bids in a slip of paper to the Court. However, Mr. Bajaj has refused to place any bid. Thus, the Court is unable to accept the submissions regarding valuation of the subject property made by Mr. Bajaj.

16. The other two bidders were open to the suggestion put forth by the Court. M/s. Ahuja and Anand submitted a bid of Rs.12.50 crores and Mr. Robin Aggarwal has submitted a bid for Rs.13 crores.

17. After the bid was opened and announced by the Court, M/s Ahuja and



Anand sought to increase the bid to Rs.14 crores.

18. In the opinion of this Court, prior to asking for the bids, the Court had made it sufficiently clear that both the bidders should give their best bids and accordingly, Mr. Robin Agrawal, who was also the highest bidder in response to the public notice floated by the OL, has given the higher bid.

19. A perusal of the judgments cited by the Id. Counsel for Mr. Robin Agrawal, as also Id. Counsel for the OL, shows that the settled legal position is that receiving of higher bids post the conclusion of the auction does not justify reopening of concluded proceedings. This reasoning is outlined in the judgment of the Supreme Court in *Vedica Procon Pvt. Ltd. (supra)*. The relevant portion of the said judgment is as under:

“44. A survey of the abovementioned judgments relied upon by the first Respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first Respondent in Navalkha & Sons (supra) laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Divya Manufacturing Company (supra) this Court departed from the principle laid down in Navalkha & Sons (supra). We have already explained what exactly is the departure and how such a departure was not justified.

45. Coming to the decision in FCS Software Solutions Ltd., we have already noticed that this Court rightly reopened the finalized sale on the ground that there was material irregularity in the conduct of the sale.”

20. In *Valji Khimji v. Official Liquidator of Hindustan Nitro Product*



(2008) 9 SCC 299 the Supreme Court has observed as under:

“28. If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the (auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its (confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed If they do not come forward to bid at the time of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.”

21. Recently, the Supreme Court in ***K Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple 2022 SCC 710*** observed that sale pursuant to a public auction can be set aside if there is some material on record that the property has been sold at a throwaway price, or there is some fraud, collusion or material irregularity. The relevant portion of the said



judgment is as under:

“8.1 Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction/sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer. In this context, we rely on the following observations of this Court in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Ors., (1976) 1 SCC 671 made in paragraphs 34, 37 and 49, which are as under...”

22. From the above judgments, it is clear that reopening of auction proceedings which are concluded is not to be usually resorted to and there ought to be some finality. Moreover, there is no allegation of fraud, collusion, or any irregularity in the present case. Thus, this Court is inclined to accept the higher bid of Mr. Robin Aggarwal of Rs.13 crores.

23. Mr. Robin Aggarwal is accordingly declared as the successful bidder at the price of Rs.13 crores. The said bidder shall now deposit 25% of Rs.13 crores i.e., Rs.3,25,00,000/- minus the amount of 25% of the earlier bid which has already been deposited i.e., Rs.2,03,67,918/- within one week i.e., Rs.1,21,32,082/- by 17th July 2023. The remaining bid amount shall be deposited with the OL within 60 days i.e., by 15th September, 2023.

24. Upon deposit of the entire sale consideration, the possession of the property shall be handed over to the successful bidder and title deeds shall



be executed.

25. *CO.APPL. 401/2023, CO.APPL. 407/2023, CO.APPL. 481/2023* are disposed of in the above terms.

CO.APPL. 398/2023 in CO. PET. 510/2014

26. Insofar as *CO.APPL. 398/2023* is concerned, on the last date, the bidder - M/s Ahuja and Anand had stated that his client is agreeable to protecting the right of way of the Applicant in *CO.APPL. 398/2023*.

27. In the opinion of this Court, the successful bidder- Mr. Robin Aggarwal deserves to be heard in this application before any right can be granted to anyone as the same could affect his interest considerably. Accordingly, let reply be filed to this application within four weeks. Rejoinder within four weeks, thereafter.

28. The successful bidder shall abide by the directions that may be passed by this Court in *CO.APPL. 398/2023*. On behalf of Mr. Aggarwal the Court is assured that the bid would not be revisited irrespective of the decision in this application.

29. List this application for hearing on 15th September, 2023.

**PRATHIBA M. SINGH
JUDGE**

JULY 10, 2023
Rahul/SK