

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR'S REPORT NO. 150 OF 2023

IN

COMPANY PETITION NO. 488 OF 2015

In the matter of Companies Act,
1 of 1956

AND

In the matter of Elder
Pharmaceuticals Limited (In
Liqn.)

Puspasen C. Jhaveri

...Petitioner

WITH

INTERIM APPLICATION (LODGING) NO. 29300 OF 2023

IN

OFFICIAL LIQUIDATOR'S REPORT NO. 150 OF 2023

* * *

- Mr. Ranjeev Carvalho, for Official Liquidator.
- Mr. Chandan Kumar, Official Liquidator.
- Mr. Swaraj Jadhav, for Application in IAL/29300/2023.
- Mr. Dinesh Dubey a/w Mr. Sanjay Gaur, for Respondent No. 2.

* * *

CORAM : MANISH PITALE, J.

DATE : 01st DECEMBER, 2023.

P. C. :

1. By this order Official Liquidator's Report No. 150 of 2023 and Interim Application (Lodging) No. 29300 of 2023, shall stand disposed of.

2. By the present Official Liquidator's Report, the official liquidator is seeking specific directions for confirmation of sale in favour of the highest bidder, in respect of property of the company in liquidation located at Dehradun, Uttarakhand.

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3. The learned counsel appearing for the official liquidator invited attention of this Court to the contents of the Official Liquidator's Report, specifically the bid summary at pages 20 and 21, to contend that the present Official Liquidator's Report seeks confirmation of sale in favour of the highest bidder.

4. In this context the aforementioned application was filed by the application who was the second highest bidder. It was claimed that during the process of e-auction, the applicant i.e. the second highest bidder was deprived of an opportunity to improve his bid by only couple of seconds and the applicant was automatically logged out of the system. It was submitted on 20th October, 2023, that this Court may consider the prayers made in the application. A specific prayer is made in the application for permission to the applicant to improve upon his bid in respect of the said property.

5. This Court thought it fit to direct the applicant to add the highest bidder as party to the application and accordingly, leave was granted to join the highest bidder as party respondent no. 2. Accordingly, the applicant served the highest bidder with the present application and that is how respondent no. 2 i.e. the highest bidder has appeared before this Court through counsel.

6. The learned counsel appearing for the applicant has

pressed for the prayer made in the present application, reiterating the submissions made on 20th October, 2023.

7. The learned Counsel appearing for respondent no. 2 in the said application submitted that an incorrect statement was made in paragraph no. 6 of the application and this was evident from a perusal of the bid summary. At this stage itself, the learned counsel for the applicant clarified that there was a typographical error in the said paragraph, in as much as the final bid of the applicant was admittedly Rs. 2,80,00,000 and not Rs. 2,85,00,000, as inadvertently stated in the said paragraph. It was submitted that even if the correct figure is to be taken into consideration the contentions raised on behalf of the applicant may be considered by this Court on merits.

8. The learned counsel appearing for respondent no. 2 emphasized that, as per the settled position of law, unless there was fraud or misrepresentation on the part of respondent no. 2 or there was a fundamental defect in the process of e-auction, this Court ought not to consider the prayer made in the present application. It was submitted that this may lead to an endless exercise of third parties interfering and approaching this Court, despite the e-auction process having attained finality.

9. The learned counsel appearing for the official liquidator

relied upon the contents of the Official Liquidator's Report to press for the direction sought in the Report.

10. This Court has considered the rival submissions. The crucial factor in such proceedings is, as to whether the property of the company in liquidation realizes sufficient amount and that the market value of the property in question is realized during the process of auction. In that regard, this Court specifically perused the valuation report of movable properties and the aforesaid immovable property of the company in liquidation. This Court finds that the highest bid offered by respondent no. 2 in the present application is well above the valuation specified in the report. Therefore, the conscience of this Court is satisfied that appropriate value of the property of the company in liquidation is being realized through the process of e-auction.

11. Insofar as the grievance of the applicant is concerned, in such process of auction there is bound to be a point where the process comes to an end and the highest bidder is identified. There is no material to indicate or fraud and misrepresentation on the part of the highest bidder in the present case and the applicant is not able to demonstrate any defect in the e-auction process, which may have caused prejudice to the applicant.

12. In view of the above, this Court finds no substance in the application filed on behalf of the applicant. Accordingly, the application is dismissed.

13. Consequently, having perused the Official Liquidator's Report, this Court is satisfied that the directions deserve to be granted.

14. Accordingly, the Official Liquidator's Report is disposed of by allowing the prayers made on behalf of the official liquidator, which read as follows

- "a) In view of averments made in paragraph [9] of this report, whether this Hon'ble Court be pleased to confirm the sale in favour of Mr. Saurabh Garg, the Highest Bidder with sume of Rs. 2,85,00,000/- (Rupees Two Crores Eighty Five Lakhs Only) for movable and immovable assets of the Company (In Liquidation) situated at Plot No. 788, Indira Nagar Colony, Phase II, Dehradun, Uttarkhand;*
- b) If prayer clause (a) is affirmative, whether this Hon'ble Court would be pleased to permit the Official Liquidator to handover the possession of said movable and immovable assets of the Company (In Liquidation) situated at Plot No. 788, Indira Nagar Colony, Phase II, Dehradun, Uttarakhand after receiving the full sale consideration from the successful bidder;"*

15. The valuation report is directed to be put back in a sealed cover.

(MANISH PITALE, J.)