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

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Date of Decision: 06.07.2023

+ **CO.APP. 12/2023, CM Nos.31468/2023, 31469/2023 & 31470/2023**

M/S NATIVE ESTATES PVT LTD.

..... Appellant

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Mr. Aman Nandrajog, Mr. Sumeer
Sodhi & Mr. Arjun Nanda, Advs.

Versus

M/S ARAVALI INFRAPOWER LTD. (IN LIQN.) THROUGH
THE OFFICIAL LIQUIDATOR & ORS

..... Respondents

Through: Mr. Vineet Dhanda, Mr. Vinay
Yadav & Ms. Gurleen Kaur, Advs.
for UOI.
Mr. Lokesh Sinhal, Mr. Nikunj
Gupta, Mr. Vaibhav Gupta & Mr.
Umesh Bhaker, Advs. for R-2 to 5.
Ms. Ruchi Sindhwani & Ms. Megha
Bharara, Advs. for Official
Liquidator.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 24.04.2023 (hereafter '**the impugned order**'), whereby the



appellant's application¹ for recalling the order dated 02.11.2022 and setting aside the sale of immovable property of the respondent company, was rejected.

2. The appellant seeks to challenge the sale of land ad-measuring 19 Bigha 11 Biswa situated at Khata No.110/75, Khasra No.1037/385, 392, 393, Khata No.51/78, Khasra No.8, 383, 384, 1036/386 at village Bhagwanpur, Derabassi, District Mohali, Punjab (hereafter "**the subject land**"). The sale of the subject land in favour of respondents no.2 to 5 was confirmed by the Learned Company Court, by an order dated 02.11.2022.

3. The appellant states that the subject land was sold on the basis of an application moved by the said respondents, without an open auction. It was also contended on behalf of the appellant that the appellant was willing to pay a higher price – a sum of ₹10,65,38,430/- (Rupees ten crores sixty-five lacs thirty-eight thousand four hundred thirty only) – for the subject land but its offer was disregarded.

4. The appellant had, by its communication dated 07.08.2022 addressed to the Official Liquidator, expressed its inclination to, *inter alia*, purchase the subject land along with sheds and buildings constructed thereon at a price of ₹10,65,38,430/-. Thus, the contention that the appellant had made a firm offer of ₹10,65,38,430/- for purchase of the subject land is erroneous; the appellant's offer also included other

¹ Company Application No.236/2023



assets.

5. It is relevant to note that the appellant's interest in acquiring the assets of the respondent company has a chequered history. The appellant, prior to making an offer for purchase of subject land and buildings, had purchased the movable assets located at the factory premises of the respondent company. However, under the guise of removing the movable assets, the appellant had also demolished the factory shed and building and removed the said material. At the material time, the appellant's related concern, Manasvi Security Agency, was entrusted with the security of the assets of the respondent company on the subject land.

6. On discovering that the appellant had removed the shed and building, the Official Liquidator filed an application² before the learned Company Court pointing out that the eight sheds located at D-7 Eldeco Sidcul, Industrial Park, Sitarganj, Uttarakhand and on the subject land, had been unauthorisedly removed by the appellant. The learned Company Court passed an order dated 09.03.2022 issuing a notice in the said application and further directing that ₹8,45,83,844.60/- be withheld from the amount due to Manasvi Security Agency.

7. It is material to note that the constituent partners of Manasvi Security Agency are spouses of the directors of the appellant company. The appellant as well as Manasvi Security Agency accepted the

² Company Application 143/2022



responsibility for unauthorisedly removing the shed and building located on the immovable property of the respondent company and tendered an unqualified apology. This was recorded by the learned Company Court in its order dated 20.04.2022.³

8. The appellant was required to restore the assets that it had removed unauthorisedly. On 18.08.2022, the learned Company Court directed the Official Liquidator to issue auction notice for sale of the subject land as well as the shed and building constructed thereon (five sheds and one office building). The Court also recorded the appellant's statement that it would purchase the shed and building at the reserve price as earlier determined, in case the building and shed did not fetch the reserved price.

9. In compliance with the said order, the Official Liquidator issued an e-auction sale notice dated 31.08.2022 for sale of the subject land and building. The reserved price of the subject land was fixed at ₹7,24,32,750/- and the reserved price for the five shed and one office building was fixed at ₹3,41,05,68/-. The auction was conducted through M/s Railtel Corporation Limited on 21.09.2022, however, no bids were received for either the subject land or the building/sheds constructed thereon.

10. Thereafter, by an order dated 10.10.2022, the learned Company Court directed that the building and shed be sold to the appellant at the

³ Order dated 10.10.2022 (Annexure as A-14 to the present appeal)



reserve price and further directed that the amount withheld from payments due to Manasvi Security Agency be adjusted towards the sale consideration.

11. Insofar as the subject land is concerned, since no bids were received, the Official Liquidator was required to initiate further steps for its sale.

12. In the aforesaid background, respondent no.2 to 5 preferred an application before the learned Company Court offering to purchase the subject land at the reserve price of ₹7,24,32,750/-.

13. The said application was allowed by an order dated 02.11.2022 as the Official Liquidator did not oppose the same. As per the normal practice, the Official Liquidator may have been required to re-value the assets and attempt to re-auction the same with a lower reserve price. Since respondent nos. 2 to 5 were willing to offer the reserve price, as disclosed in the sale notice dated 31.08.2022, the Court accepted their offer and directed the sale of the subject land to respondent nos. 2 to 5 on payment of the said amount.

14. This Court is informed that respondent nos.2 to 5 paid the entire consideration and the conveyance deed in respect of the subject land was executed in favour of the respondent nos.2 to 5 on 03.01.2023.

15. As stated above, it is apparent that the appellant's offer of ₹10,65,38,430/- which was communicated to the Official Liquidator by



a letter dated 07.08.2022 was for both the land and building and not land alone. Thus, the contention that the appellant had at any stage offered ₹10,65,38,430/- for the subject land, cannot be accepted.

16. Although, the appellant was fully aware of the efforts of the Official Liquidator to sell the subject land including the notice for the auction; the appellant neither participated in the auction nor came forward to purchase the subject land at the reserve price or more. After the transaction in favour of respondents no.2 to 5 was completed, the appellant filed the application¹ dated 18.04.2023 seeking recall of the order dated 02.11.2022, which was rejected by the impugned order.

17. This Court finds no infirmity with the impugned order rejecting the appellant's application for cancellation of a concluded transaction.

18. The present appeal was listed before this Court on 02.06.2023. On that date, the learned senior counsel appearing for the appellant stated that the appellant was willing to offer a sum of ₹10,65,38,430/- for the subject land alone, notwithstanding that its earlier offer of the said amount was for both the subject land and sheds/building located on it. It was his submission that the appellant is and was always ready and willing to pay the said amount for the subject land alone although it had not participated in the auction. He submitted that the appellant expected that the subject land would be put to auction again but, in the meanwhile, it was sold to respondents no.2 to 5.

19. The appellant was fully aware of the endeavours of the Official



Liquidator to sell the subject land but had remained unresponsive at the material time. It moved the application on 18.04.2023 to question the said sale, after a lapse of more than five months. The appellant had also persuaded this Court to issue notice in the present appeal by submitting that it was ready and willing to pay the amount of ₹10,65,38,430/- for the subject land.

20. In terms of the auction notice, the participants were required to make the earnest money deposit of 10% of the bid value and the balance amount was required to be paid within a period of sixty days. In order to ascertain whether the appellant's said offer was *bona fide* this Court directed the appellant to deposit 25% of the said offer of ₹10,65,38,430/- with the Registry of this Court within a period of two weeks from the date of the order (2nd June 2023) and further directed that *status quo* be maintained subject to the said deposit being made.

21. The appellant has failed and neglected to deposit the said amount with the Registry of this Court. Clearly, the contention that the appellant is and was always ready and willing to pay the said amount of ₹10,65,38,430/- for the subject land, thus, cannot be accepted.

22. The present appeal is, clearly, an attempt to reopen concluded issues, with a view to explore the possibility of making any monetary gains. We are of the view that the present appeal filed by the appellant is not *bona fide* and is required to be dismissed with costs.

23. Accordingly, the present appeal is dismissed with costs



quantified at ₹50,000/-. The costs shall be deposited with the Official Liquidator within a period of two weeks from today. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 06, 2023
'gsr'/Ch



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