$~25

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

% *Date of Decision:* 19.09.2023

+ **CO.APP. 24/2023 & CM APPL. 48384/2023 & 48385/2023**

S A V AND CO ..... Appellant

Through: Mr. Vipul Ganda, Mr. Aditya Nayar, Ms. Sakhsi Rastogi & Mr. Santosh Kumar Giri, Advs.

versus

M/S LUMAX AUTOMOTIVE SYSTEMS LTD & ANR. ..... Respondents

Through: Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for OL.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 29.05.2023 (hereafter '**the impugned order**') passed by the learned Company Court in a Company Petition No.829/2016 captioned ***M/s APPL Industries Ltd. v. Lumax Automative Systems Ltd.***

2. By an order dated 13.11.2018 passed by the learned Company Court in Company Petition no 829/2016, the respondent company (M/s Lumax Automotive Systems Ltd.) was directed to be wound up and the Official Liquidator was appointed as the liquidator.

3. Subsequently by an order dated 01.06.2022, the learned Company Court examined the valuation reports of the properties of the company in liquidation as received by the Official Liquidator and permitted the Official Liquidator to sell those properties on the terms and conditions as indicated. The said properties of the company in liquidation included an immovable property being Plot No.99, Phase-IV, Udyog Vihar, Gurugram (hereafter '**the subject property**'). The subject property was directed to be sold on an "as is where is basis" in terms of the sale notice as approved by the learned Company Court. The sale notice was directed to be published in two daily newspapers – "*Dainik Bhaskar*" (Hindi) and "*The Hindustan Times*" (English)

4. RailTel Corporation of India Limited was appointed as the agency for conducting the e-auction of the subject property.

5. The sale notice, as approved by the learned Company Court, was published on 08.07.2022 in the two newspapers as well as on the websites of the Official Liquidator and RailTel Corporation of India Limited.

6. The reserve price for the subject property was fixed at ₹9,65,00,000/-. In addition, the reserve price for the movable assets housed on the subject property was fixed at ₹2,16,000/-. The auction was successfully completed on 22.07.2022 and respondent no.2's bid of ₹9,74,65,000/- was accepted as the highest bid for the subject property. The highest bid of ₹4,70,880/- for the movable assets of the company in liquidation was made by one M/s R. S. Traders.

7. In terms of the auction, the highest bidder (respondent no.2) deposited 25% of the bid amount within the stipulated period.

8. On 19.09.2022, the learned Company Court confirmed the same and directed respondent no.2 to deposit the remaining 75% of the bid amount.

9. Thereafter, the ex-management of the company moved an application (Application No.604/2022) on 27.09.2022 seeking recall of the order dated 19.09.2022. The said application is not on record. This court is informed that the ex-management sought recall of the order dated 19.09.2022 on the ground that the application for revival of the company in liquidation was pending and that the subject property is an integral part of the said revival scheme. Thus, in effect, the ex-management sought to preserve the sale of the subject property in aid of the rehabilitation proposed by them.

10. The aforesaid application (Application No.604/2022) was listed and taken up for hearing by the learned Company Court on 29.05.2023. Although, no application was filed by the appellant, its representative was present in court on 29.05.2023, and offered to purchase the subject property for a consideration of ₹11.5/- crores.

11. The appellant claims that he was contacted by the ex-management for purchasing the subject property while the said application for revival of the company in liquidation was pending.

12. Mr. Ganda, learned counsel appearing for the appellant submits

that in the interest of the creditors, the appellant's offer for higher value of the subject property ought to be accepted. He contends that the auction of the subject property was flawed inasmuch as the notice dated 08.07.2022 fixed the EMD at 1% of the reserved price even though it is mentioned as 10%. Further, he submitted that the sale notice dated 08.07.2022 was not widely publicized and was published in the Delhi edition of the newspapers.

13. The learned Single Judge rejected the appellant's offer as the Court found no flaw in the auction process.

14. We are unable to fault the impugned order. The auction notice dated 08.07.2022 was, in addition to being published in two newspapers, was also published on the website of the Official Liquidator as well as the RailTel Corporation of India Limited. The contention that the EMD was incorrectly calculated at 1% appears correct. The auction notice required EMD of ₹9,65,000/- to be deposited which is 1% of the reserved price, however the heading of the relevant column reads as as "EMD 10% (In Rs.)". However, we are unable to accept that the said error has resulted in impacting the integrity of the auction process. All bidders were required to furnish a bid amount as specified in the notice and the auction purchaser did not derive any additional benefit.

15. It is also pointed out by Mr. Ganda that the auction notice was published on 08.07.2022 and the auction was held on 22.07.2022 and thus, the period of fifteen days was not available to the appellant.

16. If the publication of the notice and the date of the auction are included, the period of fifteen days was provided. However, even if it is accepted that the period between the date of publication of the auction notice and the date of auction was short of fifteen days by one day; we are unable to accept that the same had any adverse impact in the auction process. It is not the appellant's case that he would have participated in the auction if the auction was held on 23.07.2022 and not 22.07.2022. According to the appellant, he was unaware of the auction of the subject property and had become aware of the same much later (although the date on which the appellant became aware is not specified). The appellant had not moved any application before the learned Company Court on immediately becoming aware of the auction of the subject property, but had merely appeared in court on 29.05.2023, which is almost more than ten months after the auction was conducted and eights months after the sale of the subject property was confirmed in favour of respondent no.2.

17. On 19.09.2022, the learned Company Court had confirmed the sale and had directed deposit of the remaining 75% of the bid amount. The entire process was deferred on account of the application filed by the ex-management of the company in liquidation. The learned Company Court disposed of the said application on 29.05.2023 and further directed that the balance amount would be paid within the timelines commencing from the release of the said order. The said order was released on 05.06.2022.

18. Respondent no.2 has since, paid the balance amount as stipulated.

Thereafter, the possession of the subject property was handed over to respondent no.2 in terms of the order dated 19.09.2022. The sale of the subject property has not yet been registered in favour of respondent no.2.

19. We find no merit in the present appeal. We are of the view that the present appeal is a speculative exercise and an unjustifiable imposition of judicial time. Accordingly, this appeal is dismissed with cost quantified at ₹10,000/-. The cost shall be deposited with the Official Liquidator within a period of two working days from today.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

SEPTEMBER 19, 2023
Ch