IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
(Commercial Division)
Original Side

Present :- **Hon'ble Mr. Justice I. P. Mukerji**
Hon'ble Mr. Justice Biswaroop Chowdhury

IA NO: GA-COM/2/2024, GA-COM/3/2024
APO/140/2023
WITH
EC/91/2023
SILIGURI JALPAIGURI DEVELOPMENT AUTHORITY
VS
BENGAL UNITECH UNIVERSAL SILIGURI PROJECTS LTD.
And
APO/118/2023

TERAI TEA COMPANY LTD.
VS
SILIGURI JALPAIGURI DEVELOPMENT AUTHORITY & ORS.
And
IA NO: GA-COM/1/2024
APOT/80/2024
MAXOFIT SOFTECH PVT. LTD.
VS
BENGAL UNITECH UNIVERSAL SILIGURI PROJECTS LTD. & ANR.

For the SJDA :- Mr. Anirban Ray
Mr. Raja Saha,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Saaqib Siddiqui,
Mr. Yash Singhi
Mr. Aviroop Mitra, Advs.

For the SLRL Agency :- Mr. Jayanta Kr. Mitra,
Mr. Ahin Chowdhury
Mr. Ranjan Bachawat, Sr. Advs.
Mr. Suddhasatva Banerjee,
Mr. Anujit Mookherjee,
Mr. Rajdeep Mantha
Mr. Prithish Chandra, Advs.

For the appellant/Maxofit Softech Pvt. Ltd.
:- Mr. Sagar Bandopadhyay
Mr. Rahul Sharma, Advs.

For the appellant in GA/2/2024 :- Mr. Kushal Chatterjee
Mr. Iftiqar Munshi &
Mr. Aditya Mondal, Advs.

For the Bengal Unitech/respondent No.1
:- Mr. Siddarth Batra,
Mr. Shourjyo Mukherjee,
Mr. Chinmay Patra &
Mr. Vishwarup Acharyya, Advs.

For the Terai Tea Co. Ltd.	:-	Mr. Krishnaraj Thaker, Mr. Rittick Chowdhury, Mr. Niladri Banerjee & Mr. Deepankar Thakur, Advs.
Judgment On	:-	**09.08.2024**

I. P. Mukerji, J.:-

This appeal raises a point of some importance.

An arbitral award was made on 27th December, 2021. Bengal Unitech Universal Siliguri Projects Ltd. (Bengal Unitech) is the award holder. The appellant Siliguri Jalpaiguri Development Authority (SJDA) is the award debtor. Bengal Unitech filed an execution application (EC 91 of 2023) in this court to realize the award. On 12th April, 2023 the executing court appointed a Special Officer to carry out transfer of the subject property belonging to the judgment debtor. It was 92.96 acres of land situated at Mouza- Dabgram within Police Station- Rajganj in District- Jalpaiguri in West Bengal.

The proposed transfer by lease was duly advertised in the newspaper, after fixing Rs.322 crores as the reserve price on the basis of the circle rate valuation obtained by the Special Officer. On 15th June, 2023 he published an advertisement for lease of the property for 99 years. 29th June, 2023 was the last date for receiving bids. Till that date, no offer was received by the Special Officer. When the matter was next taken up in court. On 20th July, 2023 SLRL Agencies Pvt. Ltd. (SLRL) appeared and offered Rs.400 crores together with an earnest of Rs.40 crores for the property. Later on by an application (GA 4/2023), Terai Tea Co. Pvt. Ltd. offered Rs.350 crores. However, they could make an earnest deposit of Rs.1 crore only, although asked to deposit Rs.40 crores by the court. They approached the court for an opportunity to bid for the property. That application was dismissed. On dismissal of that application, the court by its impugned judgment and order dated 27th July, 2023 recommended transfer of the property on lease in favour of SLRL for Rs.400 crores, observing that they were the only intending purchaser available. The terms and conditions were as follows:-

a) 10% of the amount that had already been deposited by cheques are to be encashed by the Registrar, Original Side, immediately and the amount to be put in an interest bearing fixed deposit with the State Bank of India, High Court Branch.
b) The State of West Bengal along with Siliguri Jalpaiguri Development Authority shall have a survey carried out in the presence of the learned Special Officer and SLRL Agencies Pvt. Ltd. delineating a map containing measurement of property be made by the BL&LRO and/or its authorised agent and a report be prepared demarcating such land/plot. The Block Land and Land Revenue Officer is directed to carry out the same within a period of 21 days from date.
c) A draft copy of the lease deed to be made over to the SLRL Agencies Pvt. Ltd. by Siliguri Jalpaiguri Development Authority within a period of 10 days from date.
d) The applicant shall deposit a further amount of Rs.170 Crores (Rupees One Seventy Crores Only) within 90 days from completion of the BL & LRO report.
e) SJDA shall undertake to stand by the No Encumbrance certificate dated 22nd May, 2023.
f) Upon Payment of Rs. 170 crores as second installment, the SJDA would execute and register a lease deed equivalent to the quantity of land amounting Rs. 170 Crores. In the event the Applicant defaults in paying the remaining 190 crores within the time mentioned hereinafter, the sum of Rs.40 crores initially deposited shall be forfeited.
g) The balance amount of Rs.190 crores shall be deposited within 90 days of execution of the lease deed as mentioned hereinabove.
h) In the event the balance of Rs.400 crores has not been deposited within 90 days of execution of the above lease deed, the entire amount of Rs.210 crores shall stand forfeited and the lease deed issued in favour of the SLRL Agencies Pvt. Ltd. shall be treated as cancelled and a nullity.

At the suggestion of the purchaser the court had made some modification of the terms and conditions of the lease contained in the advertisement.

After a month or so after the impugned order was made, on or about 23rd August, 2023, one organization Maxofit Softech Private Limited made an application before the learned judge (GA 8 of 2023). It does not appear from the records that this application was ever moved before the court. In the list of the learned judge, the application appeared with some other applications.

It appears that in those other applications no substantive order was made by the court. Mr. Sagar Bandopadhyay on the basis of that refusal has preferred an appeal, contending that order in his client's application was deemed to have been refused.

During the course of hearing of the appeal, Mr. Kushal Chatterjee, learned advocate moved an application on behalf of one organization Kusum Udyog stating that his client be allowed to intervene and make a bid for the property. They said they were prepared to pay Rs.500 crores for it.

All these appeals and the applications were heard together, one by one.

As common questions of facts and law are involved they are being disposed of by a common judgment and order.

It appears that after the learned single judge directed that the sale may be confirmed in favour of SLRL, the SJDA was activated by some interested parties to contend that the circle rate based valuation of Rs.322 crores on which the reserve sale price of the property was based was low and did not represent the correct valuation of the property which would be about Rs.700 crores.

CREDAI, an association of real-estate, owners, brokers, developers seem to have triggered the above action of the authority.

On 4th August, 2023 they wrote to the Principal Secretary, Department of Urban Development and Municipal Affairs, Government of West Bengal commenting on the valuation of the said property at Rs.322 crores that it should have been valued at around Rs.700 crores and that they were desirous of taking the property for the purposes of their association.

On or about 14th August, 2023 SJDA filed an appeal against the impugned judgment and order complaining, inter alia, that the valuation of the land on which basis the reserve price was fixed and sold was inadequate. It should be re-advertised, fresh offers invited and sold taking the valuation at Rs.700 crores.

On 24th August, 2023 the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal wrote to SJDA valuing the land at Rs.779,39,11,053/-.

During the hearing of the appeal, they relied on the said valuation made by the Inspector General of Registration.

CREDAI appeared before us when we are hearing the appeal. They assured us that they would be able to get buyers who would offer close to the said valuation of Rs.700 crores and odd. Within a short period of time they threw up their arms, not being able to fetch any prospective buyers. Ultimately with the leave of the court they stopped appearing.

The question is whether this court should set aside the sale order of Saraf, J, dated 27th July, 2023 and embark upon a fresh process for sale of the said property.

Now, the law on the subject is very important.

The Supreme Court in **Navalkha & Sons vs. Sri Ramanya Das & Ors.** reported in **(1969) 3 SCC 537** cited by Mr. Jayanta Kr. Mitra, learned counsel has remarked that if the court was satisfied that an adequate price was being obtained by sale of a property in execution, it would not venture further by inviting further offers, over an indefinite period of time, in its effort to get a higher price.

Following the above decision the Supreme Court in **M/s Kayjay Industries (P) Ltd. vs. M/s Asnew Drums (P) Ltd. & Ors.** reported in **(1974) 2 SCC 213** also cited by Mr. Jayanta Kr. Mitra said:-

> "A court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not always forthcoming. The judge must make a certain margin for this factor. A valuer's report good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful.....
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> Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bids made on May 16, 1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If Court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise....
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> The judgment-debtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case."

When the court has confirmed sale in favour of a party its discretion should not be interfered with unless it has been exercised unreasonably, capriciously or illegally, according to the Division Bench of this Court in **Sharawan Kumar Agarwal vs. Shrinenp Investment Ltd. & Ors.** reported in **(1990) 1 CHN 375** also cited by Mr. Mitra.

The ratio in **Registrar of Assurances & Anr. vs. ASL Vyapar Private Ltd. & Anr.** reported in **2022 SCC OnLine SC 1554,** also cited by Mr. Mitra is that great weightage must be placed on acceptance of a bid by the court for sale of an immovable property, after a minimum price has been fixed, advertisement issued, public action held and the bid accepted by the court. It is to be taken as the fair market value. The registering authority was warned not to question the price or the valuation of the property.

Divya Manufacturing Company (P) Ltd. Tirupati Woollen Mills Shramik Sangharsha Samity & Anr. vs. Union Bank of India & Ors. Official Liquidator & Ors. reported in **(2000) 6 SCC 69** is a very interesting case cited by Mr. Thakar. A property of a company in liquidation was being sold by the court through the Official Liquidator. The terms and conditions of sale contained a provision similar to that of Clause 12 of the terms and conditions of the agreement in our case. The court had the power to cancel a sale even after confirmation. In the other case, undoubtedly there was confirmation of sale by the court. Nevertheless, the sale had been confirmed without any reliable determination of the value of the property. Before and after confirmation of sale, offers for buying the property started coming in with wide fluctuation in the price offered. The Division Bench set aside a concluded sale and directed fresh advertisement and conduct of the sale process. It was argued before the Supreme Court that a concluded sale could not be rescinded by the court.

The Supreme Court laid down the following ratio. It is the duty of the court to get an adequate price for a property proposed to be sold by it. If the appellate court found that the property was grossly undervalued and the price grossly inadequate, it had the power to set aside the sale. The power to set aside the sale should be exercised as judiciously as possible and within a short time of confirmation of a sale.

I would summarise the applicable law as follows:-

The court conducting sale is enjoined with a duty of obtaining the best price for a property. If for this purpose it has to advertise and readvertise sale of the property it should keep on doing so till it gets the best price. It would also be open to it to cancel an ongoing sale process and start a new one, on discovering that there has been under valuation of the property, availability of a reasonably higher offer or on its learning that it is being deceived to accept an unreasonably low offer. It could also cancel a sale after confirmation provided such cancellation is made within a short time of confirmation of sale and without accrual of any third party rights. Nonetheless, the court has also a duty to sell the property as early as possible and hand over the sale proceeds to the rightful claimant, that is, to say the decree holder and the judgment debtor in case of any surplus. The court cannot ignore that in the matter of court sale also there is a time limit for conclusion of the sale. Now, if within the time conceived by the court within which the property should be sold an adequate offer is received which may not be ideally the highest offer conceivable, it would be within its right to conclude the sale in favour of that offerer. Once concluded it becomes a binding contract which cannot be breached even by the court. This is for the reason that even when conducting a court sale, an officer of the court on behalf of the court is entering into the legal relationship of a contract of sale with the purchaser which ordinarily would be as binding on the parties as an ordinary contractual relationship arising out of a sale agreement. If at a later point of time a party approaches the court that he is willing to offer a higher price for the property the concluded sale cannot be reopened and such application is liable to be dismissed.

At this stage the grounds taken by the appellants and the intervener in this appeal need to be considered, dealt with and disposed of.

First and foremost is the objection of Terai Tea Company Pvt. Ltd. (Terai Tea) Mr. Krishnaraj Thaker, learned advocate appearing for the Terai Tea, has urged the following grounds:

(a) The court was enjoined with a duty to conduct a public auction in its endeavour to get the highest price. Therefore the whole sale was vitiated.

(b) According to Clause 12 of the terms and conditions of the sale, the court has the power to revoke any confirmation of sale even after the consideration has been paid by the buyer on such terms and conditions as the court may think fit and proper.

Clause 12 is as follows:

> "The Hon'ble High Court may set aside the transfer even after the transfer is confirmed in favour of the offerors/intending party(s)

and/or consideration is paid on such terms and conditions as the Hon'ble Court may deem fit and property." (Page 170 of P.B. Vol-II)

Thereafter, taking into account the revised offer of Terai Tea at Rs.500 crores the court should set aside the sale in favour of SLRL Agencies, readvertise and sell the property by public auction.

Learned counsel argued that at the time of confirmation of the sale in favour of SLRL, the court had changed the terms and conditions of sale advertised by the Special Officer. After the sale process has been initiated the court could not "change the rules of the game" so as to suit any particular intending purchaser.

Under the West Bengal Town and Country Planning (Development Township Projects) Rules, 2008 there are some guidelines and restrictions regarding development of property in that region. It was argued that if this property was covered by the said rule, Terai Tea would offer Rs.425 crores for a lease hold interest and if outside the purview of the said rules, it was in a position to pay Rs.575 crores if the property was conveyed as freehold.

Mr. Sagar Bandopadhyay, learned advocate moving the appeal for Maxofit Softech Pvt. Ltd. could not cross the hurdle of establishing before the court that the application out of which the appeal arose (GA 8 of 2023) was moved before the trial court. The memorandum of appeal seems to have been filed on or about 26th February, 2024. It was open to us not to entertain the appeal and the appellant to first create the base before the trial court before approaching us. However, realizing that not entertaining this application could further delay matters we took it up for consideration.

Mr. Bandopadhyay cited **Mahakal Automobiles & Anr. vs. Kishan Swaroop Sharma** reported in **2008 (13) SCC 113** to contend that the sale in question was conducted without compliance with the requirements of order 21 Rule 54 and 66 of the Civil Procedure Code. He submitted that there was not proper valuation of property, invitation of offers, consideration of offers and proclamation of sale of the property.

We make the following observations. First of all, an appeal before a Division Bench has to be from a specific order. Either the appellant has to be a party to the proceedings and affected by the order or not a party to the proceeding but affected by it. In the latter case leave is to be obtained from the appellate court to prefer the appeal. There does not appear to be any proceeding before the trial court on which any order was passed regarding Maxofit Softech Pvt. Ltd., so as to justify this appeal filed by them. Secondly, even assuming that they were not parties, they filed this appeal without leave of the court. Even if we ignore all the above technical issues and consider the appellant's worthiness as an intending purchaser, we do not find any move on the part of the Maxofit Softech to respond to the Special Officer's advertisement by making an offer. Even till date they have not made any offer or made an offer tendering a reasonable earnest amount to show their bona fide.

This application GA 8/2023 by them was made one month after confirmation of sale.

Mr. Bandopadhyay's client really does not have the locus standi to complain that any procedure of sale has been breached by the court. They appear to be a mere speculator and a person interested in disrupting the sale process conducted by the court. Accordingly, their appeal is dismissed.

During pendency of the appeal another organization Kusum Udyag tried to enter the arena by saying that they offered Rs.500 crores for the property. It was an empty statement. There was no evidence to suggest that they had the financial ability to pay Rs.500 crores. Even a reasonable earnest was not offered.

Therefore, the contention of Mr. Chatterjee based on **Ram Kishun & Ors. vs. State of Uttar Pradesh & Ors.** reported in (**2012) 11 SCC 511** that it was the obligation of the court to obtain the best value of the property and that the property was sold for an undervalue has got absolutely no legs to stand upon. Moreover, Kusum Udyag was nowhere in the scene they made their presence by an application in the midst of the appeal.

There is no merit in the application. It is dismissed.

CONCLUSIONS:-

On the date the court confirmed the sale only two offers, one by SLRL and the other by Terai Tea were before the court. The application of Terai Tea was rejected by the court. In the circumstances, only one offer of SLRL was before the court. It recommended confirmation of that offer. To assess whether the decision of the court was correct, a scrutiny has to be made of the conduct of the proceedings before the court. The order dated 23rd March, 2023 reveals that the learned Advocate General appeared before the court and agreed to the court carrying out the sale. He said on the next date of hearing he would indicate the market value of the property so that the reserve price for its sale could be fixed. He would also indicate whether it would be sold as leasehold or freehold property. On 12th April, 2023 the government appeared before the court and submitted that the circle rate of the property was Rs.322 crores. The court appointed a Special Officer to sell the property by directing him to fix the reserve price in accordance with the circle rate. The order dated 6th July, 2023 recorded that till 29th June, 2023 which was the last date for receiving bids no offers had been received. In those circumstances, the appearing counsel for intending purchasers in court were directed to submit their offers. The proceedings on 20th July, 2023 records the terms and conditions of sale offered by SLRL through their counsel in court. It recorded an offer of Rs.400 crores for the property together with an earnest of 10% of it. The court described it as a “generous offer”. Some other parties also submitted offers. The matter was directed to appear once again on 24th July, 2023 to consider all the offers. On 24th July, 2023 learned counsel for Terai Tea deposited Rs.1 crore. The learned judge observed in the order that to be eligible to participate in the sale the earnest should be Rs.40 crores. On 27th July, 2023 the application of Terai Tea (GA 4/2023) was rejected with the observation that they could only offer Rs.1 crore, not being in a position to deposit the earnest of Rs.40 crores. On the same day, the application (GA 6/2023) of SLRL was considered and allowed by recommending sale of the property in its favour.

The award is of a substantial sum of money. It is against the SJDA and in favour of Bengal Unitech. A sizable amount in the form of interest is accruing on the award. This sum is accumulating against the award debtor SJDA. The award is to be satisfied by lease of the said property. The award holder is also deprived of the use of the awarded sum together with interest. If paid within reasonable time they may have been able to make more substantial use of the money.

SLRL has deposited Rs.40 crores more than nine months ago. They are also deprived of the use of the sum. Not a single other party which came before the court by filing an appeal or an application to intervene could tender even 10% of the offered price i.e. Rs.40 crores by SLRL. Only empty offers were thrown before the court.

After the sale was confirmed in favour of SLRL the government announced that the actual valuation of the property was Rs.700 crores. We think that within a span of four or five months this revision in valuation is most irresponsible conduct on the part of the government. Having valued the property at Rs.322 crores, signified consent to the court to go ahead with the sale fixing that valuation as the reserve price and the court having invited offers on that basis. SJDA should be estopped from resiling from that valuation.

In the above circumstances, I hold that the learned judge was perfectly justified in recommending confirmation of sale in favour of SLRL, as no party was available making any offer anywhere near the reserve price with evidence of sufficient financial resources to fulfill that offer. The judgment and order under appeal should be upheld and sale confirmed in favour of SLRL.

I am convinced that no offer matching the SLRL offer is obtainable at least in the near future.

For all those reasons, the appeals **(GA-COM 2 of 2024, GA-COM 3 of 2024, APO 140 of 2023, APO 118 of 2023, GA-COM 1 of 2024 AND APOT 80 of 2024)** and the application **GA 2 of 2024** are dismissed. All pending connected applications are disposed of accordingly.

The impugned judgment and order is affirmed.

The sale of the property be carried out as recommended and directed by the impugned judgment and order dated 27th July 2023 in accordance with law.

No order as to costs.

(I. P. Mukerji, J.)

Biswaroop Chowdhury, J.:-

I have perused the judgment proposed to be delivered by my learned brother and I agree with the observations made therein. However I add the following grounds:

The execution case being E.C 91 of 2023 which was filed by the Award Holder Bengal United Unitech Siliguri Projects Limited against Siliguri Jalpaiguri Development Authority Award Debtor was not contested by the Award Debtor. Thus in an application filed by Bengal Unitech Universal Siliguri Projects Limited for attachment and auction sale of the property of Award Debtor no objection was raised by the Award Debtor.

Upon considering the submission of Government Pleader the Learned Executing court by order dated 12th April 2023 was pleased to observe and direct as follows;

'Heard Mr Siddharth Batra, Counsel appearing on behalf of the petitioner. Also heard Mr Anirban Roy, Government Pleader appearing on behalf of the Siliguri Jalpaiguri Development Authority the Award-Debtor in the present case. Mr Anirban Ray has submitted upon instruction that the respondent is willing to have the property sold through auction as a lease hold property and has submitted the circle rate which indicates the amount to be approximately Rs 322 crores.

In light of the above submission, I appoint Mr Ganesh N. Jajodia, Advocate Mob. No. 9831095746 as a Special Officer to carry out the entire process of auction and sale of the said property subject to confirmation by this Court.

The initial remuneration of the Special Officer shall be Rs. 3 lakhs to be paid by the petitioner. Cost and expenses for advertisement and carrying out the auction shall also be borne by the petitioner.

I make it clear that upon sale being concluded, any cost paid by the petitioner shall be adjusted and re-imbursed to the petitioner.

The Special Officer is directed to ensure that the sale takes place expeditiously, preferably within a period of two months. Both parties are directed to cooperate with the Special Officer and in the event of any difficulty the Special Officer is granted leave to mention the matter before this Court.

I make this matter returnable a month hence for the Special Officer to inform the Court of the progress made regarding the auction and sale.

I make it clear that the base price shall be the circle rate indicated above.

Learned Advocate General is directed to inform this Court of the willingness of the State to sell this property as a free hold property as such sale would fetch a higher price. Learned AG is requested to inform this court of the respondents view two weeks hence.'

Thus upon perusal of the order of the Learned Executing Court it is clear that on the basis of submission of Learned Advocate for Siliguri Jalpaiguri Development Authority upon instruction from the said Authority/Award Debtor about willingness to sell their property through auction as a lease hold property and also at the circle rate approximately amounting to Rs. 322 crores, Learned Judge was pleased to pass the above order, for auction and sale by appointing Special Officer. The matter was adjourned for two weeks for the Learned Advocate General to take instruction of the willingness of the State to sell the property as a free hold property on the ground that such sale would fetch a higher price Learned AG was requested to inform the views of the state. Pursuant to the order dated 12th April 2023, meeting was held by the Learned Special Officer with the Learned Advocates for the Award Holder and Learned Advocate for the Award Debtor. On the queries raised by Award Holder as to whether transfer would be lease-hold Land or free hold land and if lease hold then what would be the quantum of lease period, Learned Advocate representing the Award Debtor informed that the mode of transfer will be leasehold and the quantum of the leasehold period to be intimated on the next day. A list of documents were directed to be produced by the Special Officer.

It was conveyed in the meeting before Special Officer by the Learned Advocate of the Award Debtor that the mode of transfer would be leasehold and quantum of leasehold period would be conveyed on the next day of the meeting.

On 28th April 2023 Learned Advocate for the Award Debtor handed over the following documents to the Special Officer.

i) Copy of the document showing valuation of the said property issued by Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal dated 21st March, 2023.
ii) Copy of the document showing conversion, payment of mutation fee and mutation certificate.
iii) Copy of the document dated 27th January 2020 issued by office of District Magistrate Land Acquisition Section, Jalpaiguri showing the date of declaration of Award in different L.A.P. Case,
iv) Copy of the document dated 29th September 2020, issued by Office of Survey and Demarcation details in respect of L.A.P. Case.
v) Copies of Possession Certificates.
vi) Copy of Bengal Unitech Universal Siliguri Projects Limited plot schedule.
vii) Copy of the signed schedule of the said property.
viii) R.S. Khaitan

As conversion Status of the property was unclear the meeting was adjourned granting opportunity to the Award Debtor to clarify the status of such conversion by 3rd May 2023. Thereafter meetings were held on 4th May 2023 and 15th May 2023. In the meeting dated 15th May 2023 it was agreed that the quantum period of the lease-hold right of the schedule property would be 99 years subject to the prior permission of renewal clause. It was decided that the rough draft of the paper publication was to be circulated amongst the parties. Thereafter the matter appeared on 19th May 2023 before Learned Executing Court. Learned Court upon hearing the parties, and Special Officer was pleased to adjourn the matter one week after vacation granting opportunities to the parties to give comments if any with regard to the notice of the Special Officer.

On 23rd May 2023 in the meeting before the Special Officer Learned Advocate for the Award Holder orally suggested that there should be amendments and suggestions in the said Sale Notice and terms and conditions to invite more bona-fide offerer. It was suggested that the word 'Reserve Price' should be highlighted in the said notice and further time was sought to provide suggestions. The meeting was thus adjourned to 30th May 2023. It further appears from the minutes of the meeting that the Learned Special Officer met Chairman SJDA, Chief Executive Officer of SJDA, and Associate Planner of SJDA. They perused the draft and gave comments on Sale Notice and the Terms and Conditions of the draft of the notice.

Again the meeting was held on 2nd June 2023 by the Special Officer, a request was made to make the publication after taking a formal approval from the State Government. On the objection raised by Learned Advocate for the Award Holder the Special Officer in paragraph-6 of the minutes of the meeting recorded the submission of Chairman of SJDA present at the meeting which is as follows:

'Dr Saurav Chakraborty, Chairman of SJDA duly submits that the said land belongs to the government and the government is well aware of the disbursement of the said land and the Award Debtor is willing to pay off the dues and demands of the Award Holder without any hesitation. But asides a formal approval shall need to be obtained from the Cabinet/Principal Secretary of the State regarding the paper publication. He further assures that there will be no negative hindrance regarding such approval.'

Special Officer upon recording submission of Chairman SJDA in paragraphs 6 of the minutes of the meeting was further pleased to record his observation in para-10, and 11 of the minutes of the meeting which are as follows"

'10. The Hon'ble Court by an order dated 19th May 2023 has directed that the publication shall be published at the earliest after considering the suggestions of the parties regarding such publication. The comments of both the parties have been already adopted and there shall be no delay from my part for the ends of justice as the notice has been already finalized.'

11. And at this stage no delay shall be condoned without the proper direction of the Hon'ble Court. The parties shall be at liberty to submit before the Hon'ble Court.'

The matter appeared before the Learned Executing Court on 8th June 2023 and the Learned Judge was pleased to direct the Special Officer to proceed with issue of the advertisement notice, and notice of auction was issued by the Special Officer.

Now if we stop here at this point we will find that on consent of Siliguri and Jalpaiguri Development Authority the Judgment Debtor herein the prayer for auction of land of Judgment Debtor was allowed by the Learned Trial Court/Executing Court. The minimum reserve price of Rs. 322 crores was also fixed by the Learned Court on the submission of Learned Advocate for Judgment Debtor on instruction. Several meetings were held by the Learned Special Officer where Learned Advocate for the Award Debtor was also present with Learned Advocate for Award Holder. Several documents were filed by Learned Advocate for the Award Debtor including documents relating to valuation of the property to be auctioned. It was the contention of the Award Debtor that the property should be confirmed as lease hold and the quantum of the leasehold period would be confirmed on the next day of the meeting after taking proper instructions from his client. Thus there was no objection with regard to the valuation of property, by the Award Debtor and the value furnished by the Award Debtor was accepted by Court and auction directed upon mentioning the same as reserve price. No offer was received by the Special Officer till 16th July 2023 when the matter appeared before Learned Executing Court. SLRL Agencies Pvt Ltd appeared before court and offered Rs. 400 crores together with an earnest of Rs. 40 crores. By application being G.A. 4/2023, Terai Tea Co Pvt Ltd offered Rs. 350/- crores for the property. As they could only deposit Rs. 1 crore instead of 40 crores their application was dismissed. Sale was confirmed in favour of SLRL. Being aggrieved by the order of dismissal Terrai Tea @ Pvt Ltd preferred an appeal. Award Debtor SJDA also preferred an appeal against the order of Executing Court on the ground that the valuation of the land on which basis the reserve price was fixed and published was inadequate.

Now the point for consideration is whether the ground on which appeal is preferred by SJDA is sustainable in the eye of law.

It is well settled principle of law that no persons can be permitted to aprobate and reprobate at the same time. Secondly it is to be remembered that a case of execution of decree which is taken out for non-compliance of the decree should be disposed of expeditiously otherwise the decree holder will be denied justice, inspite of having right declared by Court. Now upon perusal of the record it will appear that Award Debtor on obtaining valuation of land and agreeing for transferring of the same on lease-hold basis and attending meeting on different dates and the auction being held without any offer and finally an intending purchaser appearing in Court the Award Debtor cannot be permitted to retract and seek fresh auction which will cause delay and uncertainty which in effect is denial of justice to the Award Holder. When no purchaser turned up at the auction when reserve price was fixed at Rs. 322 crores and finally SLRL Agencies appeared in Court to take the property on lease at the rate of Rs 400 crores and complied the terms and conditions laid down by the Executing Court if at this stage instead of proceeding for finalizing the lease, a fresh auction is ordered it will amount to the arms of the clock put on the reverse direction. It is not open to the Award Debtor to raise the issue that the property is undervalued, on the basis of the offer of an intending purchaser proposing purchase price of 700 crores. It is not the case of the Award Debtor that the State Government has issued objection letter regarding valuation of the land nor it is the case of the Award Debtor that SLRL is disqualified under law from taking lease of the land belonging to the Judgment Debtor for development. In the absence of the above two grounds it would not be just and proper to defer the finalization of transfer of the property by lease by directing another auction. By deferring the matter serious prejudice will be caused to the Award Holder who inspite of getting the Award about three years ago, did not receive any payment. The Award Debtor has not even made part payment till today for justifying their claim for re-auction of the property to be considered on the other hand after obtaining valuation of the property to be fixed as reserve price and after considerable period being passed and auction being held and decision taken by Executing Court to accept prayer of SLRL to enter into lease with Award Debtor the plea for re-auction raised to the prejudice of Award Holder cannot be accepted. By allowing prayer of re-auction when considerable period has passed from the date of Award and when no part payment of Awarded sum is made the same will cause nothing but delay and denial of justice to Award Holder. It cannot be denied that finance is required to run a business undertaking and Learned Counsel for the Award Holder has submitted that huge debts are already outstanding and proceedings against his client is already instituted and for non payment of Awarded sum his client is unable to liquidate the said debts. It will also appear from the minutes of the meeting of Special Officer dated 2nd June 2023 that Chairman SJDA submitted that State Government is well aware about disbursement of the said land and the Award Debtor is willing to pay off the dues and demands of the Award Holder without any hesitation but formal approval is required to be obtained from Cabinet/ Principal Secretary of the State. Thus there is no scope to direct re-auction at this stage.

It is also to be remembered that a property may have a market value but there may not be intending purchasers for such value thus Courts have obligation to fix the minimum reserve price for the auction. When there is no offer in the auction sale minimum reserved price may be reduced. Even Courts have power to permit the judgment debtor to make private sale or lease to liquidate the dues of decree-holder (See 021r83). Courts have duty to take all necessary steps in accordance with law so that the execution of a decree/award/order is carried out expeditiously fetching an adequate price in the opinion by the Court and decretal dues are paid to the decree holder In this regard it would be reasonable to quote the relevant paragraph of a judicial decision.

The Hon'ble Madras High Court in the case of DR. A.U. Natarajan and Another Vs Indian Bank Madras reported in AIR-1981 MADRAS-151 the Hon'ble Court observed as follows:

'31. We have already pointed out the difference in meaning between the words "value" and "upset price or reserve price". What the proviso in question lays down is that in a proclamation of sale the estimate of the property, as given by either or both the parties, should necessarily find a place, But, no duty was cast on the Court to enter in the sale proclamation its own estimate of the value of the property. The reason for the Legislature having worded the proviso in the manner done is not far off to see. The Court making an estimate of the value of the property and entering it in the proclamation of sale would become necessary only when an upset price has to be fixed for the property. Since the Legislature has now made it obligatory that the estimate of the value of the property, as given by either or both the parties, should necessarily find a place in the proclamation of sale, the need for the Court to fix an upset price may not arise in all cases. The procedure indicated by P. N. Ramaswami, J., in Yellappa Naidu v. Venugopal Naidu (1957) 70 L.W. 815 : A.I.R. 1958 Mad. 423. can be resorted to, i.e., the sale will have to commence at the higher price given by the judgment-debtor and, in the absence of bidders, the price will have to be progressively brought down till it reaches the figure given by the decree-holder and again raised up, depending upon the availability of bidders. If, in spite of such a procedure, the sale does not take place for want of bidders, then it is open to the Court, on the application of the decree-holder, to fix as upset price for the property at a rate as near as the property would be worth in the estimation of the Court. If, even then, the sale does not take place, the decree-holder can move the executing Court to reduce the upset price. It will be open to the executing Court to reduce the upset price or not, depending upon the circumstances of the case, and, if a reduction is to be made, to decide the extent to which the upset price should be reduced. It is only for these reasons, the Legislature should have enacted the proviso in two parts, the first part relating to the discretionary power of the Court to give its own estimate of the value of the property in the sale proclamation and the second part relating to the obligation of the Court to include in the sale proclamation the estimate, if any, given by either or both the parties. The first part of the proviso is in the negative and the second part, in the affirmative. The significance of the manner of drafting cannot be missed. The affirmative is used to give a mandate and the negative is used only to emphasize that the Court is not under a duty to enter its own estimate in the proclamation of sale. If it was the intention of the Legislature that the Court should, in no circumstances, give its own estimate of the value of the property, then the wording of the first part of the proviso would have been entirely different. The Legislature would have clearly mentioned that the Court was precluded from making its own estimate of the value of the property and that the proclamation shall not include the estimate, if any, made by Court.

32. In some cases, the Court may feel called upon, in the interest of justice, to enter in the proclamation of sale its own estimate of the value of the property. Take for example, a case where the judgment-debtor, for some reason, has not given his value of the property and only the decree holder has given his value and that value is grossly low. The proclamation of sale would then contain only the value as given by the decree-holder, and if the

property is brought for sale, the bidding at the auction can start only at the rate given by the decree holder and the property may be knocked off at the value given by the decree-holder or for a slightly higher amount. The result will be that the property may get sold for a very low price and the judgment-debtor would be the loser in the bargain. To avoid such a situation, the Court can certainly exercise its discretionary power under the first limb of the proviso and give its own estimate of the value of the property in the sale proclamation'

In the instant matter Executing Court has fixed the upset reserve price by accepting the market value of the property to be Rs 322 Crores as claimed by the Award Debtor and making the same as upset price/reserve price. Although no offer came at the auction to take the land on lease but subsequently SLRL came up before the Court with an offer of Rs. 400/- crores and the same was accepted by the Learned Executing Court. Thus from the orders of the Executing Court and the price offered by the SLRL neither the procedure adapted by the Executing Court appears to be arbitrary nor the price offered by SLRL appears to be unreasonable.

Now with regard to the pleas raised by Terrai Tea Company LTD. Maxafit Softech PVT LTD as my learned brother has dealt with the pleas taken by the said applicants I do not intend to deal in details their pleas. However I only clarify the relevant provisions of law.

At the very outset it is to be remembered that in a case of Execution of a Decree the rights of Decree holder and Judgment Debtor are primary and vital, the rights of other parties including intending purchaser in an auction sale are secondary. The Executing Court has a duty to see that the decretal dues are liquidated expeditiously in the execution case and where the realization of debt is by attachment and auction sale of Judgment Debtors property Courts have to see that the property to be sold is valued in accordance with law and that judgment debtor is also heard with regard to valuation and is not unjustly denied of any portion of his property. With regard to submission made by Mr. Sagar Bandapadhyay that further auction should have been directed in accordance with the rules and rules of games cannot be changed I am of the view that as Executing Court has duty to ensure that the decree is executed expeditiously and in the event of execution of decree by auction sale the Court may in the interest of justice permit the judgment debtor to make private sale of property to pay the decretal dues., and during the interim period postpone the auction sale. Although the Award Debtor had the opportunity to make private sale or lease upon leave of the Executing Court as provided under Order 21 Rule 83 of the Code of Civil Procedure but such remedy was not availed of by the Award Debtor. Thus the Executing Court had no other option but accept the prayer of SLRL Agency who appeared in Court and prayed for participation in the lease offering the total price of Rs. 400/- crores which is more than the reserve price. Such prayer was also not objected by the Award Debtor.

As permission for private sale or lease is permitted under Rule 83 of Order XXI of the Code of Civil Procedure the decision to allow a party who has appeared in Court to participate in the transfer process when no one turned up at the auction cannot be said to be arbitrary or unreasonable decision of Executing Court.

When the function of the Executing Court is to dispose of Execution proceedings expeditiously and also by ensuring that Decree holder gets decretal dues without unreasonable delay and judgment debtor is absolved of his liability in a just and reasonable manner and when there is substantial compliance of the rules and the execution case comes at the verge of disposal Courts should not look into the technicalities and re-open any issue at the instance of an intending purchaser, when prejudice is not caused to either judgment debtor, or decree holder. In such a situation Courts in exercise of inherent power may waive a formality in the interest of justice.

In the facts and circumstances mentioned above I am of the view that the order dated passed by Learned Executing Court in E.C. 91/2023 by allowing SLRL to enter into Deed of Lease with SJDA on the terms mentioned therein is just and reasonable.

Thus these appeals and intervening applications are devoid of merits and the same should be dismissed.

Urgent certified photo copy of this judgment and order if applied for be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

(Biswaroop Chowdhury, J.)