IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 WRIT PETITION NO. 2787 OF 2023

NAVNATH ASHRAJI SABLE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS DISTRICT COLLECTOR AND OTHERS
AND
4 WRIT PETITION NO. 2807 OF 2023

ASHTI TALUKA SAKHAR KAMGAR UNION THROUGH ITS GENERAL SECRETARY
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS DISTRICT COLLECTOR AND OTHERS
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Mr. B. R. Kaware, Advocate for the Petitioners
Mr. S. K. Tambe & Mr. M. M. Nerlikar, AGPs for Respondents State
Mr. N. D. Sonavane, Advocate for Respondent No.3

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 29th July, 2024

ORDER:

1. In both these Petitions, the Petitioners are identically placed. All of them are equipped with Revenue Recovery Certificates (RRC) issued by the Assistant Commissioner of Labour, Latur as well as by various controlling authorities under the provisions of the Payment of Gratuity Act, 1952 and also under section 50 of the MRTU and PULP Act, 1971.

2. The issue is that Respondent No.3 before us, which is a financial institution, is a secured creditor. Considering the law, the sale

proceeds will be first disbursed for satisfying the outstanding amounts towards secured creditor. However, the learned Advocate representing Respondent No.3 points out Clause 20 on internal Page 3 of the Bid document for Sale of Assets of Mahesh (Kada) Sahakari Sakhar Karkhana Ltd., Kada, Tq. Ashiti, Dist. Beed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest (Enforcement) Rules, 2002. This is the Bid document which was published by way of an advertisement. The said document is taken on record and marked as 'X' for identification. Clause 20 of the Bid document 'X', reads as under:

> "20. The Bank intends to sell the assets detailed above as "As IS WHERE IS, AS IS WHAT IS AND WHATEVER THERE IS WITHOUT ANY WARRANTY, GUARANTEE, WITHOUT ANY RECOURSE, ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER". The Authorized Officer (AO) does not take or assume any responsibility for any shortfall of the movable/immovable assets, for procuring any permission etc., or for any dues, statutory or otherwise viz; Provident Fund, Sales Tax, Central Excise, Workers Dues, Property Tax, Electricity Charges, Water Charge, GST, TDS and any other applicable taxes etc. of any authority established by law. Such dues, if any, of past, present and future will have to be borne/paid by the Purchaser of the assets. Such dues including statutory dues alongwith interest thereon will also have to be paid by the Purchaser of the

assets. All encumbrances are also to be borne/paid by the Purchaser."

3. The learned Advocate for the Bank submits that the sale certificate, with reference to the bids that would be opened on 12th August, 2023, would not be confirmed unless the auction purchaser accepts all the conditions set out in the bid document. In short, unless Clause 20 is accepted along with all other conditions set out in the bid document, the sale transaction would not be completed. Once the auction purchaser sale transaction is completed, the petitioner can move for recovery of the amount from the prospective buyer.

4. The learned Advocate for the Petitioners places reliance upon the judgment delivered by this Court in **Khandelwal Tube Mill Kamgar Sangh Vs. Government of Maharashtra and others, (2023) 1 CLR 379.** We have perused the said judgment. In paragraph 31, this Court has concluded that the secured creditor's right would be in priority over the unsecured claims. In the said case, having reference to the pronouncement in **Maharashtra State Cooperative Bank Limited Vs. Babulal Lade & Others, (2020) 2 SCC 310,** the Bank had agreed to disburse the dues of the employees from the sale proceeds. Therefore, the recovery certificate issued by the Industrial Court was directed to be executed in that matter.

5. In the present case, the learned Advocate for the Financial Institution, submits that the Bank will not claim such amount from the sale proceeds, which would be over and above the secured dues towards the Bank. The said amount may be used, if permitted, for satisfying the dues of the workers. In any case, he submits that because of Clause 20 of the bid document, the Purchaser is made strictly liable to pay legal dues of these workers.

6. We find that Clause 20 of the Bid document 'X', would secure the interest of the Petitioners to quite an extent. The prospective buyer will have to satisfy the dues of these Petitioners.

7. By observing as above, **these Writ Petitions are disposed off.**

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan