

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

COMMERCIAL EXECUTION APPLICATION NO.46 OF 2021

R. N. Laboratories Private Limited	... Applicant
Vs.	
Epitome Residency Private Limited	... Respondent

Mr. Shrey Fatterpekar with Ms. Anuja Jhunjhunwala and Ms. Rukshin Ghiara i/by M/s M. Mulla Associates, Advocates for the Applicant.
Mr. D. S. Chaudhary, Deputy Sheriff is present.

CORAM : ABHAY AHUJA, J.
DATE : 06 MAY, 2024.

PC. :

1. Pursuant to order dated 20th March, 2024, today when the matter is called out, Mr. Chaudhary, learned Deputy Sheriff tenders across the Bar report dated 20th April, 2024 seeking the following directions:

“(a) The Hon’ble Court may confirm the auction sale of the right, title and interest of the Defendant bearing Flat D-401, Fourth Floor, admeasuring 1972 sq. ft. carpet area, in the building known as Imperial Heights located at Goregaon Bus Depot, Goregaon Mulund Link road, Goregaon, Mumbai 400062 in favour of M/s R. N. Laboratories Private Limited;

(b) The Hon’ble Court may direct the Hon’ble Prothonotary and Senior Master, High Court, Bombay to issue Certificate of Sale in respect of the right, title and interest of the Defendant bearing Flat D-401, Fourth Floor, admeansuring 1972 sq. ft. carpet area, in the

building known as Imperial Heights located at Goregaon Bus Depot, Goregaon Mulund Link Road, Goregaon, Mumbai 400 062 in favour of M/s R. N. Laboratories Private Limited ;

(c) After issuance of the Certificate of Sale, the Auction Purchaser M/s R. N. Laboratories Private Limited may be directed to make payment of registration charges and stamp duty in the office of the concerned Sub Registrar of Assurances;

(d) After payment of the said registration and stamp duty charges by the Auction Purchaser M/s R. N. Laboratories Private Limited, the office of Sheriff of Mumbai may be directed to hand over the possession of the said flat i.e. Flat No.D-401, Fourth Floor, admeasuring 1972 sq. ft. carpet area, in the building known as Imperial Heights located at Goregaon Bus Depot, Goregaon Mulund Link Road, Goregaon, Mumbai 400 062 to the authorized representative of M/s R. N. Laboratories Private Limited;

(e) The Sheriff of Mumbai may be directed to transfer the balance purchase price of Rs.2,37,04,500/- (Rupees Two Crores Thirty Seven Lakhs Four Thousand Five hundred only) deposited by M/s R. N. Laboratories Private Limited as per Order dated 20th March, 2023, in the office of the Hon'ble Prothonotary and Senior Master, High Court, Bombay by cheque;

(f) The Sheriff of Mumbai may be directed to refund the amount of E.M.D. of Rs.20,00,000/- (Rupees Twenty Lakhs only) to M/s R. N. Laboratories Private Limited, Plaintiff and Auction Purchaser by way of NEFT in their bank account;

(g) The Sheriff of Mumbai may be directed to refund the balance amount of Rs.35,380/- (Rupees Thirty Five Thousand Three Hundred Fifty) which was deposited by them towards the cost of valuation and advertisement

into the bank account of M/s R. N. Laboratories Private Limited by way of NEFT;

(h) The Hon'ble Court may direct Imperial Heights Tower D Co-operative Housing Society Limited to submit the original bills and audited statements in support of their dues in respect of the above suit property to this office for verification and submission of the same for your Lordship's consideration;

(i) That any other order as this Hon'ble Court may deem fit and proper."

2. It is submitted that pursuant to order dated 20th March, 2024 of this Court, the successful bidder M/s R. N. Laboratories Private Limited has paid the difference amount of Rs.2,41,97,500/- in the office of the Sheriff of Mumbai by way of demand draft on 2nd April, 2024.

3. The Deputy Sheriff - Mr. D. S. Chaudhary, and the learned counsel for the successful bidder submit that till date no Application has been received under Rules 89, 90 or 91 of Order XXI of the Code of Civil Procedure, 1908 ("CPC") for setting aside the sale and that since the payment of the differential amount has been paid, this Court after permitting the Sheriff's office to deduct poundage at the rate of 1% of the amount deposited by order dated 20th March, 2024 viz. Rs.2,41,975/- confirm the auction sale in favour of the Judgment Creditor and also

direct the Prothonotary and Senior Master to issue Certificate of Sale in respect of Flat No.D-401, 4th floor, ad-measuring 1972 sq. ft. carpet area alongwith two car parking spaces in the building known as Imperial Heights located at Goregaon Bus Depot, Goregaon Mulund Link road, Goregaon, Mumbai 400062 (the “said flat”).

4. The learned Deputy Sheriff has also sought for direction to hand over possession of the said flat to the Judgment Creditor after the registration of the Certificate of Sale. In addition a direction to transfer the balance purchase price after deducting poundage into the account of the Prothonotary and Senior Master of this Court as well as refund of E.M.D. of Rs.20 lakhs and the balance amount of Rs.35,380/- paid by the Judgment Creditor towards valuation and advertisement to the Judgment Creditor is also sought.

5. I have heard the learned counsel as well as the learned Deputy Sheriff and also perused the Sheriff’s Report No.25 of 2024. It is noted that by order dated 20th March, 2024, this Court had declared the Judgment Creditor viz. M/s R. N. Laboratories Private Limited as a successful bidder. Pursuant to the said order, the successful bidder has

deposited an amount of Rs. 2,41,97,500/- in the office of the Sheriff by way of demand draft on 2nd April, 2024. Pursuant to Rule 474 of the High Court Original Side Rules, 1980 and the table of Sheriff's fees, the Sheriff is entitled to a poundage of 1% of the amount deposited.

6. Accordingly, the Sheriff is entitled to Rs.2,41,975/- as poundage. Let the said amount be deducted from the amount of Rs.2,41,97,500/- and the balance amount be deposited in the account of the Prothonotary and Senior Master of this Court within a period of one week.

7. It is observed that no Application to set aside the sale has been filed in this Court under Rules 89, 90 or 91 or Order XXI of the CPC and therefore, subject to above, this Court confirms the sale of the said flat in accordance with Rule 92 of Order XXI of the CPC.

8. Subject to the above, in accordance with Rule 94 of Order XXI of the CPC, the learned Prothonotary and Senior Master of this Court to issue Certificate of Sale in respect of the said flat in favour of M/s R. N. Laboratories Private Limited.

9. M/s R. N. Laboratories Private Limited is directed to make payment of stamp duty and registration charges in the office of the concerned Sub-Registrar of Assurances.

10. After registration of the Certificate of Sale in respect of the said flat the Sheriff of Mumbai is directed to hand over the possession of the said flat to the authorized representative of M/s R. N. Laboratories Private Limited.

11. It is observed that there is an earnest money deposit of Rs.20 lakhs as well as the balance of Rs.35,380/- which was deposited towards the cost of valuation and advertisement by M/s R. N. Laboratories Private Limited which requires to be refunded to them. The Sheriff of Mumbai is directed to refund the said amounts to M/s R. N. Laboratories Private Limited subject to the verification and settlement of the society dues payable after 1st April, 2024 in view of Clause 19 of the Conditions of auction sale. It is made clear that the above refund is subject to the conditions of sale of the said flat and in particular, to clause 19 which reads thus:

“(19) All costs, charges and expenses of and incidental

to and in relation to stamp duty, registration fees, transfer fees if any payable will be borne and paid by the Purchaser. The Purchaser shall not be liable to pay the outgoings including the Municipal Taxes previous to the day of payment to the purchase money, and outgoings shall be apportioned, if necessary. The transfer fees payable to the co-operative society for transfer of the premises in the name of the Purchaser shall be required to be paid by the Purchaser. The Purchaser shall bear his own costs throughout and shall not ask the Sheriff of Mumbai or Plaintiff/Applicant for the same or any part thereof.”

12. Imperial Heights Tower D Co-operative Housing Society Limited to furnish original bills and audited statements in support of the documents in respect of the said flat to the Sheriff of Bombay as well as the Prothonotary and Senior Master within four weeks so that the aforesaid sale condition can be complied with.

13. The Sheriff's Report accordingly stands disposed in the above terms. The Execution Application also to accordingly stand disposed.

(ABHAY AHUJA, J.)