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Comp.A.No.115 of 2022
in C.P.No.57 of 1998

SENTHILKUMAR RAMAMOORTHY,J

By this application the highest bidder at the auction of the Max-worth Trichy project in Chettipatti, Visalur and Sooriyur villages has applied for refund of the earnest money deposit of Rs.64,37,490/-.

2. In the affidavit in support of the application, it is stated that the applicant's investors failed to support the purchase of the property and that there appear to be litigations relating to the said property. Learned counsel for the applicant contends that the company in provisional liquidation did not have saleable interest in the property and that, therefore, the applicant is entitled to refund.

3. The sale was conducted by putting all prospective bidders on express notice that no warranty on title was being offered and that



such disclaimer applies not only to patent but also latent defects. In view thereof, the contention with regard to the title of the company in provisional liquidation cannot be countenanced.

4. While this application was pending, the Official Liquidator was directed to submit a report with regard to the total expenditure incurred for the sale of 24 projects of the company in provisional liquidation, including this project. From the report, it appears that a total sum of Rs.10,36,225/- was incurred towards advertisement expenditure; further sums of about Rs.37,587/- towards site expenses; Rs.2530/- towards site inspection; and Rs.6150/- towards auction expenses. These expenses were incurred for 24 projects and may be required to be apportioned depending on the size and value of the individual projects.

5. The money deposited by way of EMD is ordinarily liable to be forfeited if the person depositing such amount commits a breach



of the terms and conditions of auction. In this case, various reasons have been set out in the affidavit as the explanation for the applicant not proceeding with the purchase. Although the said reasons are not entirely convincing, by taking into account the total expenditure incurred by the Official Liquidator and keeping in mind the fact that the relevant property would have to be re-auctioned by incurring similar expenditure, the Official Liquidator is directed to forfeit a sum of Rs.7,50,000/- and refund the remainder to the applicant within *thirty days* from the date of receipt of a copy of this order. C.A.No.115 of 2022 is disposed of on the above terms without any order as to costs.

24.01.2024

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