

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 25.03.2025
DELIVERED ON: 25.03.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**M.A.T. 433 of 2025
With
I.A. No. CAN 1 of 2025
Shri Shital Kumar Sarawgi
Vs.
The West Bengal State Financial Corporation Limited & Ors.
With
M.A.T. 434 of 2025
With
I.A. No. CAN 1 of 2025
Binod Kumar Agarwal
Vs.
The West Bengal Financial Corporation Limited & Ors.**

Appearance:-

**Mr. Sakya Sen, Sr. Adv.
Mr. Arijit Bardhan
Mr. Avirup Chatterjee
Mr. Rishav Das**

.....For the Appellant (M.A.T. 433 of 2025)

**Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Biswaroop Bhattacharya
Mr. Sumitava Chakraborty**

.....For the Appellant (M.A.T. 434 of 2025)

**Mr. Joydip Kr. Sr. Adv.
Mr. Suddhastva Banerjee
Mr. Sannidhya Dutta
Mr. Abhik Chitta Kundu**

**.....For the Respondent Nos.1 to 3/ West
Bengal Financial Corporation**

**Mr. Jishnu Chowdhury, Sr. Adv.
Mr. S. Chakraborty
Mr. Sanjib Mitra
Mr. Abhidipto Tarafdar**

.....For the Respondent No.4

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. These intra-Court appeals are directed against the common order dated 11th March, 2025 passed in the three writ petitions. The first writ petition was filed by Modern Refractories Private Limited & Ors. in W.P.A. 28476 of 2024. The said company had availed a financial assistance from the respondent/West Bengal Financial Corporation as early as in the year 1974 for a sum of Rs.7.80 lakhs. In order to secure the loan, the bank had mortgaged its fixed assets, which is situated in Purulia District. Admittedly, there has been default and the West Bengal Financial Corporation (for brevity, "WBFC") took their own sweet time to initiate action against the defaulting borrower i.e. the company and ultimately, action was initiated under Section 29 of the State Financial Corporations Act. It is not in dispute that the said proceeding initiated under Section 29 by the WBFC was never put to challenge by the company or by the Directors of the company or anyone else. The WBFC took into consideration the decision of the Hon'ble Supreme Court in ***Kerala Financial Corporation Vs. Vincent Paul & Anr.*** reported in **(2011) 4 SCC 171** and the guidelines laid down therein. In pursuance thereof, a notice for natural justice "without prejudice" dated December 12, 2024 was issued. In the notice, two options have been given to the borrower i.e. that before dealing with the mortgaged assets, the WBFC gave an opportunity to fetch an offer equivalent to or better than that of the above offer of Rs.326,00,000.00/- from any other interested buyer of your choice and submit the same along with down payment of the entire such consideration within 30 days from the date of the letter. In such case, the borrower will be liable to repay the balance of loan dues of the company, if any, after adjustment of the sale proceeds in your loan account. An alternative offer

was also given to redeem the mortgage and hypothecation charge with WBFC by paying the total outstanding of Rs.737,50,921.24/- together with interest etc. within 30 days from December 12, 2024 and if the same is complied with, WBFC will release mortgaged and hypothecated assets created in their favour.

2. The writ petitioner in WPA 663 of 2025 (***Shri Shital Kumar Sarawgi Vs. The West Bengal Financial Corporation Limited & Ors.***) addressed a letter to the WBFC stating that his choice of buyer will be Mr. Binod Kumar Agarwal, who is stated to be his brother-in-law. The said Binod Kumar Agarwal is the writ petitioner in WPA 5754 of 2025. The said writ petitioner, Binod Kumar Agarwal also submitted a letter on 2nd January, 2025 to WBFC stating that he has been selected by the borrower, Modern Refractories Private Limited to be the buyer of their choice for the property located in the district of Purulia and he is interested in purchasing the said property at Rs.3,26,51,000/-. A request was made to furnish copy of the said property documents so as to get the same verified through their lawyer and also to arrange for a visit to the said property. In pursuance thereof, a reply was given to the two writ petitioners viz. Shri Shital Kumar Sarawgi and Binod Kumar Agarwal dated 7th January, 2025 in which it has been stated that Mr. Shital Kumar Sarawgi is not the borrower and a letter given by him in his personal capacity cannot be considered as any fulfilment of the opportunity provided to the borrower vide WBFC letter dated 12th December, 2024.
3. Further, it has been stated that it has come to the knowledge of WBFC that the borrower viz. Modern Refractories Private Limited has been dissolved and the name of the company has been struck off from the register of

companies and, therefore, it is inconceivable how a company, since dissolved, could have selected and/or otherwise nominated any person as their choice for the property mentioned in the said letter.

4. Further, it was mentioned that no document in support of such statement has been provided and they also noted the contradiction between the letters under reply, wherein Mr. Shital Kumar Sarawgi claims that he has selected Binod Kumar Agarwal as a buyer of his choice, whereas Mr. Binod Kumar Agarwal in his letter claims that he has been selected by Modern Refractories Private Limited (since dissolved). Therefore, the nomination stood rejected. This led to the litigation and the first of the three writ petitions was filed in WPA 28476 of 2024. If the company had been struck off/dissolved, the writ petition at the instance of the company was not maintainable. Therefore, any order passed in the writ petition, more particularly, the order dated 3rd December, 2024 has to be construed as a nullity. It appears that the Hon'ble Court was not apprised of this fact that the company has been struck off.
5. Be that as it may, the matter proceeded further. Mr. Binod Kumar Agarwal put in his money and for which an extension of time was granted in WPA 663 of 2025 by order dated 13th January, 2025 in which Mr. Binod Kumar Agarwal was an added respondent. In the said order, the Hon'ble Court observed that for the ends of justice, time is granted to the writ petitioner till 15th January, 2025 to deposit the entire offered amount with WBFC and the same is only to test the bona fide of the petitioner in participating in the auction process. Therefore, this order makes it abundantly clear that the extension of time was only to establish the bona fide of the writ petitioners

and nothing more. That apart, it has been made clear that further auction process would be conducted.

6. Another order was passed on 27th February, 2025 in WPA 663 of 2025 and WPA 28476 of 2024 in which the submission made by the successful bidder was recorded that an auction between the writ petitioner and the highest bidder ought to be held for fetching more money. The said stand was accepted by WBFC.
7. Subsequently, the 3rd writ petition was also clubbed and the Hon'ble Single Bench has permitted WBFC to proceed further because their proposal to conduct a fresh auction is for fetching more money for liquidating the entire dues. Pursuant thereto, a communication has been sent on 21st March, 2025 to Mr. Binod Kumar Agarwal and Akash Tourism and Resorts Private Limited, who are the intervenors in the writ petitions and in the said communication, it has been mentioned that the intervenor, Akash Tourism and Resorts Private Limited has submitted a letter dated 11th March, 2025 stating that they will like to enhance their bids to Rs.3,50,00,000/- for purchasing the mortgaged assets of the borrower and they have also deposited with WBFC a sum aggregating to Rs.35,00,000/- being 10% of the enhanced bid. Pertinently, the WBFC referred to the decision in ***Kerala Financial Corporation Vs. Vincent Paul*** reported in ***(2011) 4 SCC 171*** and the guidelines laid down therein. The object behind laying down the guidelines is noted as the dominant consideration is to secure the best price for the property to be sold. Therefore, there can be no fetters placed on the WBFC to proceed further with the auction, which is scheduled to be held at 3 p.m. today (25.03.2025). In fact, the learned Single Bench could have non-suited Mr. Binod Kumar Agarwal from pursuing his claim as the

nomination of Mr. Binod Kumar Agarwal at the instance of a company, which has been struck off, would not be valid.

8. Be that as it may, bearing in mind that the best price should be secured, which would not only be in the interest of the public sector corporation but also in the interest of the defaulting borrower, therefore, we find no ground to interfere with the order passed by the learned Single Bench.
9. Accordingly, appeals fail and they are dismissed.
10. It is open to the appellant in M.A.T. 434 of 2025 to participate in the auction scheduled to be held at 3:00 p.m. today.
11. No costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)