OD-2

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/269/2025

STEEL ARMADURA INNOVACIONES PVT LTD. AND ANR.
-**VS**-
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date: 25th April, 2025.

Appearance:
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Mr. SamridhaSaha, Adv.
…for the petitioner.

Mr. R. Chowdhury, Adv.
Mr. PurnenduModak, Adv.
Ms. S. Saha, Adv.
…for respondent nos. 2 & 3.

Mr. Siddhartha Chatterjee, Adv.
Ms. AniktaUpadhyay Agarwal, Adv.
…for successful bidder.

The Court: The petitioner has filed the present writ petition challenging the auction sale conducted by the respondent bank under the SARFAESI Act in pursuance of the Third Auction Notice dated 14.02.2025 as well as the Sale Certificate issued in favour of the respondent no. 4 in respect of the secured assets of M/s. Chhabra Ispat Private Limited.

The origin of this writ petition lies in the facts that M/s Chhabra Ispat Private Limited defaulted in repaying the credit facilities availed from the respondent no. 2 bank. Hence, the respondent no. 2 took measures under the SARFAESI Act to enforce its security interest over the borrower's immovable property i.e. all the piece and parcel of property along with plant, machinery, furniture and fixture situated at the Industrial Land having land area of 10.73 acres in Industrial Area in Khatha No. 612, J.L. No. 26 having Plot Nos. 925, 964, 965, 966, 967, 968, 969, 971, 972, 973, 974, 978, 980, 981, 982 and 983, Mouja- Nakrajuria, P.O. and P.S.- Salanpur, District- Paschim Burdwan, West Bengal.

In furtherance of such measures, respondent no. 2 issued first auction notice dated 11th August, 2024 for auction sale of the secured asset to be held on 13.09.2024. The first auction notice was published in "Financial Express" newspaper (English) and one prominent Bengali vernacular newspaper, both having wide circulation in the State of West Bengal. The first auction sale could not materialise as the respondent bank had withdrawn the said auction notice vide Withdrawal of Sale Notice dated 28.08.2024.

Thereafter, the respondent bank published the second auction notice on 08.09.2024 for the auction sale of the secured assets to be held on 09.10.2024. The Second Auction Notice was also published in widely circulated English language newspaper, viz. "Financial Express" and also a vernacular newspaper, being a Bengali daily having wide circulation in the State of West Bengal. The second notice also could not culminate into sale as the respondent bank had cancelled the auction sale.

The respondent bank issued the third public notice which was published on 15.02.2025 in an English daily "Echo of India" (Kolkata Edition) and in "Arthik Lipi", a vernacular newspaper in Bengali. In the said auction process, the M/s Maithon Infrabuilt Private Limited participated and the secured assets were sold in favour of the M/s Maithon Infrabuilt Private Limited. Thereafter, a sale certificate under Section 9(6) of the Security Interest (Enforcement) Rules, 2002 was also issued in favour of M/s Maithon Infrabuilt Private Limited.

It is the contention of the learned senior counsel for the petitioner that he is interested in purchasing the secured assets, however, the respondent bank issued public notice in a newspaper which does not have wide circulation in the locality. The first two auction notices were issued in "Financial Express" whereas the third one has been issued in two obscured newspaper - "Echo of India" and "Arthik Lipi". It is his allegation that neither "Echo of India" nor "Arthik Lipi" is a newspaper of general prominence or wide circulation in Kolkata (or the concerned locality) and thus, the said publication is in violation of proviso to Rule 8(6) of Security Interest (Enforcement) Rules, 2002. He further contended that as a result of such lack of proper publicity and notice, the e-auction held pursuant to the Third Auction Notice had no competitive participation. The M/s Maithon Infrabuilt Private Limited was the sole participant in the said auction and was accordingly declared the successful bidder by default without any fair bidding. The sale was purportedly confirmed in favour of M/s Maithon Infrabuilt Private Limited at a price of Rs. 9,95,28,500/-, which was the lowest permissible incremental bid above the reserve price set by the respondent bank.

Learned senior counsel for the petitioner further contends that the bank has acted in an arbitrary and mala fide manner, in collusion with successful bidder, for the sale of the secured assets. Leaned counsel for the petitioner also contends that the circulation of the “Echo of India” newspaper (Kolkata Edition) is lesser than the “Financial Express”. The petitioner states that he is ready and willing to offer a higher price for the auctioned property.

Learned counsel for the respondent bank submits that the said auction was conducted in accordance with law and there was no mala fide intent in publishing the auction notice in “Echo of India” (Kolkata Edition). Rather, he submits that the circulation of the said newspaper is more prominent than that of the “Financial Express”. M/s Maithon Infrabuilt Private Limited had participated in the auction process and quoted a price above the reserve price. Accordingly, the sale certificate was duly issued to the respondent no. 4 in terms of under Section 9(6) of the Securities Act, 2002.

Learned counsel for the respondent bank further submits that the sale certificate has been issued in favour of M/s Maithon Infrabuilt Private Limited, though the petitioner, in the present writ petition has not impleaded Maithon Infrabuilt Private Limited as a party, and has instead made Maithon Alloys Limited as a party to the present proceedings. Learned counsel for the respondent bank submits that there is no mala fide or arbitrariness in confirming the sale in favour of Maithon Infrabuilt Private Limited.

This Court had heard the arguments advanced by the parties and perused the documents placed on record.

The scope of judicial intervention in matters of auction sale is very narrow and limited. It is a well-settled principle of law that a confirmed sale can only be set aside on the grounds of material irregularity, fraud or any other fundamental error in the procedure of auction. In conducting an auction sale, the respondent bank is required to follow the due process as enumerated under Section 8(6) of the Securities Rule, 2002 and in furtherance of the said sale procedure, the certificate of sale is issued under Rule 9(6) of the said Act. The said Sections are quoted below: -

> *"8. **Sale of Immovable secured assets**: - (1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.*
>
> *(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by authorized officer.*
>
> *(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of Rule 8.*
>
> *(3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.*

(4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of Rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sale the whole or any part of such immovable secured assets by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through e-auction mode; or

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provisions of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) The authorized officer shall serve to borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):-

[Provided that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspaper including one in vernacular language having wide circulation in the locality]

(7) Every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorized officer

shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the incumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property]

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing]

*9. **Time of sale, issue of sale certificate and delivery of possession, etc.**-*

(1) No sale of immovable property under these rules, in first instances shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower:

[Provided further that if sale of immovable property by anyone of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale]

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor:

[Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 8]:

Provided further that if the authorized officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect that sale at such price.

(3) On every sale of immovable property, the purchasers, shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty-five per cent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchasers to the authorized officer on or before the fifteenth day of confirmation of the sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months]

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms or payment shave been complied with, the authorized officer exercising the power of sale shall issue a

certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if the thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalization of the sale]

(8) On such deposit of money for discharge of the encumbrances, the authorized officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.”

A combined reading of both the sections makes it clear that the auction notice is to be published in two newspapers having wide circulation in the locality; one in English and the other in a vernacular language, as enlisted in the Act. In addition to the paper publication, the Rules envisages two other modes of services:-

(I) the auction notice also to be affixed on the conspicuous part of the immovable property which is to be auctioned and

(II) the authorized officer also had to upload the details and terms and conditions of the sale on the website of the secured creditors.

Hence, the Rule itself provides 3 mandatory modes of circulation of auction notices in order to ensure proper participation of the bidders.

In the present case, the petitioner alleges that they were interested in purchasing the secured asset, however, they could not participate in the auction sale as the respondent bank had published the said auction notice in a newspaper which is having a much lesser circulation and they were unaware about the said auction sale. However, this allegation is not sustainable, as the respondent has shown that the newspaper "Echo of India" (Kolkata Edition) has a wide circulation, with more than 24,000 subscribers.

Moreover, upon a closure examination, it is evident that if the petitioner was genuinely interested in purchasing the said secured assets, it would not have been difficult for him to find out the details of the said auction sale. The petitioner himself admits that he was in touch with the officials of the respondent bank since August, 2024 and the sale was conducted in March 2025, much later. The sale notice was also conspicuous affixed on the immovable assets to be auctioned as well as the same was also uploaded on the website of the secured creditor. Hence, it is not possible to believe that the petitioner was not aware of the said auction sale.

The Petitioner has not placed any documents or material on record to show that the newspaper '*Echo of India*' is having lesser circulation than the '*The Financial Express*'. The said contention is without any material support.

Learned counsel for the petitioner has failed to point out any material irregularity or fundamental error in the auction procedure. The auction sale has already been concluded and the sale certificate has been issued to the successful bidder.

In view of this, this Court is not inclined to exercise its discretionary jurisdiction to interfere with the concluded sale.

There is no merit in the present writ petition. The same is dismissed.

(GAURANG KANTH, J.)

KB
AR(CR)