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Review Application No.9 of 2024
in Company Application No.655 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

**Review Application (OS) No.9 of 2024
in Company Application No.655 of 2023**

M/s.Annai Enterprises
Rep. by Mr.Babu.J, Proprietor,
Having Office at
New No.1235, Old No.1126/2,
Trichy Road, Near Sungam Chithamani,
Coimbatore – 641 005.

...Applicant

Versus

- 1.Assistant Commissioner (CT) (FAC)
Commercial Tax Department,
Palani – I, CT Buildings, Old Dharapuram Road,
Kothaimangalam Palani,
Dindigul District – 624 601.
- 2.The Official Liquidator, High Court Madras,
(Liquidator of M/s.Vijayakumar Mills Limited)
Corporate Bhavan, IInd Floor,
29, Rajaji Salai, Chennai – 600 001.
- 3.M/s.KGISL Infrastructure Private Limited,
Rep. by its Executive Director,
Having Office at
No.365, KGISL Campus, Thudiyalur Road,
Saravanampatti, Coimbatore – 641 035.

...Respondents



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Review Application filed under Section 114 & Order XLVII Rule 1 of C.P.C, 1908, Order XIV Rule 8 of O.S.Rules read with Rule 9, 11(b), 19 of the Companies (Court) Rules, 1959 against the order dated 02.02.2024 passed in Comp.A.No.655 of 2023 insofar it concerns Lot-E property and forfeits and appropriates the Earnest Money Deposit of the petitioner.

For Applicant : Mr.S.Manuraj
For Respondent – 2 : Mrs.B.Ambli,
Deputy Official Liquidator

ORDER

This Review Application has been filed by the applicant seeking to review order dated 02.02.2024 passed in Company Application No.655 of 2023 by this Court.

2. The applicant is aggrieved by the 2nd sentence in Paragraph No.3 of the aforesaid order, wherein, this Court has recorded that the EMD (Earnest Money Deposit) paid by applicant herein namely, M/s.Annai Enterprises stands forfeited and appropriated.

3. The specific case of the applicant is that the applicant had participated in the Court auction held on 18.07.2023 for the sale of



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immovable asset viz., a land measuring to an extent of 32.05 Acres situated at Elavanthi Village, Palladam Taluk, Tiruppur District belonging to M/s.Vijayakumar Mills Limited (company under provisional liquidation). In the said auction, the applicant had offered the highest bid of Rs.8.03 Crores and thus, the applicant was declared as successful bidder.

4. As per Clause 10 of the Terms and Conditions of Sale of Immovable Assets Belonging to M/s.Vijayakumar Mills Limited (company under provisional liquidation), being the highest offerer, the applicant ought to have paid the full bid amount (after deducting the amount of EMD deposited) to the Official Liquidator, within 30 days from the date of acceptance. However, the applicant was unable to pay the bid amount. In fact, the applicant had made an attempt to take a Demand Draft for a sum of Rs.1.6 Crores after having deposited an initial sum of Rs.69,00,000/- towards EMD (Earnest Money Deposit).

5. The learned counsel for the applicant submits that the 2nd sentence in Paragraph No.3 of the order dated 02.02.2024 passed in Company Application No.655 of 2023 by this Court has caused great prejudice to the



applicant since the applicant was not a party to the proceedings in Company Application No.655 of 2023. He further submitted that the applicant became aware of the order dated 02.02.2024 only at the time of filing of Company Application No.153 of 2024 during May 2024.

6. On the other hand, the learned Deputy Official Liquidator submitted that the order dated 02.02.2024 passed in Company Application No.655 of 2023 by this Court does not call for any review as there is no error apparent on the face of record in the said order.

6.1. Further, the learned Deputy Official Liquidator drew the attention of this Court to Clauses 10, 19, 22 & 27 of the Terms and Conditions of Sale of Immovable Assets Belonging to M/s.Vijayakumar Mills Limited (company under provisional liquidation).

6.2. The learned Deputy Official Liquidator also submitted that as per Clause 19 of the Terms and Conditions of Sale of Immovable Assets Belonging to M/s.Vijayakumar Mills Limited (company under provisional liquidation), if the purchaser does not pay the amount of sale consideration



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to the Official Liquidator within 30 days from the date of acceptance, the Official Liquidator shall terminate the sale and forfeit the EMD (Earnest Money Deposit) and part the sale consideration if any paid. Therefore, forfeiting of EMD (Earnest Money Deposit) of Rs.69,00,000/- paid by the applicant is perfectly in consonance with Clause 19 of the aforesaid terms and conditions.

6.3. The learned Deputy Official Liquidator submitted that the applicant filed a Company Application No.446 of 2023 seeking to extend the time limit for payment of balance bid amount of Rs.7,33,10,500/- upto 15.09.2023, however, the said company application was strangely withdrawn by the applicant on 07.11.2023.

7. I have considered the arguments advanced by the learned counsel for the applicant as well as the learned Deputy Official Liquidator.

8. The present application has been filed by the applicant seeking to review the order dated 02.02.2024 passed in Company Application No.655 of 2023 by this Court is not maintainable since the applicant was very well



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aware of the Terms and Conditions of Sale of Immovable Assets of
M/s.Vijayakumar Mills Limited (company under provisional liquidation).

Hence, as rightly submitted by the learned Deputy Official Liquidator, the
forfeiting of EMD (Earnest Money Deposit) of Rs.69,00,000/- paid by the
applicant is perfectly in consonance with Clause 19 of the said terms and
conditions.

9. For the aforesaid reasons, this Review Application is rejected.

02.01.2025

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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C.SARAVANAN, J.

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