

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY APPLICATION No. 222 of 2007****In****OFFICIAL LIQUIDATOR REPORT No. 23 of 2007****In****COMPANY PETITION No. 47 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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M/S. SINGHAL STEELS, PROP. VARUN S. SINGHAL -**Applicant(s)****Versus****O.L. OF HINDUSTAN FASHIONS LTD & 3 - Respondent(s)**

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Appearance :

MR BHARAT T RAO for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR.HIREN M MODI for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR PAVAN S GODIAWALA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 30/11/2007****ORAL JUDGMENT**

1. Present Judges' Summons has been taken out by the applicant - M/s. Singhal Steels, to recall the order dated 02.04.2007 passed by this Court in O.L.R. No. 23 of 2007 in Company Petition No.47 of 2003 by which this Court confirmed sale in favour of M/s. A.B.Engineering - respondent No.4 herein for sale of Composite Lot No.III including land, plants and machineries and all other movable (excluding records) of M/s. Hindustan Fashions Ltd. (in liquidation) for sale consideration of Rs.2,30,00,000/- (Rupees Two Crores Thirty Lacs.)

2. By order dated 09.01.2006 passed by this Court in Company Petition No.47 of 2003, M/s. Hindustan Fashions Ltd. has been ordered to be wound up and the Official Liquidator attached to this Court was appointed as Official Liquidator of the said Company with directions to take possession of the properties, movable and immovable and the account books. That thereafter, vide order dated 11.07.2006 and 21.11.2006 passed in Official Liquidator Report No.28 of 2006 in Company Petition No.47 of 2003, this Court ordered to appoint Sale Committee under the Chairmanship of the Official Liquidator and the

Secured Creditors as members of the Committee. Meeting of the Sale Committee was convened on 11.12.2006 for disposal of the assets and properties of the said Company and after obtaining a valuation report on 21.11.2006 from Shri Vinod R.Trivedi, Valuer, offers were invited by giving advertisement in local newspaper and inspection were provided to the intending purchasers. That thereafter, meeting of the Sale Committee was convened on 12.01.2007 for auction / inter-se bidding amongst the intending purchasers. So far as Lot No.III is concerned, Composite offer and the highest offer for purchase of the said property was received from M/s.A.B.Engineering of Rs.2.25 Crores and thereafter during further discussion, M/s.A.B.Engineering raised their offer to Rs.2.30 Crores. That Official Liquidator of M/s. Hindustan Fashions Ltd. submitted O.L.R. No. 27 of 2007 for considering the said offer of M/s. A.B. Engineering of Rs.2.30 Crores, which according to the Official Liquidator was highest offer and considering the Valuers Report, Official Liquidator found said offer to be adequate. Official Liquidator requested to consider and/or confirm sale

of Composite Lot No.III i.e. including land, plants and machineries and all other movable (excluding records) of M/s. Hindustan Fashions Ltd. (in liquidation) for sale consideration of Rs.2,30,00,000/- (Rupees Two Crores Thirty Lacs.). Vide order dated 02.04.2007, this Court accepted the offer of M/s. A.B.Engineering and confirmed sale in faour of respondent no.4 for sale consideration of Rs.2.30 Crores with respect to Lot No.III including land, plants and machineries and all other movable (excluding records) of M/s. Hindustan Fashions Ltd. (in liquidation). That as per the said order, the purchaser was required to deposit 25% of the sale consideration within a period of 30 days from 02.04.2007 and the balance amount of Sale consideration was required to be deposited within three months thereafter and EMD was to be adjusted in the last installment. It appears that said M/s.A.B.Engineering Ltd. Deposited entire sale consideration on 30.04.2007 and it is the case on behalf of respondent No.4 that on making payment of sale consideration on 30.04.2007, possession of the Composite unit was handed on 01.05.2007. It is

submitted that the applicant M/s. Singhal Steels were also interested in purchase of Lot No.III including land, plants and machineries and all other movable (excluding records) of M/s. Hindustan Fashions Ltd. (in liquidation) and they were ready and willing to offer atleast Rs.2.55 Crores and as soon as they came to know about the same, it is the case on behalf of the applicant that they approached Office of the Official Liquidator, but no proper reply was given. However, again when they approached Office of the Official Liquidator in the month of April 2007, they were informed that sale has been confirmed in favour of respondent no.4 with respect to properties being Lot No.III for sale consideration of Rs.2.30 Crores. The applicant immediately preferred present application on 03.05.2007 to recall the order dated 02.04.2007 confirming sale in favour of respondent no.4 for Rs.2.30 Croes and requested to consider their offer to purchase Lot No.II for sale considering of Rs.2.55 Crores.

3. By order dated 04.05.2007, this Court noted offer of the applicant to purchase properties being Lot No.III of Rs.2.55 Crores (minimum) and also noted

submission on behalf of the applicant that the applicant may bid for higher amount subject to inter-se rebidding. This Court directed the applicant to deposit Rs.25 lacs by way of EMD and further sum of Rs.10 lacs by way of costs, late fee charges, etc. on or before 08.05.2007 and respondent no.4 was directed to maintain status quo. That thereafter, present application came up for hearing on 11.05.2007 and the learned Advocate appearing on behalf of respondent no.4 made a statement on instructions from one Ramjibhai Lavjibhai Hadiyar, authorized representative of respondent no.4 that nothing will be removed from the factory premises inclusive of plants and machineries till further order is passed by this Court. That thereafter, the application was further heard on 20.06.2007 and Shri Soparkar, learned Senior Advocate appearing with Shri Godiawala, learned Advocate appearing on behalf of respondent no.4 raised preliminary objection by submitting that before considering the present application on merits, the applicant should be directed to deposit the entire amount of Sale consideration and the applicant be put at par with

the purchaser i.e. Respondent no.4 - herein. Apropos the same, Mr.Rao, learned Advocate appearing on behalf of the applicant submitted that without entering into any further controversy, the applicant will deposit the entire sale consideration as deposited by respondent no.4 with the Official Liquidator on 29.06.2007. The Official Liquidator was directed to accept the same and keep the said amount in separate account. The applicant deposited the entire amount, however, there was some dispute with regard to interest and therefore, further sum of Rs.1 lac came to be deposited by the applicant on ad-hoc basis without prejudice to the rights and contentions of the respective parties. Thus, entire amount of sale consideration has been deposited by the applicant and the applicant and respondent no.4 are put at par.

4. Mr.Rao, learned Advocate appearing on behalf of the applicant has submitted in support of the prayer in the Judges' summons that though initially when the present application was filed offer made by the applicant was minimum Rs.2.55 Crores, subsequently the applicant has further raised its

offer and the applicant is ready and willing to purchase the entire property being Lot No.III including land, plants and machineries and all other movable (excluding records) of M/s. Hindustan Fashions Ltd. (in liquidation) for sale consideration of Rs.2.75 Crores (minimum) which can be further raised if there is inter-se bidding between the applicant and respondent no.4. It is submitted that Sale Consideration has been confirmed in favour of respondent no.4 for sale consideration of Rs.2.30 Crores, however, the offer made by the applicant to purchase the said property at Rs.2.75 Crores deserves consideration as the Official Liquidator and the creditors would be getting atleast Rs.40 lacs more which is substantial one and same would be in the interest of creditors, workers etc. It is further submitted by Mr.Rao, learned Advocate appearing on behalf of the applicant that in fact at the time when advertisement was published in December 2006, he was not aware of the same as he was out of the town and busy in business work. It is submitted by him that the applicant wanted to purchase the said property and he approached the Office of the Official

Liquidator; he was informed that the sale has been confirmed which was not correct and thereafter when he visited the premises of M/s. Hindustan Fashions Ltd. in Ankleshwar in the last week of April 2007 he came to know that sale has not been confirmed and possession was not given. Therefore, he made detailed inquiry with the Official Liquidator and he came to know on 02.04.2007 that sale has been confirmed by the Court for sale consideration of Rs.2.30 Crores minimum. Thereafter the applicant has approached this Court by way of present application. It is further submitted that valuation is made by the valuer on the basis of forced sale. It is submitted that the valuable land of the company in liquidation is sought to be taken away by the auction purchaser on throw away price and when the present applicant is ready and willing to raise the amount substantially, in the interest of secured creditors of the company in liquidation, the offer of the present applicant is required to be accepted and the order dated 02.04.2007 passed by this Court is required to be recalled in the larger interest.

5. Mr.Rao, learned Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of **Divya Manufacturing Co.Ltd. V/s. Union Bank of India reported in AIR 2000 SC 2346** wherein the Hon'ble Supreme Court has held that the High Court can set aside the confirmation of the past highest bidding and it is within the discretion of the High Court in the interest of creditors of the company in liquidation. It is further submitted that as observed by the Hon'ble Supreme Court the paramount consideration must be to fetch maximum price in the interest of the creditors of the company in liquidation. It is further submitted that except entire amount of sale consideration deposited by respondent no.4 there are no change circumstances meaning thereby except so called possession taken over by respondent no.4 position of the property is as it is and therefore, no prejudice/loss will be caused to respondent no.4 and the applicant is ready and willing to compensate respondent no.4 by way of loss of interest on the said amount, if the offer of the applicant is considered. Mr.Rao, learned Advocate has also relied upon the unreported decision

of the Division Bench of this Court in the case of Abhishek Shops & Warehouse Co-op.Soc. Ltd. v/s. Monali Textile in O.J.Appeal No. 49 of 2003 in Misc. Civil Application No. 167 of 2003 whereby the Division Bench of this Court has passed a order of re-auctioning of the property after sale was confirmed. Therefore, it is requested to recall the order dated 02.04.2007 passed by this Court and to pass an appropriate order of re-auctioning the property in question and/or to consider the offer of the applicant to purchase the property in question for sale consideration at Rs.2.75 Crores (minimum).

6. The application is opposed by Mr.S.N.Soparkar, learned Senior Advocate appearing on behalf of the respondent No.4. It is submitted that no error is shown by the applicant to recall the order dated 02.04.2007. It is further submitted that at the relevant time when this Court passed the order on 02.04.2007 confirming sale in favour of respondent no.4 for sale consideration of Rs.2.30 Crores, this Court was satisfied with regard to adequate market price and as it was found that as per the Government

approved Valuer's report the properties in question were assessed at Rs.2,10,74,000/- (Rupees Two Crore Ten lac Seventy Four Thousand only) and therefore, the offer of Rs.2.30 Crores can be said to be fair market value and therefore, it cannot be said that there is any error on the part of the Court to accept the offer of respondent No.4 for sale consideration of Rs.2.30 Crores. It is submitted that adequacy or inadequacy of the price is required to be considered at the time while considering the offer made earlier and on the basis of the material or record available at the relevant time and not on the basis of the subsequent offer. It is also further submitted that subsequent sale cannot be sole ground to review / recall the order by which sale is confirmed.

7. Mr.Soparkar, learned Senior Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of **M/s.Kayjay Industries (P) Ltd. V/s. M/s. Asnew Drum (P) Ltd. and Ors reported in (1974) 2 SCC 213** (para - 9). It is also further submitted by Mr.Soparkar, learned Senior Advocate appearing on behalf of respondent No.4 that so far as the reliance

placed upon by the petitioner in the case of *Divya Manufacturing* (supra) is concerned, in the said decision, the Hon'ble Supreme Court has considered the decision in the case of *LICA (P) Ltd.(1) v/s. Official Liquidator and Anr. reported in (1996) 85 Comp. Cases 785; LICA (P) Ltd. (2) v/s. Official Liquidator and Anr. reported in (1996) 85 Comp. Cases 792.* However, in both the decisions there was specific condition no.11 which provided in the tender notice itself that it would be open for the Court to withdraw sale / set aside sale after the sale is confirmed. It is also further submitted by him that even in the case of *LICA(1)(supra)* and *LICA (2) (supra)*, the Hon'ble Supreme Court has considered the decision in the case of *M/s.Navalakha and Sons v/s. Sri Ramanya Das and ors. reported in 1969 (3) SCC 537.* However, in *LICA (1)(supra)* and *LICA(2) (supra)*, the Hon'ble Supreme Court has not considered the observations made in the case of *Navalakha (supra)* which are made in para 6 by which the Hon'ble Supreme Court has observed that no subsequent higher offer can constitute a valid ground for refusing / confirmation of sale or offer already received.

Learned Advocate appearing on behalf of respondent no.4 has relied upon following decisions of the Hon'ble Supreme Court in support of his submission that a judgment should be understood in the light of the facts of that case and not more should be read in it then what it actually says. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Each case depends on its own facts and a close similarity between one and another is not enough because even a single significant detail may alter the entire aspect. He has relied upon following decisions :

(1) *Mehboob Dawood Shaikh v/s. State of Maharashtra reported in (2004) 2 SCC 362.*

(2) *Union of India and Anr. V/s. Major Bhadur Singh reported in (2006) 1 SCC 368*

(3) *State of Haryana and ors. V/s. AGM Management Services Ltd. Reported in (2006) 5 SCC 520.*

8. Mr.Soparkar, learned Advocate appearing on behalf of respondent No.4 has also relied upon the

decision of the learned Single Judge of this Court in the case of **Akshar Corporation v/s.O.L. Of M/s. Vivekanand Mills Ltd. & Ors. reported in 2005(4) GLR. 2766** and has submitted that the learned Single Judge of this Court has considered the judgment on the point inclusive of *LICA (1) (supra)* and *LICA (2) (supra)* and *Divya Manufacturing (supra)* and considering above, the learned Single Judge has dismissed the review application which was filed to recall the order of confirmation of sale. Now so far as the reliance placed upon decision of the Division Bench of this Court in the case of *Abhishek Shops & Warehouse Co-op Soc.Ltd V/s. Monali Textile (supra)* relied upon by the learned Advocate for the petitioner is concerned, Mr.Soparkar, learned Advocate has submitted that the said judgment is on the facts of the case and will not be applicable to the facts of the present case. Making above submissions, it is requested to dismiss the present application.

9. Heard the learned Advocates appearing on behalf of the respective parties.

10. At the outset, it is required to be noted that offer of respondent no.4 for purchase of composite Lot including land, plants and machineries and other movables (excluding records) of the company in liquidation is confirmed for sale consideration of Rs.2.30 Crores vide order dated 02.04.2007. It is the case on behalf of respondent No.4 that they have deposited entire sale consideration with the Official Liquidator on 30.04.2007 and possession of the composite unit was handed over to them on 01.05.2007. However, nothing is forthcoming whether any conveyance deed has been executed in favour of respondent No.4. It is also not the case of respondent no.4 that title with respect to the properties in question has been passed in their favour by executing conveyance deed. In the affidavit dated 11.05.2007, it is stated that possession of the composite unit was handed over to them on 01.05.2007 and that respondent no.4 thereafter has not removed any movables. Now immediately thereafter i.e. on 03.05.2007, the applicant has preferred the present application by submitting that the applicant is ready

and willing to purchase the properties in question for sale consideration of Rs.2.55 Crores which has been subsequently raised by the applicant to Rs.2.75 Crores (minimum). It is also required to be noted that said offer can be further enhanced if the inter-se bidding takes place between the parties. Thus, the applicant has offered to purchase the properties in question atleast for an amount of Rs.2.75 Crores which is Rs.45 lacs more than what is paid by respondent No.4. In the case of Divya Manufacturing (supra), after considering the decisions in the case of LICA (1)(supra) and LICA (2)(supra), the Hon'ble Supreme Court in para 16 has observed and held as under :

'16. Further, there is a specific condition No.11 in terms and conditions of sale as quoted above which empowers the Court to set aside the sale even though it is confirmed for the interests of creditors, contributories and all concerned and / or public interest. In this view of the matter, it cannot be said that the Court became functus officio after the sale was confirmed. As stated above, neither the possession of the property nor the sale deed was executed in favour of the appellant. The offer of Rs.1.30 crore is totally inadequate in comparison to the offer of Rs.2 crores and in case where such higher price is offered, it would be in the interest of the Company and its creditors to set aside the sale. This

may cause some inconvenience or loss to the highest bidder but that cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed with the market forces and price. Confirmation of the sale by a Court at grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the Court may prevent, to some extent, underbidding at the time of auction through Court. In the present case, the Court has reviewed its exercise of judicial discretion within a shortest time.

In the result, Civil Appeal No. 4706 of 1998 filed by Divya and Civil Appeal No. 4707 of 1998 filed by the Samity stand dismissed. Interim order stands vacated. Pending hearing and disposal of this appeal as the order passed by the Division Bench of the High Court was stayed, fresh directions are required to be obtained from the Court for fixing the time-table for conduct of the auction sale. Hence, the Liquidator is directed to take appropriate steps at the earliest, by obtaining an order from the Court for sale of the property by calling sealed tenders or by auction in accordance with law after giving due publicity in the newspapers, particularly, the newspapers having circulation in Delhi and in the State of Haryana with a reserved price fixed at Rs.2 crores (as offered). The parties are directed to bear their respective costs.'

11. It is required to be noted that when the properties of the company in liquidation is sold, paramount consideration should be of the interest of

the company and its creditors inclusive of the workers and therefore, when it is found that properties of the company in liquidation is likely to fetch much more price than paid by respondent no.4, technicalities should not come in the way of the Court to recall / review the order and when it is found that offer of Rs.2.30 Crores would be duly inadequate in comparison to the offer of Rs.2.75 Crores. It might be true that in the case of LICA (1) (supra) and LICA(2) (supra), there might be condition no.11, but that might be an additional ground to quash and set aside the sale which is already confirmed where possession of the properties or sale deed has been executed in favour of purchaser in whose favour sale is confirmed. Submission of the learned Advocate appearing on behalf of respondent no.4 that in the case of LICA (1) (supra) and LICA(2) (supra), the Hon'ble Supreme Court has not considered para 6 of the decision of the Hon'ble Supreme Court in the case of M/s.Navalakha (supra) is concerned, it is required to be noted that this Court is bound by the decision of the Hon'ble Supreme Court in the case of LICA (1) (supra); LICA(2)(supra) and Divya

Manufacturing (supra) and decisions of the Hon'ble Supreme Court is binding to this Court. Now so far as the reliance placed upon the decision of the learned Single Judge of this Court in the case of Akshar Corporation (supra) by the learned Counsel appearing on behalf of respondent No.4 is concerned, it is required to be noted that in that case not only possession was handed over but even conveyance deed was also executed and it was found by the learned Single Judge of this Court that the applicant has not been able to show any valid ground on which the contract, which has been approved and executed, can be set aside. Division Bench of this Court in the case of Abishek Shops & Warehouse Co.op Soc. Ltd. V/s. Monali Textile (supra), considering the decision of the Hon'ble Supreme Court in the case of M/s.Kayjay Industries (P) Ltd. V/s. M/s. Asnew Drums (P) Ltd and Ors. reported in (1974) 2 SCC 213; Navalakha and sons (supra) and Divya Manufacturing (supra) and another decisions, has set aside the sale which was already confirmed when it was found that price fetched was inadequate.

12. Now so far as the submission on behalf of respondent no.4 that at the time when this Court confirmed sale in favour of respondent no.4 for sale consideration of Rs.2.30 Crores, it was found that same can be said to be fair market value and therefore, it is not open for this Court to review / recall the order is concerned, at the outset it is required to be noted that said observations are made by this Court considering the report of the Government approved valuer's report assessing the value of the properties at Rs.2,10,74,000/- (Rupees Two Crore Ten Lac Seventy Four Thousand only). However, considering the original record of O.L.R. No.23 of 2007, it appears to the Court that along with O.L.R. only executive summary of the report of the valuer is produced and entire report is not on record. Therefore, it appears to the Court that this Court had committed an error in solely relying upon the executive summary. Even otherwise now considering the offer of the applicant, it appears to the Court that this Court committed error which this Court is accepting, in accepting the offer of respondent no.4 to sale properties in question for sale consideration

of Rs.2.30 Crores. This Court is of the firm opinion that properties might have fetched more price considering the fact situation and not the offer of the applicant. Under the circumstances, even accepting what is stated by the learned Single Judge of this Court in the case of Akshar Corporation (supra), when the Court finds that the error pointed out in the review petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and had resulted in miscarriage of justice, this Court would be justified in reviewing in its own order. Under the circumstances, in the facts and circumstances of the case, and particularly when respondent no.4 has deposited entire amount and it is alleged that only possession was handed over to respondent no.4 meaning thereby that there is no change in the property more particularly when conveyance deed has not been executed in favour of respondent no.4 yet and respondent no.4 can be compensated by awarding interest on the amount deposited by it and when the applicant has deposited the amount offered by it, this Court is of the firm

opinion that order dated 02.04.2007 in favour of respondent no.4 requires to be recalled by reviewing the said order and to consider the offer of the applicant - herein. At this stage it is required to be noted that when there is no conveyance deed in favour of respondent no.4 and when amount was deposited on 30.04.2007 how possession could have been handed over by the Official Liquidator on the next day i.e. on 01.05.2007 as alleged. This also requires some consideration.

13. For the reasons stated above, the present application succeeds. Order dated 02.04.2007 passed by this Court in Official Liquidator Report No.23 of 2007 in Company Petition No. 47 of 2003 is hereby recalled and subsequently the order passed by this Court confirming sale in favour of respondent no.4 with respect to the properties of the company in liquidation for sale consideration of Rs.2.30 Crores is hereby quashed and set aside. Office is directed to notify Official Liquidator Report No.23 of 2007 before the appropriate Court taking up such matters for considering the same, immediately as the amount

deposited by respondent no.4 as well as by the applicant are lying idle with Official Liquidator. It is observed that so far as the amount of Rs.10 lacs deposited by the applicant is concerned, the same shall be appropriated by O.L. & kept with him as part of the amount realized over and above the sale consideration and same shall be distributed amongst the creditors as per the provisions of the Companies Act. There shall be no order as to costs.

[M.R.Shah, J.]

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