

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**COMPANY APPLICATION No. 533 of 2007**

**In**

**COMPANY APPLICATION No. 138 of 2007**

**In**

**COMPANY PETITION No. 5 of 2006**

**With**

**COMPANY APPLICATION No. 99 of 2008**

**In**

**COMPANY APPLICATION No. 533 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

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 ?

**CITIZENS CO-OP. BANK LTD. - Applicant(s)**

**Versus**

**OL OF SAFFRON CERAMICS PVT. LTD. - Respondent(s)**

**Appearance :**

M/S THAKKAR ASSOC. for Applicant(s) : 1,  
OFFICIAL LIQUIDATOR for Respondent(s) : 1,  
MR NITIN K MEHTA for Respondent(s) : 1,

**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 29/02/2008**

**ORAL JUDGMENT**

1. In Company Application No.533 of 2007, the applicant Bank has prayed for permission to proceed to auction the properties of the Company in liquidation on such terms and conditions as may be deemed fit by this Court. The applicant Bank has also sought permission of this Court to participate in the auction process alongwith other bidders. This Court has passed an order on 13.12.2007 permitting the applicant Bank to proceed with the auction of the property in question. The Court has also directed to constitute the sale committee consisting of the applicant Bank, Official Liquidator and Union, if any. The direction was issued to give public advertisement in two newspapers, namely, "Foolchhab" Gujarati language and "Indian Express" English language, covering this area, fixing the upset price of Rs.1.90 crores. The applicant Bank was permitted to participate in the auction subject to further

order that may be passed by this Court. The Court has also made it very clear that grating of permission to participate in the auction shall not amount to confirmation of sale.

2. Subsequent to this, the applicant has filed another Company Application No.99 of 2008 seeking permission to proceed to auction the properties of the Company in liquidation and to grant fresh date of auction of the property of company in liquidation. The applicant Bank has also requested this Court to fix upset price of the properties of the company in liquidation at Rs.1,63,11,000/-.

3. An affidavit is filed by Ramesh Gamot – Recovery Officer of the applicant Bank in support of Judge's Summons.

4. Mr. N.K.Pahwa, learned advocate appearing for the applicant Bank has submitted that the

applicant Bank has exclusive charge by way of mortgage in respect of immovable property being factory building, its machineries including the land bearing Revenue Survey No.101/1 and 101/2 paiki admeasurig 12232 sq.mtrs., situated at Makansar, Taluka Morbi. He has further submitted that the company in liquidation committed default in payment of the dues of the applicant Bank, initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. He has further submitted that after following the due procedure under the Act, the applicant Bank took over possession of the subject property on 16.10.2006. Thereafter, by an order dated 14.12.2006 passed by this Court in Company Petition No.5 of 2006, the Company was ordered to be wound up and the Official Liquidator attached to this Court was appointed as the Official Liquidator of the Company. Being aggrieved by the winding

up order, the management of the Company in liquidation field OJ Appeal No.26 of 2007 which came to be dismissed on 2.3.2007.

5. Mr.Pahwa further submitted that the applicant Bank informed the Official Liquidator about the act of taking over possession of the Company. Thereafter, Company Application No.533 o 2007 was filed by the applicant seeking permission to participate in the auction proceedings alongwith other bidders. Though the said permission was granted, however the Court has made it clear that this would not amount to confirmation of sale in favour of the applicant Company. The public advertisement as directed by this Court was published, but no response was received and hence the present application was filed.

6. Mr.Pahwa has further submitted that the auction of the property was notified and

scheduled to be held on 10.1.2008. Nobody obtained tender form nor anybody preferred to participate in the auction. Therefor, the auction failed. He has further submitted that the auction failed because of the fact that the earlier valuation report submitted by R.K. Associates dated 20.10.2006 contained the figure of Machineries as on 2006 and, therefore, after a period of one year, the value of the machineries depreciates, especially when the machinery is lying idle. It decreases its value by 10 to 12%. He has further submitted that the machineries of company in liquidation are idle and are not in use for the last one year without any maintenance and, therefore, applicant obtained re-valuation of the machineries of the Company in liquidation from R.K. Associates. As per the valuation certificate, the current value of the machineries of the company in liquidation is Rs.80,74,000/- and the value of the land is

about Rs.82,37,000/-. Thus, in aggregate the entire value of assets of company in liquidation is Rs.1,63,11,000/-. He has, therefore, submitted that if the upset price is reduced from Rs.1.90 crores to Rs.1,63,11,000/- there is a possibility of having more bidders and there is likelihood of large number of bidders participating in the auction. He has further submitted that the Bank is no more interested in participating the bid and hence appropriate order may be passed to reduce the upset price and fix up the date for fresh advertisement and auction.

7. Mr. J.S.Yadav, learned advocate appearing for the Official Liquidator, on the other hand has submitted that earlier auction was held at Morbi and because of this reason the buyers could not participate in the auction. If the auction is held at Ahmedabad there is possibility of inviting more buyers. He has,

therefore, submitted that the fresh auction be held at Ahmedabad only. As against this suggestion of Mr.Yadav, Mr.Pahwa, learned advocate appearing for the applicant Bank submits that the applicant Bank has no objection to hold auction at Ahmedabad though it is to be held at the office of Cooperative Federation.

8. After having heard learned advocates appearing for the respective parties and after having gone through the application and outcome of the earlier advertisement as well as the fresh valuation report of R.K.Associates, the Court is of the view that it is just and proper to reduce the upset price from Rs.1.90 crores to Rs.1,63,11,000. Accordingly, the upset price of the properties in question be shown as Rs.1,63,11,000/-. The fresh advertisement will again have to be issued in two newspapers and this advertisement should be



published in 'Gujarat Samachar' Gujarati daily, Ahmedabad as well as Rajkot Edition and 'Indian Express' English daily, Ahmedabad Edition. The advertisement should be published immediately and auction be held on 25.3.2008 at Cooperative Federation Office, Ahmedabad. The outcome of the auction be made known to this Court by filing separate application. In auction proceeding, the Sale Committee members be also allowed to be joined, more particularly the Official Liquidator should be intimated about the auction and his representative should remain present at the time of auction.

9. In view of the aforesaid order in this application, the earlier application would not survive and hence both these applications are accordingly disposed off.

(K. A. PUJ, J.)