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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 30.04.2024

+ **CO.APP. 11/2024**

ABR EMERALD LLP

..... Appellant

Through: Mr Anuj P. Agarwala, Mr Aayush Agarwala and Ms Bhumika Sharma, Advocates.

versus

THE OFFICIAL LIQUIDATOR & ANR.

..... Respondents

Through: Mr Gourab Banerji, Senior Advocate with Mr Rishabh Jain, Ms Raka Chatterjee, Mr Rakesh Talukdar and Mr V. Supreeth, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE GIRISH KATHPALIA

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning an order dated 29.02.2024 passed by the learned Company Court rejecting the appellant's application being CO.APPL. 253/2024. The appellant had filed the said application, *inter alia*, praying that the e-auction process in respect of Plot No.51, Phase -II, Industrial Area, Andheri East, Mumbai-400093 (hereafter *the subject property*) be set aside.

2. The subject property belongs to Golden Gate Industries Ltd. (formerly known as JVG Industries Limited), which is under liquidation.

3. The subject property was valued by an accredited valuer, M/s M Tech Services LLP. The fair market value of the subject property was assessed at



₹88,90,00,000/- (Rupees Eighty Eight Crores Ninety Lacs only); the realisable value was assessed at ₹80,01,00,000/- (Rupees Eighty Crores and One lac only); and the distress value was assessed at ₹71,12,00,000 (Rupees Seventy One Crores Twelve Lacs only). The valuation report was considered by the learned Company Court on 12.10.2023 and directions were issued to the Official Liquidator (hereafter *OL*) to prepare a draft sale notice.

4. The *OL* moved an application (CO. APPL 829/2023) seeking permission to take steps for sale of the subject property, which was considered by the learned Company Court on 30.11.2023. The draft sale notice prepared by the *OL* pursuant to the order dated 12.10.2023, was considered and approved by the learned Company Court. The learned Company Court directed that the subject property be sold by auction to be conducted by M/s Railtel Corporation of India Limited (hereafter *Railtel*). The reserve price was fixed at the fair market value as assessed by the valuer – ₹88,90,00,000/- (Rupees Eighty Eight Crores Ninety Lacs only). The learned Company Court directed that steps be taken within a period of two weeks to publish the notices (as approved) in:

- (i) the Loksatta (Marathi);
- (ii) Hindustan Times, Mumbai edition (English);
- (iii) Hindustan Times, Delhi edition (English); and
- (iv) Navbharat Times, Delhi (Hindi).

5. There is no dispute that the notices for sale of the subject property



were duly published.

6. The order dated 30.11.2023 allowing the auction was challenged before this Court in Company Appeal No.29/2023 by the ex-directors of the Golden Gate Industries Ltd. – the company in liquidation – *inter alia* on the ground that all the debts of the company in liquidation were paid and there was no requirement to auction the subject property. In the said proceedings, the Court permitted e-auction to proceed but interdicted the confirmation of the sale in favour of the auction purchaser. The said appeal is pending consideration.

7. The last date for submission of the Earnest Money Deposit (EMD) was fixed as 06.01.2024. The e-auction of the subject property was conducted by Railtel on 09.01.2024. A singular bid was received for an amount of ₹88,90,00,000/-, which is assessed as the fair market value and was fixed as the reserve price of the subject property.

8. The appellant did not participate in the e-auction. It claims that it was very much interested in purchasing the subject property but became aware of the e-auction some time in February, 2024. In the aforesaid context, the appellant filed an application – which was rejected by the learned Company Court by the impugned order – challenging the auction process. The appellant sought that the subject property be sold to it as it was willing to offer a higher price by 5%.

9. The learned Single Judge rejected the said application on the ground that the appellant's application was vague and did not specify the amount offered. The appellant had not deposited the Earnest Money, which was



required for any person to participate in the auction process. The learned Single Judge also noted that the re-opening of auctions results in enormous delays in disposal of petitions and since there was no error in the procedure adopted for auction of the subject property, the appellant's application for re-opening the auction could not be entertained.

10. The appellant has appealed the said decision in this appeal. The present appeal was listed before this Court on 09.04.2024. Mr Rai, the learned senior counsel, who appeared for the appellant on 09.04.2024, submitted that he had instructions to further increase the appellant's offer for the subject property to ₹97 Crores.

11. Considering that the appellant had neither deposited the Earnest Money, nor participated in the e-auction but sought interdiction of the auction process, this Court directed the appellant to deposit the offered amount with the Registry of this Court before its appeal could be heard on merits. This was also taking into account that the auction purchaser had already deposited 25% of the amount offered (₹88,90,00,000/-) in compliance with the terms and conditions of the auction and had also offered to pay the balance amount within a period of two working days.

12. It is also material to note that the appellant has not deposited the amount offered with the Registry of this Court. Mr Agarwala, the learned counsel appearing for the appellant submits that the appellant has preferred a Special Leave Petition before the Supreme Court against the order of this Court dated 09.04.2024 and therefore, the hearing in the present appeal be deferred. We are not persuaded to accept the said contention. However,



notwithstanding that the appellant has not deposited the amount offered by it, this Court has considered the appeal on merits as well.

13. The only ground urged before this Court to assail the auction process is that the appellant has offered a higher price. It is contended on behalf of the appellant that it is the duty of the OL as well as the Company Court to ensure that maximum value is realised for the property of the company in liquidation. Thus, it was necessary for the Company Court to have considered the appellant's application notwithstanding that the appellant had not participated in the auction process.

14. Mr Gourab Banerji, learned senior counsel appearing for the auction purchaser (respondent no.2) referred to the decision of the Supreme Court in ***Navalkha and Sons v. Sri Ramanya Das and Ors.*** (1969) 3 SCC 537 and on the strength of the said decision contended that an offer for higher price was not a ground to reopen the auction process.

15. As noted at the outset, there is no cavil that the auction notices were duly published in the leading newspapers as directed by the learned Company Court. There is no ground to fault the assessment of the fair market value of the subject property, as well. Merely because the appellant had offered a marginally higher price (by 5% before the learned Single Judge and approximately 10% before this Court) does not indicate any flaw in the valuation of the subject property.

16. In ***Navalkha and Sons v. Sri Ramanya Das and Ors.*** (*supra*) the Supreme Court had observed as under:

“... In A. Subbaraya Mudaliar v. K. Sundarajan [AIR 1951 Mad



986] it was pointed out that the condition of confirmation by the Court being a safeguard against the property being said at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co. case)."

[emphasis added]

17. It is also relevant to refer to the decision of the Supreme Court in ***Vedica Procon Private Ltd. v. Balleshwar Greens Private Ltd. and Ors.: (2015) 10 SCC 94***. In the said case the Supreme Court had referred to earlier decisions including ***Navalkha and Sons v. Sri Ramanya Das and Ors.: (supra)***, and had held as under:

“47. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in *Navalkha & Sons* [*Navalkha & Sons v. Ramanya Das*, (1969) 3 SCC 537] laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in *Divya Mfg. Co. (P) Ltd. v. Union Bank of India* (2000) 6 SCC 69] this Court departed from the principle laid down in *Navalkha & Sons* [*Navalkha & Sons v. Ramanya Das*, (1969) 3 SCC 537] . We have already explained what exactly is the departure and how such a departure was not justified.”



18. If the auction process is interfered with solely for the reason that a person who has not participated in the auction process has offered a higher price, it would discourage bonafide purchasers from participating in the bidding process. They could always await the final outcome and decide to make their offer thereafter. This would be debilitating to the integrity of the auction process and thus, cannot be accepted.

19. The offer made by the appellant is not significantly higher so as to lead to a conclusion that the price offered by the auction purchaser (respondent no.2) is a wholly inadequate price. It also does not lead to the conclusion that the auction process has not resulted in securing an adequate offer.

20. We agree with the decision of the learned Single Judge that it is necessary to maintain the integrity of the auction process. Once it is found that there is no infirmity or flaw in conducting the auction and an offer for adequate price is received, the process must be carried to its intended conclusion. The successful bidder has complied with all the conditions including making the requisite deposits within the time stipulated and, cannot be deprived of his bargain merely because another bidder has subsequently made a higher offer.

21. In the present case, the auction notice was widely published in national dailies including those having wide circulation in Mumbai – where the principal office of the appellant is located – therefore, it is not possible for this Court to accept that the appellant was unaware of the auction notices. Whilst, the appellant is correct that the dominant object is to recover



the best price for the properties of the company in liquidation, we are unable to accept that the auction process can be brought to naught at the instance of another buyer who had not participated in the auction, but is subsequently willing to offer a marginally higher price.

22. The appeal is unmerited and accordingly, dismissed.

VIBHU BAKHRU, J

GIRISH KATHPALIA, J

APRIL 30, 2024

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