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Neutral Citation No. - 2024: AHC:172092-DB

Judgement Reserved on:- 22.10.2024**Judgement Delivered on:- 25.10.2024****Chief Justice's Court****Case :- SPECIAL APPEAL No. - 963 of 2024****Appellant :- Mrs Jayshree Kailash Wani****Respondent :- Official Liquidator****Counsel for Appellant :- Amit Krishna****Counsel for Respondent :- Arnab Banerji****Hon'ble Arun Bhansali,Chief Justice****Hon'ble Vikas Budhwar,J.****(Per: Vikas Budhwar,J.)**

1. This intra-court appeal under Chapter VIII, Rule 5 of the Allahabad High Court Rules read with Section 483 of the Companies Act, 1956 is against the order of the Company Judge dated 12.9.2024 whereby the Civil Misc. Application No.46 of 2024 preferred by the appellant seeking extension of time to deposit the bid amount in pursuance of the orders dated 26.7.2023 and 1.12.2023 of the Company Court was rejected.

Facts

2. Broadly, the facts of the case are that M/s Ganga Asbestos Cement Pvt. Ltd. (In short 'Company') was directed to be wound up by the Company Judge by order dated 25.4.1995. Thereafter, the Company Judge on 29.11.2022 directed for e-auction of the assets of the company in liquidation situate in Village Dariyapur, District Raebareilly.

3. An e-auction notice came to be published in the year 2022 for auctioning of the land measuring 9.211 hectares or 92110 sq. meters containing a reserved price of Rs.15 crores. As per the e-auction notice the earnest money being 10% of the reserved price was Rs.1.5 crores and the date and the time of the inspection of the demised property which was put

to auction was scheduled on 2.1.2023 and 3.1.2023 from 11.00 a.m. to 5.00 p.m. The date of submitting the earnest money deposit was 9.1.2023 upto 5.00 p.m. and the bidding was scheduled on 10.1.2023 upto 6.00 p.m.

4. The appellant herein, participated in the e-auction and bid for Rs. 51 crores which was stated to be highest. On 26.7.2023 the bid of the appellant came to be accepted by the Company Court and an order is stated to have been passed in Misc. Company Application No. 3 of 1995 on 26.7.2023 which is as under:-

“In Re: Civil Misc. Recall Application No. 40 of 2023

Heard Sri Udayan Nandan, learned counsel for the applicant.

The recall application is misconceived and is hereby dismissed.

In Re: Civil Misc. Application Nos. 36 and 37 of 2023

Sri Shashi Nandan, learned Senior Advocate assisted by Sri Udayan Nandan, learned counsel appearing for M/s. Garnet Shelters Pvt. Ltd., Sri Amit Krishna, learned counsel for Mrs. Jayshree Kailash Wani and Sri Arnab Bannerji, learned counsel for Official Liquidator are present. Sri O.P. Mishra, Advocate has also appeared for Kotak Mahindra Bank.

The representatives of two companies, M/s. Garnet Shelters Pvt. Ltd. and Mrs. Jayshree Kailash Wani are present in the chamber. The bidding was made which was carried to several rounds and finally bid was settled in favour of Mrs. Jayshree Kailash Wani at Rs.51 crores.

The highest bidder is directed to deposit the entire amount of the bid within a period of 60 days from today failing which the earnest money deposited shall be forfeited.

The earnest money which is deposited with Rail Tel Corporation of India Ltd. by M/s. Garnet Shelters Pvt. Ltd. shall stand refunded to the company, M/s. Garnet Shelters Pvt. Ltd., within 15 days from today along with interest.

The application nos. 36 and 37 of 2023 stand disposed of.”

5. As per terms and conditions of the e-auction as well as the order of the Company Court dated 26.7.2023 in Misc. Company Application No. 3 of 1995 the appellant was required to deposit the entire amount of the bid within a period of 60 days from the passing of the order dated 26.7.2023, failing which the earnest money deposited was to be forfeited.

6. The appellant, thereafter, preferred a Civil Misc. Time Extension Application No.42 of 2023 before the Company Court in Misc. Company Application No.3 of 1995 in which on 1.12.2023 the following order was passed:-

*“Order on Civil Misc. Time Extension Application No.42 of 2023
Heard Sri Amit Krishna, learned counsel for the applicant and Sri Arnab Banerjee, learned counsel for the Official Liquidator.*

This is an application seeking extension of time by the applicant who was the highest bidder in the auction conducted on 26th July, 2023. The applicant, being the highest bidder, was required to deposit the bid amount, within 60 days. The said amount was not deposited by the applicant within the time framed and this application has been moved for seeking extension of time.

This Court finds that the amount was to be deposited by 25th September, 2023 and more than four months have elapsed since the auction has taken place, but the applicant has not deposited any amount.

As a last opportunity, the applicant is granted one month's time to deposit the entire amount, out of which, half of the amount shall be deposited by 15th December, 2023 and balance amount shall be deposited within next 15 days.

In view of the said fact, application stands disposed of.

It is made clear that no further time will be granted to the applicant, in case he fails to deposit the required amount.”

7. Thereafter, the second time extension application came to be filed by the appellant on 2.9.2024 seeking further extension of time to deposit the bid amount in pursuance of the order dated 26.7.2023 and 1.12.2023 passed by the Company Court which came to be numbered as Civil Misc. Application No.46 of 2023. The said application was rejected by the Company Judge on 12.9.2024.

8. Questioning the order dated 12.9.2024 rejecting the Time Extension Application No. 46 of 2024 the present intra-court appeal has been preferred by the appellant.

Submission of counsel for Appellant

9. Sri Amit Krishna, learned counsel for the appellant has sought to argue that the order of the Company Judge rejecting the Civil Misc. Application No.46 of 2024 for extension of the time to make the payment

of bid amount cannot be sustained for a single moment inasmuch as the Company Court has misconstrued the entire case and has adopted an incorrect approach. Elaborating the said submission, it has been submitted that pursuant to the e-auction notice, the appellant participated in the auction. He was found to be the highest bidder offering Rs.51 crores. According to him the appellant has also deposited the earnest money, however, due to the ill-health of the appellant he could not make the site inspection of the demise property which was scheduled on 2.1.2023 and 3.1.2023 however, when for the first time spot inspection was made on 18.11.2023 then it was found that there existed a drainage of Nagar Palika/Nagar Nigam, Raebareilly which was utilized for flushing the waste of AIMS, Raebareilly, which was flowing in the middle of the auctioned land. The total area/land on which the said drainage was constructed is measuring 18,436 sq. feet. Apart from this, there also existed one pond of about one bigha which had already been allotted for fishery purposes to individuals by the State Government. Besides the same, there was a substation of 33 KV of AIMS Raebareilly, constructed in the middle of the auction land. Submission is that the said aspects were neither depicted nor disclosed in the auction notice and it was rather element of surprise for the appellant to know about the existence of the same. Contention is that had the appellant being apprised about the said facts while mentioning in the e-auction notice, he would have not participated in the bid.

10. Reliance has also been placed upon the decision in **Llovegeet Dhuria v. State Bank of India & Ors. 2022 0 Supreme (P & H) 728**, **S.K. Bakshi v. Punjab National Bank & Ors, 2022 0 Supreme (J&K) 731** and **M/s Kalyani (India) Private Limited v. Punjab National Bank; Branch Manager Punjab National Bank 2024 Law Suit (Del) 176** so as to contend that the e-auction notice is required to disclose all information and suppression of any vital fact makes it fatal. In nutshell,

the submission is that on account of non-disclosure of the said vital facts, fraud has been practised upon the appellant.

11. In order to show bona fides it is being argued that the appellant has arranged the amount Rs.49,40,000,00/- and the photocopy of the cheques have already been appended along with the memo of the appeal and the same would be paid in case the said obstructions are removed from the auctioned land. It is thus prayed that the order of the learned Single Judge be set aside and the appeal be allowed in toto.

Submission of counsel for Respondents

12. Countering the submissions of the learned counsel for the appellant Sri Arnab Banerjee, who appears for the Official Liquidator, has submitted that the order of the Company Judge needs no interference in the present appeal. He has further submitted that the appellant is a defaulter and he is not entitled to any relief whatsoever. Submission is that the e-auction notice itself provided for grant of opportunity for inspection and the date fixed was on 2.1.2023 and 3.1.2023 between 11 a.m. to 5 p.m. and it was always open for the appellant to have inspected the premises in question and thereafter participate in the auction as the date of submission of the earnest money was 9.1.2023 and the bidding was scheduled on 10.1.2023.

13. According to the counsel for the Official Liquidator the terms and the conditions of the e-auction itself provided that the same was “AS IS WHERE IS AND WHATEVER THERE IS BASIS” According to him once the appellant participated in the bid with open eyes then it is not open for him to resile and question the auction proceedings.

14. Contention is that on 26.7.2023 the bid of the appellant stood accepted by the Company Judge, with the stipulation that the bid amount was to be paid within a period of 60 days from the said date failing which the earnest money deposited shall stand forfeited and thereafter on 1.12.2023, another Time Extension Application No.42 of 2023 came to be

preferred by the appellant and on his request one more opportunity was accorded to him to deposit the entire amount out of which half of the amount was to be deposited by 15.12.2023 and balance amount within next 15 days with a clear stipulation that no further time would be granted. However, the appellant instead of honouring the undertaking given before the Company Judge has now filed another application seeking extension of time for making the payments that too conditional after a period of 9 months on 2.9.2023 which was not maintainable and it has been rightly rejected by the Company Judge. Therefore, the appellant is not entitled to any relief and the appeal is to be dismissed.

15. Before delving into the tenability of the arguments advanced by the rival parties, it would be apposite to reproduce the relevant extract of the auction notice and the terms and the conditions of the auction notice:-

E-Auction Notice

“Pursuant to order dated 29.11.2022 passed by the Hon'ble High Court of Judicature at Allahabad in M.C.A. No. 3 of 1995, following immovable assets (land) of M/s Ganga Asbestos Cement Ltd. (In Liquidation) situated at Village Dariyapur, District - Raebareilly (U.P.) will be put to sale on "as is where is basis and whatever there is basis" through e-auction.

Description

<i>Assets</i>	<i>Reserve Price (In Rs.)</i>	<i>Earnest Money 10% (In Rs.)</i>	<i>Date and time of Inspection</i>
<i>Land measuring 9.211 hectare Or 92110 Sq.mtr.</i>	<i>15 Crores</i>	<i>1.50 Crores</i>	<i>02.01.2023 & 03.01.2023 (11:00 AM to 05:00 PM)</i>

Date of submitting the E.M.D. 09.01 2023 upto 5.00 PM

Date of bidding:- 10.01.2023 up to 06.00 PM.

All the details along with terms and conditions of e-auction are available on portal <https://olauction.enivida.com> of M/s Rail Tail Corporation Ltd. For queries with regard to said e-auction contact no. (i) _____ (ii) _____ & (iii) 011-49606060. The details also available on www.mca.gov.in (website of MCA)

RAJNEESH KUMAR SINGH

OFFICIAL LIQUIDATOR”

Terms and Conditions of Auction

“E-Auction bids are invited for sale of movable / immovable properties of M/s Ganga Asbestos Cement Ltd. (in liquidation) by office of Official Liquidator (OL) Attached to Hon'ble Allahabad High Court on "AS IS WHERE IS AND WHATEVER THERE IS BASIS". It would be deemed that by submitting the Bid request, the bidder has made a complete and careful examination of the Property and has satisfied himself/itself of all the relevant and material information in relation to the Property. The Hon'ble High Court has absolute right to accept or reject the bid requestor adjourn, postpone, extend the auction without assigning any reasons whatsoever and no objections will accrue in such an event. No encumbrances in relation to the above mention properties are known to OFFICIAL LIQUIDATOR (OL) and Hon'ble High Court vide its order dated 29.11.2022 had authorized Railtel to conduct E-Auction proceeding and interested bidders are requested to file their bids on RailteleNivida portal i.e. <https://olauction.enivida.com>.”

16. We have heard the learned counsel for the parties and have perused the record carefully.

17. The facts are not in issue. It is not in dispute that pursuant to the order dated 29.11.2022 of the Company Judge e-bids were invited for sale of movable and immovable properties of the company in liquidation by the official liquidator. It is also not in dispute that e-auction notice came to be issued in the year 2022 for auctioning the land (assets) of the company in liquidation being land admeasuring 9.211 hectares or 92110 sq. meters, the reserved price was Rs.15 crores and the earnest money, being Rs.1.5 crores. In order to enable bidders to have and over all view 2.1.2023 and 3.1.2023 was that date fixed for inspection of the premises in question from 11.00 a.m. to 5.00 p.m. The date of submission of the earnest money deposit was 9.1.2023 upto 5.00 p.m. The date of bidding was 10.1.2023 upto 6.00 p.m.

18. It is admitted to the appellant that he participated in the e-auction and his bid was found to be highest to the tune of Rs.51 crores. On 26.7.2023 company court accepted the bid of the appellant directing him to deposit entire amount of the bid within a period of 60 days from the said date failing which, the earnest money deposited shall be forfeited.

19. The appellant preferred a Civil Misc. Time Extension Application No.42 of 2023 before the Company Judge seeking further time to deposit the bid amount. On the said application, the Company Judge on 1.12.2023 as a last opportunity, granted one months time to the appellant to deposit the bid amount out of which the half was directed to be deposited by 15.12.2023 and the balance amount within next 15 days with a clear stipulation that no further time shall be allowed to the appellant in case he fails to deposit the required amount. The orders dated 26.7.2023 and 1.12.2023 has attained finality, as it has been apprised to the Court that the same has not to been put to challenge. However, now after a period of approximately nine months on 2.9.2024, the second Time Extension Application came to be filed by the appellant, Civil Misc. Application No.46 of 2024 seeking further time to deposit the bid amount taking a stand that since the e-auction notice did not disclose the facts that there exist a drain, pond and a sub-station of the electricity department, thus the appellant was kept in dark and the appellant is agreeable to make the payment of the entire bid amount subject to removal of the obstructions from the auction land. The said application has been rejected.

20. Apparently, we find that the e-auction notice itself provided for an opportunity to the appellant to make an inspection of the site in question on 2.1.2023 and 3.1.2023 i.e. much before the date of the submission of the earnest money i.e. 9.1.2023 and the date of the bid which was on 10.1.2023. The terms and the conditions of the e-auction itself contained a stipulation that the auction was “AS IS WHERE IS AND WHATEVER THERE IS BASIS” and it would be deemed that by submitting the bid request the bidder has made a complete and careful examination of the property and has satisfied himself/itself of all the relevant and material information in relation to the property.

21. Pertinently, the appellant for the reasons best known to him had not made physical inspection of the property in question before auction, however, it has come on record that for the very first time inspection was

conducted by the appellant on 18.11.2023 as apparent from para 6 of the application preferred seeking extension of time to make deposit of the bid amount.

22. Certainly, for the inaction or lethargy on the part of the appellant, the respondent cannot be held to be responsible. Further more, once the terms and the conditions as set forth in the e-auction notice itself recites that the auction “AS IS WHERE IS AND WHATEVER THERE IS BASIS” then there is no question of non disclosure of the vital fact. Not only this, it is on the instance of the appellant itself that the auction stood settled in his favour by the Company Judge on 26.7.2023 and by order dated 1.12.2023 whereby, on the request of the appellant time was extended for a period of one month to make the entire payments of the bid amount. Once the said orders have been passed on the request and the undertaking of the appellant and have attained finality then it does not lie in the mouth of the appellant to question the auction.

23. A Division Bench of this Court in **Palika Towns LLP vs. State of U.P. and others 2022 (7) ADJ 331 (DB)** had the occasion to interpret “AS IS WHERE IS AND WHATEVER THERE IS BASIS” while holding as under:-

31. Apparently the words "AS IS WHERE IS" finds its root in the common law doctrine of "Caveat Emptor" which means "let the buyer beware". This doctrine puts the duty on the purchaser to carry out all necessary inspection of the property before entering into an agreement. If the purchaser fails to conduct such an inspection, then later, on identification of defects in the property may not be a ground to revoke or claim damages under the contract. In such cases it is presumed that the purchaser had the notice of defects, if any.

32. Section 3 of the Transfer of Property Act 1882 incorporates the doctrine of constructive notice under Section 3 which is read as under:-

"A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have know it.

Explanation II: Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of

the title, if any, of any person who is for the time being in actual possession thereof."

33. Nonetheless the Transfer of Property Act, 1882, also envisages the duty of the seller to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. This is, however, subject to the presence of contract to contrary between the parties.

34. Now, another facet needs to be examined as to what are the types of defects which a buyer is expected to inquire into before purchasing the property. There are two types of defects namely latent defects and patent defects. Latent defects are such type of defects which are unlikely to be discovered by a purchaser during investigation. On the other hand, the second category is patent defects which are discoverable if the buyer would have carried out inspection. Here in the present case the defects falls under the second category, being patent defects as Court finds that on 24.09.2018 the public announcement was made by Liquidator inviting claims due from the Corporate Debtor wherein in item no. 5 the details of the demised premises in question was given. Further the sale notice for assets of the Corporate Debtor was also published which is annexure- 4 at page no. 45 wherein again description of the land was given. It is a matter of common knowledge that whenever a property is being sought to be sold through auction and the reserve price runs into crores of rupees (which in the present case is 145.67 crores) then it is clearly expected that purchaser might have got carried out inspection of the title deed as well as of the liabilities attached to it. The petitioner herein is a registered liability partnership company duly registered with Government of India Ministry of Corporate Affairs and thus, it becomes highly implorable and inconceivable that the petitioner was not having knowledge about the liability of the Corporate Debtor. The present case can also be analyzed from another point of angle that the petitioner is not a illiterate person but the presumption is that legal option is freely accessible to it. It is not a case wherein the demised premises which is being put to auction is in remote part of the country or there is no via media of getting internal details of the Corporate Debtor and its liabilities particularly when it is a matter of common knowledge that once the demised land is leasehold then obviously an intending party would approach the lessor to get the details with respect to title and position of lease rentals. In other words, this Court cannot peep into mind of the petitioner so as to perceive as to whether any investigation was conducted at the level of intending party or to what extent.

24. So far as the reliance placed upon the judgements in **Llovegeet Dhuria (Supra)**, **S.K. Bakshi (Supra)** and **M/s Kalyani (India) Private Limited (Supra)** are concerned, they are not applicable in the facts of the

case as the issue involved in those cases was relatable to a pending litigation at the instance of the secured creditor which was not disclosed in the auction notice. However, in the present case, there is no dispute to the ownership and the title of the land in question.

25. Nonetheless, the present case is a classic example of approbating and reprobating at the same time while resiling from an obligation which stood entered at the own volition of the appeal.

26. As regards the submission that the appellant is ready to deposit the bid amount subject to the removal of the obstructions from the auction land is concerned, the same cannot be accepted for the simple reason that it is not within the domain of the Court to re-write the terms and the conditions of the auction which stood settled between the parties.

27. Viewing the case from all the points of angle, we are of the firm opinion that order of the Company Judge dated 12.9.2024 passed in Civil Misc. Application No.46 of 2024 in Company Misc. Application No.3 of 1995 does not suffer from any legal infirmity so as to warrant interference in the appeal.

28. Resultantly, the appeal is **dismissed**.

Order Date :- 25.10.2024

Piyush

(Vikas Budhwar, J) (Arun Bhansali, CJ)