

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6165 OF 2015

(Arising out of Special Leave Petition (Civil) No.2198 of 2015)

Vedica Procon Private Limited ... Appellant

Versus

Balleshwar Greens Private Limited & Others ... Respondents

WITH

CIVIL APPEAL NO. 6166-6167 OF 2015

(Arising out of Special Leave Petition (Civil) Nos.10148-10149 of 2015)

Vedica Procon Private Limited ... Appellant

Versus

Balleshwar Greens Private Limited & Others ... Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted.

2. M/s Omex Investors Ltd. was ordered to be wound up by the Company Judge of the Gujarat High Court by an order dated 6.3.1990. The Official Liquidator attached to the Gujarat High Court was appointed as the Liquidator of the said company.

3. By order dated 26.3.2013, the official liquidator was directed to put the freehold land of the company admeasuring 13895 sq. mtr. to auction for sale by inviting offers from the intending purchasers in sealed covers. By the said order, the High Court also fixed an upset price at Rs.55 crores and earnest money deposit (EMD) at 10% thereof.

4. Tender Notice (containing the terms and conditions of sale) inviting offers from the prospective purchasers in sealed covers was widely published. 11 prospective purchasers responded to the notice. On 17.12.2013, an auction was held in the open court. After inter-se bidding of 12 rounds, the appellant in Civil Appeal arising out of SLP (Civil) No.2198 of 2015 [“Vedica Procon Private Limited”, hereinafter referred to as “the appellant”) became the highest bidder with an offer of Rs.148 crores¹ –whereas the first

¹ In order of the High Court dated 17.12.2013, it is recorded as follows:

7. In view of the aforesaid, it transpires that M/s Vedia Procon Pvt. Ltd. being the highest bidder, has offered Rs.148 Crores (Rupees One Hundred Forty Eight Crores) for the land admeasuring 13895 Sq. Mtrs. Approx. situated at T.P. No.18 of F.P. No.32/P, bearing Survey No.25, 27/B/1, 31, 38, Moje Rajpur Hirpur, Outside Raipur Gate, behind New Cloth Market, Opp. Hirabhai Market, Diwan Ballubhai Road, Raipur, Ahmedabad.

respondent (Balleshwar Greens Private Limited) in the abovementioned SLP made the second highest bid. The High Court accepted the bid of the appellant.

5. By the same order the High Court recorded that the earnest money deposit by the appellant and the first respondent be retained by the official liquidator and the earnest money deposits made by the other unsuccessful bidders be returned.

6. On 19.12.2013, the official liquidator addressed a letter to the appellant referring to the order dated 17.12.2013 of the High Court and informed the appellant as under:

“With reference to the subject cited above, I have to state that pursuant to order dated 17.12.2013 passed by the Hon’ble High Court of Gujarat in Official Liquidator Report No.43 of 2013, **the sale of Freehold land of the company in Liquidator (sic liquidation)** admeasuring 13895 sq. mtrs. approx. at T.P. No.18, F.P. No.32/P, bearing Survey No.25, 27-B/1, 31, 38, Moje Rajpur – Hirpur, Outside Raipur Gate, behind New Cloth Market, Opp. Hirabhai Market, Diwan Ballubhai Road, Raipur, Ahmedabad **is confirmed in your favour for Rs.148 Crores.** A copy of said order is enclosed herewith for your ready reference and perusal. In this connection, you are requested to deposit sale proceed 25% i.e. Rs.37.00 Crores on or before 16.02.2014 and balance remaining 75% i.e. Rs.106.50 Crores on or before 16.04.2014, after adjusting Rs.4.50 Crores behind EMD in final payment of sale proceed. **You are, therefore, requested to kindly deposit the**

8. Ms. Amee Yajnik, learned counsel for the Official Liquidator, Mr. D.S. Vasavada, learned counsel for respondent No.6 – Union, Mr. U.R. Bhatt, learned counsel for respondent No.1 – State Bank of India and Mr. Anip Gandhi, learned counsel for the ARCIL, have expressed that the bid of M/s. Vedica Procon Pvt. Ltd. may be accepted.

9. In view of the above discussion, the bid of M/s. Vedica Procon Pvt. Ltd. being the highest bidder, who has offered Rs.148 Crores for the land mentioned in the tender notice deserves to be accepted and is hereby accepted as per the tender conditions on as is where is basis and whatever there is basis.

sale proceed with this office, within stipulated time given by the Hon'ble High Court of Gujarat **in terms of order dated 17.12.2013 and Tender document."**

[emphasis supplied]

7. Pursuant to the said letter, the appellant deposited on 06.01.2014 an amount of Rs.37 crores being 25% of the purchase price by Demand Draft drawn on ICICI Bank.

8. By letter dated 09.1.2014, the first respondent requested the official liquidator to refund its earnest money deposit. The relevant portion of the letter reads as follows:

"5. As per condition no.29 of Tender Document, the EMD of second highest bidder i.e. Baleshwar Greens Pvt. Ltd. was to be returned after 25% of the sale consideration is deposited by the successful bidder.

6. We have come to know that successful bidder M/s. Vedia Procon Pvt. Ltd. has deposited 25% of the sale consideration in the office of Official Liquidator.

7. Therefore we hereby request you to **kindly refund our EMD** of Rs.4.5 Cr and late fees of Rs.23.5 lakhs at the earliest.

JUDGMENT [emphasis supplied]

9. Admittedly, the EMD of the first respondent was returned.

10. On 16.01.2014, the appellant informed the official liquidator that they had deputed security persons to "protect the possession" of the property in question for various reasons detailed in the said letter. In response, the official liquidator by its letter dated 24.01.2014 informed the appellant *inter alia* as follows:

“Besides this it is brought to your notice that the office of the Official Liquidator has already deployed security at the mills premises of the company in Liquidation. However, keeping in view the facts and apprehension stated by you in the aforesaid letters, if you so desire, you can post your security outside the premises purchased by you to protect your interest and avoid the possibility of any casualty under the control and supervision of the security posted by official liquidators office at your risk, cost and consequence in addition to existing security arrangement made by this office.”

11. On 25.03.2014, the appellant filed an application before the High Court seeking extension of time to deposit the balance consideration of Rs.106.5 crores. The said application was allowed after hearing the secured creditors, by an order dated 31.03.2014, extending the time for payment up to 31.07.2014. However, the appellant deposited the entire balance amount of Rs.106.5 crores on 16.04.2014 without availing the benefit of the extended time by the order of the High Court (referred to supra). The said fact is acknowledged by the official liquidator in his letter dated 16.04.2014 calling upon the appellant to take over the possession of the said land on 17.04.2014 at 11.30 am in presence of the representatives of the official liquidator. The relevant portion of the letter reads as follows:

“Accordingly, **you have deposited the entire full sale consideration i.e. Rs.148.00 Crores with this office.** In this connection, you are requested to depute your authorized representative at freehold land admeasuring 13895 Sq. Mtrs. Approx. situated at T.P. No.18, F.P. No.32/p, bearing Survey

No.25, 27-B/1, 31, 38 Moje Raipur-Hirapur, Outside Raipur Gate, behind New Cloth market, Opp. Hirabhai market, Diwan Ballubhai Road, Raipur, Ahmedabad for taking over possession of the said land on 17.04.2014 at 11.30 am, when the representatives of this office will remain present for handing over possession of the said land to you, in terms of order dated 17.12.2013 passed by the Hon'ble High Court of Gujarat in Official Liquidator Report No.43 of 2013.”

[emphasis supplied]

12. The first respondent preferred OJ Appeal No.9/2014 against the order dated 31.03.2014 of the High Court granting extension of time to deposit the balance amount by the appellant. In the said appeal, the first respondent expressed its willingness to raise its offer to an amount of Rs.160 crore for the land in question and also offered to deposit the said amount within 72 hours.

13. On 17.04.2014, a possession memo was drafted purporting to handover the property in question. It appears from the copy of the said possession memo that it was signed by two UDC officials of the Official Liquidator by name S.R. Meena, STA and C.G. S. Karki and one Ganesna Venkataramana on behalf of the appellant. The first respondent disputes the fact that the possession of the property in question was infact delivered to the appellant herein. However, the Division Bench of the High Court by the impugned order found no substance in the objection of the first respondent:

“... Though it is disputed by the present application, the record reveals that on 17.4.2014 when O.J. Appeal No.9 of 2014 came to be heard and disposed of by the Division Bench of this Court, the Official Liquidator handed over the possession of the lands in question to opponent No.9. However, it is an admitted position that the sale deed is not executed. ...”

14. The first respondent's appeal (OJ Appeal No.9/2014) was disposed of by an order² dated 17.04.2014 by issuing directions.

The substance is:

1. That the first respondent herein would move an application before the learned Company Judge showing his desire “to apply afresh for the bid”;
2. That the parties are directed to maintain status quo till such a period;
3. The respondent herein is directed to handover a DD of Rs.160 crores to the Deputy Official Liquidator;
4. That it would be open to the learned Single Judge to decide the application of the respondent herein (if made) on merits.

² 1. The appellant before us will move before the learned Company Judge within a period of one week with an appropriate application showing his desire to apply afresh for the bid, as according to Mr. Trivedi, the order dated 17.12.2013 is not finalized and it still requires confirmation of the learned Single Judge. Be that as it may, if the application is not made within one week, the benefit of this order will not ensure for the benefit of present appellant. The parties are directed to maintain status-quo till the appellant files an application before the learned Single Judge and the learned Company Judge shall decide the question of interim relief on merits.

2. The appellant shall handover the Demand Draft of Rs.160 crores to Mr. R.C. Mishra, Deputy Official Liquidator, who is present in the Court, today itself. The Deputy Official Liquidator has accepted it and shall pass the receipt of the same to the present appellant. The Official Liquidator shall see that the amount is kept in Fixed Deposit at least for one month so that there is no loss of interest.

3. It goes without saying that we have not entered into the merits of the matter and the deposit of Rs.160 crores with Official Liquidator is without prejudice to the rights and contentions of the parties and we have adopted this only because of the view expressed by the Apex Court in the case of Shradhha Aromatics Private Limited (supra).

4. It goes without saying that once the application is made, it will be open for the learned Single Judge to decide the same on merits. The status-quo thereafter will be subject to the order which may be passed by the learned Single Judge after hearing the parties.

5. The order dated 31.03.2014 passed in Misc. Civil Application No.53 of 2014 by the learned Company Judge is interfered with to the above extent only.

15. In order to complete the narration of facts, it may be mentioned herein that the appellant herein moved a review application Misc. CA No.90 of 2014 O.J. Appeal No.9 of 2014 before the Division Bench of the High Court which was partly allowed making some minor modification in the order dated 17.04.2014, the details of which may not be relevant for our purpose.

16. Pursuant to the order dated 17.04.2014, the first respondent moved an application OJMCA 89 of 2014 seeking recall of the order dated 17.12.2013 on various grounds. The said application was allowed by an order dated 11.08.2014. By the said order, the learned Single Judge had set-aside the sale made in favour of the appellant herein on 17.12.2013 and ordered the return of the amount already paid by the appellant. The learned Single Judge also directed a fresh auction of the property in question. He also directed the first respondent to pay an amount of Rs.25 lakhs to the appellant herein.

17. Aggrieved by the order dated 11.08.2014, the appellant carried the matter to the High Court in O.J. Appeal No.36 of 2014 which was dismissed by the Division Bench vide order dated 04.12.2014. The said order is the subject matter of SLP (Civil) No.2198 of 2015.

The appellant also chose to prefer SLP (Civil) No.10148-10149 of 2015 against the order dated 17.04.2014 passed in O.J. Appeal No.9 of 2014 as modified vide order dated 22.04.2014 passed in Review Application (Misc. Civil Application No.90 of 2014).

18. The order dated 17.04.2014 of the Division Bench of the High Court is passed in appeal (OJA No.9 of 2014) preferred by the first respondent against the order dated 31.03.2014 with leave of the Division Bench. The only ground on which the respondent challenged the order of the learned Single Judge granting extension of time in favour of the appellant herein for depositing the balance sale consideration was that the first respondent had been deprived of making a better offer. According to the first respondent, he believed that the appellant herein would faithfully comply with the tender conditions and the earlier order of the Court in terms of which the appellant was bound to deposit the entire sale consideration on or before 16.01.2014. If only the respondent had known that the time schedule for the payment of sale consideration is flexible even the respondent would have offered price higher than what had been offered (Rs.148 crores) by the appellant.

19. The Division Bench without examining or recording any finding in regard to the tenability of the submissions made by the

respondent chose to dispose of the matter with certain directions which are already extracted in the earlier part of this judgment. The reason given by the Division Bench for such an order is that the Division Bench has adopted such a course of action in view of an earlier decision of this Court in ***Shradhha Aromatics Private Limited v. Official Liquidator For Global Arya Industries Limited & Others***, (2011) 6 SCC 207.

20. The Division Bench recorded the submission made by the first respondent that by order dated 17.12.2013, the Company Judge accepted only the offer of Rs.148 crores made by the appellant herein but no order of confirmation of sale was made. But the Division Bench did not record any finding whether such a submission was accepted or not. From the order, it appears that the Division Bench was greatly influenced by the fact that the first respondent was willing to enhance the bid to Rs.160 crores.

21. From direction No.3 contained in the order, it is clear that the Division Bench did not adjudicate the rights of the respective parties. At the cost of repetition, we reproduce direction No.3 as under:

“3. It goes without saying that **we have not entered into the merits of the matter** and the deposit of Rs.160 crores with Official Liquidator is without prejudice to the rights and

contentions of the parties and we have adopted this only because of the view expressed by the Apex Court in the case of Shradhha Aromatics Private Limited (supra).”

[emphasis supplied]

A procedure which is not very desirable. It is inconsistent with the principle that the judicial process and adjudication demand certainty and finality.

22. Pursuant to the abovementioned direction of the Division Bench, the learned Company Judge, on an application filed by the first respondent, by his order dated 11.08.2014, recalled the order dated 17.12.2013 and set aside the sale made in favour of the appellant. When the said order was challenged by the appellant herein before the Division Bench of the High Court, the same was dismissed by the impugned judgment.

23. It is interesting to notice that the respondent in its application took various grounds (for setting aside the order dated 17.12.2013 of the Company Judge) other than the ground which the respondent pleaded in its earlier appeal OJA No.9 of 2014. This time the respondent pleaded:

1. That there was a change in the share-holding pattern of the appellant company which amounted

to the violation of condition no.31 of the tender notice which provided that the nomination would not be allowed by the successful bidder;

2. That by virtue of a subsequent event the value of the land in question was likely to fetch a much higher price than the price at which the property was sold on 17.12.2013. The event being the revision of certain regulations (the Gujarat Town Planning and Urban Development Act, 1976) whereby the Floor Space Index (FSI) for construction applicable to the area in which the property in question is located had been increased from 1.0 to 1.8. In other words, in view of the revised regulations, it would be open to construct a much larger built up area on the property in question than what was permissible as on 17.12.2013.

24. Two factors weighed heavily before the Company Judge for recalling the earlier Order dated 17.12.2013 by his Order dated 11.8.2014. They are: (i) by a notification dated 04.03.2014 of the Government of Gujarat, the FSI applicable to the area in which the

land is located is increased from 1.0 to 1.8. As a consequence, the value of the property in question increased considerably, (ii) that during the pendency of the recall application, the first respondent herein, who had already deposited an amount of Rs. 160 crores as a condition precedent for filing the recall application, further enhanced his offer by another Rs. 40 crores, pursuant to the order of the Company Court dated 9.5.2014 and deposited the said amount, and it appears that the respondent agreed to further enhance the offer by another Rs.14 crores, making it a total of Rs. 214 crores.

25. In view of the above-mentioned two facts, the High Court recorded the conclusion that the Company Judge's order dated 17.12.2013 (accepting the bid of the appellant herein of Rs. 148 crores) is vitiated (i) by an irregularity inasmuch as the Company Judge failed to take note of the potential value of the land and the possibility of its fetching a higher price than Rs. 148 crores, (ii) the bid of the appellant herein of Rs. 148 crores was an inadequate price to the property in question, (iii) because of the failure of the company court to discharge its obligation (as custodian of the properties of a company in consideration) to secure the best price possible, when the assets of the company in liquidation are sold, (iv)

when the facts and circumstances indicate that the property in question is in fact capable of securing a much higher price, the sale of the property at a lesser price also resulted in an injury to the interest of various stakeholders who are entitled for the distribution of the proceeds of the sale of the assets of the company in liquidation.

26. The learned counsel for the appellant submitted that the impugned order is untenable for the following reasons:-

(i) That the offer of Rs. 148 crores made by the appellant and accepted by the Company Court was the best price for the land having regard to the facts and circumstances as they existed on that date of the order i.e. 17.12.2013. The fact that some two and a half months later (on 4.3.2014), the Government of Gujarat decided to increase the FSI which resulted in increase in the value of the land in question can legally never be a relevant consideration for determining the regularity and the legality of the order dated 17.12.2013, (ii) the Division Bench chose to recall the order dated 17.12.2013 on erroneous logic and recorded an untenable conclusion:

“....However, it is required to be noted that the averments in the application before the learned Company Court by respondent No. 1

herein – original applicant that everybody was aware of change/increase in FSI, but it was not brought to the notice of the learned Company Court, considering the submissions made by the appellant before the learned Company Court recorded in the impugned order, it does not appear that the aforesaid was disputed by the appellant. As observed herein above and even at the cost of repetition it is to be noted that the learned Company Court has recalled its earlier order dated 17.12.2013 accepting the higher offer of the appellant of Rs. 148 crores and the relevant factors like potential development of the land were not considered which had a direct bearing on the determination of the market price....”

27. The learned counsel argued that the submission made by the first respondent herein that everybody knew the fact which was not in existence as on 17.12.2013 could not have been accepted by the High Court on the ground that the appellant herein did not specifically dispute the same. Such a logically absurd submission was made and the first respondent made no effort to prove such an assertion though in law the burden of proving such an assertion lies on the maker of such assertion.

28. The learned counsel submitted that assuming for the sake of argument that the conclusion recorded by the Division Bench is legally tenable, such a conclusion is based on the plea of the respondent herein that “everybody was aware of the change/increase in FSI, but it was not brought to the notice of the learned Company Court.....” necessarily implies that even the first respondent herein was aware of it and he also failed to bring that

fact to the notice of the Company Court. Obviously, the only inference that can be drawn from the conduct of such respondent is that it would disentitle the respondent to seek any remedy from the court.

29. It is further submitted that the conduct of the respondent in writing to the official liquidator on 9.1.2014 claiming the refund of his EMD without indicating even at that stage that the land in question is more valuable than Rs. 148 crores and that the first respondent was willing to make a higher offer would only go to show that all the allegations made in the recall application are tailor made to suit the convenience of the respondent in view of the increase in the FSI and the consequential escalation of the price of the property in question.

30. The learned counsel argued that no doubt the subsequent events made the property in question more valuable, but such subsequent events are wholly irrelevant in determining either the adequacy of the bid made by the appellant on the relevant date or the regularity and legality of the order dated 17.12.2013 of the Company Judge in assessing the injury to the stakeholders.

31. In the alternative, it is submitted on behalf of the appellant that in the absence of any plea and proof that sale was vitiated by fraud, the inadequacy of consideration especially when none of the stakeholders in the company liquidation raised such an objection on 17.12.2013 can never be a ground for recalling an order of accepting the highest bid at the instance of an unsuccessful bidder on a subsequent date on the ground that on a subsequent date such unsuccessful bidder is willing to offer higher price. Approving such course of action would denude the proceedings of a court of law and the sales undertaken in the course of judicial proceedings, of all element of certainty and finality. Such uncertainty would be a disincentive for genuine prospective purchasers. It adversely affects the possibility of attracting best offers in court sales and would be detrimental to the public interest

32. On the other hand, it is argued by the learned counsel for the first respondent that **(i)** the substantial hike in the offer made by the first respondent (Rs.66 crores) is a relevant factor as the benefit of such enhanced price would go to all the stakeholders in the company in liquidation. Therefore, the High Court rightly recalled the order dated 17.12.2013. **(ii)** by the impugned order, the first respondent is not going to get the property in question, but it only

throws open for everybody an opportunity to participate in the fresh auction to be conducted; **(iii)** the property would still be sold to the highest bidder, **(iv)** but in the process all the stakeholders would be benefited. Therefore, the impugned order calls for no interference.

33. It is also submitted on behalf of the first respondent that there is no confirmation of the sale in favour of the appellant herein though the order dated 17.12.2013 recorded that the highest bid by the appellant is accepted by the Court. Acceptance of the bid is different from confirmation of the sale. Confirmation of sale requires an active application of mind by the court to ensure that there is no irregularity in the conduct of the sale and the price fetched is the best price for the value of the property. It is also argued on behalf of the respondent that the company court being the custodian of the property of the company in liquidation, should always make an endeavour to secure the best price for the property put to sale in order to give maximum benefits to all the stakeholders who are entitled for the distribution of sale proceeds of the assets of the company in liquidation.

34. In support of the submission that a concluded sale in an auction by the court cannot be reopened except on the ground of fraud, learned counsel for the appellant relied upon a judgment of

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this Court reported in ***Valji Khimji & Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited & Others***, (2008) 9 SCC 299. It was a case where the properties of a company in liquidation were put to sale in an auction. In the said auction, the highest bid was Rs.3.51 crores which was accepted by the court and the sale was confirmed. The court directed the auction purchaser to pay the consideration in certain instalments. Some two and a half months later, a third party sent a letter to the official liquidator offering a higher amount of Rs.3.75 crores. Almost a year later, another party offered an amount of Rs.5 crores. Subsequently, both the parties approached the Company Judge seeking a recall of the order of confirmation of the sale. Such application was allowed by the Company Court. The auction purchaser unsuccessfully carried the matter in an intra court appeal and finally landed up in this Court. This Court allowed the appeal upholding the order confirming the sale. This Court held:

“11. It may be noted that the auction-sale was done after adequate publicity in well-known newspapers. Hence, if anyone wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover, even after the auction the sale was confirmed by the High Court only on 30.7.2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction-sale will ever be complete.”

35. On the other hand, learned counsel for the first respondent relied upon decisions of this Court in ***Navalkha & Sons v. Sri Ramanya Das & Others***, (1969) 3 SCC 537, ***Divya Manufacturing Company (P) Ltd. v. Union Bank of India & Others***, (2000) 6 SCC 69, ***FCS Software Solutions Ltd. v. LA Medical Devices Ltd. & Others***, (2008) 10 SCC 440, ***Shradhha Aromatics Pvt. Ltd v. Official Liquidator for Global Arya Industries Limited & Others***, (2011) 6 SCC 207 and ***Manoj I Naik & Associates v. Official Liquidator***, (2015) 3 SCC 112.

36. In ***Navalkha & Sons v. Sri Ramanya Das & Others***, (1969) 3 SCC 537, certain moveable and immovable properties of a company in liquidation were brought to sale. The Company Court directed the sale to be conducted by three persons jointly appointed as Commissioners for the conduct of sale. The sale was conducted. The appellant before this Court was the only offeror. The offer was accepted by the Commissioners. The Commissioners made an application to the Company Court for the confirmation of sale. At that stage, a third party made an application claiming that he was willing to offer a higher price. The Company Court then decided to put the property once again for auction but only between the

original offeror and the objector. In such a process, the original offeror once again became the highest bidder. That bid was accepted by the Company Judge. At that stage, another third party came forward objecting to the procedure adopted by the High Court for confining the auction only between the two parties without any fresh advertisement. Such an objection was rejected by the Company Judge. Aggrieved by the same, the objector carried the matter in an intra court appeal to the Division Bench successfully. Hence the appeal before this Court by the original offeror. This Court dismissed the appeal approving the view of the Division Bench that the procedure adopted by the learned single Judge was not legally sustainable. In the process, this Court indicated the principles governing the confirmation of sales conducted by the Company Courts by the official liquidators.

“6. The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal v. S. Sriman Kanthimathinatha Pillai*, AIR 1921 Mad 286, it was observed that where the property is authorised to be sold by

private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed 'is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathi Pillai*, AIR 1925 Mad 318 and *S. Soundajan v. M/s. Roshan & Co.*, AIR 1940 Mad 42. In *A. Subbaraya Mudaliar v. K.Sundarajan*, A.I.R. 1951 Mad 1986, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold 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's case*)."

37. ***Divya Manufacturing Company (P) Ltd. v. Union Bank of India & Others***, (2000) 6 SCC 69 was a case where the assets of the company in liquidation were sold in favour of the appellant before this court and the sale was confirmed by the Company Court. Within a week thereafter, an application came to be filed by one of the participants in the auction proceedings praying that the order of confirmation be recalled and the applicant was willing to offer an amount higher than what was offered by the appellant before this Court. Subsequently, more number of applications came to be filed before the Court offering higher amounts. Therefore, the Company Court recalled the order confirming the

sale. Hence, the appeal before this Court. This Court, while reiterating the principles laid down in **Navalkha case** (supra), declined to interfere with the order of the court and held as follows:

“16.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 a 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.”

38. We cannot help pointing out that their Lordships came to such a conclusion placing reliance on para 6 of **Navalkha case** (supra). Their Lordships failed to take note of the last sentence of the paragraph but placed reliance on the penultimate sentence of the paragraph. No doubt, the penultimate statement of the paragraph recognises the discretion of the Company Court either for accepting or refusing the highest bid at the auction, it also emphasizes the obligation of the Court to see that the price fixed at the auction is adequate price even though there is no irregularity or fraud in the

conduct of the sale. However, the penultimate sentence restricts the scope of such discretion in the following words:

“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's case*.”

39. In other words, in ***Navalkha case***, this Court only recognized the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made. This Court also emphasized that it is equally a well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

40. In ***FCS Software Solutions Ltd. v. LA Medical Devices Ltd. & Others***, (2008) 10 SCC 440, the property of a company in liquidation was brought to sale and confirmed by the company court. The Company Court directed the official liquidator to deliver possession of the property after executing the sale deed in favour of the successful bidder after receiving full and final payment. The official liquidator instead of delivering the possession of the property, filed an application before the Company Court saying that

he had received two higher offers. Upon such application, the Company Court stayed the delivery of the possession of the property. The successful bidder moved the Company Court praying that the liquidator be directed to execute the sale deed and deliver the possession of the property. However, the Company Court directed the official liquidator to issue fresh advertisements. Pursuant to fresh advertisement, much higher offers were received. The original purchaser unsuccessfully challenged in an intra court appeal the decision of the Company Judge to reopen the concluded proceedings and thereafter approached this Court. This Court rejected the case of the original purchaser on the ground that in the proceedings which culminated in the sale in favour of the appellant before this Court, there were certain irregularities and that the Company Judge failed to notice such irregularities until such irregularities were brought to his notice by the third parties who subsequently offered higher price.

“28. ... From the facts stated above, it is clear that in November, 2004, the bid of the appellant was highest and was accepted by the Official Liquidator. But it is also clear that certain facts which were necessary to be brought to the notice of intending purchasers were not set out in the proclamation of sale nor were disclosed at the time of sale notice. They related to valuation of movable and immovable properties, fixation of reserve price, non-inventory of plant and machinery, etc. The attention of the Company Judge was invited by other bidders by filing Company Applications. The Company Judge considered the objections and having prima facie satisfied himself, ordered fresh auction. We find no illegality in the

said approach. When fresh bids were received, it was found that the highest offer was of respondent No. 3-Society which was of Rs.3.5 crores. The Company Judge extended an opportunity to the appellant to raise its bid. It, however, appears that the appellant was adamant to get the property for Rs.1.47 crores on the ground that the said offer was highest and all the proceedings taken by the Official Liquidator and Company Judge thereafter were totally illegal and unlawful. In our opinion, the respondents are right that in such cases, the approach of the Company Judge should be to get highest price so as to satisfy maximum claims against the Company in liquidation. The procedure followed by the Company Judge, therefore, cannot be said to be illegal.”

41. In ***Shradhha Aromatics Pvt. Ltd v. Official Liquidator for Global Arya Industries Ltd & Others***, (2011) 6 SCC 207, the Company Judge approved the highest bid of the 2nd respondent before this Court for the purchase of the property of a company in liquidation. Subsequently, an application came to be filed by a third party offering a higher amount for the property which was rejected by the Company Court. However, a second application was filed by the same third party with a further enhancement of the offer. This time, the Company Judge thought it fit to recall its earlier order confirming the sale in favour of the above mentioned 2nd respondent by placing reliance on the judgment of this Court in ***Divya Manufacturing Company*** (supra). Aggrieved, the original purchaser carried the matter in an intra court appeal before the Division Bench. Once again, the Division Bench permitted both the parties to give further offers. However, after such a strange

exercise, the Division Bench opined that learned Company Judge could not have recalled the confirmed sale because subsequently a higher price was offered by somebody else. Even before this Court, an intervener made a better offer. It may be mentioned here that there was a time gap of more than three years between the original confirmation and such subsequent higher offer made in this Court. However, this Court disposed of the appeal accepting the much higher offer made by the intervener in this Court and directing the execution of the sale deed in favour of such intervenor for the following reasons:

“15. We have considered the respective submissions and carefully perused the record. Ordinarily, the Court is loathe to accept the offer made by any bidder or a third party after acceptance of the highest bid/offer given pursuant to an advertisement issued or an auction held by a public authority. However, **in the peculiar facts of this case**, we are inclined to make a departure from this rule. Admittedly, total area of the land advertised by the Committee is 12,500 square meters and the same is situated in an important district of Gujarat. It is also not in dispute that the area has been substantially developed in the last four years. The initial offer made by M/s Patel Agro Diesel Ltd. was of Rs. 83 lakhs and the highest revised offer given before the learned Company Judge was of Rs. 1.27 crores. After acceptance of the revised offer by the learned Company Judge, the appellant stepped in and made an offer to pay Rs. 1.41 crores. The first application filed by it was dismissed but the second application was allowed and the increased offer of Rs. 1.51 crores was accepted by the learned Company Judge vide order dated 27-11-2007. That order did not find favour with the Division Bench, which restored the first order passed by the learned Company Judge. If the order of the Division Bench is sustained, the creditors of the Company are

bound to suffer because the amount available for repayment of the dues of the creditors would be a paltry sum of Rs. 1.27 crores. As against this, if the offer made by the intervenor-cum-promoter is accepted, the Official Liquidator will get an additional amount of more than Rs. 4.25 crores. The availability of such huge amount will certainly be in the interest of the creditors including GSIIC. Therefore, it is not possible to approve the order passed by the Division Bench of the High Court. In a somewhat similar case—*FCS Software Solutions Ltd. v. La Medical Devices Ltd.*, (2008) 10 SCC 440, this Court approved the acceptance of revised bid of Rs. 3.5 crores given by the appellant with a direction to compensate the earlier highest bidder by payment of the specified amount.”

[emphasis supplied]

As indicated in the above extract, such a decision was rendered on the **PECULIAR FACTS** of that case.

42. ***Manoj I Naik & Associates v. Official Liquidator***, (2015) 3 SCC 112, once again was a case where certain properties of a company in liquidation was brought to sale. The company Judge declined to accept the highest offer received on the ground that the value of the property would be much higher than what was offered. Eventually, when the matter reached this Court at the instance of the highest bidder, the highest bidder himself substantially raised his offer whereas certain other respondents also offered much higher amounts for the property. From the judgment, it appears that there was virtually a scramble for the property, each of the parties to the proceedings offering very high prices. While the

original successful bidder's offer was only Rs.1.3 crores, by the time the matter was heard and disposed of by this Court, it reached an amount of Rs.70 crores. Once again, it must be noticed that there is a time gap of almost a decade. It is not possible to cull out from the judgment the actual date of the auction by the official liquidator.

43. But the fact remains that one of the secured creditors objected to the sale in favour of the appellant before this Court on the ground that the value of the property even on the date of the original sale was worth around Rs.6.25 crores as against the highest offer of Rs.1.3 crores of the appellant herein. Therefore, the decision of the Company Judge to reject the highest offer is perfectly justified.

44. 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** (*supra*) 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 Manufacturing Company** (*supra*) this Court departed from the principle laid down in **Navalkha & Sons** (*supra*). We have already explained what exactly is the departure and how such a departure was not justified.

45. Coming to the decision in **FCS Software Solutions Ltd.**, we have already noticed that this Court rightly reopened the finalized sale on the ground that there was material irregularity in the conduct of the sale.

46. **Shradhha Aromatics** (*supra*), as already noticed, is a decision rendered on the peculiar facts of the case and, in our opinion, does not lay down any principle applicable across the board. Whereas in **Manoj I Naik** (*supra*) the Company Court itself declined to accept the highest offer, therefore, it has no relevance in the context of the case on hand.

47. In our opinion, in the case on hand, the High Court was not justified in recalling the order dated 17.12.2013 for following reasons:

48. The highest bid of the appellant herein was accepted by the Company Court and all the stake-holders of the company in

liquidation were heard before such an acceptance. Nobody ever objected including the first respondent herein at that stage on any ground whatsoever, such as, that there was any fraud or irregularity in the sale nor was there any objection from any one of them that the price offered by the appellant herein was inadequate. No doubt, the property in question became more valuable in view of the subsequent development. In our opinion, it is not a relevant consideration in determining the legality of the order dated 17.12.2013. Imagine, if instead of increasing the floor space index for construction from 1.0 to 1.8 the State of Gujarat had decided to reduce it below 1.0 subsequent to 17.12.2013, could the appellant be heard to argue that it would be legally justified in resiling from its earlier offer which was accepted by the Court and not bound by the contractual obligation flowing from such an offer and acceptance?

49. Certain incidental questions raised by the first respondent are required to be answered at this stage.

50. The first respondent submitted that the order dated 17.12.2013 only accepted the highest bid but it did not confirm the sale and, therefore, the Court is at liberty to decline confirmation of the sale in view of the subsequent developments. In our opinion,

the said submission is to be rejected because there is no specific format in which a sale conducted by the official liquidator is to be confirmed by the Company Court. The mere absence of the expression “that the sale is confirmed” in the order dated 17.12.2013 is not determinative of the question. The totality of the circumstances, such as, the very tenor of the order (Footnote 1 supra) that none of the stake-holders of the Company in liquidation ever objected to the offer of the appellant herein on the ground that it is inadequate consideration for the property; the fact that the official liquidator himself understood the order dated 17.12.2013 to be an order not only accepting the highest bid of the appellant herein but also as an order confirming the sale in favour of the appellant, as evidenced by his letter dated 19.12.2013, (the relevant portion of which is already extracted earlier) and the fact that the first instalment of the payment of 25% of the sale consideration was accepted both by the official liquidator and the Company Court without raising any objection for the same and the fact that the first respondent withdrew its earnest money deposit without raising any objection regarding adequacy of the price offered by the appellant herein, in our view, clearly indicate that the sale in favour of the appellant was confirmed by the order dated 17.12.2013. Assuming

for the sake of argument that there is no confirmation, in the absence of any legally tenable ground for not confirming the sale, it cannot be declined to the appellant as it was observed in **Navalkha case** (supra) that “...no subsequent higher offer can constitute a valid ground **for refusing confirmation** of the sale or **offer already made**”.

51. The other submission made before the Division Bench of the High Court and before us by the first respondent that there was a change in the share-holding pattern of the appellant company subsequent to the order dated 17.12.2013 and that such a change would virtually amount to a nomination by the successful bidder in favour a of third party contrary to the conditions of the tender notice, in our opinion, does not deserve any consideration. This was not the ground on which the first respondent initially sought recall of the order dated 17.12.2013. Such a recall was sought only on one ground, the details for which are already noted earlier in this judgment. The first respondent kept on adding new grounds from stage to stage for attacking the order dated 17.12.2013. The conduct of the first respondent is understandable. The value of the property in question must have escalated substantially in view of

the developments subsequent to the order dated 17.12.2013 but allowing such an attempt, in our opinion, would rob the sales conducted by the Courts of all sanctity.

52. For all the abovementioned reasons, we allow the appeals of the appellant Vedica Procon Private Limited, with costs.

.....J.
(J. Chelameswar)

.....J.
(Abhay Manohar Sapre)

New Delhi;
August 13, 2015

JUDGMENT