

PETITIONER:
INDUSTRIAL FINANCE CORPORATION AND ORS.

Vs.

RESPONDENT:
OFFICIAL LIQUIDATOR, HIGH COURT, CALCUTTA AND ANR. ETC. ETC

DATE OF JUDGMENT 16/02/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1993 AIR 1524 1993 SCR (1) 1063
1993 SCC (3) 40 JT 1993 (2) 130
1993 SCALE (1) 618

ACT:
Companies Act, 1956; Section 457(1)(e)-Sale of assets of a Company in liquidation by Company Court --- Terms of Sale Notice-What is the procedure to be adopted.

HEADNOTE:
Neptune Paper Mills (N.P.M.) was directed to be wound-up by the Company Court on August 4, 1987. The Official Liquidator took possession of the assets of the company under the orders of the Court N.P.M. had borrowed huge amounts from several financial institutions including Industrial Finance Corporation of India, I.C.I.C.I., W.B.I.D.C. and I.D.B.I. on security of its assets. In view of the default committed by it in repayment, the financial institutions (F.Is.) recalled their loans in April, 1988 with the result all the loans in their loans in April, 1988 with the result all the loans in their entirety became due at once. On August 8, 1988 the F.Is. were granted leave to file a suit under Section 446 of the Companies Act. A suit was filed by them in September 1990 in the Calcutta High Court wherein a direction was given to the official liquidator to function as a receiver too. In January 1990, the company court directed the sale of the assets of the company in liquidation. Before making the said order the court had obtained a valuation of the said assets. The valuation was at Rs. 4 crores. Sale notices were published from time to time in response to which certain offers were received, the highest of them being Rs. 6.90 crores. For one or the other reason, no offer was accepted and sale notice was published again. The sale notice would state that (1) the said company in liquidation will be sold as a going concern on "as is where is and whatever there is basis", (2) the bids will start from 690 crores, (3) the successful bidder must deposit 10% of his bid at the time of the sale, (4) the balance amount of the sale price may be paid by instalments as would be fixed by the
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Hon'ble Court, Calcutta i.e., deferred payment of instalments will be considered and (5) and purchaser shall have to enter into an agreement and understanding with the

employees union on the same lines as has been entered into previously by one of the bidders. In pursuance of the said sale notice, certain offers were received including the one by Buxa. Its offer was in a sum of Rs. 6 crores subject to certain terms and conditions stipulated therein. In short, it proposed to pay the said amount in instalments @ Rs. 45 lakhs per annum with a moratorium of one year immediately following the confirmation of sale.

On the date of sale before the learned company Judge only two parties remained in the field. They were asked to raise their bids. Buxa raised its offer to Rs. 8 crores, the higher of the two. The learned Judge accepted its offer subject to the condition that the balance consideration (after deducting 10% earnest money which was to be deposited immediately) shall be paid in instalments prescribed by him. It was directed that for the first two years following the sale, Rs. 60 lakhs shall be paid each year. Thereafter, half-yearly instalments of Rs. 30 lakhs shall be paid until the entire earnest money is paid off. No interest was stipulated. It was provided that on default of payment in any one instalment yearly or half-yearly the official liquidator shall forthwith take possession of the assets and the earnest money paid shall stand forfeited.

Complaining that the terms settled by the learned Company Judge were too liberal to the purchaser and pre-judicial to the interest of the F.Is., an appeal was preferred by them before the Division Bench. The Division Bench finding that it would be inappropriate to set aside the sale, effected modifications in the terms of sale thereby providing some more safeguards to protect the interest of the F.Is. Aggrieved by the order of the Division Bench, F.Is. approached this court by way of a Special Leave Petition (S.L.P. 14929/90). This Court, taking the view that the allegations made on behalf of F.Is. can be dealt with by the High Court if it is moved again declined to interfere with the order of the High Court. But with a view to secure the interest of the Financial institutions it passed an order on 19.11.90 that until the High Court makes its order the Purchaser shall be taken to be the receiver and shall be accountable as a receiver.

Accordingly the financial institutions filed an application before the Division Bench requesting it to reconsider its order with a prayer that the

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sale in favour of Buxa be set aside or in the alternative Buxa be directed to deposit the entire balance consideration of Rs. 7.2 crores at once. They further submitted that they have a charge for Rs. 8 crores on the assets of the company in liquidation and that granting a period of 10 years for paying the balance consideration in instalments and not taking adequate security from Buxa for proper payment of balance consideration, was prejudicial of their interest.

The Division Bench disposed of the said application by its order dated 20-2-1992, holding that (1) the F.Is. (Secured creditors) by their acts and conduct have come within the winding up and.. therefore, the assertion of their right as secured creditors outside winding up proceedings cannot be accepted or sustained at that stage. (2) the purchaser Buxa has taken possession of the assets sold, has re-employed the workmen after entering into an understanding with them and has also invested substantial amounts in recommencing the production in the factor%?. (3) In the above circumstances, the F.Is. cannot insist upon repayment of the entire money due to them under the deeds of hypothecation executed by the company in liquidation. However, it passed directions

curtailing the time for payment and providing for payment of interest by the purchaser.

In these appeals by special leave it was contended for the Appellants that (a) the procedure followed by the High Court for selling the assets of the company in liquidation is not fair and proper and that it has caused grave prejudice to the interest of financial institutions, (b) By granting liberal instalments, the "present price" of the assets sold is no more than Rs. 4 crores, whereas the total amount due to the financial institutions is more than Rs. 12 crores, (c) either the sale should be set aside and a fresh sale be held or the instalments prescribed should be drastically reduced coupled with a provision for reasonable interest on the balance consideration.

On the other hand the purchaser/Respondent submitted that it is not open to this court at this stage to effect any modification in the terms of the sale; that though with a view to save its investment which it had already made by the date of the judgment of the Division Bench, it agreed to certain further modifications being made by the Division Bench; it is not now agreeable to any further modification since in such a case it would not be possible for it to run the industry or to pay the consideration and

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that as the purchaser has invested huge sums of money and has reemployed almost all the workers; it is not in a position to bear any further financial burden.

Modifying the order and dismissing the appeal, the Court,

HELD: 1. Though there is no standard or uniform pattern to be followed with respect to the terms of the sale notice issued by the Court, it would be appropriate for the court to adopt such procedure as would avoid a situation where the court is put to the task of negotiating the terms of sale with the parties. That would also give room for avoidable criticism and comment. It would have been better if the sale notice itself had prescribed the number of instalments which would be granted to the purchaser, besides other terms and conditions and then invited offers on that basis. Alternately, the court could have invited the offers subject to such conditions as the offerers may prescribe and then have them evaluated by a qualified person and select the most appropriate one. If none of them are found acceptable and if the court thought it appropriate, it could also allow the bidders to submit revised offers and then have them evaluated. These are not the only two methods. But it has to be emphasised that any method devised should be such as to obviate the necessity or occasion for the court to negotiate the terms and conditions of sale with the party or parties. The sale notice in this case merely stated that the balance consideration may be paid in instalments as would be fixed by the court. The number and duration of instalments and other allied terms like bank guarantee, nature and terms of default clause, payment of interest on instalments were all left to be determined by the Court. In this case the bid of Rs. 6 crores was got enhanced to Rs. 8 crores, with lesser number of instalments than offered by the purchaser all as a result of persuasive efforts by the Company Judge. But it has given room for the argument that had it been known before hand that so many instalments would be granted without stipulation of interest, several higher offers could have been received. [1073G-H, 1074A-D]

2. The contention that the Supreme Court has no power at this stage to modify the number of instalments is untenable. Nor there is any basis for Buxa to take up the stand that, either the existing terms should be affirmed by this court

or it should be allowed to walk out of the deal altogether along with its investment. This it cannot do for the following

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reasons; Firstly, the sale notice itself stated that "the balance amount of the sale price may be paid by instalments as would be fixed by the Hon'ble Court, Calcutta i.e., deferred payment of instalments will be considered". what the High Court of Calcutta could do, can equally be done by this Court sitting in appeal. Secondly, the purchaser has repeatedly submitted before the Calcutta High Court that it is prepared to abide by such conditions as may be imposed by the Court. [1074E-F]

3. Having considered and taken into account all the relevant facts and circumstances of the case including the interest of the financial institutions, the interest of the workers who have since been re-employed by the purchaser and the fact that the purchaser has already invested substantial amount to revive the company, the following modification was made in the number of instalments in which the balance consideration has to be paid: [1075F-G]

The total balance consideration of Rs. 5.80 crores, remaining due after payment of Rs. 52 lakhs due in the year 1992 shall be paid in full by the end of the year 1996 in equal bimonthly instalments. The instalments shall be payable by the last day of February, April, June, August, October and December in each year. Each instalment excepting the last instalment shall be in a sum of Rs. 24, 16,000. The last instalment shall be in such sum as to make up the total short fall payable on that date i.e. Rs. 20,16,000. [1077C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 636-37 of 1993

From the Judgment and Order dated 20.2. 1992 of the Calcutta High Court in Appeal No. 493 of 1.990.

Harish Salve and Indranil Ghosh for the Appellants.

P. Chidambarani. M.I.,. Lahoty Ms. S. Khazanchi, K.('. Gellani and P.S. Jha for the Respondents,

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY. J. Heard the counsel for the parties.

Leave granted in both the S.L.Ps. We shall first deal with the appeal arising from S.L.P.(c) No, 5377/92

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The appeal is directed against the order dated 4.3.1992 passed by a Division Bench of the Calcutta High Court modifying its earlier order of November 13, 1990. The controversy in this appeal pertains to the terms of sale of the assets of a Company in liquidation. A few facts are necessary to be stated to appreciate the controversy.

Neptune Paper Mills (N.P.M.) was directed to be wound-up by the Company Court on August 4, 1987. The Official Liquidator took possession of the assets of the company under the orders of the Court. N.P.M. had borrowed huge amounts from several financial institutions including Industrial Finance Corporation of India, I.C.I.C.I., W.B.I.D.C. and I.D.B.I. on security of its assets. In view of the default committed by it in repayment, the financial institutions (F.Is.) recalled their loans in April, 1988 with the result all the loans in their entirety became due at once. On August 8, 1988 the F.Is. were granted leave to file a suit under Section 446 of the Companies Act. A suit was filed by them in September,

1990 in the Calcutta High Court wherein a direction was given to the official liquidator to function as a receiver too.

In January 1990, the company court directed the sale of the assets of the company in liquidation. Before making the said order the court had obtained a valuation of the said assets. The valuation was at Rs. 4 crores. Sale notices were published from time to time in response to which certain

offers were received, the highest of them being Rs. 6.90 crores. For one or the other reason, no offer was accepted and sale notice published again. It would be appropriate at this stage to notice the terms of the sale notice, which led to the sale in favour of the respondent, Buxa Holdings Limited since re-named as Kanoi Agrotech Limited (hereinafter referred to as "Buxa"). The Sale notice published in the newspaper "The Hindu" dated 10th April, 1990 reads as follows:

"PUBLIC NOTICES

Sale Notice Sale Notice Sale Notice

In the matter of

Neptune Paper Mills Ltd (in Liquidation)

That in terms of the order of the Hon'ble High Court,

Calcutta dated 3.4.90, take notice the sale of the above-

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named company as going concern and "as is where is and whatever there is basis" will be held at 2.00 pm on 17.4.90 in the open Court of the Hon'ble Company Judge, High Court, Calcutta. The bids of such sale will be started from 6.90 crores. The successful bidders must deposit 10% of his/their bids in the Court at the time of sale. The balance amount of the sale price may be paid by instalments as would be fixed by the Hon'ble Court, Calcutta i.e., deferred payments of instalments will be considered. The Purchaser shall have to enter into an agreement and or memorandum of understanding with the employees' union in the same line with which has already been entered into with one of the bidders in court.

The bidder may have inspection of the assets of the company on applications to Official Liquidator before the sale of date. Terms and condition along with the list of assets will be available at the office of the undersigned during the office hours.

Official Liquidator High Court Calcutta

Dated the 10th April, 1990."

The significant thing to notice is that the sale notice did not specify the number of instalments nor did it specify the period within which the entire consideration was to be remitted. All that it stated was that (1) the said company in liquidation will be sold as a going concern on "as is where is and whatever there is basis", (2) the bids will start from 6.90 crores, (3) the successful bidder must deposit 10% of his bid at the time of the sale, (4) the balance amount of the sale price may be paid by instruments as would be fixed by the Hon'ble Court, Calcutta i.e., deferred payment of instalments will be considered and (5) the purchaser shall have to enter into an agreement and understanding with the employees' union on the same lines as

has been entered into previously by one of the bidders. In pursuance of the said sale notice, certain offers were received including the one by Buxa. Its offer was in a sum of Rs.6 crores subject to certain terms and conditions stipulated therein. In short, it proposed to pay the said amount in instalment @ Rs.45 lakhs per annum with a moratorium of one year immediately following the confirmation of sale. When the matter

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was taken up by the learned Company Judge on 17th September, 1990, only two parties remained in the field. They were asked to raise their bids. Buxa raised its offer to Rs. 8 crores, the higher of the two. The learned Judge accepted its offer subject to the condition that the balance consideration (after deduction 10% earnest money which was to be deposited immediately) shall be paid in instalments prescribed by him. The learned Judge directed that for the first two years following the sale, Rs. 60 lakhs shall be paid each year. Thereafter, half-yearly instalments of Rs.30 lakhs shall be paid until the entire eat-nest money is paid off. No interest was stipulated. It was provided that on default of payment in any one instalment yearly or half-yearly the official liquidator shall forthwith take possession of the assets and the earnest money paid shall stand forfeited. Certain other conditions were also stipulated but it is not necessary to notice them for the purpose of this appeal.

Complaining that the terms settled by the learned Company Judge were too liberal to the purchaser and prejudicial to the interest of the F.Is., an appeal was preferred by them before the Division Bench. On a consideration of relevant circumstances, the Division Bench came to the opinion that it would not be appropriate for it to set aside the sale, and that no useful purpose will be served by postponing the sale of the assets any further. At the same time, it was of the opinion that some more safeguards should be provided to protect the interest of the F.Is. Accordingly, it effected the following modifications in the terms of sale: (i) The balance consideration namely Rs.7 crores 20 lakhs (the earnest money of Rs. 80 lakhs was already deposited) shall be paid in the following manner: for the first two years, the instalments payable each year shall be Rs. 60 lakhs; thereafter half-yearly instalments in a sum of Rs. 40 lakhs each shall be paid till the entire consideration is paid off. The first instalment shall be paid by 10th June, 1993 and the last instalment by 30th June, 2000 A.D. (ii) In case of default in payment of any one instalment, the official liquidator shall be entitled to take possession of the assets sold. In such an eventuality the entire earnest money and other instalments paid till then shall stand forfeited. (iii) Buxa shall provide a revolving bank guarantee in favour of the official liquidator for a sum of Rs. 60 lakhs till all the instalments are paid. The bank guarantee shall be furnished within three weeks from the date of the order and shall be kept alive till the entire consideration is paid off. It is not necessary to notice the other terms and conditions. This order was made on November 13, 1990.

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Aggrieved by the order of the Division Bench, F.Is. approached this Court by way of a Special Leave Petition (S.L.P. 14929/90), which was disposed of on 19.11.1990 under the following order :

"Taken on Board on being mentioned. We have heard Mr. Gopal Subramaniam for the petitioner

and counsel for the respondents. We are of the view that some of the allegations which Mr. Subramaniam makes can be appropriately dealt with by the High Court in the case the High Court is moved again but at present we do not think it would be advisable to interfere with the order of the High Court. We gather today is fixed as the date of which the possession of property would be transferred from the official liquidator to the purchaser. To secure the interest of the Financial institutions the petitioner we are of the view that until the High Court makes its order the purchaser shall be taken to be the receiver and shall be accountable to be a receiver."

Accordingly the financial institutions filed an application before the Division Bench requesting it to reconsider its order. In this application, the F.Is. prayed that the order dated 13th November, 1990 be recalled, the sale in favour of Buxa be set aside or in the alternative Buxa be directed to deposit the entire balance consideration of Rs. 7.2 crores at once. It was submitted by the F.Is. that the company in liquidation has been directed to be sold by the company court free from all encumbrances that the financial institutions have a charge for Rs. 8 crores on the assets of the company in liquidation and the granting a period of 10 years for paying the balance consideration in instalments is highly prejudicial to the interest of the F. Is. Not taking adequate security from the Buxa for proper payment of balance consideration, it was submitted, was also prejudicial to their interest. At the time of arguments, however, their counsel did not press the request for setting aside the sale. His main submission was that Buxa be directed to pay the entire balance consideration immediately and that till the payment is made, it should be directed to furnish a bank guarantee besides interest @ 15% per annum. Alternately, it was submitted that the number of instalments granted be reduced sharply with a provision for interest thereon. The Division Bench disposed of the said application by its order dated 20.2.1992. It held that (1) the F.Is. (secured creditors) by their acts and conduct have come within the winding, up and. therefore the

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assertion of their right as secured creditors outside winding up proceedings cannot be accepted or sustained at that stage. (2) The purchaser Buxa has taken possession of the assets sold, has re-employed the workmen after entering into an understanding with them and has also invested substantial amounts in recommencing the production in the factory. (3) In the above circumstances, the F.Is. cannot insist upon repayment of the entire money due to them under the deeds of hypothecation executed by the company in liquidation. (4) The only question that survives for consideration is whether the time for making the payment should be curtailed and whether some interest should be directed to be paid by the purchaser. The application was disposed of with the following directions:

(a) The purchaser (Buxa) shall pay in the year 1992 a sum of Rs. 80 lakhs in six bimonthly instalments payable on the last day of February, April, June, August, October and December.

(b) In the year 1993, the sum payable shall be Rs. 85 lakhs. In 1994, it shall be Rs. 90 lakhs and in 1995, Rs. 95 lakhs. In the year 1996 and thereafter, the annual amount payable shall be Rs. one crore till the entire

consideration is paid off.

(c) The revolving bank guarantee shall be equal to the amount payable in each of the said years.

(d) Along with the last instalment, the purchaser shall pay a lumpsum of Rs. 25 lakhs as and by way of interest.

(e) The purchaser shall not encumber, alienate or transfer assets purchased by him so long as the entire consideration is not paid. This does not, however, prevent it from raising monies-by hypothecation, mortgage or by creating charge on the said assets.

(f) In default of payment in any two of the bimonthly instalments, the Official Liquidator shall take possession of the assets sold and all the amounts paid till then shall stand forfeited.

A few other directions were made which, not being relevant herein, need not be noticed.

In this appeal it is contended by Sri Salve, learned counsel for the appellants that the procedure followed by the High Court for selling the

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assets of the company in liquidation is not fair and proper and that it has caused grave prejudice to the interest of financial institutions. He submitted that by granting such liberal instalments, the "present price" of the assets sold is no more than Rs. 4 crores, whereas the total amount due to the financial institutions is more than Rs. 12 crores. He submitted that either the sale should be set aside and a fresh sale be held or the instalments prescribed should be drastically reduced coupled with a provision for reasonable interest on the balance consideration. On the other hand, Sri P. Chidambaram, learned counsel for the purchaser submitted that it is not open to this court at this stage to effect any modification in the terms of the sale. The purchaser in any event is not agreeable to any further modification. If this court proposes to effect any modification in the terms of sale, the purchaser should be left free to withdraw his offer and to walk out. The learned counsel submitted that Buxa's offer of Rs. 6 crores, which was ultimately raised to Rs. 8 crores, was subject to the conditions contained in its offer. True it is that Buxa accepted the terms and conditions stipulated by the Company Judge which were different from those stipulated by it. But this was by its consent. As a matter of fact, with a view to save its investment which it had already made by the date of the judgment of the Division Bench, it even agreed to certain further modifications being made by the Division Bench on both the occasions. The purchaser is not now agreeable to any further modification since in such a case it would not be possible for it to run the industry or to pay the consideration. He submitted that the purchaser has invested huge sums of money and has reemployed almost all the workers and that it is not in a position to bear any further financial burden.

(11) Before we deal with the contentions urged by the learned counsel, we feel constrained to make certain observations with respect to the terms of the sale notice issued by the court. While we agree that there is no standard or uniform pattern to be followed in such matters, it would be appropriate for the court to adopt such procedure as would avoid a situation where the courts is put to the task of negotiating the terms of sale with the parties. That would not be consistent with the dignity of the court. It would also give room for avoidable criticism and comment. It would have been- better if the sale notice itself had prescribed the number of instalments which would

be granted to the purchaser, besides other terms and conditions and then invited offers on that basis. Alternately, the court could have invited the offers subject to such conditions as the offerers may

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prescribe and then have them evaluated by a qualified person and select the most appropriate one. If none of them are found acceptable and if the court thought it appropriate, it could also allow the bidders to submit revised offers and then have them evaluated. We are not saying that these are the only two methods. There may be others. Our object is only to emphasise that any method devised should be such as to obviate the necessity or occasion for the court to negotiate the terms and conditions of sale with the party or parties. The sale notice in this case merely stated that the balance consideration may be paid in instalments as would be fixed by the court. The number and duration of instalments and other allied terms like bank guarantee, nature and terms of default clause, payment of interest on instalments were all left to be determined by the court. It is true that in this case the bid of Rs. 6 crores was got enhanced to Rs. 8 crores, with lesser number of instalments that offered by the purchaser all as a result of persuasive efforts by the Company Judge. Even so, it has given room for the argument that had it been known beforehand that so many instalments would be granted without stipulation of interest, several higher offers could have been received.

We are not prepared to agree with Mr. Chaidambaram, learned counsel for Buxa that this court has no power at this stage to modify the number of instalments. Nor do we see any basis for Buxa to take up the stand that either the existing terms should be affirmed by this court or it should be allowed to walk out of the deal altogether along with its investment. This it cannot do for more than one reason. Firstly, the sale notice itself stated that "the balance amount of the sale price may be paid by instalments as would be fixed by the Hon'ble court, Calcutta i.e., deferred payment of instalments will be considered". What the High Court of Calcutta could do, can equally be done by this court sitting in appeal. Secondly, the purchaser had repeatedly submitted before the Calcutta High Court that it is prepared to abide by such conditions as may be imposed by the Court. We may refer to the stand taken by the counsel for the purchaser before the Division Bench as recorded in its order dated 13th November, 1990. It reads thus: "Mr. Mukherjee, learned Advocate appearing on behalf of the purchaser has submitted that the sale in this case was sale of assets of the Mill as a going concern and not merely sale as scrap. The Court had power to grant such instalments whether it was specifically provided in the terms and conditions as advertised or not. In this connection he has drawn our attention to clause (10) of the Terms. He has

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submitted in the present case the court had granted such instalments for such period and on such terms after considering all the facts..(para 7).. He has submitted that in any event if this court is not inclined to approve the confirmation of the sale on the terms and conditions as prescribed by the Trial Court, it may allow such confirmation in favour of his clients to remain but provide for some modification and/or addition to such term and conditions if this court think it fit and proper. In this context, he has submitted that so far as the instalments are concerned, the quantum may be increased so that all the instalments are paid by the year 2000 A.D instead of 2002

A.D. as directed by the impugned order. So far as the guarantee is concerned, he has submitted that the court can provide for similar guarantee as provided for in other cases for sale by court in cast of default. He also submitted that it may be provided that the charge of the secured creditors be shifted to the sale proceeds and that the sale, which was free from encumbrances, should be subject to this that his clients should approach the financial institutions for further financial held (para 8) " Even before the second Division Bench which passed the impugned order, the purchaser did not take up the stand that the court has no power to modify the terms and conditions of sale. All that its counsel submitted was that having regard to the facts and circumstances of the case, the instalments should not be reduced. The impugned order records the contention of the purchaser's counsel in the following words: "It is submitted by Mr. Mukherjee, learned counsel for the purchaser that having regard to the commitments of the company and the fact that former employees have been re-employed and the company has to consistently run on a profitable basis, it would not be possible to reduce the instalments any further."

Having considered and taken into account all the relevant facts and circumstances of the case including the interest of the financial institutions, the interest of the workers who have since been re-employed by the purchaser and the fact that the purchaser has already invested substantial amount to revive the company, we are of the opinion that certain modifications should be made in the number of instalments in which the balance consideration shall be paid. But before we do so, we must refer to a particular fact which discloses the unfair conduct of the purchaser (Buxa). According to the impugned order the purchaser had to pay a sum of Rs. 80 lakhs in the year 1992 in bimonthly instalments. It paid only a total sum of Rs. 28 lakhs. The excuse now put forward for nonpayment of the

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balance of 52 lakhs is the order of 'status quo' passed by this court- Having entertained the S.L.P. filed by the financial institutions, this court (K. Jayachandra Reddy and late R.C. Patnaik, JJ.) passed the following order on 14.5.1992:

"Heard both the parties.

Status quo to be maintained.

The second respondent in SLP(C) 5377/92 shall not encumber, alienate or transfer the assets of the company in liquidation purchased by him. Respondent No.2, shall, however, maintain accounts and, as and when required, produce the same before the Court.

Post the matter before an appropriate Bench on 21.7.1992.

Meanwhile, if the parties alone chose to file affidavits, they may file.

As the matter before us is at an interlocutory stage, it need not be treated as part heard."

It is evident from a reading of the order that the order to maintain status quo did not and could never have meant stay of instalments payable by the purchaser in accordance with the impugned order. To say so would amount to placing a totally unreasonable and unwarranted interpretation upon the said order. It would be unfair above all. The purchaser has been put in possession of the assets purchased by him and no fetter whatsoever was ever placed by the said order upon his possession or enjoyment of the property purchased by him. The idea behind the order was that the purchaser

should not transfer, alienate or encumber assets purchased and that he should maintain the accounts and produce them before the court. The order directing that status quo to be maintained has to be understood in the said context. We must say that after some debate, Mr. Chidambaram agreed fairly that his client's interpretation of the said order was wrong, that he retreats his default and that he is prepared to pay the said amount of Rs. 52 lakhs along with such interest as may be prescribed by this Court. It is directed that the purchaser shall pay the said amount of Rs. 52 lakhs due for the year 1992 in terms of the impugned order along with an amount

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of Rs. 6 lakhs representing the interest on the said amount, consolidated i.e., a total of Rs. 58 lakhs on or before 5th March, 1993. This payment shall be in addition to such other amounts as may be payable in accordance with the impugned order as modified by us herein.

Now coming to the modification of the terms imposed in the order under appeal, the only modification we wish to make is in the number of instalments. After the payment of the aforesaid Rs. 52 lakhs due in the year 1992, the total balance consideration will be Rs. 5.80 crores. This amount shall be paid in full by the end of the year 1996 in equal bi-monthly instalments. The instalments shall be payable by the last day of February April, June, August, October and December in each year. This means that each instalment, excepting the last instalment, shall be in a sum of Rs.24,16,000. The last instalment shall be in such sum as to make up the total shortfall payable on that date i.e., Rs. 20,16,000. There shall be no other modification in the terms and conditions prescribed in the order under appeal including those relating to default and interest. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

For the reasons given above, the appeal arising from S.L.P. (C) No. 6736/92 filed by the purchaser is dismissed. No costs.

G.N.R.

Appeal dismissed.

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