

PRAVIN GADA AND ANOTHER

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v.

CENTRAL BANK OF INDIA AND OTHERS
(Civil Appeal Nos. 8658-8660 of 2012)

DECEMBER 03, 2012

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[K. S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Auction Sale - Of the property of company under liquidation - At the behest of the secured creditors - Auction sale confirmed in favour of appellants for Rs. 2.50 crores - Set aside on being challenged - Further auction fetching Rs. 6.45 crores also set aside - Sale in favour of appellants restored - On appeal, Supreme Court passing orders for fresh auction - The highest bid was for Rs. 5.04 crores - Held: The appellants had deposited Rs. 2.50 crores 6 year back and already invested substantial amount in the property - The highest offer came up to Rs. 5.04 crores at such a distance of time - Including the interest component on the amount deposited by the appellants, the total sum would come to Rs. 4.75 crores - Therefore, sale directed to be confirmed in favour of the appellants, subject to their depositing a further sum of Rs. 50 lacs - In view of the concession of the appellants made before High Court regarding their willingness to negotiate with the workmen, High Court directed to deal with the rights of the workmen in an appropriate manner, and if required, monitor the same - Corporate Law - Rights of workmen of company under liquidation.

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Corporate Law - Company under liquidation - Official Liquidator - Role of - Held: Role of Official Liquidator is not restricted to participation at the stage of disbursement of dues of the workmen, his participation is required also at the stage of conducting of sale.

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The Company in question was declared sick by BIFR.

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A Official Liquidator was appointed. Debt Recovery Tribunal (DRT) allowed the application of the creditor-Bank of the Company for recovery of its dues against the Company. It further directed that on failure to repay the amount, the immovable property of the company would be sold and
B the sole proceeds would be paid to the applicant-Bank and respondent No.1-Bank in proportion to their respective charges.

C The immovable property of the company was sold in auction to the appellants for Rs. 2.50 crores. Respondent No. 1-Bank filed application for setting aside the sale alleging procedural irregularities and prayed for fresh auction. Official Liquidator had also filed its report before
D DRT stating that the workers of the company had contended that the sale to the appellants was at a price which was neither fair nor reasonable.

E The Recovery Officer set aside the sale to the appellants and directed conduct of fresh auction in the presence of secured creditors, the Receiver and Official Liquidator, after notice. Fresh auction was conducted wherein original auction-purchasers (appellants) did not participate. The highest bid was for Rs. 6.45 crores.

F On the application of the appellants, the sale was set aside by DRT, directing the Recovery Officer to publish a public notice to determine as to whether the offers higher than the bid of Rs. 6.45 crores could be realized and if no further offers were received, accept the highest bid after inter-se bidding between the earlier bidders.

G Appellants filed appeal, which was dismissed by DRAT. The order was challenged in writ court, who remanded the matter to DRAT. After remand, DRAT restored the sale in favour of the appellants. Workers' Union challenged this order and High Court again
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remitted the matter to DRAT. After reconsidering the matter, DRAT restored the sale in favour of the appellants. A

The matter was challenged by secured creditors and the workmen's Union. The appellants made a submission before the Court that they were ready and willing to negotiate with the workmen, but they were not in a position to do so until the litigation by secured creditors attained finality. High Court allowed the writ petition directing public advertisement inviting bids for the sale of the property. High Court also held that the opinion of DRAT that the power of Official Liquidator was restricted to participation at the stage of disbursement of the dues of the workmen, but not in conducting sale, was not correct. B C

The present appeals were filed by the appellants. This Court directed fresh auction. As the Court was not satisfied with the auction, it directed further auction. Pursuant thereto auction was conducted and the highest bid was for Rs. 5.04 crores. D

Disposing of the appeals, the Court E

HELD: 1. As per order of this Court, the auction was conducted and the highest offer in the auction that was tendered was Rs. 5.04 crores. There has been no grievance with regard to the proper publication of the notice for holding of auction. This Court had passed two orders on different occasions to see that the sale is conducted in a fair and transparent manner. Conditions were also imposed so that speculative bids do not come into the sphere of auction. Despite the best of efforts, the maximum price the property fetched was Rs.5.04 crores. A sum of Rs. 2.50 crores was deposited by the present appellants in October 2006 and in the meantime, six years have elapsed. The interest component on the same, till date would have come to rupees 2 crores 25 lacs and F G H

A thereby the total sum would come to rupees 4 crores 75
 lacs. The possession was taken over by the appellants
 long back and they had already invested substantial
 amount. The highest offer in the auction came up to
 rupees 5.04 crores at such a distance of time. Regard
 B being had to the totality of the circumstances, the sale
 should be confirmed subject to the appellants depositing
 a further sum of Rs. 50 lacs before the DRAT within a
 period of three months from the date of the judgment. The
 confirmation of sale as has been directed by this Court
 C shall be treated to have attained finality. [Paras 16 and 18]
 [630-A-G; 632-A-B]

2. The official liquidator had appeared before the
 recovery officer on number of dates. However, the DRT
 D had returned a finding that he has a restricted role which
 has been found fault with by the High Court. The finding
 of the High Court as regards the role of the official
 liquidator is correct. [Paras 17] [631-F-G]

Rajasthan Financial Corpn. and Anr. v. Official Liquidator
 E *and Anr.* AIR 2006 SC 755; 2005 (3) Suppl. SCR 1073 ; *A.P.*
State Financial Corporation v. Official Liquidator (2000) 7
 SCC 291; 2000 (2) Suppl. SCR 288; *International Coach*
Builders v. State of Karnataka (2003) 10 SCC 482; 2003 (2)
 SCR 631 - relied on.

F 3. Before the Division Bench, the workers union had
 also challenged the decision of the DRAT. The appellants
 submitted that while they were ready and willing to
 negotiate with the workmen, they were not in a position
 to do so until the litigation which was instituted by the
 G secured creditors attained finality. Keeping in view the
 interest of the workmen and their rights, the High Court
 is directed to deal with the rights of the workmen regard
 being had to the submissions advanced by the
 appellants in an apposite manner and, if required,
 H monitor the same. As concession was given before a

particular Division Bench, the Chief Justice is requested to place the matter before the same Bench and if it is not possible, at least before the same presiding Judge. [Paras 19 and 20] [632-B-C, F; 633-A-C]

4. The Interlocutory Applications which have been filed for impleadment and withdrawal of the amounts that have been deposited as earnest money are allowed and the bidders who have deposited the money are allowed to withdraw the same. [Para 21] [633-D]

Case Law Reference:

2005 (3) Suppl. SCR 1073 Relied on Para 17

2000 (2) Suppl. SCR 288 Relied on Para 17

2003 (2) SCR 631 Relied on Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8658-8660 of 2012.

From the Judgment & Order dated 20.09.2011 of the High Court of Bombay in Writ Petition (C) No. 2689, 7488 and 7489 of 2011.

V.K. Chaudhary, B.S. Nagar, Rohitash S. Nagar, Rekha Pandey for the Appellants.

Jaideep Gupta, Indu Malhotra, Dinesh Mathur, Nishant Menon, Priyanka Bharti (For Dua Associates), Saurabh Kirpal, Sanjay Agarwal, G.K. Sarkar, Nikhil Jain, Sudarshan Singh Rawat, R.S. Hegde, Chandra Prakash, Mohammed Nazar, A. Ramakrishana, Rajeev Singh for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The present appeals by special leave have been preferred questioning the defensibility of the order dated 20th September, 2011 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition Nos. 2689 of

A 2011, 7488 of 2011 and 7489 of 2011 whereby the High Court has quashed the order dated 3rd March, 2011 passed by the Debt Recovery Appellate Tribunal (for short 'the DRAT') wherein the DRAT had set aside the order of the Debt Recovery Tribunal (for short 'the DRT') and restored the confirmation of sale
 B conducted by way of public auction in favour of the respondents, who are the appellants herein.

3. Shorn of unnecessary details, the facts which are essential to be stated for disposal of these appeals are that a
 C company by the name of Jay Electric Wire Corporation Ltd. had a factory at Mysore situate on land admeasuring approximately 4.4 acres comprised in plots 44 and 47 in Serial Nos. 55 and 69 in the Industrial Area of village Habal and Serial No. 33 of Metagally, Hobla Kasba. The said company, which
 D closed down in February, 1995, had about 149 workers. As dispute arose between the workmen and the management because of termination, the matter was referred to the Industrial Tribunal at Mysore after the reference made under Section 10 of the Industrial Disputes Act, 1947 and the said tribunal, vide
 E award dated 5th January, 2001, directed the employer to pay back wages to the workmen with effect from 6th February, 1995 and to continue payment during the subsistence of the relationship of employer and employee between the parties.

4. As the facts are further unfurled, on 18th December, 2006, a recovery certificate was issued by the Deputy Labour
 F Commissioner at Bangalore for recovery of a sum of Rs.4.44 crores towards the dues of the workmen under the award passed by the Industrial Tribunal. A proceeding was initiated before the Company Judge of the High Court of Bombay in 1996 forming the subject-matter of Company Petition No. 336
 G of 1996. Subsequently, on a reference made by the BIFR under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, the company court held that it was just and equitable for the company to be wound up. The official liquidator was appointed as provisional liquidator by order
 H dated 6th October, 2005 to take charge of the books, assets

and business of the company and to exercise necessary powers under the Companies Act, 1956. On 15th October, 2008, the said order was made absolute. The official liquidator was commanded to proceed in the matter in accordance with law to deal with the assets of the company in liquidation.

5. It is pertinent to state here that in the year 1999, the ICICI Bank had instituted a suit before the High Court in its original side for recovery of its dues against the company. The learned single Judge, vide order dated 8th July, 1999, appointed a Receiver who was granted liberty to sell the assets by public auction or by private treaty and to apply the net sale proceeds as between the ICICI Bank and the Central Bank of India which was impleaded as the second defendant to the suit in satisfaction of the respective charges on the immoveable property. The suit eventually stood transferred to the DRT and the DRT, by order dated 26th August, 2003, allowed the application filed by the ICICI Bank Ltd. for a sum of Rs.1.12 crores together with future interest at 12% per annum. It was further directed that on failure on the part of the borrower to repay the amount within six months, the immoveable property would be sold and the net sale proceeds would be paid to the applicant bank and the Central Bank of India in proportion to their respective charges.

6. In June, 2004, a public notice was issued for sale of the moveable and immoveable properties of the borrower and notice for the proposed sale was published in the newspapers. Though the movables of the borrower came to be sold, yet no proper offer was received for the sale of immoveable property. In a meeting dated 24th July, 2006, it was noted that two offers were received, one amounting to Rs.1.10 crores and the other Rs.80 lacs. The Central Bank of India stated that the offer was not acceptable to it. At that stage, the Standard Chartered Bank appeared before the Receiver stating that the ICICI Bank had assigned its debts to it. The meeting convened by the Receiver was adjourned to 9th August, 2006 and eventually, on 21st August, 2006, bidding took place inter se the two bidders who

A submitted their offers when the first and second respondents enhanced their bid to Rs.2.50 crores. The meeting was adjourned to 5th September, 2006 and the successful bidder was directed to enhance the amount representing 25% of the offer by 28th August, 2006. In the said meeting, the
 B representative of the Central Bank of India was not present. On 29th September, 2006, a letter was addressed by the Receiver to the advocates of the two banks enclosing the report seeking the confirmation of sale. He also required the banks to send expression of interest in the property from two parties. On
 C receipt of the letter, the Chief Manager of the Central Bank of India visited the office of the Receiver on 17th October, 2006 and informed about the expression of interest of two other bidders who were willing to pay higher price.

7. As is evincible from the Judgment of the High Court,
 D certain meetings took place and the bank had difficulty in contacting the advocate. On 27th October, 2006, when both the bidders arrived at the office of the Receiver, they were informed that the sale had been confirmed in the morning. On 30th
 E October, 2006, an application was filed by the Central Bank of India for setting aside the sale. Many a procedural irregularity was alleged including the one that it had no intimation of the proceeding until it received the letter dated 29th September,
 F 2006 of the Receiver stating that the property had been sold for a sum of Rs.2.50 crores and the sale had been confirmed on 27th October, 2006. It was contended by the Central Bank of India that in the absence of intimation, it had been unable to remain present when the bidding took place on 21st August,
 G 2006. A prayer for fresh auction and to consider the offers submitted by the two bidders who had expressed interest in the purchase of the property was made. It is apt to mention here that the official liquidator had filed report on 1st December,
 H 2006 before the DRT stating that an application had been received from the workers contending that the sale which had been confirmed in favour of the first and second respondents, the appellants herein, was at a price which was neither fair nor

reasonable. A submission was put forth that no notice was sent to the liquidator through the Registrar despite the mandate of law. A

8. As is reflected from the proceedings of the fora below and the order passed by the High Court, the Recovery Officer, vide order dated 5th December, 2006, had set aside the confirmation of the sale holding that it was obligatory to ensure that a higher price was fetched for the property and the assets of the company in liquidation, if the sale price offered by an auction purchaser was inadequate. He ultimately set aside the sale and directed for conduct of a fresh auction in the presence of secured creditors, the Receiver and the official liquidator after notice. In pursuance of the said order, on 5th December, 2006, a sale was conducted without making a fresh notification. The Recovery Officer noted that the original auction purchasers did not participate in the fresh bidding process, but the two bids were received by the Recovery Officer and the highest bid amounting to Rs.6.45 crores was offered by one Umrah Developers. Regard being had to the said position, the Recovery Officer directed the bid of Umrah Developers to be accepted and the successful bidder was directed to pay the purchase consideration. The said Umrah Developers deposited the full consideration of Rs.6.45 crores on 10th November 2006 and 11th December, 2006. Taking note of the same, the Recovery Officer declared them as the successful bidder. B
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9. Being grieved by the aforesaid order, the first and second respondents therein preferred an appeal before the DRT which set aside the sale. Taking note of the facts in entirety, it opined that there was something wrong on the part of the valuer inasmuch as the offer of Rs.6.45 crores was received when the bids were conducted only amongst a few persons and not in the public realm and that was good enough indicative of the fact that the property could fetch a higher value. The DRT further opined that it would have been proper to issue a public notice and invite fresh offers. Being of this view, it directed, while retaining the offers which were received until 5th F
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A December, 2006, that the Recovery Officer should publish a public notice to determine as to whether offers higher than the bid of Rs.6.45 crores of Umrah Developers could be realized and if no further offers were received, the Recovery Officer was directed to accept the highest bid after inter se bidding between the earlier bidders.

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 10. Being dissatisfied with the aforesaid, an appeal was preferred by the first respondent before the DRAT which granted stay on 26th February, 2007 as a consequence of which the entire process of holding a fresh auction came to a standstill. At this juncture, an application was filed by Umrah Developers to permit it to withdraw the amount which it had deposited. The application was rejected by the DRT which compelled the company to file an application before the tribunal to withdraw the amount and the company was allowed to withdraw 90% of the bid amount leaving the balance, i.e., Rs.64.5 lacs in deposit before the Recovery Officer. Eventually, the DRAT dismissed the appeal by order dated 2nd July, 2008 mainly on the foundation that offer of Rs.6.45 crores was higher than the offer of Rs.2.50 crores furnished by the first and second respondents. The said order came to be challenged before the writ court and during the pendency of the writ proceedings, an application was filed by Umrah Developers for refund of the balance sum which was allowed. The writ petition preferred by the first and second respondents was disposed of on 11th August, 2010 in terms of the agreed minutes. As per the agreed order, the matter stood remanded to DRAT for a fresh decision.

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 11. As is demonstrable, on remand, the DRAT, by its order dated 15th October, 2010, allowed the appeal and directed restoration of the confirmation of sale in favour of the first and second respondents. The said order of the DRAT was assailed by the workers' union and the High Court remitted the matter to the DRAT for fresh consideration. The DRAT, considering the facts in entirety, allowed the appeal vide order dated 3rd March, 2011 and restored the confirmation of sale. The said

order came to be assailed by the secured creditors and the workmen's union on the ground that the confirmation suffered from material irregularities. The High Court noticed that the DRAT had opined that the power of the official liquidator was restricted to participate at the stage of disbursement of the dues of the workmen but not in conducting of the sale. It did not agree with the said finding on the basis of the proposition of law laid down in *Rajasthan Financial Corpn. and Anr. V. Official Liquidator & Anr.*¹. While noting that aspect, the High Court proceeded to address the fundamental question whether the procedure that was followed in the sale of the property was fair and proper or whether there was any fraud and material irregularity. It adverted to the facts in a chronological manner and came to hold that the manner in which the sale proceedings had been conducted was neither fair nor transparent as a consequence of which the possible price that could be realized had become an unfortunate casualty. It took note of the offer made by Umrah Developers after a month of confirmation of sale and opined that the proper price had not been realized. The finding of the DRT that the Central Bank of India had remained absent could not be a justification to sustain the manner in which the sale had been conducted as it was manifestly contrary to the basic concept of fairness and transparency. The Court referred to number of authorities to highlight the conception that in every case, the duty of the court is to satisfy itself that the price offered is reasonable and the said satisfaction is to be based on the bedrock of the prevalent market value. Expressing the aforesaid view, the High Court allowed the writ petition, set aside the order of the DRAT dated 3rd March, 2011 and proceeded to direct as follows: -

"We direct that the Recovery Officer attached to the DRT to issue a public advertisement which shall be published in at least two newspapers, one in English and another in Kannada having circulation in Mysore, inviting bids for the sale of the property. The terms and conditions governing

1. AIR 2006 SC 755.

A the sale shall be laid down by the Recovery Officer of the
DRT, and a fresh valuation shall be carried out on the basis
of which the reserve price of the property shall be fixed.
We record the statement made on behalf of the Central
B Bank and the Standard Chartered Bank by their counsel
that both the Banks shall cooperate with the Recovery
Officer and shall meet all the expenses of the sale,
including towards newspaper advertisements. On the
request of the two banks, we further clarify that if the Banks
are ready and willing to meet the expenses for the issuance
C of a publication in any additional newspapers, that shall
also be permitted by the Recovery Officer at the expenses
which have been agreed to be borne by the Banks. We
direct the Recovery Officer to expedite the process of sale
and to hold a meeting for fixing the terms and conditions
D within a period of three weeks from today. The sale
process should be completed within a period of three
months from the date on which an authenticated copy of
this order is placed before the Recovery Officer."

E 12. The said order has been assailed by the first and
second respondents before this Court, the successful bidders
who had deposited Rs.2.50 crores in pursuance of the order
passed by the DRT.

F 13. At this juncture, it is worthy to note that this Court on
27th March, 2012, after taking note of the High Court's
direction, had passed the following order: -

G "This Court while issuing notice on 25th November, 2011,
had directed status quo to be maintained by the parties.
When the matter was heard for some time it was submitted
by Mr. C.A. Sundaram, learned senior counsel for the
petitioner that the High Court has grossly erred in directing
the sale of the property by inviting bids despite the factum
that public auction was not successful and eventually the
sale was effected by the direction of the DRT and
ultimately the offer of Rs.2.5 crores was accepted from the
H petitioners herein. The learned senior counsel has urged

many other contentions which need not be referred to in presenti having regard to the nature of directions which we are going to pass today. A

It is worth noting that Mr. Jaideep Gupta, learned senior counsel appearing for the Central Bank of India has filed a chart of the amount due from the original buyer, namely, Jay Electric Wire Corporation. We think it apposite to reproduce the chart in toto: B

"1. Central Bank of India (Respondent No. 1):

As per the Recovery Certificate dated 6.11.2003 issued by the DRT an amount of Rs.10.99 crores is due and payable which as on 31.3.2012 @ 12% per annum at quarterly rests amounts to Rs.42.41 crores. C

2. Standard Chartered Bank (respondent No. 2): D

As on 26.8.2003 an amount of Rs.1.12 crores is outstanding along with interest @ 12% per annum.

3. Workmen through Official Liquidator (respondent No. 4) : E

As per the recovery certificate issued by the Deputy Labour Commissioner on 18.12.2006 an amount of Rs.4.44 crores is due and payable as computed until 1999." F

It is submitted by Mr. Gupta that in fitness of things and regard being had to the concept of obtaining of the Highest Price in Court sale, having of auction is the warrant and, therefore, auction should be directed to be held. The learned senior counsel further submitted that the property is likely to fetch much more amount than that has been deposited by the petitioners. G

Mr. Sundaram, learned senior counsel would contend that the sale had been given effect to in the year 2006 on H

A acceptance of Rs.2.5 cores and with the efflux of time if there has been a price rise solely on the said base a public auction should not be directed.

B Be it noted that at one point of time, a third party had deposited Rs.6 crores to purchase the property but later on he withdrew as the matter was litigated in the Court.

Having heard learned counsel for the parties and regard being had to the totality of the circumstances, we issue the following directions:

C (i) The property in question be put to auction by issuing a public advertisement in at least two newspapers one in English and another in Kannada language having wide circulation in the city of Mysore inviting bids for the sale of the property.

D (ii) It shall be mentioned in the advertisement that the reserve price is Rs.3 crores and the same shall be deposited before the Recovery Officer of the DRT to enable one to participate in the bid.

E (iii) Any one who would not deposit the amount would not be permitted to participate in the auction as speculative bids are to be totally avoided.

F (iv) The newspaper publication shall be made within a period of two weeks stipulating that the deposit is a condition precedent for participation in the auction which shall be made before the DRT within a week from the date of publication of the advertisement in the newspapers.

G (v) The auction shall be held within a period of two weeks from the issuance of the advertisement which shall state the specified time and place for the auction.

H (vi) The petitioners without prejudice to the contentions to be raised and dealt with in these Special Leave Petitions shall participate in the bid without the deposit as they have purchased the property in the year 2006.

(vii) The bid shall not be finalized and the bid sheet shall be produced before this Court in a sealed cover. A

We reiterate at the cost of repetition that the above arrangements are subject to the result of the final adjudication in these Special Leave Petitions.

List the matter after five weeks." B

14. After the said order came to be passed, I.A. Nos. 4-6 of 2012 were preferred wherein the following order was passed:

"These applications were preferred by the Bank stating that going by the present valuation the property will fetch nearly Rs.10 crores whereas the order stipulates Reserve Price only Rs.3 crores. Hence, the Bank has sought modification of the upset price fixed by the Court. C

Learned counsel for the Bank also submitted that as per the Debt Recovery Tribunal Act the time stipulated for auction is thirty days whereas the order directs to conduct the auction within two weeks. To this extent the respondent seeks modification of that direction also. D

Learned counsel on the either side submitted that the auction should go on without any delay. E

Considering the facts and circumstances of the case we are inclined to dispose of these applications directing the Recovery Officer to go on with the auction within the time limit stipulated in the bid. The question as to whether the upset price has been correctly fixed or not will depend upon the bid amount offered by the bidders in the auction." F

15. After the said interlocutory applications were disposed of, the auction took place but this Court was not satisfied since certain aspects were highlighted that caused impediments in obtaining proper offers. This Court in IA 7-9 of 2012, after hearing the learned counsel for the parties and referring to its earlier orders, proceeded to pass the following order: - G

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A "5. In the present application it has been asseverated that
in compliance with the order dated 5.7.2012, the Recovery
B Officer of Debt Recovery Tribunal-I, Mumbai, ordered for
publication of the notice in two newspapers which was
published on 20.7.2012 calling upon interested parties to
C give their offer within seven days from the date of
publication as directed by this Court vide order dated
27.3.2012. Pursuant to the publication carried in English
and Kannada newspapers no other offer whatsoever was
received by the Recovery Officer and till 7th only the offer
of the petitioners, namely, Praveen Gada and Amarnath
Singhla, was received.

6. When the matter was taken up, order dated
30.8.2012 passed in R. P. No. 419 of 2003 was brought
to our notice. The said order reads as under: -

D "As per directions of the Hon'ble Supreme Court vide
its orders dated 27.3.2012 & 5.7.2012, advertisement was
published fixing reserve price at Rs. 3.00 Crores.

E Only one bid of Shri Pravin Gada & Amarnath
Singhla has been received on 07.08.2012 as per public
notice. His bid was opened at the scheduled date & time
of the auction. He has given offer of Rs. 3 crores. As his
participation in auction was without deposit as directed in
above orders, there was no question of his depositing
F EMD.

Relevant columns of Bid Sheet were accordingly filled
in and the signature of the bidder has been obtained. As
per the directions, the said bid sheet be submitted to the
Hon'ble Supreme Court.

G Apart from above, 3 offers in closed envelope were
received today, but those are not opened & considered in
view of the directions of the Hon'ble Supreme Court as per
aforesaid orders.

H On the date of auction the above 3 closed envelopes

containing offers have been received. This being new situation arisen at the time of auction, in my opinion it would be appropriate to bring this fact to the kind notice of the Hon'ble Supreme Court. Hence these 3 closed envelops be also submitted to the Hon'ble Supreme Court. A

As per directions of the Hon'ble Supreme Court, the Bid Sheet at Exh. 154 be submitted to the Hon'ble Supreme in a sealed cover." B

7. The bid sheets were opened before us and we find that an offer amounting to Rs. 3,30,00,000/- by Kumar Enterprises, Rs. 3,30,00,000/- by Riddishiddhi Bullions Ltd. and Rs. 3,30,00,000/- by Krishna Texturisers Pvt. Ltd. were deposited by way of bank drafts on 29.08.2012 and 30.8.2012 respectively. C

8. It is submitted by Mr. Sundaram, learned senior counsel for the petitioners, that as the said offers were not in accord, the same should not be considered and the petitioners should be treated as the highest bidder in the auction. Mr. Rohtagi and Mr. Gupta, learned senior counsel for the Central Bank of India, per contra, submitted that the price of the property as on today is worth more than Rs. 10 crores and the reason for the offerees not coming is that the petitioners are in possession and they have put up a board indicating their name and status. It is urged by them that it is one thing to say that the auction is conducted by virtue of the order passed by this Court and the whole thing is subject to the pendency of the lis but it is another thing to see at the entrance that the board is fixed and the people are not allowed to survey the nature and character of the assets. The photographs of the board that have been put up are filed in Court and we have perused the same. Be it noted, the putting up of the said photographs is not disputed. D
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9. Regard being had to the facts and circumstances, we are of the considered opinion that there should be a re- H

A auction and we are inclined to modify the conditions incorporated in the earlier order. Keeping in view the totality of circumstances, we issue the following directions:-

B (i) The property in question be put to auction by issuing a public advertisement within two weeks in at least two newspapers, one in English and another in Kannada language, having wide circulation in the city of Mysore inviting bids for the sale of the property.

C (ii) It shall be mentioned in the advertisement that the reserved price is Rs. 5 crores and the same shall be deposited by way of bank drafts drawn on a nationalized bank before the Recovery Officer of the DRT to enable one to participate in the bid. The advertisement shall stipulate that the deposit of the reserved price fixed by this Court is a condition precedent for participation in the auction.

D (iii) It shall be clearly stated in the advertisement that the property would be available for inspection in presence of the Registrar of Civil Court or any equivalent officer nominated by the Principal District and Session Judge, Mysore, and it is so done to avoid the grievance from any quarter that the property was not available for proper verification. The inspection by any interested party shall be done within one week from the date of advertisement between 11.00 a.m. to 3.00 p.m.

E (iv) During the entire period of inspection the concerned officer deputed by the learned Principle District and Sessions Judge, Mysore shall see to it that the board that has been fixed is removed from the site so that there can be inspection of the plot without any kind of pre-conceived notion by the perspective bidders.

F (v) The aforesaid reserved price shall be deposited

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before the Recovery Officer of the DRT within ten days from the date of the advertisement. Any one who would not deposit the reserved price within the time limit, his bid shall not be considered A

(vi) The auction shall be held within a period of two weeks from the date of issuance of the advertisement which shall state the specified time and place for the auction. B

(vii) The petitioners without prejudice to the contentions to be raised and dealt with in these Special Leave Petitions shall participate in the auction without the deposit as they have purchased the property in the year 2006. C

(viii) The offerees who have already given the bids shall deposit the balance amount to meet the reserved price before the Recovery Officer of the DRT failing which they shall be ineligible to participate in the bid. D

(ix) After the submission of the bids there shall be a public auction amongst the eligible offerees to get the maximum price. E

(x) The auction shall not be finalized and the bid sheet shall be produced before this Court in a sealed cover for issuance of further directions, if required. F

10. We repeat at the cost of repetition that the above arrangements are subject to the result of the final adjudication to the Special Leave Petitions.

11. A copy of the order passed today be sent by fax, email and speed-post to the Principal District Judge, Mysore by the Registry of this Court. G

12. List the matters on 1.11.2012."

16. After the aforesaid order was passed, the auction was H

A conducted and the highest offer in the auction that was tendered was Rs. 5.04 crores. Learned counsel appearing for the said highest bidder filed an application for impleadment and impressed upon this Court for acceptance of the bid. Be it noted, there were other offers amounting to Rs. 3.30 crores and

B slightly more, but there has been no grievance with regard to the proper publication of the notice for holding of auction. We have so stated as the High Court had set aside the sale essentially on the ground that the sale process was not fair and transparent. This Court had passed two orders on different

C occasions to see that the sale is conducted in a fair and transparent manner. We had also imposed conditions so that speculative bids do not come into the sphere of auction. Despite the best of efforts, as we have seen, the maximum price the property has fetched is Rs.5.04 crores. It is submitted

D by Mr. Sundaram and Mr. Choudhary, learned senior counsel, that a sum of Rs. 2.50 crores was deposited by the present appellants in October 2006 and in the meantime, six years have elapsed. It is urged by them that the said amount was kept with the bank and the bank must have dealt with the money as a prudent financial commercial venture and thereby must have

E earned interest at least at the rate of 15% per annum. Calculated on that basis, it is contended, the interest component by now would have come to rupees 2 crores 25 lacs and thereby the total sum would come to rupees 4 crores 75 lacs. It is also urged by them that the possession was taken over by

F them long back and they have already invested substantial amount. As is noticeable, the highest offer in the auction has come up to rupees 5.04 crores at such a distance of time. Regard being had to the totality of the circumstances, we are disposed to think that the sale should be confirmed subject to

G the appellants depositing a further sum of Rs. 50 lacs before the DRAT within a period of three months from today and we order accordingly.

H 17. At this juncture, it is necessary to address whether the finding of the High Court as regards the role of the official

liquidator is correct or not. In *Rajasthan Financial Corpn.* (supra), while dealing with the role of official liquidator, a three-Judge Bench referred to the pronouncements in *A. P. State Financial Corporatin v. Official Liquidator*² and *International Coach Builders v. State of Karnataka*³ and, in the ultimate eventuate, summed its conclusions. The relevant conclusions are reproduced below: -

"(i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

xxx

xxx

xxx

(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation."

18. On a perusal of the record, it transpires that the official liquidator had appeared before the recovery officer on number of dates. However, the DRT had returned a finding that he has a restricted role which has been found fault with by the High Court. In our opinion, the High Court is absolutely correct in its analysis and we concur with the same, but, a pregnant one, the fact remains that the High Court had set aside the sale on the foundation that a fair and transparent procedure had not been adopted. Having given due respect to the same, this court had passed orders on earlier occasions which we have reproduced

2. (2000) 7 SCC 291.

3. (2003) 10 SCC 482.

A hereinabove to get the auction conducted in a fair and transparent manner and recorded our conclusion. Therefore, the confirmation of sale as has been directed by us shall be treated to have attained finality.

B 19. Another important facet deserves to be mentioned. Before the Division Bench, the workers union had also challenged the decision of the DRAT. The High Court, while dealing with their submission, has recorded as follows:-

C "During the course of the hearing of these proceedings, the Court has been informed that an effort has been made by the First and Second Respondents to settle the outstanding dues of the workers through an out of Court settlement. Counsel appearing on behalf of the workmen submitted that the workmen would abide by the result of the Petitions which have been filed by the secured creditors and it is only in the event that the Petitions filed by the Banks are dismissed that the workers would be inclined to enter into an out of Court settlement with the First and Second Respondents. Counsel for the First and Second Respondents stated that his clients would be able to resolve the dispute with the workmen only if the Petitions filed by the secured creditors challenging the sale in favour of his clients fail. Counsel appearing on behalf of the First and Second Respondents submitted that while the First and Second Respondents are ready and willing to negotiate with the workmen, they are no in a position to do so until the litigation which has been instituted by the secured creditors attains finality."

G 20. The aforesaid submission has its own significance in law. We may hasten to clarify that we have confirmed the sale as this Court has undertaken the exercise to have an auction conducted through the competent authority of DRT by adopting a fair, competitive and transparent procedure but that does not mean that the conclusion arrived at by the High Court in that regard is erroneous. Thus, while confirming the sale subject to H the conditions imposed hereinbefore, we are disposed to think

that keeping in view the interest of the workmen and their rights, the High Court should deal with the rights of the workmen regard being had to the submissions advanced by the first and second respondents before it in an apposite manner and, if required, monitor the same. As concession was given before a particular Division Bench, we would request the learned Chief Justice to place the matter before the same Bench and if it is not possible, at least before the learned presiding Judge. We have felt so as such a submission was put forth before the Division Bench which had categorically recorded the same and it is not desirable that there should be any kind of deviation with regard to the statement made.

21. Presently to the Interlocutory Applications which have been filed for impleadment and withdrawal of the amounts that have been deposited as earnest money. Regard being had to the facts and circumstances of the case, all impleadment applications are allowed and the bidders who have deposited the money are allowed to withdraw the same.

22. The appeals are accordingly disposed of leaving the parties to bear their respective costs.

K.K.T.

Appeals disposed of.