

A M/S. TECH INVEST INDIA (PVT.) LTD.  
THR. MAJOR SHAREHOLDER RAJIV GOSAIN

v.

B M/S. ASSAM POWER & ELECTRICALS LTD.  
AND OTHERS

(Civil Appeal Nos. 6055-6056 of 2015)

AUGUST 11, 2015

**[M. Y. EQBAL AND ARUN MISHRA, JJ.]**

C *Company law: Sale of assets of company – Public*  
*auction – Stay application by company on the ground that its*  
*assets were worth Rs.7 crores and public auction was being*  
D *held without fixing the minimum reserve price after issuing*  
*auction sale notice only once – Company judge refused to*  
*interfere with the auction and directed the company to raise*  
*the objections at the time of confirmation of sale – In auction,*  
*respondent no.3 purchased assets for Rs.45.55 lakhs – High*  
*Court held that counsel representing shareholders of the*  
E *company had no objections and confirmed the sale –*  
*Company's appeal dismissed on the ground that counsel*  
*had not made any objections at the time of confirmation of*  
*sale – On appeal, held: Sale at a price of Rs. 45.45 lakhs*  
*without proper publicity through advertisement or fixing any*  
F *reserve price for the assets cannot be sustained in law,*  
*particularly, when the predecessor Official Liquidator reported*  
*that the property put in auction is of much higher valuation –*  
*Having considered the illegality and irregularity committed*  
*in the auction sale of the property, the entire process was*  
G *vitiated.*

**Allowing the appeals, the Court**

H **HELD: 1. Prima facie, the objections raised by the**  
**appellant were not properly considered inasmuch as the**

objections were not heard on merit and the auction sale was confirmed. The Advocate, had made the said statement before the Company Court, however, he had never been engaged either by the shareholders. Therefore, making statement by the Advocate that he has no instruction or waiving the disposal of objection on merit, was without any basis which ought to have been considered by the High Court. The conduct of the Official Liquidator in selling the property at a price of Rs. 45.45 lakhs without proper publicity through advertisement or fixing any reserve price for the assets cannot be sustained in law, particularly, when the predecessor Official Liquidator reported that the property put in auction is of much higher valuation. Having considered the illegality and irregularity committed in the auction sale of the property, the entire process was vitiated. Further, the Company Judge also failed to exercise its judicial discretion to see that the properties are sold at a reasonable price. Apart from that, when the valuation report was submitted before the Company Judge, it ought to have disclosed the secured creditors and other interested persons in order to ascertain the market value of the property before property was auction sold. Since the same was not done, the auction sale and the order confirming the sale were liable to be set aside. Consequently the Official Liquidator is directed to forthwith recover the possession of the properties and proceed with a fresh auction after obtaining the fresh valuation report and fixing the reserve bid. [Paras 14 to 18] [975-F-G, H; 976-A-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6055-6056 of 2015.

From the Judgment and Order dated 25.09.2012 of the High Court of Uttarakhand at Nainital in Review/Recall

A Application No. 660 of 2012 in Company Appeal No. 01 of 2005.

Priya Puri, Ranjay Kr. Dubey for the Appellant.

B M. C. Dhingra, Piyush Kant Roy, M. T. George, M. G. Yogamaya, Pulak Raj Mullick, Tanuj Bagga Sharma, Sahil Mullick (for Rajinder Mathur), Ravindra Kumar, M. Shakeel, Subhash Chandra Jain for the Respondents.

C The Judgment of the Court was delivered by

**M. Y. EQBAL, J.** 1. Leave granted.

D 2. These appeals by special leave are directed against the judgments dated 25.09.2012 and 16.07.2012 of the High Court of Uttarakhand at Nainital, which dismissed the appeal and review application filed by the appellant company challenging the order confirming the sale and handing over the assets of the appellant-company to the respondent.

E 3. The facts of the case lie in a narrow compass. The respondent no. 1 had sent a statutory notice under Section 434 of the Companies Act, 1956 and filed a winding up petition against the appellant-company alleging that the appellant-company had taken a loan of Rs. 6 lakhs from respondent no. 1 on 23<sup>rd</sup> March, 1999 and promised to repay it within 30 days with 18% interest. The appellant-company was alleged to have, however, initiated measures to shut down its operations and sell its assets and issued closure notices in May, 1999 without repaying the dues to the respondent.

G 4. The Company Judge appointed an Official Liquidator on 14.10.1999 and the possession of the assets of the appellant-company was taken over by the Official Liquidator who was also granted permission to assess the valuation in terms of order dated 23.02.2000. The Official Liquidator filed

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an application for selling the assets of the appellant-company through a public auction and it was allowed on 11.08.2003. The public auction was to be held on 29.09.2003. A

5. The appellant-company filed an application to stay the auction on the ground that its assets worth Rs. 7 crores were going to be auctioned without fixing the minimum reserve price and after issuing the auction sale notice only once. The appellant accordingly expressed apprehension about the highest price being secured. The Company Judge disposed of the application vide order dated 26.09.2003 refusing to interfere with the auction and directed the appellant-company to raise the aforesaid objections at the time of confirmation of sale. B C

6. In the auction, respondent no. 3 purchased the assets of the appellant-company for Rs. 45.55 lakhs and deposited 10% of the consideration. Vide order dated 28.05.2004, respondent no. 3 was directed to deposit the remaining amount after it was noted that the counsel for the major shareholders in the appellant-company had no objection. Noting that respondent no. 3 had deposited the said amount as directed, the sale in favour of respondent no. 3 was confirmed and possession of the assets of the company was directed to be given vide order dated 30.06.2004. D E

7. Rajiv Gosain, a shareholder in the appellant-company, filed an application for rejecting the auction sale and for re-auction. It was alleged that respondent no. 1 and the Official Liquidator had appointed S. K. Ahuja & Associates who had inspected the assets of the appellant-company and valued the assets to be worth Rs. 6.25 crores. The same was said to have been communicated to the petitioner vide letter dated 15.05.2000 and it was in turn said to have been communicated by the appellant-company to the Official Liquidator vide letter dated 26.06.2003. The Official Liquidator was, however, F G H

A alleged to have not informed the High Court of the valuation by  
S. K. Ahuja and Associates and consequently secured  
permission for valuation on 23.02.2000 pursuant to which the  
Official Liquidator was alleged to have illegally and with mala  
fide intention appointed an ineligible valuer, Mr. S. B. Bhargava,  
B to value the assets of the appellant-company. Mr. S. B.  
Bhargava was alleged to have drastically and illegally reduced  
the value of the assets of the appellant-company to Rs. 76.80  
lakhs and his report was submitted to the High Court by the  
Official Liquidator. The same was alleged to have led to the  
C issuance of an erroneous auction notice which did not mention  
minimum reserve price and many other vital details and which  
notice only came to the knowledge of a very limited number of  
individuals. The auction was further challenged on the ground  
D of procedural irregularity.

8. One Advocate Mr. Sharad Sharma appeared before  
the High Court on 13.04.2004 claiming to represent the  
shareholders of the appellant-company and the matter was  
listed for filing of objections by him and on 30.04.2004 one  
E last opportunity was given to him for filing of objections.

9. On 28.05.2004, the High Court, after noting that the  
counsel representing the shareholders of the appellant-  
company had no objections, directed respondent no. 3 to  
F deposit the remaining amount. On 30.06.2004, the High Court  
confirmed the sale in favour of respondent no. 3 and the assets  
of the appellant-company were directed to be given to  
respondent no. 3.

G 10. The appellant-company filed an appeal to the Division  
Bench of the High Court contending that its assets were worth  
much more than the price at which it was sold and that its  
objections were not considered at the time of confirmation of  
sale. The Division Bench dismissed the appeal vide judgment  
H dated 16.07.2012 on the ground that the counsel for the

appellant-company had not made any objections at the time  
the sale was confirmed. A

11. The appellant-company filed a review application  
alleging that the counsel who claimed to be representing the  
appellant-company before the Company Judge on 28<sup>th</sup> May,  
2004 was not engaged by them and hence there was an error  
on the face of judgment dated 16.07.2012 which had made  
recorded the same. The High Court, however, held that such a  
statement in the judgment dated 16.07.2012 was a mere  
repetition of what was stated in the order dated 28.05.2004 of  
the Company Judge and hence an error, if any, was in the order  
dated 28.05.2004 which was appealed against by the  
appellant-company. The High Court held that the appeal filed  
by the appellant-company was dismissed mainly because the  
sale was confirmed in favour of respondent no. 3, possession  
handed over and encumbrances created, before any steps  
were taken by the appellant-company. The High Court  
accordingly dismissed the review application vide judgment  
dated 25.09.2012. B  
C  
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12. Hence, the present appeals. E

13. We have heard learned counsel for the parties. We  
have also perused the entire facts of the case and the order  
passed by the High Court. F

14. Prima facie, it appears that the objections raised by  
the appellant were not properly considered inasmuch as the  
objections were not heard on merit and the auction sale was  
confirmed. Shri Sharad Sharma, Advocate, had made the  
aforesaid statement before the Company Court on 28.5.2004,  
however, he had never been engaged either by Mr. Rajiv Gosain  
or by any person authorized by him. Therefore, making  
statement by the Advocate that he has no instruction or waiving  
the disposal of objection on merit, was without any basis which  
ought to have been considered by the High Court. G  
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A            15. Be that as it may, the conduct of the Official Liquidator  
in selling the property at a price of Rs. 45.45 lakhs without  
proper publicity through advertisement or fixing any reserve  
price for the assets cannot be sustained in law, particularly,  
B when the predecessor Official Liquidator reported that the  
property put in auction is of much higher valuation.

              16. Having considered the illegality and irregularity  
committed in the auction sale of the property, the entire process  
is vitiated. Further we are of the view that the Company Judge  
C also failed to exercise its judicial discretion to see that the  
properties are sold at a reasonable price.

              17. Apart from that, when the valuation report was  
submitted before the Company Judge, it ought to have been  
D disclosed the secured creditors and other interested persons  
in order to ascertain the market value of the property before  
property was auction sold. Since the same has not been done,  
the auction sale and the order confirming the sale are liable to  
be set aside.

E            18. We, therefore, allow these appeals and set aside  
the judgment and order passed by the Company Judge and  
also the order passed by the High Court in appeal.  
Consequently the Official Liquidator is directed to forthwith  
F recover the possession of the properties and proceed with a  
fresh auction after obtaining the fresh valuation report and fixing  
the reserve bid. Needless to say that all further actions shall  
be taken in accordance with the procedure established by law.