

(2007) 03 BOM CK 0132

In the Bombay High Court

Case No : Suit No. 162 of 2002 Alongwith Chamber Summons No. 183 of 2007 in Suit No. 162 of 2002 (Court Receiver's Report No. 7 of 2006) , Notice of Motion No. 671 of 2006 in Suit No. 162 of 2002, Writ Petition Ld. No. 328 of 2006 and Chamber Summons No. 53 of 200

Canara Bank (Debenture Trustees)

APPELLANT

Vs

Apple Finance Ltd., Court Receiver and Parasvanath Developers Ltd.
 Canara Bank Vs Apple Finance Limited, Kotak Mahindra Prime Ltd. and Kotak Mahindra Bank Ltd.
 Morris Security Pvt. Ltd. Vs Dena Bank and Others
 Apple Credit Corporation Limited Vs Apple Finance Limited and Canara Bank and Another

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84
Companies Act, 1956 — Section 391
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 18

Citation : AIR 2008 Bom 16 : (2007) 3 ALLMR 491 : (2007) 77 SCL 92

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : M.P.S. Rao, V.N. Bodhe and Madhu Hiraben, instructed by Chitnis Vaithy and Co., Umesh Shetty, Umesh Shetty and instructed by Co. in Suit No. 162 of 2002, K.A. Setalvad and A.P. Kapadia, Daphtary Feraira and instructed by Diwan, in Suit No. 1075 of 2006, J.S. Saluja, M.V. Kini and instructed by Co. for Canara Bank in Notice of Motion No. 459 of 2006 and Syndicate Bank in Notice of Motion No. 1212 of 2006 in Suit No. 1075 of 2006, Harindar Toor, instructed by Crawford Bayley and Co. in Chamber Summons No. 53 of 2006 in Suit No. 3975 of 2002, Richa Singh, in CHS. 570 of 2006 and Smita Telang and B.J. Sawant, in Notice of Motion No. 407 of 2007, for the Appellant; Virag Tulzapurkar and Arif Doctor, instructed by Kanga and Company for Defendants No. 1, E.P. Bharucha, Riyaz Chagla and Vishakha Vashwani, V.V. Juris, instructed by N.G. Thakkar and M.S. Motiwala, PDS Legal for Dena Bank, instructed by Virendra Trulzapurkar, Vikram Trivedi, Birendra Saraf, Sunil Tilokchand and Durgesh Khanapurkar, M.K. Ambalal and instructed by Co. for Defendant Nos. 2 and 3, for the Respondent

Judgement

Roshan Dalvi, J.—The above suit No. 162 of 2002 came to be filed by Canara Bank as a Debenture Trustee for amounts due and payable by the Defendants Apple Finance Limited (AFL) in respect of 750014% Secured Redeemable Rated Nonconvertible Debentures (AAAI) series for 75 crores together with interest, costs, charges thereon. AFL mortgaged their immovable property at Plot No. C27, G block, Bandra Kurla Complex, Bandra(E), Mumbai 400 051 (the suit property) to secure the said debentures. AFL issued the said debentures of 75 crores to 6 debenture holders being 5 Nationalised Banks and to a Limited Company. The Nationalised Banks were Dena Bank, Bank of Baroda, United Bank of India, UCO Bank and Syndicate Bank. A first charge on the right, title and interest inter alia of the suit property together with the plot on which it stood and the furniture, fittings and fixtures thereon came to be created in favour of Canara Bank as the Debentures Trustee who filed the above Suit.

2. The AFL failed to redeem the debentures and pay off the various loans granted by the Debenture Holders. Consequently the Plaintiffs sued to obtain interim reliefs including appointment of the Court Receiver.

3. The Receiver was directed to sell the suit property. Several offers resulted in failure. On 23rd December, 2005 the offer by Jet Airways of Rs. 206 crores came to be received which until then was the highest offer. 25% of the amount of the offer as required to be deposited by the Offerer at the auction sale under the provisions of Order XXI Rule 84 of the CPC came to be deposited in the Court. Under the Court Receiver's report the said offer is required to be accepted or rejected by the Court, pending the confirmation of the offer, two other offerers of Rs. 225 Crores and Rs. 235 Crores have been received from 2 applicants being (one) M/s. Financial Technologies India Limited who have taken out Notice of Motion No. 407 of 2007 in the above suit and (one) Parasvnath Developers Limited who have taken out Chamber Summons No. 183 of 2007.

4. After the appointment of Court Receiver and pending the offers being confirmed by the Court, AFL entered into private negotiations with one Kotak Mahendra Prime Ltd, and Kotak Mahendra Bank Ltd. (Kotak) to explore the viability of revival and rehabilitation of AFL. An arrangement came to be entered into by AFL with Kotak for repayment of the debenture holders by way of One Time Settlement (OTS).

5. Consequently Kotak has applied by way of Chamber Summons No. 238 of 2006 and Notice of Motion No. 671 of 2006 in the above Suit No. 162 of 2002 to stay the sale of the suit property.

6. It is argued on behalf of Kotak that the Plaintiffs who are the Debenture Trustees, acting on behalf of the Debenture Holders, as well as the Defendants AFL agreed to allow Kotak (who have been brought on record as Defendants 2 and 3) to take over the assets and properties of AFL, to pay off the Debenture holders and hence the sale of the property need not be made. In fact it is contended by them that under the circumstances that the parties to the Suit

have agreed to revive AFL by paying off the creditors who are the Debenture Holders, the Court Receiver, got appointed by the Plaintiffs, also need not continue and could be discharged. Indeed if the parties enter into any settlement by which they can resolve their dispute themselves by paying off the other creditors there would be no waste of the suit property and the purpose for which the Court Receiver is appointed would itself stand served.

7. In normal circumstances, no sale of the suit property can, therefore, take place and the offer at the auction need not be accepted by the Court. The Court need only return the 25% amount deposited by the offerer at the auction to him along with accrued interest thereon, if the amount is invested at the instance of the offerer.

8. It may at once be mentioned that until the Court accepts the offer by confirmation of the sale, there is no binding contract and the auction purchaser/offerer would have no locus or any crystallised right in the property to be purchased. *Navalkhe and Sons v. Ramanuja* 1970 (40) CC 936. It may be mentioned that the reserve price fixed for the sale of the suit property shown by the Court Receiver to this Court was Rs. 250 Crores. The offer of Jet Airways at the auction sale was Rs. 206 Crores. The further offers received by the aforesaid two offerers of Rs. 225 Crores and Rs. 235 Crores is also below the reserve price. Judicial notice is required to be taken of the considerable escalation of prices as held by the Division Bench of this Court in the case of *Niwas Builders v. Chanchalaben Gandhi* 2003 (3) MLJ 312.

9. The Suit property has been charged in favour of a Nationalised Bank acting as a Debenture Trustee for and on behalf of 5 other Nationalised Banks and a Limited Company. It would be totally against public interest to accept any of the offers which are below, not only the market price, but the reserve price fixed more than a year ago before an auction sale was held. The mandate contained in the judgment of the Apex Court in the case of *Rajasthan Housing Board and Another Vs. G.S. Investments and Another*, is required to be borne in mind. The interference by the High Court for passing directions in favour of the highest bidder at an auction sale was frowned upon with a mandate that the Court should exercise its discretionary power even under Article 226 of the Constitution of India with great care and caution and only in furtherance of public interest. A direction issued by the High Court which amounted to confirmation of the auction in favour of the highest bidder when the Chairman of the Housing Board had the full authority regarding final acceptance of the bid was held not justified. It was also held that the price fetched for the plots in question were much below the market rate. The direction of the State Government staying the procedure in connection with auction and subsequently disproving the auction in the interest of the Housing Board was upheld.

10. The Court would do well to keep in mind the various propositions of law relating to auction sales :

(a). The Court must see that the property is sold at a reasonable price. The valuation report is a must and be disclosed by the Court. *Union Bank of India v. Official Liquidator* 2000 (101) SCC 317

(b). The duty of the Court is to keep the auction open to get the most remunerative price so that intending bidders are free to participate. *LICA Ltd. v. Official Liquidator* 1996 (85) SCC 788 ; *Manmohan Matre v. Official Liquidator* (2004) 4 C L J 587 (All) Allahabad.

(c) Interests of creditors should be the paramount consideration. *Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others*, .

(d) Court, as the custodian of the interests of the Company and its creditors can accept higher price even after confirmation of sale if possession is not handed over and sale deed not executed. *Divya Mgg. Co. (P) Ltd. v. Union of India* A 2000 SC 2346.

In view of the higher offers already received in this case, the confirmation of sale in favour of Jet Airways can be unhesitatingly refused.

11. The agreement reached between the parties to the suit for adopting the best possible mode of payment to the Debenture Holders and reviving the Defendant Company AFL, may be allowed subject to the protection of the interests of all the creditors of AFL in the same spirit as enjoined by the Supreme Court in the judgments supra.

12. That leaves various applications made by several Debenture Holders and other Creditors whose dues have not been paid off though an attempt in that regard is made.

13. The most material of such applications is by Dena Bank in Notice of Motion No. 1453 of 2006 in the aforesaid Suit No. 162 of 2002 in which they have applied essentially for the continuation of the sale of the property and the satisfaction of their claim under the AAIII Debentures held by them and for leave to intervene in the Suit. Paragraph 6 of the Complaint shows Dena Bank holding 500 + 2000 Debentures of the aforesaid series, since 30th December, 1997 and 25th June, 1998.

14. It is their case that after the appointment of the Court Receiver and before the auction sale being held by the Court Receiver, Kotak entered into an agreement with AFL under which they, as the Debenture Holders, were to be paid off along with the other Debenture Holders. Their total claim in the Suit is 10 Crores in series to AAIII and Rs. 25 Crores in series AAII along with interest of Rs. 5.35 Crores and penal interest of approximately .48 Crores. Under the OTS they are to be paid off Rs. 32.95 Crores which represents the principal amount for the aforesaid 2 series of Debentures together with the contractual rate of interest of 15% p.a. until the date of the Suit i.e. 15th August, 2001 and not until the date of the Certificate. It is their case that though interest upon the principal amount continued to accrue pending the suit and pending the

appointment of the Court Receiver which they were entitled to receive upon the sale of the Suit property of AFL, they were induced to enter into an agreement with Kotak upon a representation that the other Debentures holders were also being similarly paid off their dues until the date of the Suit. They entered into an agreement accepting such OTS on 31st December, 2005 and were paid off by cheque also dated 31st December, 2005. They have sought to avoid the said settlement, which they claim has been entered into, upon a misrepresentation of facts. They claim that the agreement is voidable at their option. They seek to avoid the agreement u/s 18 of the Indian Contract Act. It is their contention that they were informed that a new Financer (Kotak) would revive the business of AFL and AFL would offer OTS in full and final settlement with their approval along with the approval of the other Creditors and move the High Court and obtain an order for revival and reconstruction of AFL u/s 391 of the Companies Act. They contend that the misrepresentation practiced upon them was in as much as they were subsequently informed that similar OTS proposal was offered to the other Debenture Holders where as they learnt later from an affidavit filed by another Debenture Holder Bank of Baroda (BOB) in Writ Petition No. 328 of 2006 filed by one Morries Security Pvt. Ltd that BOB were paid off the principal amount as well as the full contractual rate of interest till the date of settlement. They therefore claim to avoid their agreement with AFL financed by Kotak and have applied for directions to continue the sale of the suit property to obtain a better price thereof and for the satisfaction of their entire claim as one of the Debenture Holders.

15. It must first be seen whether on a misrepresentation they are entitled to avoid the contract u/s 18 of the Indian Contract Act. The correspondence of AFL with them annexed to their affidavit in support of Notice of Motion No. 1453 of 2006 is required to be seen. In the letter dated 11th October, 2005 AFL has informed them that they have an independent Financer who was willing to fund the Company to revitalise its functions. They offered Dena Bank full and final settlement of the dues under the OTS. The brake up of the dues was the entire principal amount under the 2 series of Debentures and interest at the contractual rate up to 15th August, 2001 (the date of claim) aggregating to the liquidated sum of Rs. 32.95 Crores. The letter further states that once AFL receives the approval of Dena Bank along with the approval of the other Creditors they would apply for revival of the scheme to the High Court u/s 391 of the Companies Act, 1956 and shall make payment of the sum of Rs. 32.95 Crores after the scheme is approved by the High Court.

16. A further letter dated 9th November, 2005 of AFL to Dena Bank for the OTS shows that they had approached other Debenture Holders with similar OTS proposal as offered to Dena Bank, which was being considered by them and their response was awaited. The letter shows the principal amount along with interest at the contractual date till 15th August, 2001 (the date of the filing of the Suit). Hence, it can be seen that the other proposals would also essentially show the offer of the entire principal amount and the contractual rate of interest till the filing of the Suit by the Debenture Trustees on behalf of even those Debenture

Holders. The said letter awaits the approval of all the Creditors of the Company, before a scheme u/s 391 of the Companies Act can be proposed. Such approval of all the Creditors would, therefore, be for similar OTS proposal of the amount of interest up to the date of the Suit.

17. In a further letter dated 10th November, 2005 by AFS to Dena Bank regarding OTS a statement detailing the dues of all the other Banks and financial institutions including Dena Bank was also annexed. This shows the liability of AFL to all the creditors as on 10th November, 2005, only for the principal amount. Consequently it is seen that though a representation is made for payment of both the principal and the interest amount and it shows a similar proposal made to all the Debenture Holders - there is no reason why the proposals could be different or discriminatory - the statement of only the principal amount was shown to Dena Bank. The total amount payable by AFL amounting to a similar proposal could have been evident only from the statement showing the interest payable to the Debenture Holders. The statement of liability showing only the principal amount was in any case known to Dena Bank upon the filing of the Suit.

18. Further by their letter dated 5th December, 2005 of AFL to Dena Bank for OTS the photocopy of the letter of the United Bank of India approving the OTS was forwarded to Dena Bank. The said letter shows the aggregate amount of the full and final settlement accrued due to United Bank of India annexing the interest computation sheet calculating interest payable at the contractual rate of 14% p.a. till 15th August, 2001, the date of the filing of the Suit. It also mentions that United Bank of India would have the right to withdraw the acceptance at any time without mentioning any reason whatsoever. United Bank of India is the only other Bank which has settled its claim similar to Dena Bank. Pertinently the photocopy of the letter of Bank of Baroda was not forwarded to Dena Bank.

19. Upon the representation that all the Debenture Holders who are the beneficiaries in Suit No. 162 of 2002 were similarly settling as Dena Bank was called upon to settle, Dena Bank accepted the offer of OTS and concluded the contract by executing an agreement in that behalf on 31st December, 2005. It also agreed to adjourn the auction sale to be held since without auctioning the suit property of AFL it could be paid off as would the other beneficiaries. Though AFL was to propose the scheme u/s 391 of the Companies Act before the High Court in a Petition for its revival and rehabilitation and was to pay off the Debenture holders upon such scheme being sanctioned, AFL/Kotak made payment of the OTS amount of Rs. 35.35 Crores which represented the principal amount and interest at the contractual rate up to 15th August, 2001 on the date of the agreement itself.

20. Dena Bank learnt later through the proceedings in the Writ Petition No. 328 of 2006 that Bank of Baroda has been preferentially treated and that they have been discriminated against. The discrimination was allowed to prevail upon the representation of AFL that they had made similar proposals to the other

Debenture Holders and were to receive approval of all the creditors with an illustration of only United Bank of India. Dena Bank therefore, by their letter dated 28th March, 2006 to Kotak as well as AFL put on record the representation and called upon them to return the Debentures transferred to Kotak. That is their claim in the Notice of Motion also. Mr. Thakkar on behalf of Dena Bank stated that due to the misrepresentation they have lost 29.87 Crores on the secured Debentures and 5 Crores on the unsecured Debentures. Dena Bank, therefore, claims that the private agreement between AFL and Kotak be not allowed by the Court and that the procedure of sale of the Suit property be continued or that otherwise they be paid up the remainder of interest which they would not have forfeited but for the misrepresentation.

21. It is contended on behalf of Kotak and AFL that Dena Bank took a business decision considering the position of the Debenture Holders whose claims were pending settlement for many years and hence, there is no question of misrepresentation upon them. Mr. Tulzapurkar referred to the statement in para 18 of the affidavit in support of the Chamber Summons which shows a calculated commercial decision which Dena Bank took considering the earlier unsuccessful bids, the urgent need for improvement of their financial parameters, the maintenance of their capital adequacy rate at the level prescribed by the RBI and the fact of settlement of an otherwise non-performing assets. That argument would hold good had it been a case of a single creditor. Since the letters of AFL showed OTS with all the Debenture holder Banks and they had not informed Dena Banks of its proposal made to the Bank of Baroda, the case of Dena Bank, that they considered the OTS to be on par with the other similar Banks upon such representation, becomes clear and acceptable.

22. The rights of the beneficiary debenture holders, who are secured Creditors being held in the suit would certainly have to be protected if AFL and Kotak desire to come together to revive AFL, with or without the Court Receiver.

23. The United Bank of India has applied under Chamber Summons No. 510 of 2006 for a direction to AFL to deposit balance arrears in respect of their claim under the AAIII Debenture series, being the further interest at the contractual rate remaining unpaid to them. The case of United Bank of India need not be separately considered. Suffice to say that neither the Court, nor AFL can discriminate between equally placed creditors. The settlement, if at all, must be with each of them at par. A complete settlement with Bank of Baroda including payment of interest till the date of the settlement has been already effected. The other Debenture Holders including UBI must similarly be paid their contractual rate of interest until the date of settlement, if AFL desires to wash its hands off the liabilities of creditors and the Court Receiver got appointed by the Debenture Trustees on behalf of the beneficiary Debenture Holders, and the consequent auction sale called for by the Court Receiver under the directions of the Court.

24. Gujarat Gems Private Limited who are minority share holders of Dena Bank, Syndicate Bank, UCO Bank and Bank of Baroda have applied by way of a

derivative action in the Notice of Motion No. 271 of 2006 in the above suit No. 162 of 2006 as well as filed a separate Suit being Suit No. 1075 of 2006, in which they have taken out Notice of Motion No. 1212 of 2006. In both of which they have applied essentially for restraining Kotak from dealing with the interest of the Debenture Holders as also for confirmation of the sale by auction of the suit property. They hold shares in the aforesaid beneficiary Banks. They claim that the interest in their holding is prejudicially effected by the private agreements entered into by AFL with Kotak to pay off the Bankers lesser than their claim though an offer of a larger amount came to be received at the auction. They claim that as all the Banks themselves have not filed applications to avoid the settlement contract, which prejudicially affects them, they have applied instead. They can apply only in case of directors' inaction actuated by malafide and upon obtaining sanction of the general meeting to protect the company's interest. However, since in this case, the applications are filed by Dena Bank and United Bank of India, their cases can be considered in those applications. The other debenture beneficiary Banks have to be paid at par, with or without the application of some of their shareholders.

25. The total claim required to be paid off under the Agreement between AFL and Kotak is less than even the offer of Jet Airways which is the lowest received by the Court and lower than the reserve price. Though the share holders' interest need not be separately considered except if they fall under the exception to the wellknown Foss v. Harbottle Rule, the interest of the beneficiary Banks themselves is required to be kept in mind for the entire cause of action in the Suit accrued upon their claim.

26. AFL has various other secured and unsecured creditors. ICICI Bank Ltd. Who is the Debenture Trustee in respect of series II of the Debentures representing the interests of various other Debenture Holder Banks in Suit No. 2584 of 2002, has also made an application under Notice of Motion No. 218 of 2006 in the above Suit No. 162 of 2002 for the relief of not distributing the sale proceeds to the parties in the Suit or depositing the surplus sale received in the Suit filed by them. It must be remembered that AFL has sought to clear their outstanding liabilities in respect of series II as well as III of the Debentures and hence, the claim of the Debenture trustees in the other Suit against AFL must also be protected if AFL is to be allowed to go ahead with its private agreement with Kotak for its own reconstruction/rehabilitation.

27. Canara Bank who has obtained a decree on 18th November, 2005 in O.A. No. 107 of 2002 before the DRT, Mumbai has applied for being paid off its claim in that proceeding by a Notice of Motion No. 459 of 2006 in the above Suit No. 162 of 2002. They seek rejection of the confirmation of sale put up by the Court Receiver for auction and directions for inviting fresh bids.

28. SICOM Ltd. Who is a secured Creditor of AFL to the extent of 25 crores has applied under Notice of Motion No. 2216 of 2005 in the aforesaid Suit No. 162 of 2002 for protection of its interest as such Creditor and for payment to it out of

the surplus sale proceeds from the auction sale conducted by the Receiver.

29. Yet another application is made by one APPLE CREDIT CORPORATION LTD. (ACCL) who has sued APPLE FINANCE LIMITED (AFL) in Suit No. 3975 of 2002 by way of Chamber Summons No. 53 of 2006 for setting apart and excluding apart of the suit property belonging to the AFL from the sale to be conducted by the Court Receiver or for the payment of its outstanding dues from AFL upon surplus sale proceeds being received. The part of the suit property to be excluded has been shown as Exhibit1 to the Chamber Summons No. 53 of 2006. The Suit filed by the said ACC Ltd is upon payment of Rs. 95.33 Crores to AFL initially upon an agreement to assign receivables and later upon an agreement to create security in their favour for the payment of the said sum. The security entitled ACC Ltd to acquire a portion of the Suit property being the premises of AFL to the extent of Rs. 72.53 Crores and by transfer of certain shares of one Trans America Apple Distributors Finance Ltd to the extent of the balance sum of Rs. 22.76 crores. Even the claim of ACCL being secured Creditors and having a security of a part of the Suit property is required to be satisfied if the arrangement between Kotak and AFL is to be allowed.

30. It is seen that AFL owe various secured and unsecured Creditors an egregiously vast amount raised by way of Debentures as also by otherwise mortgaging its property. There are also similar claims of unsecured creditors in Suit No. 162 of 2002 as well as Suit No. 3975 of 2002. Two nationalised Banks have acted as the Debenture Trustees for various other Debenture Holders beneficiary Banks. Whilst the Suit was pending and Court Receiver appointed for the property of AFL, AFL entered into, what could be truly termed as a secret Agreement with Kotak to revitalise itself. Such revamping would otherwise constitute creation of third party rights when a Receiver has been appointed in respect of the properties of the Defendant Company which AFL was not empowered to do.

31. AFL has not applied for leave of the Court after the appointment of the Court Receiver to enter into any such agreement. However, since AFL is not shown to have been specifically enjoined from entering into any arrangement for its reconstruction and rehabilitation, it may be allowed to enter into such arrangement provided it is found to be in the interest of the beneficiary debenture holders in the Suits as well as for public interest since it has a large number of secured and unsecured creditors yet unpaid and which can all be paid off upon a sale of the suit property at the current increased price.

32. The argument on behalf of Kotak in Chamber Summons No. 18 of 2006 and Chamber Summons No. 238 of 2006 in the above Suit No. 162 of 2002 is taken out for staying the auction sale is that at present the Plaintiff as well as the Defendants do not want any sale by the Court Receiver as also the continuity of the Court Receiver upon Kotak having taken over the interest of the Debenture Trustees Plaintiffs in the Suit, is an over simplification. Such argument would be understandable if it related to a single dispute between two parties, one of whom

washes its hands off the litigation. This however, is a case where the interest of a large number of Secured Creditors has to be protected by the Court. Each of the Creditors desire to be paid off as the bottom line of their claim. Interest of justice as well as commercial exigency, therefore, demand a balance to be drawn. AFL may be allowed to carry on its business with the assistance of Kotak but only after repayment in full of all the Debenture Holders and other creditors if it desires to salvage its property from the onslaught of the bidders at the public auction, which AFL has invited upon itself by its initial defaults constraining the Debenture Trustees to sue.

33. It is contended by AFL that the Suit property is in prime locality and pristine condition and its market value is about 600 Crores. This far exceeds the total claim of all the creditors and Debenture Holders, secured and unsecured Creditors. Kotak is the recipient of such bounty. AFL would be sheltered by Kotak upon the worth of its property. Pending the tenure of the Court Receiver no party who is an outsider can be allowed to take advantage of a property which the Receiver was meant to protect. Allowing AFL and Kotak to go on with their arrangement would be to put a premium on backdoor entry in a takeover bid by an independent third party without complete protection of the claims of the Plaintiffs on behalf of the beneficiaries who expended for the appointment of the Court Receiver in the first place.

34. The sale by the Court Receiver is an incident of his appointment. The reserve price for the sum fixed as far back as in 2005 was Rs. 250 Crores. After the initial offers which extended up to 160 Crores, none of them which materialised, upon escalation of market price the offer of Jet Airways was taken to be, at first, munificent. It exceeded the total claim of the beneficiary Debenture Holders in Suit No. 162 of 2002 in which the auction sale took place.

35. However, various applications of various parties whose interests were completely bypassed by AFL or Kotak and who have applied before this Court in the Court Receiver's report cannot atleast be bypassed by the Court.

36. The offer of Jet Airways though apparently large, pales before two other higher offers received by the Court itself before the Court could confirm the auction sale in favour of the Jet Airways. Upon seeing the reserve price and taking judicial notice of the fact that the prices have escalated tremendously in the year after the reserve price was fixed and the auction sale was held, the sale if at all of the Suit property can be allowed by the Court only upon fresh offers and upon a compliance of the provisions of Order 21 Rule 84 of the CPC.

37. The extent of the offer made by Kotak to take over AFL which is in substance to take over its only attractive property, which is the Suit property, has not been disclosed to Court. It is only an arrangement between AFL and Kotak. It can, therefore, be allowed to continue and perpetuate only if the entire claims of all the creditors of AFL are settled by Kotak. This breather can be given to Kotak only in view of the fact that the offers of the three offerers are yet far below the

reserve price and the reserve price of the property today would be far above Rs. 250 crores - AFL itself having stated to Court through its Counsel that the property today is worth Rs. 600/crores and sought to substantiate it by its photographs.

38. The only equitable order which can be passed in the above applications is as follows :

1. The offer of Jet Airways of Rs. 206 crores is not accepted.
2. Kotak is given 8 weeks time to pay off all the Debenture Holders in the aforesaid two Suits Nos.162 of 2002 and Suit No. 2584 of 2002 (ICICI Bank) at par with their arrangement with Bank of Baroda for payment of the interest at the contractual rate of 14% p.a until the date of settlement with them as also the separate claims of Canara Bank, SICOM Ltd., ACCL and the other similar small unsecured Creditors.
3. The Court Receiver shall not act in respect of the Suit property any further for a period of 8 weeks.
4. If these claims are not settled, the Debenture Holder beneficiary Banks shall be entitled to be brought on record as party Defendants in terms of the Applications made by them. The amendments in the Plaint to that effect shall be carried out.
5. In that event the Court Receiver shall obtain a fresh valuation of the Suit property and get a fresh reserve price fixed.
6. All the parties including Jet Airways, Financial Technology Limited, Parasvnath Developers Ltd, any other parties interested shall be entitled to bid after the reserve price is fixed by the Court and made known to the bidders.
7. All the above applications and Court Receiver's Report disposed off accordingly.
8. This order is stayed for 2 weeks.