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**(2006) 08 SC CK 0077**

**In the Supreme Court Of India**

**Case No :** Special Leave Petition (Civil) No. 4957 of 2006

Falcon Retreat Pvt. Ltd. and Another

APPELLANT

Vs

EDC Ltd. and Others

RESPONDENT

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**Date of Decision :** 24-08-2006

**Acts Referred:**

Constitution of India, 1950 — Article 136

State Financial Corporations Act, 1951 — Section 29

**Citation :** (2007) 3 ALT 15 : (2006) 4 AWC 4033 Supp : (2006) 133 CompCas 288 : (2006) 8 SCALE 458 : (2006) 13 SCC 223 : (2007) 80 SCL 151

**Hon'ble Judges :** B. P. Singh, J;Altamas Kabir, J

**Bench :** Division Bench

**Advocate :** T.R. Andhyarujina, Pallav Sishodia, Sushma Sharma, Meghalee Barthakur and Rajan Narain, for the Appellant; Sanjeev Desai Triveni Potiekar, Prashant Kumar, Chander Shekhar Ashri, E.C. Agrawala, Mahesh Agarwal, Rishi Agrawal, Dhruv Mehta, Harshvardan Jha and Yashraj Deora for K.L. Mehata and Co., for the Respondent

**Final Decision :** Allowed

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## Judgement

1. In this SLP the Petitioner has impugned the judgment and order of the High Court of Bombay at Goa dated February 22, 2006 in Civil Writ Petition No.19 of 2006, whereby it dismissed the Writ Petition filed by the Petitioner praying that its proposal contained in letter dated January 18, 2006 be considered and that Respondent No. 1, herein, be restrained from selling the assets in question to Respondent No. 3.

2. We have heard counsel for the parties at length. We have carefully perused the material placed before us. We are satisfied that this is not a fit case for interference by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution of India.

It is not disputed that the Petitioner had committed defaults in payment of dues to Respondent No. 1. Action was taken u/s 29 of the State Financial Corporation

Act by the aforesaid respondent. The property in question was attached and possession was also taken by Respondent No. 1. The property known as Falcon Retreat is a hotel. Thereafter, Respondent No. 1 made efforts to put the property to sale by auction. Seven such attempts were made, but either on account of non-availability of purchaser or on account of postponement of the auction on the request of the Petitioner, the property could not be sold.

3. On November 23, 2005, Respondent No. 3, namely, L.K. Trust made an offer of Rs. 12.99 crores for the property in question. The offer of Respondent No. 3 was considered by the Board of Respondent No. 1 on December 5, 2005 and the Board resolved to accept the offer on certain conditions. However, the Petitioner was informed of the private offer by Respondent No. 3 and was called upon to get a better offer, if possible, within three days. The letter of Respondent No. 1 dated December 5, 2005 to this effect was perhaps received by the Petitioner late on December 13, 2005. In its reply the Petitioner sought twelve months time to arrange a better buyer.

On December 12, 2005 the offer of Respondent No. 3 was accepted by Respondent No. 1 and the same was communicated to Respondent No. 3 incorporating the relevant conditions for the sale. On December 29, 2005, Respondent No. 1 informed the Petitioner that it was decided to accept the offer of Respondent No. 3 to which the Petitioner objected by saying that the price was ridiculously low.

On January 23, 2006, the Petitioner filed a writ petition before the High Court praying for a Writ of Mandamus directing Respondent No. 1 to consider the proposal contained in the letter of the Petitioner dated January 18, 2006 and to restrain the Respondent No. 1 from selling the property to Respondent No. 3.

4. It appears from the letter of February 6, 2006 addressed to Managing Director of Respondent No. 1 that the offer referred to in the letter of the Petitioner dated January 18, 2006 related to M/s Condor Polymeric. By its letter of February 6, 2006, Condor Polymeric made a formal offer to the Managing Director of Respondent No. 1. This is an event subsequent to the filing of the Writ Petition. The High Court by its impugned judgment and order dismissed the writ petition holding that Respondent No. 1 had already entered into an agreement with Respondent No. 3 for the sale of the assets for a sum of Rs. 12.99 crores and, therefore, there was no question of the same being cancelled or set aside since it represented a concluded contract between the parties.

5. We may observe that M/s Condor Polymeric is not a party before us nor was it a party in the Writ Petition. In an affidavit filed before this Court affirmed on April 24, 2006, the deponent Arvind S. Ghatkar, General Manager of the Engineering Department of Respondent No. 1 has stated that the offer of M/s. Condor Polymeric has been considered by the Board of Respondent No. 1, and subject to the decision of this Court, Respondent No. 1 may be inclined to accept the higher offer of Rs. 14 crores, but the Respondent No. 1 would not like to go for re-

auction of the property. In its counter-affidavit filed before this Court on April, 12, 2006, Respondent No. 1 has referred to several such proposals made by the Petitioner in the past, solely with a view to frustrate the efforts of Respondent No. 1 to sell the property and realize its dues.

6. Having heard counsel for the parties and considered every aspect of the matter, we are of the view that at the instance of the Petitioner, this Court should not interfere in the exercise of its discretion under Article 136 of the Constitution of India. An offer has been made by Respondent No. 3 and accepted by Respondent No. 1. It was stated that though cheques have been issued by Respondent No. 3 they have not been honoured by the bank. Even if that be so, it is for Respondent No. 1 to consider what action it should take in such event. If ultimately Respondent No. 1 finds that Respondent No. 3 is not in a position to fulfill its commitment and pay the price offered within the time granted by Respondent No. 1, it may proceed to consider other options. This is entirely a matter within the discretion of Respondent No. 1. Of course, it is expected to act fairly and in accordance with law. As long as it acts within the parameters of the law, and its action is not found to be arbitrary or unreasonable, it is entitled to take a decision which is in the interest of Respondent No. 1 Corporation. We, therefore, dismiss the SLP and leave it to Respondent No. 1 to proceed in accordance with law. If Respondent No. 3 makes the payment as promised within such time as may be granted by Respondent No. 1 and fulfills the conditions of sale, that may be the end of the matter. But if it fails to do so, it is always open to the Respondent to take necessary steps to safeguard the interest of Respondent No. 1 Corporation which includes inter alia the consideration of other offers made by other parties.

The Special Leave Petition, is therefore, dismissed. Consequently the interim order dated March 27, 2006 stands vacated.