
(2011) 05 DEL CK 0230

In the Delhi High Court

Case No : E.A. No. 342 of 2011 in EX.P. 72 of 2009

Glencore Grain Rotterdam B.V.

APPELLANT

Vs

Shivnath Rai Harnarain (India) Company

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54(2), Order 21 Rule 64, Order 21 Rule 66(2), Order 21 Rule 67, Order 21 Rule 67(1)

Citation : (2011) 5 AD 422 : (2012) 1 BC 290 : (2011) 182 DLT 269 : (2011) 6 RCR(Civil) 967

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Rajiv Nayar, Vidhur Bhatia and Darpan Wadhwa, for the Appellant; Sandeep Sethi Narendera M. Sharma and Abhishek Sharma for Respondent No. 2 and Mahinder Rana, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—Issue notice. Notice is accepted on behalf of the decree holder by Mr. Vidhur Bhatia. Counsel for the decree holder has opposed this application without filing the reply.

2. I have heard learned senior counsel for the parties and proceed to dispose of this application.

3. The present application has been filed by the judgment debtor No. 2 to seek a direction to ITCOT Consultancy and Services Limited (hereinafter referred to as ITCOT) to furnish a copy of the valuation report prepared by it, and to grant leave to the applicant to file objections to the said valuation report. A further direction is sought to ITCOT to keep in abeyance the public auction proposed to be held in terms of the public notice issued by it for sale of shares of judgment debtors No. 2 & 3 held in judgment debtor No. 5 company.

4. By an order dated 19.04.2010 passed in this execution petition, this Court

had, inter alia, directed as follows:

Since the decree is sought to be executed by sale of shares of J Ds No. 2 and 3 in the Company JD No. 5, the sale of these shares be done through an authorized broker. SBI Capital Markets Limited, Word Trade Tower, 6th Floor, Barakhamba Lane, New Delhi-110 001 is appointed as authorized broker. It is directed to sell the shares of J Ds No. 2 and 3 held by them in JD No. 5 and the amount so released be kept by SBI in suspense account and the court be informed about the amount realized by sale of share for satisfaction of the decree out of the amount so raised from the sale of the shares. Since the shares of J Ds No. 2 and 3 have been attached in execution of this decree, and JD No. 5 is not a listed company these shares shall be sold by SBI Capital Markets Ltd in the manner shares of an unlisted company are sold, after getting the value of the shares assessed through a Chartered Accountant. The SBI Capital Markets Ltd shall appoint a Chartered Accountant for assessment of value/worth of shares. The charges of the Chartered Accountant shall be borne by the Decree Holder. J Ds No. 2, 3 and 5 are directed to provide the account books and other necessary information to the Chartered Accountant so appointed so as to assess value/worth of the shares and once the value of the shares is assessed by the Chartered Accountant and the information is given, the shares shall be put to auction by above broker. The Decree Holder or any other person shall be at liberty to purchase these shares. (emphasis supplied)

5. This order was challenged by the judgment debtors in appeal, being EFA(OS) No. 15/2010. The said appeal was dismissed by the Division Bench vide order dated 11.06.2010. Consequently, the order dated 19.04.2010 has attained finality. Subsequently, SBI Capital Markets Limited was substituted by ITCOT vide order dated 22.02.2011. The said order, inter alia, states as follows:

I, therefore, appoint ITCOT Consultancy and Services Limited 50-A, Greames Road, Murugesan Naicker Complex, Chennai-600006 Ph.# 044-28290324, 42936800 Fax # 044-28293512 as the firm to undertake valuation of the shares held by JD No. 2 & 3 in JD No. 5 and after valuing the shares to sell the shares. The work shall be split in two parts. The first part shall be the valuation of the shares and second part shall be selling of the shares. J Ds shall provide all necessary information to the above said broker for valuation of the shares and shall cause no hindrance. The aforesaid company shall complete the valuation work as early as possible, in all probabilities within 60 days. The initial charges for the first part of the work shall be borne by the decree holder to be recovered from J Ds as a part of the decretal amount. The final fee for the work shall also be recovered by the DH as a part of the decree. The sale of shares shall be undertaken within 30 days after valuation of the shares. The agent shall give its report after completion of entire work to the Court. The money so realized shall be kept by agent in a nationalized bank and the same shall be utilized in satisfaction of decree and in payment of fees of the agent. Any hindrance caused by the J Ds in the work of the agent shall be viewed seriously." (emphasis

supplied)

6. ITCOT had completed the process of valuation and has tendered the valuation report on confidential basis in this Court on 04.05.2011. This fact has been communicated to the decree holder, as well as to the judgment debtor No. 5-Shri Lal Mahal Limited. I may note that judgment debtor No. 2, the applicant, is the Managing Director of judgment debtor No. 5 company. The ignorance of the said communication feigned by judgment debtor No. 2 is, therefore, unbelievable and rejected.

7. ITCOT has also proceeded to issue a public notice to conduct a public auction for sale of 96,67,400 shares amounting to 28.445% of the paid up capital of judgment debtor No. 5 company as on 31.03.2011. The said notice notes the fact that judgment debtor No. 5 is an unlisted public limited company. It also notes the fact that the company reported a turnover of Rs. 1295 Crores for the year ended March 2010, and has informed that for year ending March 2011, it has achieved a much higher turnover. In relation to the decretal amount this notice indicates "as per HC order in EP 279/2009". The number of shares offered for sale is 96,67,400 shares of the face value of Rs. 10/- each. The notice also gives the breakup of shares held by judgment debtors No. 2 & 3, which are to be sold as one lot amounting to 28.445% of the paid up capital as on 31.03.2011. The reserve price has been fixed at Rs. 55.10 Crores. This notice has been issued on 16.05.2011. The last date for sale of the bid document is 16.06.2011. The submission of bids can take place up to 17.06.2011 at the office of ITCOT in Chennai. The sale in front of bidders is scheduled to take place on 18.06.2011 at ITCOT, Chennai.

8. The submission of the learned senior counsel for the judgment debtor No. 2/ applicant firstly is that the judgment debtors have not been provided with a copy of the valuation report prepared by ITCOT. The judgment debtors do not know on what basis the said valuation has been done.

9. I may note that the court had not directed ITCOT to supply a copy of its valuation report to either the decree holder, or the judgment debtors. The bid document, which is publicly available on the website of ITCOT, and also specifically given to the judgment debtor No. 5 vide ITCOT communication dated 12.05.2011 gives the "Executive Summary of Valuation Report". The said report takes note of the following facts:

In spite of being a longtime company, it is closely held * It has a star status in the industry it operates with its pricing of commodities being referred as "Gold Standards" for reference; yet margins are not high.

It has shown robust growth but has no history of issuing dividends so far.

The Company has highly valuable status & labels (brands) of established nature but the shares have remained "unquoted" to indicate a value.

The company allotted 1,00,00,000 (100 lakhs) shares to three entities during

2009 at Rs. 10/- per share at par value. Managing Director of the company Mr. Prem Chand Garg (JD 2) and Mrs. Anita Garg (JD 3) filed an affidavit in the Delhi High Court that the estimated market value of their shares were Rs. 100/- per share and that on March 31, 2011, SLML has allotted additional shares of 9,91,160 to one U.K. entity at Rs. 225/- per share. The Company had not provided reasons for difference in valuation of over 2000%.

Subsequent to enterprise valuation of SLML, value of shares of JD2 and JD3 constituting 28.445% of shares amounting to INFLUENTIAL MINORITY SHARE HOLDING is to be carried out.

In such a scenario, ITCOT has made reference to

Government approved methodologies

Generally accepted methodologies in Indian Market

Internationally accepted practices to envisage all scenarios.

10. The method of valuation has been indicated by ITCOT by enumerating the guidelines which have been taken into consideration as well as the methodology adopted by it for arriving at its valuation of the shares of judgment debtor No. 5. I may set out herein below these factors as well:

4. Guidelines:

Disinvestment Ministry

CCI Guidelines

Dept. of Economic Affairs, Ministry of Finance Reference books (for intricacies in using tools and techniques)

1. Damodaran on Valuation, A swath Damodaran, Wiley Finance (India) 2nd Edition, 2006

2. Valuation for Mergers, Buyouts and Restructuring - Enrique R. Arzac, WILEY - FINANCE (INDIA) - R 2010

5. Methodology:

All applicable methodologies were adopted.

1. Discounted Cash Flow Methodology

2. Net Asset Value Method

3. Relative Valuation Technique or Valuation Multiples

o Price-Earning Ratio (P/E)

o Price-Book Ratio (P/B)

o Price-EBITDA per share o Price-EBIT per share

4. Comparative Transaction Valuation

As all values so arrived were found in a very close range, an average of these values have been taken. Since valuation of shares of JD2 and JD3 together accounting to 28.445% alone were required appropriate correction factors of lack of management control in view of influential minority shareholding represented by this 28.4455 stake and for lack of liquidity in view of these being unquoted shares were applied.

Value of shares held by JD2 and JD3 were arrived and the same was also put under validation of market price of similar sized peer companies and validated.

11. From the aforesaid, it is evident that though the detailed valuation report has not been supplied by ITCOT to the judgment debtors or the decree holder, the factors considered by ITCOT, and the methodology adopted by it for arriving at its valuation has been sufficiently disclosed. The reserve price has been fixed by ITCOT on the basis of its valuation. Therefore, I find no merit in the grievance raised by the judgment debtor applicant with regard to non-supply of the valuation report prepared by ITCOT.

12. The submission of Mr. Sethi is that the valuation is extremely low inasmuch, as, the company had allotted shares on 31.03.2011 @ Rs. 225/- per share, i.e., at a premium of Rs. 215/- per share. This aspect has been noticed and commented upon by ITCOT even in its summary above extracted. Even before me, the judgment debtor/applicant has not advanced any basis for its claim that the valuation of shares is about Rs. 225/- per share. Moreover, assuming for the sake of argument that this submission has force, the judgment debtors, who are also entitled to bid in the auction process, can also submit their bid to acquire the said shares which have been put on sale at the said valuation of Rs. 225/- per share.

13. The next submission of Mr. Sethi is that the proposed sale is in the teeth of Order XXI Rule 64 CPC. He submits that the decree holder has not yet quantified the exact amount recoverable under the decree in question. The said amount has also not been indicated in the public notice issued by ITCOT. Under Order XXI Rule 66 (2)(d), the sale proclamation should specify fairly and as correctly as possible, the amount for the recovery of which the sale is ordered. He submits that merely disclosing that the amount to be recovered is as per the decree sought to be executed in the present execution petition is not sufficient. He submits that the reason for knowing the exact amount to be recovered is that under Rule 64 of Order XXI CPC, the court executing the decree cannot order attachment and sale of a property, beyond what is necessary to satisfy the decree. He submits that even as per the valuation of the ITCOT, the lot of shares to be sold is valued at Rs. 55 Crores at the least, whereas the amount recoverable under the decree is to the tune of Rs. 40 Crores. Therefore, the sale of the entire block of shares is not justified and would be illegal, if permitted. In support of his submission Mr. Sethi has placed reliance on *Ambati Narasayya Vs.*

M. Subba Rao and another, ; Lal Chand Vs. VIIIth Addl. District Judge and others, ; and Smt. Arati Daw Vs. Pradip Roy Chowdhury and Others,

14. On the other hand, the submission of Mr. Nayar, learned senior counsel appearing on behalf of the decree holder, is that the order directing the sale of entire shareholding of judgment debtors No. 2 & 3 in judgment debtor No. 5, passed on 19.04.2010 has attained finality with the dismissal of the first appeal by the Division Bench. He submits that a perusal of the said order dated 19.04.2010 as well as the order passed by the court on 22.02.2011 shows that the entire shareholding of the judgment debtors No. 2 & 3 was directed to be sold as a block; the entire proceeds realized after sale of shares was to be kept in a "suspense account" and; out of that, the satisfaction of the decree was to be done. He submits that the reason for sale of the entire shareholding of judgment debtors No. 2 & 3 in the judgment debtor No. 5 company as a block was considered appropriate and necessary, as judgment debtor No. 5 is an unlisted company and the shareholding of judgment debtors No. 2 & 3 put together constitutes a block of about 28% shareholding of the issued and paid-up equity of judgment debtor No. 5 as of now. He submits that the sale of a lesser shareholding in the said unlisted company would be meaningless, as it is well-known that any sale of shares below 26% shareholding/voting rights in such a company would not give the purchaser any meaningful rights of influence on the management of the company, because special resolutions can be passed only by a majority of 75% or more.

15. He further submits that mere failure to mention the amount, for the recovery of which the sale is being undertaken, in the public notice, is not fatal. In this regard, he places reliance on a Division Bench judgment of this Court in State Bank of India & Etc. v. Hon'ble Debts Recovery Appellate Tribunal and Ors. AIR 2010 Del 83 (DB). He submits that the judgment debtor No. 2 himself being a judgment debtor, would be aware of the recoverable amount under the decree. He further submits that the judgment debtor/applicant, in any event, does not have the locus standi to raise any such objections. Mr. Nayar further submits that the amount to be recovered under the decree in question as computed by the decree holder is to the tune of Rs. 86 Crores and not 40 Crores, as alleged by the judgment debtor/applicant. He has tendered a chart/tabulation which shows the amounts recoverable as per the award under execution and the date on which the award was held to be enforceable has been taken as the date for applying the conversion rate of US Dollars and Pound Sterling.

16. Mr. Nayar also places reliance on Order XXI Rule 78 CPC which states that "no irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery".

17. Having heard learned Counsel for the parties, I am of the view that the

present application is without any merit.

18. What is to be appreciated is the peculiar situation that, to realize the decretal amount, the Court has directed attachment of sale of the shareholding of judgment debtor Nos. 2 and 3 in the judgment debtor No. 5 company, which is not a listed company. The entire shareholding of judgment debtor No. 5 is privately held. Therefore, as the shares of judgment debtor No. 5 are not traded in the stock market, only such persons/entities would be interested in purchasing the shares proposed to be disposed of, who by purchasing the said shares, get some meaningful/influential rights in the management of the judgment debtor No. 5 company.

19. Pertinently, the shareholding of judgment debtor Nos. 2 and 3, put together, constitutes about 28% of the paid up share capital of judgment debtor No. 5. This means that any person/entity who buys the said chunk of shares (which is a little over 26%) of the paid up share capital of judgment debtor No. 5, would become a minority shareholder with right to assert itself in the management of the company, as a company would need the support of such a purchaser to pass any special resolution.

20. The significance of holding 26% of the paid up share capital in a company can be gauged from the fact that following resolutions can be passed only by a special resolution, i.e. by a majority of 75% or more shareholding:

1. To alter the provisions of the memorandum, to change the objects of the company, and to change the place of the registered office from one state to another [Section 17].
2. To change the name of the company (also requires approval of the Central Government) [Section 21].
3. To omit the word "Limited" or "Private Limited" from the name of the company [Section 21].
4. Change of name of charitable or other non-profit company by omitting the word or words "Limited" or "Private Limited". [Section 25(3)].
5. To alter or add to the articles [Section 31].
6. To purchase the Company's own shares or specified securities [Section 77A(2)].
7. To issue sweat equity shares [Section 79A].
8. To issue further shares without pre-emptive rights [Section 81(1) to non members [Section 81(1-A)] or to convert loans or debentures into shares [Section 81(3)].
9. To determine that any portion of the share capital not already called up shall not be called up except in the event of, and for the purpose of, winding up the company [Section 99].

10. To reduce the share capital (this requires authorization by the articles and confirmation by the Court) [Section 100].
11. Approval of variation of rights of special classes of shares [Section 106].
12. To remove the registered office of the company outside the local limits of the State, Town, or Village in which it is situated [Section 146].
13. To commence any new line of business [Section 149(2A)].
14. To keep registers and returns at any other place than within city, town or village in which the registered office is situated [Section 163].
15. To authorize the payment of interest on the paid-up amount of share capital raised for the purpose of defraying the expenses of construction of any work or building or the provisions of any plant that cannot be made profitable for a lengthy period [Section 208(2)].
16. To appoint auditors in the case of a company in which the Central and/or any State Government, and/or public financial institution or institutions together hold twenty-five per cent or more of its subscribed capital [Section 224A].
17. To request the Government to investigate the affairs of the company and to appoint inspectors for the purpose [Section 237].
18. To appoint sole selling or buying or purchasing agent in the case of companies having paid-up share capital of rupees fifty lakhs or more [Section 294-AA].
19. To fix remuneration of directors, where the articles require such resolution [Section 309(1)].
20. To sanction remuneration to directors other than managing or whole-time directors on percentage of profit basis in certain instances [Section 309(4)] and renewal under Sub-section (7)].
21. To consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the company [Section 314].
22. To make the liability of any director or manager unlimited where so authorised by the articles [Section 323].
23. To make inter-corporate loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 60 per cent of the company's paid-up share capital and free reserves or 100 per cent of its free reserves, whichever is more (S. 372A).
24. To apply to a Court to wind-up the company [Section 433(a)].
25. To wind-up the company voluntarily [Section 484(1)(b)].

26. To bind the company by arrangement made u/s 517.

27. For various other matters pertaining to the winding up of the company. [See Sections 433(a), 494(1)(b), 507, 512(1), 546(1)(b), 550(1)(b)].

28. To alter the constitution of a company registered under Part IX [Section 579(1)].

21. Even from the Executive Summary of Valuation Report prepared by ITCOT, it appears that the judgment debtor No. 5 company, though having robust growth, has no history of issuing dividends so far. Therefore, those investors, who are looking to earn dividends, would not get attracted to the proposed sale. It would only be persons/entities, who would be interested in becoming the "influential minority shareholders" (as noticed by ITCOT in its Executive Summary of Valuation Report), who would be interested in buying into the shareholding of the company which is on offer.

22. The submission of Mr. Sethi that only so much of the judgment debtors' asset should be sold, as are necessary to raise sufficient funds to meet the liability under the decree, in normal situations and circumstances, cannot be questioned. But in a case like the present, the entire shareholding of judgment debtor Nos. 2 and 3, constituting about 28% of the paid up share capital of judgment debtor No. 5, has to be treated as a single lot. An endeavour to sell the shares in smaller lots, of say, 100 shares or even 1% of the paid up share capital of judgment debtor No. 5 at a time, would not provide any comfort to any prospective buyer, of his acquiring an influential minority shareholding/stake in the judgment debtor No. 5 company. In fact, such a process would fail to secure the best price of the shareholding of judgment debtor Nos. 2 and 3 in the judgment debtor No. 5 company.

23. To me, it appears that the Court, while passing the orders dated 19.04.2010 and 22.02.2011, was conscious of the aforesaid position and that is why it directed the sale of the shareholding of judgment debtor Nos. 2 and 3 in judgment debtor No. 5. Pertinently, the Court had directed that the sale proceeds be kept in a no lien account and from the amount received, the necessary funds were to be utilized to satisfy the decree in question and in payment of fees of the agent. Such a direction is obviously premised on the understanding that the entire shareholding of judgment debtor Nos. 2 and 3 would be sold as a lot, even if the value thereof is more than the decretal amount and the costs incurred in conducting the sale.

24. In *Ambati Narasayya* (supra), the Supreme Court held that the executing court has to decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may be necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. Even if the property is one, if a separate portion could be sold without violating any provision of law, only such portion of

the property should be sold as may be necessary to satisfy the decree. This decision has been followed in Lal Chand (supra).

25. In my view, the aforesaid decisions relied upon by the applicant/judgment debtor No. 2 are of no avail in the facts of this case. I have already discussed herein above the rationale behind selling the entire shareholding of judgment debtor Nos. 2 and 3, which constitutes about 28% of the paid up share capital of judgment debtor No. 5 company, as a single lot. The shares held by judgment debtor Nos. 2 and 3 cannot be sold in smaller tranches/lots, because judgment debtor No. 5 is an unlisted and privately held company. The sale of very small lots of shares is bound to drastically reduce the realizable value of the shares. The said shares, to realize their full value and potential, should go into the hands of the same person/entity or group of persons acting together. If the said shares get disbursed into hands of various buyers/purchasers, who are strangers and do not have commonality of interest and objective, it would serve no purpose for any of them. This factor itself will dissuade any prudent, or any person of reasonable financial intelligence and understanding from involving himself in the proposed sale.

26. In Smt. Arati Daw (supra), the learned Single Judge of the Calcutta High Court has taken the view that the executing court cannot blindly accept the valuation supplied only by the decree holder in respect of the immovable property, and acceptance of such valuation by the Court would tantamount to gross carelessness on its part. In that case, no publication of sale was made by the decree holder as mandated by Order 21 Rule 67. It was in these circumstances, that the Court set aside the auction sale. In para 51, the Calcutta High Court took note of the decision of the Supreme Court in Gajadhar Prasad and Others Vs. Babu Bhakta Ratan and Others, wherein it has been held that it is not necessary for the Court to state its own estimate of the value of the property. However, all material facts have to be mentioned by the Court when stating its estimate of the value of the property to be sold and that the Court must not accept the ipse dixit of one side.

27. This decision of the Calcutta High Court has no application in the facts of this case. The Court is not acting on or accepting the valuation of the decree holder. The Court had appointed an independent expert and experienced professional body to carry out the process of valuation. The valuation report has been received. Even from the summary, it is evident tht the same has been prepared on the basis of relevant materials and by application of well recognized principles and methods of valuation. The applicant has not been able to point out, even by reference to the said summary, any patent infirmity in the said process of valuation undertaken by ITCOT. Secondly, unlike in the Calcutta case, in the present case, ITCOT has not only issued the publication of the sale notice, it has placed sufficient relevant materials in the public domain to enable the interested parties to make an informed decision before they participate in the auction process.

28. The submission that the publication/advertisement issued by ITCOT does not indicate, in rupee terms, the decretal amount, for the realization of which, the sale of shares is proposed to be undertaken, and therefore, the proposed sale is illegal, has to be rejected for two reasons. Firstly, as I have already noticed above, the shares of judgment debtor Nos. 2 and 3 have to be sold as a single lot. The purpose and relevance of indicating the decretal amount in terms of rupees in the public notice is to put the prospective buyers to notice that, a part only (and not the whole) of the attached property, may be sold, as the purpose of the sale is to realize only the decretal amount and the costs involved in the process of sale. However, in a case like the present, the entire shareholding has to be sold as a single lot, irrespective of the amount payable under the decree. Secondly, according to the decree holder, the amount payable under the decree is to the tune of nearly 87 crores whereas the value of the shareholding of JD Nos. 2 and 3 (as per the valuation of ITCOT) is about Rs. 55.10 crores. The decree holder has tendered in Court the following computation made by it of the amount payable under the decree, as on 25.05.2011:

Head of Claims Principal Amount Interest @ 6.5 per cent per annum compounded annually until 25 May 2011 (on 365 day year) Default damages US\$5,538,285. 14 US\$9,322,861. 33 (from 25 September 1995) Demurrage US\$538,509. 70 US\$835,029. 27 (from 15 July 1996) Detention Damages-M.V. "Sidor Kovpak" US\$206, 255US\$337, 262.83 (from 8 January 1996) Detention Damages-M.V. "Negotiator" US\$240,034. 72 US\$387,931. 52 (From 19 February 1996) Dead freight US\$2,626. 25 US\$4,526. 24 (from 1 July 1995) Total US\$6,525,710. 81US\$10,887,611. 19 Amount due in Rupees @ Exchange rate of USDI = Rs.49.85 on November 26,2008 as per RBI website)Rs. 32,53,06,683.90 Rs. 54,27,47,417.80 Costs of the award GBP 5,850 Amount due in Rupees @ Exchange rate of GBP 1 = Rs.76.60 on November 26,2008 as per RBI website) Rs.4,48,110 As on 25 May 2011 (Principal + Interest+ Costs) Amount due = Rs. 86,85,02,211.70 (Approximately Rs. 86.85 crores)

29. On the other hand, the judgment debtor/applicant, who claims that the amount payable under the decree is Rs. 40 crores, has not given the basis of its estimation. The judgment debtor has not, while making its submissions, questioned any entry in the aforesaid computation furnished by the decree holder. Therefore, it appears to me that the value of the shares put to sale may not even fetch the amount sufficient to satisfy the decree, even if all the shares of judgment debtors No. 2 and 3 are sold.

30. Even if one were to assume for the sake of arguments, that the amount payable under the decree is only Rs. 40 crores or thereabout, for the reasons aforesaid, only on the sale of the entire lot of shares held by judgment debtor Nos. 2 and 3 in the judgment debtor No. 5 company, the said amount is realizable. The sale of the shares in much smaller lots is bound to result in no prospective buyer interested in the shares in question.

31. In State Bank of India (supra), a Division Bench of this Court has held that

the mere absence, in the sale notice, of the exact amount of secured debt to be recovered would not be fatal to the process of sale, unless it results in injury to the mortgager. The Division Bench took note of Order 21 Rule 90 CPC, which inter alia states that no sale shall be set aside on the ground of irregularity or fraud in publishing or conducting the auction sale, unless upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

32. The Division Bench took note of the decision of the Supreme Court in *Saheb Khan Vs. Mohd. Yusufuddin and Others*, wherein the Supreme Court while dealing with an auction under the CPC observed as under:

12. We are unable to sustain the reasoning of the High Court. Order 21 Rule 90 of the CPC allows, inter alia, any person whose interests are affected by the sale to apply to the court to set aside a sale of immovable property sold in execution of a decree on the ground of "a material irregularity or fraud in publishing or conducting" the sale. Sub-rule (2) of Order 21 Rule 90 however places a further condition on the setting aside of a court sale in the following language: "90.(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

33. The Division Bench went on to observe as follows:

13. Therefore, before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, *Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala and others*, and *Kadiyala Rama Rao Vs. Gutala Kahna Rao (Dead) By Lrs. and Others*,

14. A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the Respondent of the alleged collusion between the other Respondents and the auction-purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with Order 21 Rule 67(1) read with Order 21 Rule 54(2). No doubt, the trial court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21 Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of the court to that effect....

34. The Division Bench further observed:

15. We find, in the present case, that none of the requirements, which can affect the mortgagor, had been violated. It is not the case of the mortgagor that he is in a position to pay the amount and redeem the mortgage. In fact, even on a specific query being posed during the course of hearing, no willingness to pay the amount to redeem the mortgage was even expressed. The only violation of the said Rules was not to specify the amount secured by the mortgage. This in no manner affected the rights of the mortgagor. It is in these circumstances that we find force in the contention of learned Counsel for the Petitioners that the observations in Saheb Khan's case (*supra*), albeit applicable in the case of an auction under the said Code, would have relevance. There was undoubtedly no injury to the mortgagor arising from non-statement of the amount of the debt due. There was nothing pleaded in this behalf. The question arises as to whether the sale should be set aside only on account of non-statement of the exact amount of the secured debt and our answer to this is in the negative. The rationale, as explained above, is the absence of any injury to the mortgagor. It has been stated in the auction notice that the mortgaged property was being sold for a secured debt, but only the amount was not specified. This is, thus, an irregularity, which has caused no damage to the mortgagor and with which the auction purchaser is not aggrieved.

35. Though, the sale is yet to take place, the sale notice has been published and the bids are in the process of being invited. As the process is already underway, I am not inclined to interfere with the same at this stage, as the so-called irregularity in the sale notice is not of any material significance.

36. For all the aforesaid reasons, the application is dismissed.