

(1996) 07 CAL CK 0053
In the Calcutta High Court
Case No : B.I.F.R. No. 53 of 1988

Kolay Iron and Steel Co. Ltd. (In Liquidator) and another	APPELLANT
Vs	
Official Liquidator, High Court, Calcutta and others	RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : AIR 1997 Cal 244

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

1. This is an application for setting aside the sale already confirmed by order dated 21st July, 1995. The facts involved in this application inter alia are that by an order dated 4th Sept., 1992 passed by this Court Kolay Iron and Steel Co. Ltd. was directed to be wound up and the Official Liquidator was appointed as Liquidator thereof.
2. In terms of the said order dated 4th Sept., 1992 the representatives of the Official Liquidator along with the representatives of the secured creditors, i.e. United Bank of India, Allahabad Bank and West Bengal Financial Corporation went to the factory premises of the said Company (in liquidation) on 18th Sept., 1992 for the purpose of taking over possession of the assets of the said Company (in liquidation) but could not take over possession on that day. Again on 21st Sept., 1992 the representatives of the secured creditors went to the factory the said Company (in liquidation) and made inventory of the properties.
3. In a letter for direction dated 16th April, 1992 filed by the Official Liquidator for appointment of Valuer, on or about 4th June, 1993 this Court was pleased to direct the secured creditors to pay a sum of Rs. 10,000/- towards the cost of valuation report and for advertisement of sale and accordingly the Official Liquidator by his letter dated 16th July, 1993 requested all the secured creditors to send him a sum of Rs. 10,000/- towards cost of valuation and advertisement for sale.

4. By an order dated 20th Aug., 1993 Ajay Nath Ray, J. was pleased to appoint Mr. A.K. Dey of 33, Brabourne Road, Calcutta 1 Valuer for making valuation of assets of the said Company (in liquidation) and to file his report within 6 weeks from that date.
5. By an order dated 22nd July, 1994 Baboolal Jain, J. as he then was, was pleased to appoint Mr. Bhaskar Sen, Engineer and Valuer, in place and instead of Mr. A.K. Dey for the purpose of making valuation of the assets of the said Company (in liquidation) with a direction to the valuer to file his report within 6 weeks from the date of order.
6. On March 11, 1994 Ajay Nath Ray, J. extended the time to file the Valuer's report by 8 weeks.
7. On 6th May, 1994 Baboo Lall Jain, J. as he then was, extended the time to file the Valuer's report by further 8 weeks.
8. On March 6, 1995 valuation report was submitted. On March 30, 1995 Baboo Lal Jain, J. as he then was, passed an order directing advertisement of sale notice and directed the matter to appear as "for sale" on May 5, 1995.
9. On 20-22 April, 1995 Advertisement were published. No separate communication has been made with Allahabad Bank. Under Clause 11 of the terms of sale, the power of the Court to set aside the sale even after confirmation and payment of purchase consideration was expressly reserved.
10. In terms of the said order dated 30th March, 1995 the Official Liquidator published the Sale Notice once in the "Aajkal" once in The Telegraph" and once in the "Jansatta".
11. On or about 12th May, 1995 the sale of assets and properties of the said Company (in liquidation) came up for hearing before B.L. Jain, J., as he then was, when the Court was pleased to cancel the sale in view of the facts that there were only two valid offers which were not backed by any Pay Order or Bank Draft and the price offered was too low in comparison to the valuation made by the valuer. By the said order the Official Liquidator was directed to seek further direction for advertisement of wider scale of and for this purpose the Court directed the Official Liquidator to write to the secured creditor to obtain their views in the matter. The Court directed the Official Liquidator to take out a letter for direction by 6th June, 1995 and seek direction for fresh advertisement by fixing a fresh date for sale.
12. Pursuant to the said order dated 12th May, 1995 on or about 25th May, 1995 a notice was issued to ail the secured creditors requesting to attend the meeting of the Official Liquidator on 30th May, 1995 at this office with regard to discussion of the agenda as contained in the said letter.
13. Pursuant to the said notice dated 25th May, 1995 a joint meeting was held on 30th May, 1995 between the secured creditors and the Official Liquidator in

which the representatives of the West Bengal Financial Corporation and United Bank of India were present. It is pertinent to note that in spite of such notice, no one was present on behalf of Allahabad Bank, one of the secured creditors.

14. On 1st June, 1995 the Official Liquidator by his letter sent the copy of the said minutes of the meeting dated 30th May, 1995, the Court's order dated 12th May, 1995 and the inventory list made by the Valuer to all the secured creditors of the said Company (in liquidation).

15. On 8th June, 1995 the letter for direction filed by the Official Liquidator came up for hearing, in which the court directed the Official Liquidator to issue advertisement for sale of the assets of the said Company (in liquidation) in three newspapers of Calcutta, one newspaper in Delhi Edition and one newspaper in Bombay Edition, with a direction to the secured creditors to give funds to the Official Liquidator within a fortnight from the date of the order and the date for sale was fixed by this Court on 21st June, 1995. Leave was also given to the Official Liquidator to obtain money from the Official Liquidator's establishment charges account until he receives the amount in terms of the order from the secured creditors.

16. Pursuant to the said order dated 8th June, 1995 the Official Liquidator published the Sale Notice in three newspapers of Calcutta Edition, one newspaper in Delhi Edition and one newspaper in Bombay Edition.

17. On 28th June, 1995 advertisement for Sale was published. No particular notice was given to the Allahabad Bank.

18. On 21st July, 1995 the Company (in liquidation) was sold to M/s. Naffar Chandra Jute Mills for a price of Rs. 65,00,000/-. B.L. Jain, J. as he then was by his order confirmed such sale.

19. On 25th July, 1995 the Official Liquidator wrote to Allahabad Bank stating therein that Rs. 11,377/- is to be paid towards the costs of advertisement in terms of the order 8th June, 1995. It is contended on behalf of the petitioner that the fact that sale has already taken place has not been disclosed to the petitioner in the said letter.

20. On July 27, 1995 Allahabad Bank paid the money as required by the Official Liquidator.

21. On 22nd Sept., 1995 on behalf of M/s. Naffar Chandra Jute Mills Ltd. the sale matter was mentioned when the Official Liquidator was directed to take necessary police help if so required, for the purpose of making over possession.

22. By a letter dated 10th Oct., 1995 the Official Liquidator informed all the secured creditors that since the purchaser has paid the entire consideration of sale, the possession of all the assets and properties of the said Company (in liquidation) would be handed over to the successful purchaser on 26th Oct. 1995.

23. On 24th Oct., 1995 one of the secured creditors, Allahabad Bank moved an

application for setting aside the sale of movable and immovable assets of the said Company (in liquidation) before the Vacation Bench without any notice to the Official Liquidator when B.L. Jain, J. as he then was, directed the matter to appear on 26th Oct. 1995 before the Regular Bench.

24. Since the Regular Bench was not sitting on 26th Oct. 1995 the determination of the Regular Company Court was assigned to Mrs. Ruma Pal, J. for 26th and 27th Oct., 1995.

25. By a letter dated 26th Oct., 1995 the learned Advocate for Allahabad Bank intimated the Official Liquidator and the Advocate-on-Record for the purchaser that the application of Allahabad Bank, which was moved on 24th Oct., 1995 before the Vacation Bench will be moved on 27th Oct., 1995 before Mrs. Ruma Pal, J. and requested to maintain status quo and not to deliver possession of the assets and not to give any effect to the letter of the Official Liquidator dated 10th Oct., 1995.

26. The copy of the affidavit and the copy of the Judge's Summons of Allahabad Bank was served by the Advocate-on-Record for Allahabad Bank to the Official Liquidator on 26th Oct., 1995, but the Official Liquidator could not stay his hands as his representatives had as pre-arranged left the office premises prior to receiving that letter.

27. On or about 27th Oct., 1995 the said application was moved on behalf of the Allahabad Bank before Mrs. Ruma Pal, J. when the Official Liquidator submitted that in terms of the order dated 21st July, 1995, the Official Liquidator upon receiving the entire consideration of sale from the purchaser, handed over the assets and properties of the said Company (in liquidation) to the purchaser.

28. On 27th and 28th Nov., 1995 the matter was heard by me.

29. Several allegations have been made by the petitioner in this application on the basis of which prayer has been made for setting aside the sale.

30. The main allegations in the instant application against the Official Liquidator are that though Official Liquidator asked the bank to pay the cost of security guards, cost of advertisement etc. the sale was conducted by . the Official Liquidator without giving any notice and/or any valid notice to the applicant and the Official Liquidator has failed to perform his obligations and/ or statutory duty in accordance with the orders of this Court by which the Court was pleased to direct the Official Liquidator to take the view of the secured creditors before making fresh advertisements and before fixing a fresh date of sale and the Official Liquidator had omitted to mention the reserve price of the assets in the advertisement published earlier and also committed irregularity by violation of several orders passed by the Company Court and as such, the steps taken by Official Liquidator for sale for the assets is vitiated by gross irregularity.

31. The main contention of the learned Advocate for the applicant is that by the order dated 12th May, 1995 the offer of Naffar Chandra Jute Mills Ltd. for Rs.

60,00,000/- was recorded as far too low in comparison to the valuation of Rs. 3,30,63,451/-. By the said order B.L. Jain, J. as he then was, directed the Official Liquidator to obtain the views of the secured creditors including that of the applicant. The Official Liquidator was further directed to inform the applicant that the matter is to appear on 8th June, 1995, it has been alleged that the Official Liquidator has failed to perform his obligations namely, to secure the views of the Allahabad Bank for fresh advertisement and to further inform that the matter was to appear on June 8, 1995.

32. It has been alleged that on or about May 25, 1995 (which however appears as May 28, 1995, a Sunday, from the disclosure made by the Official Liquidator) a notice was sent to Allahabad Bank stating that a meeting would be held on May 30, 1995. It has further been alleged that the only notice that was issued, was not sent to 36, Strand Road, Calcutta-1 where notices for payment as to security for costs for advertisements were delivered and wherefrom payments were made but to another office at 17, R. N. Mukherjee Road, Calcutta-1. In the meeting held on May 30, 1995 Allahabad Bank could not attend due to non-service of any notice and the Official Liquidator failed to secure the views of Allahabad Bank as directed by this Court.

33. It has also been submitted that on or about June 8, 1995 an order was passed directing further advertisements. The secured creditors were directed to provide funds for advertisement within a fortnight. Allahabad Bank was not present as there was no information and Official Liquidator has miserably failed in his duty to secure funds from Allahabad Bank within the time stipulated.

34. It has been alleged that Official Liquidator failed to inform the Bank to provide funds. After publication of the second set of advertisements the assets of the company (in liquidation) was sold on July 21, 1995 to Nafar Chandra Jute Mills Ltd. for a price of Rs. 65,00,000/- only without notice to Allahabad Bank. It has further been alleged that the sale was confirmed without notice to the petitioner. It has also been alleged on behalf of the applicant that on July 25, 1995 Official Liquidator obtained signed copy of the minutes of the said order but failed to communicate the same to the applicant-Bank when it wrote to the applicant's office at 36, Strand Road, Calcutta-I for payment of Rs. 11,377/- towards the cost of advertisements without disclosing that the sale has already taken place. The applicant-Bank obviously carried the impression that the advertisements were yet to be published and the Official Liquidator will apprise the same in due course.

35. The Official Liquidator accepted the money paid by the Allahabad Bank from 36, Strand Road, Calcutta-1 on or about July 27, 1995.

36. On or about October 9, 1995 the date of handing over possession was fixed but later postponed. During the long vacation on or about October 10, 1995 the Official Liquidator wrote to Allahabad Bank at 36, Strand Road, Calcutta-I that the possession of the company (in liquidation) would be handed over to Nafar

Chandra Jute Mills Ltd. on 26th October, 1995 at 2 p.m. 26th October, 1995 was the first day after the long vacation. On or about 13th October, 1995 Allahabad Bank wrote to the Official Liquidator for sending a copy of the Court's order and it was sent on or about October 17, 1995.

37. It has been submitted on behalf of the Official Liquidator that at the time of taking possession of the assets and properties of the said Company (in Liquidation) the representatives of all the secured creditors were present on 18th September, 1992 and 21st September, 1992 upon receiving intimation from the Official Liquidator. Furthermore, it would also be apparent from the facts that by a letter dated 16th July, 1993 the Official Liquidator requested all the secured creditors to send a sum of Rs. 10,000/- towards costs for valuation and advertisement of sale as directed by the Court on 4th June, 1993. Furthermore, in terms of the Court's order dated 30th March, 1995 the Official Liquidator published advertisement in the newspapers inviting the intending purchasers to submit their offers for sale of assets and properties of the said Company (in liquidation). The publication of such notice is also a notice to all the creditors including the secured creditors which the secured creditors cannot deny.

38. It has also been submitted by the Official Liquidator that pursuant to order dated 12th May, 1995 the Official Liquidator by his letter dated 25th May, 1995 intimated all the secured creditors regarding the joint meeting to be held on 30th May, 1995 at 3.00 p.m. The said letter was duly accepted by the applicant also. However, in spite of such receiving of notice from the Official Liquidator, none of the representatives on behalf of the applicant chose to attend the joint meeting held on 30th May, 1995. However, only the representatives of the West Bengal Financial Corporation and United Bank of India were present on 30th May, [1995. The said letter and copy of the minutes of the meeting have been annexed to the Affidavit-in-opposition filed on behalf of the Official Liquidator duly affirmed by Subha Kumar Banerjee on 10th day of November, 1995 as marked Annexures "K" and "L".

39. Though nobody was present on behalf of the applicant in the said meeting dated 30th May, 1995, on 1st June, 1995 admittedly the Official Liquidator sent a letter enclosing therewith the copy of the minutes of the meeting held on 12th May, 1995, the High Court's order dated 12th May, 1995 and the inventory list made by the Valuer to all the secured creditors.

40. It also appears that on 8th June, 1995 when this Court by its order fixed the date for sale of the assets and properties of the said Company (in liquidation) on 21st July, 1995 at 2.00 p.m., the learned Advocate-on-Record, who is at present the Advocate-on-Record for Allahabad Bank as well as United Bank of India, was present on behalf of one of the secured creditors, U.B.I. So it is not the fact that the applicant-Bank was not aware of the proceedings of the sale and the date fixed by this Court for such sale.

41. It has been submitted by the Official Liquidator that by the said order dated

8th June, 1995 the Court was pleased to direct the Official Liquidator to issue advertisement for sale of assets and properties of the said Company (in liquidation) in three newspapers of Calcutta, viz. the Statesman, The Anand Bazar Patrika and the Viswamitra and once in Times of India, Delhi Edition, and once in Indian Express, Bombay Edition, with a further direction to the secured creditors to provide funds to the Official Liquidator by granting leave to the Official Liquidator to obtain funds from his establishment charges account until he received the amount. In view of the order, the Official Liquidator immediately took steps for publication of such advertisements and had to bear the costs out of his own funds. Publication was made in The Statesman," "Viswamitra," and in the "Ananda Bazar Patrika" and also in Indian Express," Bombay Edition and Times of India," Delhi Edition, xerox copies of such publication have already been annexed with the petition as well as in the affidavit-in-opposition filed by the Official Liquidator on 10th November, 1995 as well as on 25th March, 1996 and marked as Annexures "O" and "N" respectively. The said publication is also a kind of information not only to all the intending purchasers but also to all the creditors in general of the said Company (in liquidation).

42. In spite of such publications, none of the secured creditors chose to appear before this Court except West Bengal Financial Corporation, one of the secured creditors, on 21st July, 1995.

43. It is also pertinent to note that even after receipt of the letter dated 10th October, 1995 from the Official Liquidator by the secured creditors, none of the secured creditors took any steps or intimated the Official Liquidator regarding their dissatisfaction with regard to the consideration of sale.

44. The question arises, even assuming that the notice inviting the views of the applicant and for providing funds for advertisement could not be served upon the applicant, does that materially effect the sale? There is no dispute that the advertisements were published in all leading newspapers in India. No other higher offer was there and the Nafar Chandra Jute Mills Ltd, became the purchaser at Rs. 65,00,000/-.

45. It is on record that the opportunity was given to the applicant to find out if anybody is willing to make higher offer but the applicant although obtained adjournment from time to time could not bring any higher offer. It is common experience that in case of sale when there is allegation that the property has fetched a low price, persons willing to make higher offers, come forward with their offers.

46. In the instant case, the applicant-Bank could not substantiate that the property could really fetch higher price. There is no other allegation of irregularity alleged except what has been mentioned hereinbefore. The allegations do not, in my view, materially affect the sale. There is no reasonable nexus between irregularity and inadequacy of price which may warrant the setting aside of the sale. Had there been any higher offer, there could have been

scope for fresh sale and bid in Court as had been done in other cases but in the instant case since no higher offer was available, there was no scope for bid and sale in Court.

47. In this connection it may be noted that on 26th February, 1996 an order was passed by me directing the applicant (Allahabad Bank) to bring forth the purchaser, who it was alleged by the applicant, was willing to purchase the assets of the Company (in liquidation) at and for a price of Rs. 65,00,000/-. I further directed the applicant to be present before this Court with a Pay Order for the entire sum of Rs. 65,00,000/ - on behalf of the alleged purchaser. The applicant was directed to present the said Pay Order before this Court on 11th March, 1996. The aforesaid order was made at the instance of and on the basis of submissions of the applicant through its learned counsel.

48. Again on 11th March, 1996 the matter was called on for hearing. On the basis of the submission of the learned advocate for the applicant adjournment was granted for a week with the direction that the applicant should bring forth the purchaser together with the Pay Order of Rs.65,00,000/- on March 18, 1996 when the said matter would appear in the list. In the event of default, I observed that the application of the applicant would be dismissed with costs.

49. It has further been noted that in the instant case, repeated attempts were made to sell the property. The highest offer was made in the first instance by Nafar Chandra Jute Mills Ltd. for Rs. 60 lakhs. The Court did not accept this and directed advertisements to be published once again. This was done. In spite of all India advertisements no purchaser came forward except Nafar Chandra Jute Mills Ltd. who offered Rs. 65 lakhs and being the highest offer, was accepted by Court. The law is quite clear that the sale cannot be post poned indefinitely. The liquidator at some point of time has to sell the assets of a company in liquidation. After repeated attempts, the highest price fetched was Rs. 65 lakhs and the Court was satisfied and the sale was confirmed.

50. The other main point to be noted is that even after the instant applications by the secured creditors were filed in Court, the Court repeatedly gave opportunities to the Banks to produce any other purchaser who was willing to pay more for the assets. In spite of the fact that such opportunities were given, no concrete proposal was made. In fact, some vague assurances were given but when the Court insisted upon an affidavit being filed by the prospective purchaser and some earnest money being deposited to show its bona fides, the Court was told by the Counsel for the Banks that the alleged purchaser had re-traded. Therefore, it is absolutely clear that the secured creditors viz. Allahabad Bank and United Bank of India failed to procure any purchaser who was willing to pay more in spite of repeated opportunities being given to them. In this connection, reference may be made to the following cases:--

(i) Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others,

(ii) The unreported judgment of the Division Bench of Calcutta High Court dated

November 10, 1994 (In re : Indus Electronics Ltd. (in Liquidation) and

(iii) Order of the Supreme Court in the SLP preferred against the said order being the order of the Supreme Court dated 19-10-1995, where the Supreme Court rejected the SLP observing that their Lordships found no grounds to interfere with the High Court's order which clearly mentioned that in spite of repeated efforts made for the purpose, higher price for the property sold could not be obtained and even the secured creditors could not obtain a better offer for the property.

51. The fact that the price fetched is below the valuation made by the Valuer appointed by the Court is not enough for setting aside a sale. As stated earlier, there is no charge made out in the application that the property has been sold at an under-value. In any event, mere inadequacy of price is not enough for setting aside the sale. It must be shown that there is a nexus between the under-value and the alleged irregularity. It is essential to show some fraud on the part of the purchaser which has resulted in a sale at an under-value. Reference may be made to the judgment and decision in the case of Shri Radhey Shyam Vs. Shyam Behari Singh,

52. The Courts are always inclined to obtain the highest price and even alter the confirmation of sale, if higher offer is made, the Courts are inclined to consider such higher offer. Unless there is some infirmity in the sale or irregularity in the conduct of the sale a mere higher offer at a late stage will not vitiate the sale. In this connection judgment and decision in the case of Sarawan Kumar Agarwal v. Shrinip Investment Ltd., reported in 94 CWN 452 may be taken note of. In the aforesaid decision it was held in paragraph 43 of the judgment at page 500 as follows:--

"Now, it is true that the Court must satisfy itself that having regard to the market value of the property, the price offered and accepted is adequate. The Court being the custodian of the interests of the Company and its creditors, the power to confirm sale or to withdraw confirmation has to be exercised with judicial discretion regard being had to the fact that the price fetched is the best that can be expected to be offered even though there may be no suggestion of irregularity of fraud. It is also true that in the present case there is a specific provision incorporated in the terms and conditions of sale that the sale in favour of a purchaser was liable to be set aside, even after the sale is confirmed and the purchase consideration is paid, in the interest and benefit of creditors, contributories and all concerned and/or for public interest. However, the investment of such power does not mean that the Court should review and set aside an order confirming a sale which has already taken place merely because at a later stage on a second thought someone more particularly an officer who was out bidden, says that he is willing to pay more. Once the Court has come to the conclusion that the price offered is adequate and has confirmed the sale, the subsequent higher offer made under such circumstances, without anything more, cannot constitute a valid ground for interfering with rights arising out of sale

which has already been confirmed."

53. In the case of Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, it is stated that the properties to be sold by Court auction in this case were the land, factory building, plant and machinery of the judgment-debtor, a drum manufacturing company. The Court auction was adjourned on various occasions in order to secure a better price. On August 28, 1969 a sale was held and the highest bid for land and buildings went up to Rs. 5.70 lakhs and for machinery to Rs. 5.40 lakhs. The decree-holder, the Maharashtra State, Finance Corporation, at the request of the receiver who was in possession of the properties, got the properties valued privately by a competent valuer who estimated the land and buildings to be worth Rs. 10,46,096/- and the machinery Rs. 7,02,000/-, total Rs. 17,48,096/-. This was to guide that the Court to sell whether a grossly unjust offer was being fobbed off on it. The auction held on September 3, 1969, however, fetched the highest offer, for the two lots, of only Rs. 5,65,000/- and Rs. 5,00,000/- respectively, in the latter case Rs. 40,000/- less than on the previous occasion. After considerable persuasion by the Judge, the auction-purchaser agreed to raise the offer for both lots together to a gross sum of Rs. 11,50,000/- and making an intelligent guess on the given circumstances the Court approved the sale:

54. It was held (after discussing the principles applicable to Court sales) that the Court had exercised a conscientious and lively discretion in concluding the sale at Rs. 11.5 lakhs. Mere inadequacy of price cannot demolish every Court sale. Here, the Court tried its best, time after time, to raise the price. Well known industrialists in the public and private sectors knew about it and turned up. Offers reached a stationary level. Nor could the Corporation decree-holder be put off indefinitely in recovering its dues on baseless expectations and distant prospects. The judgment-debtor himself, by his litigious exercises, would have contributed to the possible buyers being afraid of hurdles ahead. After all, producing around Rs. 11.5 lakhs openly to buy an industry was not easy even for apparently affluent businessmen. The sale proceedings had been pending too long and the judgment-debtor could not, even when given the opportunity, produce buyers by private negotiation. Not even a valuer's report was produced by him. Hence the executing Court had committed no material irregularity in the conduct of the sale in accepting the highest offer of the auction purchaser on September 3, 1969.

55. The Supreme Court in paragraph 7 of the said judgment has observed as follows:--

"Certain salient facts may be highlighted in this context. A Court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The Judge must make a certain margin for this factor, A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so,

when the subject-matter is a specialised industrial plant, which has been out of commission for few years, as in this case and buyers for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgment-debtor's instance, have scare value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bid made on 16-5-1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If Court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgment-debtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case.

56. In the said decision, the Supreme Court also took note of its earlier judgment in the case of Navalkha and Sons Vs. Ramanuja Das and Others, wherein it was held that the principles which should govern confirmation of sales are established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is unreasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion.

57. The Supreme Court after considering the aforesaid decision in Navalkha and Sons Vs. Ramanuja Das and Others, held and observed as follows Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others,

"Be it by a receiver Commissioner, liquidator or Court this principle must govern. This proposition has been propounded in many rulings cited before us and summed up by the High Courts. The expressions "material irregularity in the conduct of the sale" must be benignantly construed to cover the climax act of the Court accepting the highest bid. Indeed, under the Civil Procedure Code, it is - the Court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply

its mind to this aspect of the conduct of the sale may amount to material irregularity. Mere substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient. And where a Court mechanically conducts the sale or routinely signs assent to the sale papers, not bothering to see if the offer is too low and a better price could have been obtained, and in fact the price is substantially, inadequate, there is the presence of both the elements of irregularity and injury. But it is not as if the Court should go on adjourning the sale till a good price is got, it being a notorious fact that Court sales and market prices are distant neighbours. Otherwise, decree-holders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be, subsequent events, not within the ken of the executing Court when holding the sale, may prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable, conclude the sale. The Court may consider the fair value of the property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndical the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous postmortem is proper. If the Court has fairly, even if silently, applied its mind to the relevant consideration before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of Court sales will be introduced."

58. In the unreported judgment and decision in the case of Indus Electronics Ltd. (in liquidation), the Division Bench of this Court also considered the question of inadequacy of price. In the said case the property was sold at a price of Rs. 14 lakhs, whereas the valuation exceeded Rs. 2 crores. However, since in spite of repeated opportunities to the secured creditors to bring higher offers, the secured creditors failed to bring any higher offer. The Division Bench did not consider it proper to interfere with the decision of the learned Company Judge. SLP against the said judgment of the Division Bench was also dismissed. The Supreme Court while dismissing the SLP noted the fact that opportunities were given to the secured creditors to bring higher offers, but no higher offer could be brought.

59. Accordingly it was noted that no interference was called for. In the case of Shri Radhey Shyam Vs. Shyam Behari Singh, , it was held by the Supreme Court that "what has to be established is that there was not only inadequacy of the price but that that inadequacy was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the material irregularity."

60. In the instant case, there was due advertisements in all the leading newspapers and sale was held after such advertisements. The allegation that the

views of the secured creditors with regard to the advertisement could not be obtained, in my view, does not amount to irregularity so as to affect the sale particularly when no higher offer could be brought by the secured creditors.

61. In fact in the instant case, repeated opportunity was given to the applicant secured creditor to bring higher offer or match the offer of Nafar Chandra Jute Mills Limited so there could be bid in Court as already noted but no offer could be procured by the secured creditor.

62. Accordingly in my view no purpose will be secured by passing an order for fresh sale.

63. In the facts and circumstances of the case, this application is dismissed.

64. There will be no order as to costs.

65. All interim orders stands vacated.

66. The Official Liquidator will retain his cost from the funds in his hands.

67. In view of the order passed today the other connected application is also dismissed.

68. All parties concerned are to act on a signed copy of the operative part of this judgment on the usual undertaking.

79. Order accordingly.