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**(2020) 05 MP CK 0001**

**In the Madhya Pradesh High Court**

**Case No : Company Appeal No. 6 Of 2020**

Lakhani Footcare Private Limited

APPELLANT

Vs

Official Liquidator & Another

RESPONDENT

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**Date of Decision : 22-05-2020**

**Acts Referred:**

Company Court Rules, 1959 — Rule 272, 273

**Citation : (2020) 05 MP CK 0001**

**Hon'ble Judges : Shailendra Shukla, J, S. C. Sharma, J**

**Bench : Division Bench**

**Advocate : Vijayesh Atre, H. Y. Mehta, Abhinav Malhotra**

**Final Decision : Allowed/Disposed Of**

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## **Judgement**

1. The present Company Appeal is arising out of order dated 02.03.2020 as well as by order dated 04.05.2020 passed by the learned Company Judge in Company Petition No.08/2014.
2. The facts of the case reveal that a Company Petition was preferred for winding up of Lakhani Footcare Private Limited and an order was passed by the learned Company Judge on 09.09.2016 in respect of winding up and an Official Liquidator was appointed.
3. The learned Company Judge vide order dated 17. 12.2018 permitted the Official Liquidator to take appropriate steps in respect of sale of Company's property i.e. Lot No.1 through e-auction and the reserve price was fixed at Rs.31,00,00,000/-.
4. In the first round of auction against the reserve price of Rs.31,00,00,000/-, no buyer came forward and the learned Company Judge vide order dated 17.12.2018 permitted the Official Liquidator to take appropriate steps for fresh e-auction of the assets under Lot No.1 consisting of freehold land, buildings, office machineries, stocks etc. situated at 39-A, Devguaradia Road, 5/2, Milestone on Nemawar Road, next to Flyover, Indore at a reduced reserve price of

Rs.27,90,00,000/-.

5. In light of the direction issued by the learned Company Judge in the Company Petition on 09.03.2019, the Official Liquidator published a fresh advertisement of sale notice inviting tenders in respect of Lot No.1 in the Economic Times, Dainik Bhaskar and the e-auction sale notice was also uploaded on the MCA Portal.

6. Pursuant to the sale notice, four parties participated in the e-auction and on 16.04.2019, a meeting of the Asset Sale Committee was held and the respondent No.2 in the present appeal / Seabright Landmark Projects LLP was declared to have made the highest offer.

7. The appellant No.2 / M/s Om Gurudev Enterprises, a sole proprietorship concern, was also interested in purchasing Lot No.1 of the Company under liquidation and on 10.06.2019, wrote a letter to the Official Liquidator giving an offer of Rs.30,69,00,000/- and in order to establish its bonafide, a cheque of Rs.3,06,90,000/- was also submitted to the Official Liquidator. One more offer was received by the Official Liquidator for an amount of Rs.29,00,00,000/-.

8. The present appellant has stated in their appeal that they were not able to participate in the second round of e-auction held on 04.04.2019 on account of their preoccupation, and therefore, submitted a letter to the Official Liquidator offering a much higher price than the reserve price. The reserve price was Rs.27,90,00,000/- and the offer made by the present appellants was Rs.30,69,00,000/-. It was certainly more than the highest bid received, as the highest bid received was for Rs.28,15,00,000/-.

9. The Official Liquidator, after an offer was made by the appellant and by one M/s Aviral Buildcon Private Limited, submitted an OLR i.e. OLR No.31/2019 dated 25. 06.2019 for confirmation of sale and I.A. No.6678/2019 was filed on 04.09.2019 for approval of sale in favour of Seabright Landmark Projects LLP.

10. The learned Company Judge has passed an order on 2. 03.2020 confirming the sale in favour of respondent No.2.

11. An application was also preferred by learned counsel for respondent No.2 i.e. I.A. No.2294/2020 for extension of time to deposit the amount and time, up to 30. 06.2020 and extension has been granted to deposit the balance consideration. The respondent No.2 has also been directed to deposit the 20% balance consideration by 31. 05.2020.

12. Shri Vijayesh Atre, learned counsel has vehemently argued before this Court that initially a reserve price was fixed at Rs.31,00,00,000/- and no buyer came forward to participate in the e-auction. The reserve price was reduced in the second round because there was no participant in the first round, however, no fresh evaluation was carried out before reducing the reduced price, and therefore, in all fairness, a fresh auction should have been ordered by the learned Company Judge order and the offer of the present appellants, which is more than the offer of respondent No.2, should have been accepted.

13. To buttress his submission, learned counsel for the appellants has placed heavy reliance upon a judgment delivered in the case of Navlkha & Sons v/s Shri Ramanya Das & Others reported in (1969) 3 SCC 537 and a prayer has been made to set aside both the orders passed by the learned Company Judge and to direct a fresh e-auction in the matter.

14. Shri Atre, learned counsel under instruction of the appellant has also submitted an undertaking of the appellant, wherein he has given an undertaking that in case a fresh auction is held, he will not quote the price less than the price already quoted before this Court as well as quoted before the Official Liquidator i.e. less than Rs.30,69,00,000/-

15. The offers made by the persons, who have participated in the auction as well as other competitors in a tabular form, are as under:-

Sr. No.

Name of the Head

Amount (Rs.)

Difference (Rs.)

1

Reserve price in first round

31,00,00,000/-

2

Reserve price in second round (10% Reduction)

27,90,00,000/-

3,10,00,000/-

3

Offer of the highest bidder

28,15,00,000/-

25,00,000/-

4

Offer of Aviral Buildcon Pvt. Ltd.

29,00,00,000/-

1,10,00,000/-

5

Offer of the Appellant

30,69,00,000/-

2,79,00,000/-

The aforesaid chart makes it very clear that the difference between the price offered by the present appellants and the respondent No.2 is Rs.2,79,00,000/- which is certainly a big amount.

16. Shri Abhinav Malhotra, learned counsel for respondent has argued before this Court that the present appellants, who were not the participants in the process of auction, are not entitled for any relief of whatsoever kind. Otherwise also, it is going to be a never ending process. He has also stated that in case, the present appellants were interest in buying the Company's property i.e. Lot No.1, they should have deposited earnest money, they should have participated in the auction process and at this juncture, merely by submitting a letter along with a cheque of Rs.3,00,00,000/-, will not entitled them to participate in the auction process which has attained finality.

He has also stated that he has also preferred a Company Appeal for extension of time to deposit the remaining amount which is likely to listed in near future. He has categorically stated before this Court that the appellant has no locus in respect of the auction in question, as he was not a participant and the orders passed by the learned Company Judge are very exhaustive and the learned Company Judge has taken into account the law laid down on the subject by the Hon'ble Supreme Court.

17. On the other hand, the Official Liquidator has fairly stated before this Court that they shall be abiding any order passed by this Court and the present appellant was certainly not a participant in the process of auction and with the great difficulties, the auction has been finalized.

18. Heard learned counsel for the parties at length and perused the record.

19. The present Company Appeal is arising out of the order dated 02.03.2020 as well as order dated 04.05.2020 passed by the learned Company Judge in Company Petition No.08/2014.

20. The undisputed facts makes it very clear that a winding up petition was filed in respect of Lakhani Footcare Private Limited and an order was passed by the learned Company Judge on 09.09.2016 in respect of winding up and an Official Liquidator was appointed in order to clear the dues and in order to pay the work force. An order was passed by the learned Company Judge on 17. 12.2019 in respect of e-auction of Lot No.1, which included free, buildings, office machineries, stocks etc. The reserve price was fixed at Rs.31,00,00,000/-, however, no buyer came forward and the learned Company Judge vide order dated 17.12.2018 permitted the Official Liquidator to take appropriate steps for e-auction, however, this time the reserve price was reduced to Rs.27,90,00,000/-. No cogent reason is reflected from the orders passed by the learned Company Judge in respect of grant of permission relating to reduction in the reserve price

and re-auction was held. A meeting took place on 16.04.2019 of the Asset Sale Committee and respondent No.2 / M/s Seabright Landmark Projects LLP was declared to have made the highest offer.

21. The appellant before this Court has submitted a cheque to the official liquidator giving an offer of Rs.30,69,00,000/-, meaning thereby, offered Rs.27,90,00,000/- more than the amount offered by the respondent No.2. The learned Company Judge has confirmed the sale by an order dated 02.03.2020 and the order passed by the learned Company Judge reads as under:-

"OLR No.31/19 has been filed by the OL with a prayer to confirm the sale of the properties of the Company-in- Liquidation in Lot No.1 in favour of the highest bidder M/s Seabright Landmark Projects LLP, Indore (M.P.). IA No.7202/19 has been filed by the highest bidder M/s Seabright Landmark Projects LLP for confirmation of sale and direction to the OL to execute the sale deed and IA No.6678/19 has been filed by one M/s.Om Gurudev Enterprises with a prayer to accept its offer, which is more than the offer made by the highest bidder and sale the assets in Lot No.1 to it.

The brief facts are that this Court had passed the winding up order in the matter on 9.9.2016. Thereafter the attempts were made to sale the assets of Lot No.1 but since no buyer had come forward to purchase the said assets, therefore, in the meeting of the assets sale committee dated 28.8.2018 it was decided to sale the assets of Lot No.1 at a price of Rs.27.90 Crores and EMD of Rs.2.80 Crores. Hence the OLR No.29/2018 was filed before this Court seeking permission to sale the assets of Lot No.1 at the reserved price of Rs.27.90 Crores and the same was allowed by this Court by order dated 17.12.2018. Thereafter the advertisement of sale notice was issued in Dainik Bhaskar, All M.P. Edition and the Economic Times, All India Edition on 9.3.2019 and inspection of the assets/properties was given to the interested buyers on 18.3.2019. In order to give wide publicity of sale of the aforesaid assets, the sale notice was uploaded on MCA portal. The e-auction was held on 4.4.2019. The meeting of the assets sale committee/secured creditors was held on 16.4.2019. The E-auction agency M/s e-Procurement Technologies Ltd., Ahmedabad had submitted the final report in respect of the tender and highest offer received in the e-auction. As per the report of e-auction against the reserved price of Rs.27.90 Crores, the highest offer of Rs.28,15,00,000/- was received from M/s Seabright Landmark Projects LLP, Indore (M.P.). After receipt of the highest offer, on 12.4.2019 an offer of Rs.29 Crore was received from one M/s Aviral Buildcon Pvt. Ltd. vide email dated 12.4.2019. During the meeting the representative of the Bank of India had requested the assets sale committee to consider the highest offer of Rs.28,15,00,000/- from M/s Seabright Landmark Projects LLP, Indore (M.P.). This is duly reflected in the minutes of the meeting of the assets sale committee dated 16.4.2019. Thereafter on 10.6.2019 the offer of M/s. Om Gurudev Enterprises of Rs.30.69 Crores was received and on 18.6.2019 one offer of Shri Girish Panchal without disclosing any amount was received. Hence the OL has

filed the report OLR No.31/19 mentioning the details of all these offers and making alternate prayers of confirming the sale in favour of highest bidder or in favour of the subsequent offeree M/s Om Gurudev Enterprises, Indore.

The submission of learned counsel for the highest bidder is that the bid of the highest bidder M/s Seabright Landmark Projects LLP, Indore (M.P.) was already found to be highest and accepted by the assets sale committee and it had deposited the EMD at that time and thereafter almost an year was passed, therefore, subsequent offers may not be considered at this stage.

As against this, the submission of counsel for M/s Om Gurudev Enterprises, Indore (M.P.) is that he is offering the amount higher than the amount offered by the highest bidder and the object of the auction by this Court is to fetch the maximum possible price, therefore, its bid should be accepted.

The submission of counsel for the OL is that no proper explanation for submitting the bid at the time of e-auction has been given by M/s Om Gurudev Enterprises, Indore.

Counsel for the Bank of India, secured creditor has also submitted that the offer made by the highest bidder be accepted and the subsequent offer may not be considered as that will effect the credibility of auction sale and in other matters after making such offers, subsequently similar applicants have later on backed out creating complications.

I have heard the learned counsel for the parties and perused the record.

The law in regard to considering the offers after approval of the highest bid at the stage of confirmation of sale is now well settled. It has been held that a subsequent higher offer is not a valid ground for refusing confirmation of sale or offer already made. It is also well settled that if the price offered is adequate and the court is satisfied about the market value of the property and that the price offered is reasonable, then it would be appropriate to exercise the judicial discretion of confirming the sale. The Supreme Court in the matter of Vedica Procon Pvt. Ltd. Vs. Balleshwar Greens Pvt. Ltd. and others reported in (2015) 10 SCC 94 after considering the earlier judgments on this issue has held that:-

"35. In Navalkha & Sons v. Sri Ramanya Das & Others,(1969) 3 SCC 537, certain movable and immovable properties of a company in liquidation were brought to sale. The Company Court directed the sale to be conducted by three persons jointly appointed as Commissioners for the conduct of sale. The sale was conducted. The appellant before this Court was the only offeror. The offer was accepted by the Commissioners. The Commissioners made an application to the Company Court for the confirmation of sale. At that stage, a third party made an application claiming that he was willing to offer a higher price. The Company Court then decided to put the property once again for auction but only between the original offeror and the objector. In such a process, the original offeror once again became the highest bidder. That bid was accepted by the Company Judge.

At that stage, another third party came forward objecting to the procedure adopted by the High Court for confining the auction only between the two parties without any fresh advertisement. Such an objection was rejected by the Company Judge. Aggrieved by the same, the objector carried the matter in an intra court appeal to the Division Bench successfully. Hence the appeal before this Court by the original offeror. This Court dismissed the appeal approving the view of the Division Bench that the procedure adopted by the learned single Judge was not legally sustainable.

36. In the process, this Court indicated the principles governing the confirmation of sales conducted by the Company Courts by the official liquidators. (Navlakha case, SCC pp. 540-41, para 6)

"6. The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror 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 it 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 reasonable. 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. In *Gordhan Das Chuni Lal Dakuwala v. T. Sriman Kanthimathinatha Pillai*, it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed 'is the best that could be expected to be offered.

That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnasami Pillai v. Sadapathy Pillai* and *S. Soundararajan v. M/s. Roshan & Co.* In *A. Subbaraya Mudaliar v. K. Sundararajan*, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction, is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well- settled namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in *Roshan & Co.* case)."

37. *Divya Mfg. Co. (P) Ltd. v. Union Bank of India & Others*, (2000) 6 SCC 69

was a case where the assets of the company in liquidation were sold in favour of the appellant before this court and the sale was confirmed by the Company Court. Within a week thereafter, an application came to be filed by one of the participants in the auction proceedings praying that the order of confirmation be recalled and the applicant was willing to offer an amount higher than what was offered by the appellant before this Court. Subsequently, more number of applications came to be filed before the Court offering higher amounts. Therefore, the Company Court recalled the order confirming the sale. Hence, the appeal before this Court.

38. This Court, while reiterating the principles laid down in Navalkha case, declined to interfere with the order of the court and held as follows: (Divya Mfg. Co. case, SCC p. 79, Para 16)

"16. ....As stated above, neither the possession of the property nor the sale deed was executed in favour of the appellant. The offer of Rs.1.30 crore is totally inadequate in comparison to the offer of Rs.2 crores and in case where such higher price is offered, it would be in the interest of the Company and its creditors to set aside the sale. This may cause some inconvenience or loss to the highest bidder but that cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed with the market forces and price. Confirmation of the sale by a Court at a grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the Court may prevent, to some extent, underbidding at the time of auction through Court. In the present case, the Court has reviewed its exercise of judicial discretion within a shortest time."

39. We cannot help pointing out that their Lordships came to such a conclusion placing reliance on para 6 of Navalkha case. Their Lordships failed to take note of the last sentence of the paragraph but placed reliance on the penultimate sentence of the paragraph. No doubt, the penultimate statement of the paragraph recognises the discretion of the Company Court either for accepting or refusing the highest bid at the auction, it also emphasizes the obligation of the Court to see that the price fixed at the auction is adequate price even though there is no irregularity or fraud in the conduct of the sale. However, the penultimate sentence restricts the scope of such discretion in the following words: (Navalkha case, SCC p.541, para 6)

"6. .... It is well to bear in mind the other principle which is equally well settled namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co. case.)"

40. In other words, in Navalkha case, this Court only recognized the existence of

the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made. This Court also emphasized that it is equally a well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.

41. \*\*\*\*\*

42. \*\*\*\*\*

43. \*\*\*\*\*

44. \*\*\*\*\*

45. \*\*\*\*\*

46. \*\*\*\*\*

47. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Divya Mfg. Co. this Court departed from the principle laid down in Navalkha & Sons. We have already explained what exactly is the departure and how such a departure was not justified."

In the present case the record reflects that in the earlier round the attempt to sale the properties of Lot No.1 had failed, therefore, a decision was taken by the assets sale committee to fix the reserved price of Rs.27.90 Crores and considering the circumstances of the case, this Court had approved it by order dated 17.12.2018. After wide publicity the e-auction was held on 4.4.2019, in which as against the reserved price of Rs.27.90 Crores, the highest bid of Rs.28.15 Crores has been received from M/s Seabright Landmark Projects LLP, Indore (M.P.). The explanation furnished by the subsequent applicant M/s Om Gurudev Enterprises for not submitting the bid in e-auction on the ground that the marriage of his daughter was to be performed at a subsequent date on 17.4.2019, does not inspire confidence. No other subsequent offerer has approached this Court pressing his claim for its alleged highest bid, therefore, their claim before the OL are not found to be bonafide. The record further reflects that the highest bid of M/s Seabright Landmark Projects LLP, Indore (M.P.) has been considered by the assets sale committee and has been accepted. Before this Court also counsel for the Bank of India has supported the confirmation of sale in favour of the highest bidder M/s Seabright Landmark Projects LLP, Indore and has opposed the consideration of the bid of M/s Om Gurudev Enterprises. It is not disputed by any party that the price which has been offered by M/s Seabright Landmark Projects LLP, Indore (M.P.), the highest

bidder, is the adequate market price having regard to the value of the Lot No.1 at the time of auction and this Court is also satisfied that the price which has been offered by M/s Seabright Landmark Projects LLP, Indore is reasonable and adequate. Therefore, having regard to the law which is laid down in the case of Vedica Procon Pvt. Ltd. (supra), the OLR No.31/19 and IA No.7202/19 are allowed by confirming the sale in favour of the highest bidder M/s Seabright Landmark Projects LLP, Indore and the IA No.6678/19 filed by M/s Om Gurudev Enterprises is rejected.

The highest bidder M/s Seabright Landmark Projects LLP, Indore is directed to deposit the balance sale consideration amount of Rs.25,35,00,000/- in respect of Lot No.1 after adjustment of EMD amount of Rs.2.80 Crores within a period of 60 days from today. On receipt of the full consideration amount, the OL is directed to execute the sale deed in favour of M/s Seabright Landmark Projects LLP, Indore and handover the possession of the assets."

22. Undisputedly, the respondent No.2 was not able to deposit the amount in question within the time framed work and an application i.e. I.A. No.2294/2020 was preferred for extension of time to deposit the balance consideration and the learned Company Judge has granted time up to 30. 06.2020 to deposit the balance consideration. The order passed by the learned Company Judge dated 04.05.2020 reads as under:-

"Heard.

This IA has been filed seeking extension of time to deposit the amount which was directed by this Court by order dated 2/3/2020. This Court by order dated 2/3/2020 while confirming the bid of applicant M/s Seabright Landmark Projects LLP Indore (MP) in respect of lot no. 1 containing the properties of the company in liquidation, had directed the applicant to deposit the balance consideration amount of Rs. 25,35,000,00/- after adjustment of EMD amount of Rs. 2.80 crore within a period of 60 days from the date of that order.

Learned counsel for applicant submits that applicant had received the communication from OL dated 24th March 2020 on 7th April 2020 for depositing the balance consideration amount but by that time the lockdown was already declared on account of spread of COVID 19, therefore, the applicant could not deposit the balance consideration amount. He submits that on account of restriction of movement and restriction on business operations there is liquidity crunch in the market and banks are also functioning with 10%-15% staff at the minimal level therefore, the applicant has difficulty in depositing the balance consideration amount within the period granted by this Court. He further submits that EMD amount of Rs. 2.80 crore has already been deposited by the applicant and the applicant is ready to deposit the balance consideration amount but at least 3 month's time be granted to applicant to deposit the same.

Shri H.Y. Mehta learned counsel for OL submits that the IA has been filed after expiry of the time granted by this court to deposit and now the prayer for

extension of time cannot be considered. He further submits that the offer of the applicant was objected by another party by offering higher amount and that applicant has not shown the bonafides by depositing any amount in pursuance to the order of this Court. He further submits that value of the assets are going up.

Shri D.S. Panwar learned counsel for worker's union submits that there is no explanation for not depositing the amount between 2nd March i.e. the date of order of this Court till 25th March i.e. the date of imposition of lockdown. He further submits that workers are loosing interest on said amount which otherwise would have been earned by the OL and disbursed.

Shri G.S. Patwardhan learned counsel for original promoter has submitted that the sale of the assets of the company in liquidation should be expedited and the matter should not be unnecessarily delayed.

Having heard the learned counsel for the parties and on perusal of the record it is noticed that bid of applicant has already been approved by this court by previous order and that the applicant was required to deposit the balance consideration amount within a period of 60 days. The order to deposit the amount was passed by this court on 2/3/2020 and lockdown throughout the state was directed on 25/3/2020 I.e. within a period of 23 days of passing of the order. After the order of this court the applicant has not been able to deposit the balance consideration amount due to imposition of lockdown and restriction of movement on account of widespread COVID 19. Hence I am of the view that in the prevailing circumstances, the interest of justice will be served if some more reasonable time is granted to applicant to deposit the balance consideration amount subject to certain condition to ascertain that the applicant is ready and willing to deposit the balance consideration amount.

In these circumstances, IA No.2294/2020 is disposed off by modifying the order dated 2/3/2020 to the following effect:-

- i. The applicant is granted time upto 30th June, 2020 to deposit the balance consideration amount,
- ii. The applicant will deposit 20% of the balance consideration amount by 31st May 2020 and remaining consideration amount will be deposited by applicant in on or before 30th June 2020."

23. The Official Liquidator has brought all the facts before the learned Company Judge. The prayer made by the Official Liquidator in OLR No.31/2019 reads as under:-

"(i) The report of the Official Liquidator may kindly be taken on record.

(ii) In view of Para 7 (a) of this report, if this Hon'ble Court would please to accept highest offer of Rs.28,15,00,000/- received in e-auction, in respect of Lot No.1 (Land (Freehold), Buildings, Office Machineries, Stocks and Trees) of M/s Seabright Landmark Projects LLP, 295, Shree Krishna Paradise, Rau,

Indore-453331, as recommended by Asset Sale Committee in the meeting held on 16.04.2019, sale may be confirmed in their favour with necessary directions to them, to deposit the balance sale consideration amount of Rs.25,35,00,000/- in respect of Lot No.1, after adjustment of EMD amount of Rs.2.80 Crores, within a period of 60 days as per terms & Conditions of sale of within such time as decided by this Hon'ble Court.

OR

(iii) In view of Para 7 (b) of this report, in view of aforesaid highest offer of rs.30.69 Crores, along with cheque Bi,325994 of Rs.3,06,90,000/- EMD (10% of Rs.30.69 Crores), received after e-auction, as detailed at Para No.6 above, if this Hon'ble Court deem fit and proper, necessary directions may kindly be issued to Highest bidder of e-auction M/s Seabright Landmark Projects LLP to raise their offer more or equal to Rs.30.69 crores, in order to meet the highest offer for subject assets / properties of the company (In-Liqn.), if M/s Seabright Landmark Projects LLP raised the offer, sale may be confirmed in their favour with necessary directions to them, to deposit the confirmed in their favour with necessary directions to them, to deposit the balance sale consideration amount in respect of Lot No.1, after adjustment of EMD amount of Rs.2.80 Crores, within a period of 60 days as per terms & Conditions of sale or within such time as decided by this Hon'ble Court.

OR

(iv) In view of Para 7 (c) of this report, if in case, M/s Sunbright Landmark Projects LLP, is not ready to raise the offer, the sale may be confirmed in the favour of M/s OM Gurudev Enterprises, Indore (M.P.) with necessary directions to them, to deposit the balance sale consideration amount of Rs.27,62,10,000/- in respect of Lot No.1, after realisation of Cheque No.325994 or Rs.3,06,90,000/-, within a period of 60 days as per terms & conditions of sale or within such time as decided by this Hon'ble Court.

OR

(v) In view of Para 8 of this report, if this Hon'ble Court would pleased to allow prayer as mentioned in Para No.7 (a) or (b) or (c), necessary permission may kindly be granted to the Official Liquidator to handover the possession of the assets of Lot No.1 to such successful purchaser, in favour of whom this Hon'ble Court confirm the sale, after receipt of entire sale consideration.

OR

(vi) In view of Para 9 of this report, if this Hon'ble Court deem fit and proper necessary direction may kindly be issued for re-auction of assets / properties of Lot No.1, to fetch maximum sale price / realization, in the interest of all stakeholder of the company (In-Liqn.) and Reserve Price and EMD may be kindly fixed for mentioning in the sale notice.

OR

(vii) In view of Para 18 of this report, if prayer no.(vi), is allowed, necessary permission may kindly be granted for wide publication of e-auction Sale Notice by inviting e-tender in two newspaper (one is in English Daily and other one in Hindi Daily), as detailed in Para 10 above i.e.

(1) The Economic Times (English Daily)- -All India Edition

(2) Dainik Bhaskar (Hindi)- -M.P. Edition

(viii) In view of Para 11 of this report, necessary permission may also be granted to release the advertisement expenses to the advertising agency and fes for online auction to M/s e-Procurement Technologies Ltd, Ahmedabad in respect of Re-Auction, out of the fund available in the amount of the company (In-Liqn.).

And

Such other order(s) as this Hon'ble Court deem fit and proper may kindly be passed in the circumstances of the case."

24. The Official Liquidator, after bringing all facts, has certainly made a prayer for grant of permission of re-auction of assets / properties to fetch maximum sale price in the interest of stakeholder of the Company in liquidation and even a prayer was made for issuance of appropriate direction to respondent No.2 / M/s Seabright Landmark Projects LLP to raise their offer to Rs.30,69,00,000/- in order to meet the highest offer and even a prayer was made to sell of the property to appellant / M/s Om Gurudev Enterprises, however, the learned Company Judge has disposed of the OLR by an order dated 02.03.2020 confirming sale in favour of respondent No.2 / M/s Seabright Landmark Projects LLP.

25. The Hon'ble Supreme Court in the case of LICA (P) Limited v/s Official Liquidator & Another reported in (2000) 6 SCC 79 in paragraph - 5 has held as under:-

"5. The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case. One of the terms of the offer in this case is that even confirmation of the sale is liable to be set aside by the High Court as per Clause 11 of the conditions of offer. The sale conducted was subject to confirmation. Therefore, mere acceptance of the offer of Mr. Shantilal Malik does not constitute any finality of the auction nor would it be automatically confirmed. The appellant offered a higher price even now at Rs. 45,00,000. Keeping in view the interest of the company and the creditors and the workmen to whom the sale

proceeds would be applied, the learned company judge was right in exercising her discretion to reopen the auction and directing Mr. Shantilal Malik as well to make a higher offer than what was offered by the appellant. In every case it is not necessary that there should be fraud in conducting the sale, though on its proof the sale gets vitiated and it is one of the grounds to set aside the auction sale. Therefore, the discretion exercised by the learned single judge cannot be said to be unwarranted. Under the circumstances, we are satisfied that the Division Bench of the Calcutta High Court-committed manifest illegality in interfering with the order of the learned single judge. The appeal is allowed. The order of the Division Bench is set aside. The clear action of the learned single judge are also expunged. The offer of the appellant of Rs. 45,00,000 shall be minimal. It is open to the second respondent Shantilal Malik to participate in the auction and the learned single judge is directed to conduct the auction in the open court between the parties and the highest offer may be accepted as per law and action be taken thereof as per law. The appeal is accordingly allowed but in the circumstances parties are directed to bear their own costs."

In light of the aforesaid judgment, once the reserve price was fixed to Rs.31,00,00,000/-, all the more there was no reason to reject the offer made by the present appellants on a technical ground that the appellant was not a participant. If the present appellant was not a participant, the prayer made by the Official Liquidator for re-auctioning the entire properties should have been allowed.

26. The Hon'ble Supreme Court in the case of Navlkha & Sons (supra) in paragraph - 6 has held as under:-

"6. The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror 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 it 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 reasonable. 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. In *Gordhan Das Chuni Lal v. T. Sriman Kanthimathinatha Pillai*(1) it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed 'is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathi Pillai*(2) 'and *S. Soundajan v. M/s. Roshan & Ca.*(1). In A.

Subbaraya Mudaliar v. K.Sundarajan (4) it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction, is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co's case (supra)."

In the considered opinion of this Court, keeping in view the law laid down by the Apex Court in the case of Navlakha & Sons (supra), fresh auction became a necessity.

27. In the case of Vedica Procon Private Limited v/s Balleshwar Greens Private Limited & Others reported in (2010) 16 SCC 94, the Hon'ble Supreme Court in paragraphs - 47 and 48 had held as under:-

"47. In our opinion, in the case on hand, the High Court was not justified in recalling the order dated 17.12.2013 for following reasons:

48. The highest bid of the appellant herein was accepted by the Company Court and all the stake-holders of the company in liquidation were heard before such an acceptance. Nobody ever objected including the first respondent herein at that stage on any ground whatsoever, such as, that there was any fraud or irregularity in the sale nor was there any objection from any one of them that the price offered by the appellant herein was inadequate. No doubt, the property in question became more valuable in view of the subsequent development. In our opinion, it is not a relevant consideration in determining the legality of the order dated 17. 12.2013. Imagine, if instead of increasing the floor space index for construction from 1.0 to 1.8 the State of Gujarat had decided to reduce it below 1. 0 subsequent to 17.12.2013, could the appellant be heard to argue that it would be legally justified in resiling from its earlier offer which was accepted by the Court and not bound by the contractual obligation flowing from such an offer and acceptance? "

In the aforesaid case, the property in question became more valuable in view of subsequent development (i.e. increased FSR), however, in the present case, in the first round of sale, the offered reserve price was Rs.31,00,00,000/-, which was certainly much more than the reserved price offered by respondent No.2 i.e. Rs.28,15,00,000/-. The price offered by respondent No.2 is again much lower than the price offered by the appellant.

28. Keeping in view the judgments delivered by the Hon'ble Supreme Court, it is the bounden duty of the Court to see that the price fetched at the auction is an adequate price, even though, there is no suggestion of irregularity or fraud. In

the case of Punjab Wireless Systems Limited v/s Indian Overseas Bank & Others reported in (2005) 126 Company Cases 554, the Punjab & Haryana High Court has held as under:-

"22. Rejecting the argument that mere inadequacy of price cannot demolish every Court sale based on the earlier judgment of the Supreme court in Kayjay Industries (P) Ltd., v. Asnew Drums (P) Ltd., (1974) 2 SCC 213, their Lordships observed as under:-

"In our view, this submission requires to be rejected on the ground that in the said case, the Court has reproduced the paragraph which we have quoted above from the decision in Navalkha and Sons wherein the Court has specifically held that the condition of confirmation by the Court operates as safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale; the Court is required to satisfy itself that having regard to the market value of the property the price offered is reasonable; unless the Court is satisfied about the adequacy of the price the act of confirmation of sale would not be proper exercise of judicial discretion. This aspects reiterated by the Court by holding that the aforesaid principles must govern every Court sale. The Court has also observed that failure to apply its mind to the material factors bearing on the reasonableness of the price offered may amount to material irregularity in conduct of sale."

23. It is thus obvious that the power of the Court to set aside even confirmed sale if unassailable. The judgment of the Supreme Court in Navalkha and Sons's case (supra) has not dealt with such a power. However, in Union Bank of India's case (supra), the view taken in Navalkha and sons's case (supra) has been considered. Emphasising that the object of sale is to apply the sale proceeds to meet the claims of the creditors of the Company, the Supreme Court in the case of Allahabad Bank v. Bengal Paper Mills Co. Ltd. (1999)4 S.C.C. 383 (supra) has held that it is duty of the Courts to ensure that the best possible price is realised by sale of the assets and the properties of the Company in liquidation as it is obliged to the creditors for undertaking such a course. It was noticed that the learned Company Judge had ordered possession to be delivered to the Official Liquidator hastily and concluded that the auction purchasers should have realised that the order of sale could be set aside when any expenditure incurred by the auction purchaser was at his own risk. It was also observed that the interest of the creditors of the Company, particularly those of the unsecured creditors over weighed such equities. The observations of their Lordships in this regard read as under:-

"The second respondent knew that the appeals were pending and that they could end in the order of sale being set aside. Such expenditure as it incurred with this knowledge was at its risk. In the third place, and most important, the interests of the creditors of the Company, particularly the unsecured creditors, overweighed such equities, if any, as might have been considered to be in favour of the second respondent. It was, in our view, the obligation of the Division Bench to

have struck down the order of sale having regard to what it found wrong with it.

25.....The second respondent knew that the appeals were pending. It should have appreciated that the order of sale was very vulnerable, given what the Division Bench of the High Court had to say about it. It consciously took the risk of incurring the expenditure and obligations and it cannot take shelter behind him."

24. The judgment in the case of Divya Manufacturing Company (P) Ltd. (supra) has clarified any doubt about setting aside a sale even after confirmation holding that a subsequent higher offer can constitute a valid ground for doing so. In that case, the sale was confirmed for price of Rs. 1.30 crores but subsequently before possession of the property could be handed over or sale deed could be executed in favour of the auction purchaser, some interveners came and pointed out that the assets of the Company could fetch Rs. 2 crores. Both the interveners deposited Rs. 40 lacs each and also undertook to pay damages to the auction purchaser. The Division Bench of the High Court after taking into consideration all the relevant facts, ordered resale of the assets of the Company. The order of the Division Bench was upheld by the Supreme Court after referring to the judgments in Navalkha and Sons's case (supra) and LICA (P) Ltd. (1) (supra) and LICA (P) Ltd. (2) (supra). Relying and explaining various earlier judgments of the Supreme Court, it was held as under:-

"16.....The offer of Rs. 1.30 crores is totally inadequate in comparison to the offer of Rs. 2 crores and in case where such higher price is offered, it would be in the interest of the Company and its creditors to set-aside the sale. This may cause some inconvenience or loss to the highest bidder but that cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed in the market forces and prices. Confirmation of the sale by a court at a grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the Court may prevent, to some extent, underbidding at the time of auction through Court. In the present case, the Court has reviewed its exercise of judicial discretion within the shortest time."

25. The aforementioned survey of case law clearly lays down that this Court is clothed with the powers to set aside even a confirmed sale provided it comes to the conclusion that the price offered by the auction purchaser in fact was inadequate. Such power is not dependent on any finding that there was material irregularity or commission of fraud in the process of sale, adopted by the Official Liquidator. It is also significant to notice that Dr. Singhvi appearing for the auction purchaser has also conceded such a power of the Court. The question which arises is whether in the facts and circumstances of the case, the sale confirmed in favour of the auction purchaser should be set aside or the plea raised by the interveners should be rejected."

Thus, in short, if the Court feels that the price offered in the auction is not the adequate price, the Court can certainly order for re-auction and in the present case, a person i.e. present appellant has offered Rs.2,80,00,000/-more in the matter, and therefore, fresh auction is inevitable.

29. Another important aspect of the case is that the sale was confirmed on 02.03.2020 in presence of advocate of respondent No.2 with a direction to deposit entire sale consideration within a period of 60 days from the date of the order i.e. by 01.05.2020, however, respondent did not deposit any amount by 03.05.2020 and taking shelter of pandemic COVID - 19, a prayer was made for extension of time.

30. In the considered opinion of this Court, as the amount offered by respondent No.2, which is less than the initial reserve price of Rs.31,00,00,000/- and which is again less than the amount offered by the appellants, cannot be accepted as the difference is about Rs.2,79,00,000/-. The Official Liquidator is receiving almost 2.80 crore extra amount and on technicalities, such an offer cannot be thrown in a dustbin. It is certainly true that the present appellant has not participated in the process of tender but at the same time, assets of the Company, as the initial price was fixed at Rs.31,00,00,000/-, cannot be given to a person, who has offered Rs.28,15,00,000/- only.

31. In the considered opinion of this Court, the prayer made in the OLR for fresh e-auction should have been allowed and not further extension could have been granted keeping in view the peculiar facts and circumstances of the case to respondent No.2 to deposit the amount.

32. Resultantly, all the Interlocutory Application stand disposed of. The orders dated 02.03.2020 and 04.05.2020 are hereby set aside and the prayer made by the Official Liquidator in OLR No.31/2019 for holding fresh e-auction is allowed. It is needless to mention that the present appellants, keeping in view the undertaking given by them before this Court, in case, a fresh auction is held will not quote the price less than the price already quoted before this Court as well as quoted before the Official Liquidator i.e. less than Rs.30,69,00,000/-. The present appellant shall also bear the cost for conducting fresh e-auction. The exercise of concluding fresh e-auction be concluded within a period of 60 days from the date of receipt of certified copy of this order.

With the aforesaid, the present Company Appeal stands allowed. No order as to costs.

This matter has been disposed of through video conferencing and keeping in view the present scenario on account of pandemic COVID - 19, in case, a certified copy is not made available (physical copy), the e-copy obtained through the High Court Website or even the copy uploaded on the website of the High Court shall be treated as certified copy for all purposes.