(2026) 08 MP CK 4326

In the Madhya Pradesh High Court

Case No : COMP No. 3 of 2003

M/s. Enbee Plantation Ltd. APPELLANT

Vs

Utkarsh Agrawal RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Citation : (2026) 08 MP CK 4326

Hon'ble Judges : Deepak Khot, J

Bench : Single Bench

Advocate : Shri Hare Krishana Upadhyay, Shri Sandeep Agrawal, Shri Amit Khatri, Shri Somesh Shukla, Shri Harshavardhan Topre, Shri Himanshu Gupta, Shri Naveen Dubey, Shri Ratnakar Prasad Mishra, Shri Avhinav Kherdikar

Judgement

Heard on IA No. 1982/2025, an application for intervention and appropriate directions.

2. **It is submitted by learned counsel for the intervernor that the intervernor participated in the auction proceedings initiated pursuant to the auction notice published in the newspaper on 27.12.2023 for sale of property of Lot No. 1 of the company under liquidation.**

3 . It is contended by the learned counsel for the intervernor that as the property was under charge of MPSIDC, the intervernor had also served a notice upon MPSIDC seeking the status of the property in question. However, the said notice was not replied to by MPSIDC. It is also submitted that this Court was not apprised of the fact either at the time when the property was put to auction or on the date when the sale was confirmed by this Court, that the property was under charge. It is submitted that the Hon'ble Apex Court in the case of Viney Kumar Sharma Vs. The Improvement Trust and another, 2026 LiveLaw (SC) 69, while explaining the principles governing an auction process, has held that it is the duty of the financial institution to apprise the auction purchaser of the status of the property under mortgage, whether such

property is free from all encumbrances or not. Therefore, any financial institution advanced money on illegal mortgage and having chosen to auction a property which it never lawfully possessed bears the responsibility for the consequences.

4. **It is submitted by learned counsel for the petitioner that as Lot No. 1 consists of property which was under charge of MPSIDC as shown from the Khasra entries filed along with the application at pages 11 to 13, the intervernor could not get the sale deed executed in his favor. The intervernor immediately pointed out and represented the matter to the Official Liquidator vide letter dated 24.06.2024 (Annexure D-4). Despite the representation submitted by the intervernor , the Official Liquidator, vide letter/order dated 25.07.2024 (Annexure D-8), forfeited the earnest money of Rs. 9,00,000/- deposited by the intervernor on the ground that the intervernor had failed to deposit the entire sale consideration within the stipulated time.**

5. **It is further submitted that as the property was under the charge of MPSIDC, therefore, there is no question of getting the sale deed executed of the property which was under such charge. It is further submitted that the High Court of Calcutta, in the case of West Bengal Financial Corporation Vs. Annapurna Engineering and Manufacturing Private Limited and others. reported in 2022 IR (Cal) 362, has held that "as-is-where-is" or whatsoever-there-is" basis does not mean that a person is expected to purchase a property which is under charge. The relevant extract is reproduced as under:-**

> 23. **We find that the sale notice makes no mention of the order dated 19th December, 2003 passed by the Debts Recovery Tribunal-II. Although Mr. De, has strenuously argued that the appellant in its sale notice has left out the portion of the land over which the SBI claims charge, we do not find any such reference in the sale notice. The appellant having failed to disclose the encumbrances relating to the auctioned property, it cannot later claim protection on the pretext of 'as-is-where-is and whatsoever-there-is' basis.**
>
> 24. **Although Mr. De has argued that the Company having not made payment within the extended time, the appellant was justified in cancelling and/or withdrawing their offer, we find that it is not the case of the parties that time was essence of the contract. It had not been the case of the appellant that it was the intention of the parties that payment should be made within the time provided, on the contrary we find that the appellant had extended time for making payment, subject to making payment of further interest.**
>
> 25. **We have meticulously perused the documents on record and have been able to ascertain that even after 14th January, 2005 the appellant had repeatedly on several occasions, had exchanged communications with the Company and/or its banker and/or marked copies of correspondence exchanged with its banker to the Company. In none of the aforesaid correspondence reference of determination of contract/withdrawal of offer of sale has been made. The appellant having failed to disclose the encumbrances relating to the auctioned**

> **property, it cannot later claim protection on the pretext of 'as-is-where-is and whatsoever-there-is'.**
>
> 26. **We are not impressed by the arguments advanced by the appellant that the contract stood determined way back on 17th January, 2005. We further find substance in the argument of the Company that it was obligatory for the appellant to disclose to the Company, not only the pendency of the proceedings before the D.R.T. but also claim of SBI.**

6. **On the basis of the aforesaid facts, it is prayed that the letter/order dated 25.07.2024 (Annexure D-8), whereby the earnest money deposited by the intervernor has been forfeited, be quashed. It is further prayed that the earnest money deposited by the intervernor be refunded**

7 . Per contra, learned counsel for the Official Liquidator has submitted that the intervernor/proposed purchaser of Lot No. 1 was very much aware of the fact that the property of lot No. 1 was under charge, because the auction notice itself contained the stipulation that the property was being sold on "as-is-where-is" and "whatsoever-there-is" basis. Therefore, it was the duty of the purchaser to find out the title of the property and only thereafter submit the bid accordingly. The intervernor knowing well after inspecting the title records that the property was not under charge, therefore, at a later stage, the petitioner cannot say that as the property was under charge, the petitioner could not get the sale executed in his favour. The Official Liquidator has rightly taken the decision, as the intervernor failed to deposit the entire remaining sale consideration within the stipulated time and consequently could not get the sale deed executed in his favour. Ultimately, it is submitted that the property is under liquidation and the interest of the secured creditor is required to be protected. It is further submitted that the auction notice was issued on 27.12.2023, and the inspection of the lot was made on 10.01.2024. Thereafter, the e-auction was held on 24.01.2024, wherein the intervernor was declared the highest bidder for Lot No. 1 by offering a bid of Rs.3,44,00,000/-. Thereafter, O.L. No. 1/2024 was filed for confirmation of the sale. This Court, vide order dated 18.04.2024, confirmed the sale in favour of the intervernor and granted 60 days' time to deposit the balance sale consideration.

8. **It is further submitted that a letter dated 29.04.2024 was issued to the intervernor directing him to deposit the balance sale consideration. However, as the remaining amount of sale consideration was not deposited within the stipulated period of 60 days, the Official Liquidator, vide order dated 25.07.2024, has taken a decision to forfeit the earnest money deposited by the intervernor. it is further submitted that the Hon'ble Supreme Court, in the case of United Bank of India Vs. Official Liquidator, reported in (1994) 1 SCC 575, has held that when the property and assets of the company under liquidation are sold under the**

orders of the Court, the Official Liquidator cannot and does not hold any guarantee or warranty in respect thereof. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances, and other relevant aspects of the immovable property which he proposes to purchase. Therefore, the intervernor, at this stage, after the sale has been confirmed by this Court, can not submit that because of the encumbrances, he could not get the sale deed executed by depositing the remaining sale consideration.

9. **It is further submitted that the auction notice itself contains Clause 14, being one of the terms and conditions of the sale, according to which the bidder who bid for the purchase of the property/assets of the company under liquidation was required to deposit the entire sale consideration within 60 days from the date of confirmation of the sale by the Court. As the intervernor failed to deposit the entire sale consideration within the stipulated period, Official Liquidator has taken the decision to forfeit the earnest money in consonance with the terms and conditions of the sale.**

10. **From the perusal of the record, it is found that this Court, vide order dated 08.04.2024, confirmed the sale in favour of the intervernor on acceptance of his bid for Lot No. 1 for a sale consideration of Rs.3,44,00,000/-. The auction notice contained a stipulation that the entire amount of sale consideration was required to be deposited within 60 days. Even, if it is assumed that in the khasra entries or revenue record, column number 12, reflected a charge of MPSIDC, then, in the light of the auction notice, the intervernor ought to have presented the sale deed, and in case the Registrar of documents had raised an objection that the sale deed cannot be executed in the light of the said charge, then only the intervernor could have contended that because of the charge, the sale deed could not be executed. The intervernor, instead of moving to the Registrar for getting the sale deed executed, had taken the stand that unless such charge was removed from the revenue entries, the intervernor could not get the sale deed executed. As from the terms and conditions of the auction notice, it is clear that intervernor was required to deposit the entire amount of sale consideration within 60 days. Therefore, it was the obligation of the intervernor to deposit the entire sale consideration within stipulated period, and then, in case any objection had been raised that the sale deed cannot be executed in favour of the intervernor, the Official Liquidator could have been directed to get the remark regarding the charge removed from the revenue records. More so, MD MPSIDC has filed an affidavit before this Court that the property in question is not under charge.Therefore, in the absence of any such hurdle, the case law relied upon by the learned counsel for the intervernor is of no help to the intervernor. In the light of the judgment passed by the Hon'ble Apex**

Court in the case of United Bank of India (supra), the Official Liquidator, being an officer of the Court, is duty-bound to implement the orders of the Court to secure the interest of the creditors from the assets/ property of the company under liquidation.

11 . On understanding the principles laid down by the Hon'ble Apex Court in the case of Viney Kumar Sharma (supra) , it is clear that same are applicable to those financial institutions which lend money on the basis of a mortgage of a property which is not lawfully possessed by them. It is not the case of an auction conducted in liquidation proceedings in a company petition. In the company petition, the liquidation is done by the Official Liquidator, being the officer of the Court. The auction notice itself contains the term that the property under sale is on "as-is-where-is" and "whatsoever-there-is" basis. Therefore, it was the duty of the intervernor to find out the status of the title of the property under liquidation and then only submit the bid. If the sale had been confirmed and time had been granted to the auction purchaser to deposit the entire sale consideration, the intervernor, instead of depositing the same, engaged himself in correspondence with the authorities to find out the status of the property. Further, instead of directly approaching the Registrar for getting the sale deed executed, the intervernor chose not to do so, which shows the mala fides of the intervernor. Therefore, the case law relied upon by the intervernor is of no help to him.

12. **The intervernor has never applied to this Court for recall of the order confirming the sale. The intervernor has only filed an application seeking refund of the earnest money, which was forfeited by the Official Liquidator in terms of the conditions of the auction sale notice after confirmation of the sale by this Court. Therefore, in the considered opinion of this Court, the intervernor did not diligently comply with the directions issued by this Court and failed to deposit the entire sale consideration within the stipulated time. Thus, the decision taken by the Official Liquidator is in consonance with the direction issued by this Court as well as the the terms and conditions of the auction notice. The intervernor cannot claim any equity after two years from the confirmation of the sale. The property in question still remains untransferred due to the intervention of the applicant. Therefore, intervention application is dismissed. The Official Liquidator is directed to issue a fresh auction notice in respect of Lot No. 1 within 15 days from today, absolutely in consonance with the earlier order of issuance of notice of publication.**

13. **Also heard on IA No. 23400/2025, an application for intervention seeking direction to the Official Liquidator to consider the offer of intervernor in respect of purchase of Lot No. 1.**

14. **It is submitted by learned counsel for the intervernor that after the confirmation of sale of Lot No. 1, he is ready to offer Rs. 2,70,00,000/- for purchase of the property of Lot No. 1. However, as the this Court has rejected the application of intervention of the bidder who had offered the highest bid of 3,44,00,000/-, therefore, there is no question of accepting the offer of a person who has offered an amount less than the highest bid. Therefore, the I.A. No. 23400/2025 stands rejected. The Official Liquidator is directed to refund the amount deposited by the said intervernor if any. All the parties are free to participate in the fresh auction proceedings in respect of Lot No.1.**

15. **Also heard on IA No. 15161/2026, an application for intervention seeking to offer a higher amount to purchase Lot No. 2, which has already been confirmed by this Court.**

16. **This Court had issued the auction notice on 19.06.2024 and the sale was confirmed on 02.04.2025. It is submitted by learned counsel for the Official Liquidator that all the formalities have already been completed. The entire sale consideration has been deposited, possession has also been handed over to the auction purchaser, and the No Objection Certificate (NOC) from the Society has also been issued. Now, only the execution of the sale deed remains, which is merely a formality.**

17. **Considering the submissions of the learned counsel for the Official Liquidator, it is the considered opinion of this Court that, the intervernor, only to frustrate the object of the liquidation proceedings, has come forward to file the present application at a final stage after considerable period of delay. Therefore, the application is dismissed with cost of Rs. 10,000/-.**

18. **List the case in the week commencing 25.08.2026.**