

(2004) 08 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 607 of 2004

Morya Infrastructure and Others

APPELLANT

Vs

National Textile Corporation (M.P.) Ltd. and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17

Citation : (2005) 2 JLJ 24

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.C. Bagadia and D.K. Chhabra, for the Appellant; A.S. Kutumble, Saran, for Respondents No. 1 and 2 and A.K. Sethi, for the Respondent

Judgement

A.M. Sapre, J.—By filing this writ under Article 226/227 of the Constitution of India, the Petitioners seek to claim following reliefs in the nature of issuance of mandamus against the Respondents No. 1 and 2 and also seek quashing of acceptance of tender of Respondent No. 3 by Respondents No. 1 and 2 for purchase of land belonging to Kalyan Mill, Indore:

a. to issue writ, direction or order in the nature of mandamus or as deemed fit quashing the decision of the Respondent No. 1 and 2 to accept the tender of the Respondent No. 3 or of any person other than the Petitioner.

b. To issue a writ, direction or order in the nature of mandamus or as deemed fit to Respondents No. 1 and 2 to dispose off the land of Kalyanmal Mills, Indore, by open and transparent negotiations or by a re-tender or in any other fair and transparent mode giving full opportunity to the Petitioner to improve the offer.

2. Facts on which the aforementioned reliefs are claimed need to be taken note of in detail to appreciate the grievance urged by the parties to the petition.

3. The Respondent No. 1 is a Government of India undertaking being a government company as defined under the Company Act. It is thus, a State

within the meaning of Article 12 of the Constitution of India and is thus amenable to writ jurisdiction of this Court. The Respondent No. 1 is declared as sick industrial company under the provisions of SICA by BIFR. The BIFR has accordingly, framed a rehabilitation scheme as contemplated u/s 17 of SICA for Respondent No. 1 (hereinafter for convenience referred to as Company). The Company has 5 mills situated in several parts of the country, which are since closed. One mill out of 5 is located at Indore in State of M.P. It is known as Kalyan Mill. This mill is situated on the land measuring around 33.57 acres (14,62,309.2 sq. ft. approx.) bearing Khasra Nos. 156, 158/1649/3, 157/1656, 157 to 159 at 15, Shilnath Camp near Subhash Nagar, Indore) M.P.

4. As per directives contained in rehabilitation scheme, the company has decided to sell the aforementioned land belonging to Kalyan Mill. The dispute in this petition centers round the sale of the aforesaid land by the Company. In order to accomplish the task of sale of land, the company has formed a committee known as Assets Sale Committee (for short hereinafter called ASC) - the Respondent No. 2 herein.

5. On 10.3.2004, the company published an advertisement in papers having circulation in India inviting tenders for sale of land of 5 mills on "As is where is" basis. This advertisement included sale of land of Kalyan Mill as well. In the advertisement which was meant for sale of land for all the five mills, it was mentioned that the land of Kalyan Mill, referred supra, is free from all encumbrances and stands vested in Central Government. It was further mentioned that State of M.P. has also granted permission to sell the land and has also exempted the entire sale of land from payment of stamp duty payable by the buyer on the sale-deed to be executed by the Company in favour of successful buyer. So far as sale of land of Kalyan Mill was Concerned, each tenderer was required to deposit a sum of Rs. 168 lac, i.e., Rs. One Crore and sixty eight lac by way of EMD. The tenders were to be submitted on or before 21.4.2004 and were to be opened on 21.4.2004 itself.

6. It is not in dispute being a matter of record of the case produced before the Court that only two parties submitted their tender, viz., Petitioner and Respondent No. 3, pursuant to aforementioned advertisement. On 21.4.2004, the tenders were opened by ASC. So far as Petitioner was concerned, it was found that they had offered to purchase the land for Rs. 17.71 crores in their tender whereas Respondent No. 3 offered Rs. 17.01 crores. However, on 4.5.2004 (Annexure P-8), the company sent a letter to the Petitioner requesting them to come for negotiations on 7.5.2004. By yet another letter dated 4.5.2004 (Annexure P-9) the company informed the Petitioner that since the offer of Petitioner is found to be lower than what is called "Reserve Price fixed by Company", hence, Petitioner is being afforded an opportunity to further improve their original offer to be submitted in sealed cover. It was further mentioned that revised offer should not be less than the original offer else EMD of Rs. 168 lac shall stand forfeited. The letter further said that the revised offer shall be opened

and considered on 7.5.2004 by ASC. Accordingly, as the record indicates (minutes of meeting held on 7.5.2004 Annexure R-I) the Petitioner submitted their revised offer, increasing it to Rs. 18.32 crores as against original offer of 17.11 crores whereas Respondent No. 3 submitted their revised increase offer of Rs. 19.11 crores as against the original offer of Rs. 17.01 crores.

7. The minutes of meeting (7.5.2004) Annexure R-I would indicate that ASC found that since the revised offer of Respondent No. 3 is higher than that of Petitioner being more than the so-called reserve price and hence, they only allowed the Respondent No. 3 to stay back for further negotiations. Accordingly, the ASC held negotiations only with Respondent No. 3 who, in this negotiation process, increased their offer from Rs. 19.11 crores to Rs. 20.11 crores. It is this final offer of Respondent No. 3 which came to be eventually accepted by the company, i.e., ASC. This is what is recorded in the minutes of ASC held on 7.5.2004 (Annexure R-I):

Since both the offers were above the reserve price, the highest offerer, M/s. Shalimar Housing and Finance Ltd., was declared as the highest and they were asked to stay back for further negotiations as per the tender conditions. Accordingly, negotiations were held with the party and they have given the final offer of Rs. 20,00,11,000/-. The Committee concluded the sale on negotiation with the highest offerer at Rs. 20,00,11,000/- (Rupees twenty crores eleven thousand only).

8. It is against the acceptance of this offer by the Company/ASC, the Petitioner has felt aggrieved and filed this writ claiming aforementioned reliefs by way of issuance of writ of certiorari and mandamus against the Respondents. It is the case of Petitioner that they had, before filing of the writ, offered to the company/ASC that they are ready to offer and is actually offering more amount than what is offered by Respondent No. 3 and is learnt to have been accepted by the company/ASC. In fact, according to Petitioners, by their letter dated 7.5.2004 (Annexure P-12), they offered a price of Rs. 20.61 crores, i.e., much more than what was actually offered by Respondent No. 3 (Rs. 20,00,11,000/-) and yet they were not allowed to participate in the negotiations held on 7.5.2004 resulting in vitiating the entire bidding process undertaken by the company/ASC as being unfair, unreasonable and was undertaken to extend favour to Respondent No. 3 to the exclusion of Petitioner.

9. Notice of the writ was issued to the Respondents. So far as company is concerned, they have filed their return whereas Respondent No. 3, i.e., successful tenderer has filed their separate return. In substance, both these Respondents have defended the entire tender process which eventually culminated in acceptance of what they call the highest revised offer of Respondent No. 3 for Rs. 20,00,11,000/-. It is contended on their behalf that the procedure evolved and undertaken by ASC formed by company was quite fair and transparent. According to company, both the tenderers were given equal opportunity to bid and participate in negotiations process to enable them to

submit their revised offers. It is contended that the price quoted by Respondent No. 3 being reasonable, marketable and in tune with the guidelines issued by Collector, the same was found best in the interest of company. The Respondent No. 3 has also contended that Petitioner has no locus to file the writ because according to them, one "A" has submitted the tender whereas "B" has filed this writ. These in substance are the contentions on which the impugned decision is sought to be defended by Respondents.

10. Heard Shri S.C. Bagadia, learned senior counsel with Shri D.K. Chhabra, learned Counsel for Petitioners. Shri A.S. Kutumble, learned senior counsel with Shri Saran, learned Counsel for Respondents No. 1 and 2 and Shri A.K. Sethi, learned Counsel for Respondent No. 3.

11. Submission of learned Counsel for the Petitioner was the same as has been taken note of supra while narrating the facts pleaded in the writ. It is those very grounds which learned Counsel for the Petitioner reiterated in his submissions with reference to decided cases reported in (i) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and in (iv) Tata Cellular Vs. Union of India, . In reply, the submission of learned Counsel appearing for company and Respondent No. 3 were also on the same grounds which are taken in their return, referred supra.

12. Having heard learned Counsel for the parties at length and having carefully perused the record of the case. I am inclined to allow the writ in part and while quashing the impugned decision taken by company in their meeting held on 7.5.2004 (Annexure R-I) to accept what is called the only highest offer of Rs. 20,00,11,000/- submitted by Respondent No. 3 for purchase of land in question and further inclined to issue writ of mandamus against the company as indicated infra.

13. At the outset, I may take note of certain well settled principles laid down by their lordships of Supreme Court governing these types of cases. Indeed, the law insofar as powers of Courts under Article 226/227 of the Constitution of India interfering in the cases of sale of largess of State/Union by evolving the process of tender are well defined. Right from Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, followed by Kasturilal (AIR 1980 SC 1992) and resting with Tata Cellular Vs. Union of India, these principles are consistently redefined and elaborated broadly in each case. In other words, the issue involved in this case has to be decided keeping in view the law laid down by Supreme Court in these well known cases which has explained as to when, how, to what extent and in what circumstances, and on what parameters, the Court while exercising its extra ordinary powers conferred under Article 226/227 of the Constitution of India cannot and can interfere. Indeed the power to interfere is well recognized being inherent as being available to Court if it is found that impugned action is arbitrary, unfair, illegal, irrational and affecting to a large extent, the financial interest of State. Their Lordships have cautioned that Government being the guardian of the finances of State, it is expected of from

those who are entrusted with the task to protect the financial interest of State to maintain/follow the highest level of transparency in every transaction. Absence of these factors renders the whole action bad in law in the larger public interest as also in the interest of State.

14. In my considered opinion, when one examine the whole process of sale of land in question undertaken by the company in its right perspective and keeping in view the test laid down by Supreme Court in the aforesaid cases, it is clear that the impugned action is not liable to be sustained in Court of law. In other words, it is incapable of being sustained in the eye of law and has to be quashed in the public interest and also in the interest of company - being a State within the meaning of Article 12 of the Constitution of India.

15. This Court is constrained to hold that the ASC (Asset Sale Committee) simply used the expression in its resolution dated 7.5.2004 (Annexure R-I) that "the objective of company is to get the maximum price" and that "procedure followed has been fair and transparent and there was no irregularity" but in reality, neither the objective to obtain the best marketable price of the land was followed nor the procedure resorted to for finalization of sale could be said to be either fair and and/or reasonable, keeping in view the highest standard required in such type of cases.

16. In my considered view, the first thing that the ASC, i.e., Asset Sale Committee should have done was to get the valuation done of the land put for sale. Indeed before sale of any immovable property, every prudent person (intending seller) gets the valuation of property done with a view to ascertain its real marketable price available in the commercial world. The valuation done by the experts in the field gives a fair idea to the seller as to what can be the fair marketable value of the land that one can expect from any potential buyer. In a case where the title of land is absolutely free from all encumbrances - the State/Central Government being the owner - and where the buyer is to get immediate vacant possession of entire land and that too without payment of any stamp duty on the sale deed, the land of such nature is bound of fetch highest price in the open market as compared to any other private sale between the two private parties. Indeed such clear land is seldom available for acquisition for consideration in the open market to any potential buyer from public at large. As a matter of fact, one can take judicial notice of the fact that in today's world, prices of land are touching the sky and in metropolitan cities like in Indore one of the biggest commercial/industrial town in State of M.P., the prices of land are the most lucrative one in open market. The land in question measuring 33.97 acres (14,62,309.2 sq.ft.) in the heart of the city with absolutely no encumbrance in title and with a clause to deliver immediate vacant possession to the buyer and that too without payment of any stamp duty is probably the only and the largest sale ever to be accomplished in the area. A land of such highest magnitude can never be available for sale to any private individual owner, because of several ceiling restrictions applicable to him. It is infact a unique sale of its own kind and

looking to the extent of area (largest ever available in the heart of city - it is like a small village), the ASC was under legal obligation in all fairness to get the valuation done by atleast 3 independent valuers of the land so as to get the fair idea of best marketable available price before the land was advertised for sale. Not getting the valuation done makes it apparent that no sincere efforts were made by ASC before sale of such a valuable land to find out its actual marketable potential value in its real commercial world. This infirmity in my view renders the process of sale bad in law. It is much more so because while defending the sale, no such plea was taken in the return nor any document was filed by company to show their bona fide.

17. In my considered opinion, there is yet another infirmity which this Court has been able to notice in the sale process. It was the legal duty of ASC to have obtained the opinion of experts in the field as to how and by which method the land can be sold so as to fetch its real maximum value in return. In other words, sincere efforts should have been made to find out the best way/method by which the maximum return could be obtained in terms of money. Usually in such case, the task is entrusted to expert consultants in the field who suggest various modes/methods by which a maximum return can be obtained. Since the land in question is huge chunk of land having immense potential market value being situated in heart of city, efforts should have been made in its real sense as to whether it would be proper/advisable/ feasible/practicable to sell the land on "as is where as basis" or whether it should be sold in plots (small/big) or whether any other scheme can be framed etc. to have the better price? It is not for the Court to embark upon these issues in minute's details because it is not the job of the Court. However, a report from experts on this subject, if obtained, would have been of immense value to know as to in what best way and manner the sale of land should be accomplished to fetch best maximum price. This would have justified that sincere efforts were made by the members of ASC to fetch maximum return of the land. This in my opinion is yet another infirmity in the process of sale which renders the entire sale process bad in law.

18. In my considered view there lies a subtle distinction in what we call "more price" and "adequate price". It may be that out of two tenderers, one has quoted slightly more than the other but then what is quoted may be more inter se two tenderers yet the so-called more may not be adequate and real price which the company is expected to get. The company should have kept this distinction in mind while finalizing the sale rather than to concentrate the only two prices quoted by two tenderers.

19. In my considered opinion, there is yet one more infirmity which this Court has noticed in sale process resulting in vitiating the sale process. The very fact that in such a huge sale transaction, only two tenderers participated itself was a ground for ASC not to go ahead with the tender process for finalization of sale. Indeed, it is something unnatural that only two persons would participate in such a big bargain. It was a clear case where there was no real bargain nor healthy

competition held inter se tenderers for purchasing of the land. I do not thereby mean to suggest that those participated should not have been allowed to quote their offers at all or that their offer should not have been considered at all. However, taking into consideration the totality of circumstances, and the fact that value of subject matter is quite substantial and that there is every likelihood of many more participating in the tender process, the ASC should have considered this material aspect and in the larger interest should have cancelled the entire sale process rather than to negotiate only with Respondent No. 3 and re-advertised the sale so as to enable more and more persons to participate in bidding.

20. In my view, there is yet one more infirmity which I have been able to notice in the advertisement. Indeed this infirmity may have led to only two persons participating in the tender process. The advertisement was meant for sale of land belonging to 5 mills. The land in question was shown as one item out of 5 in the said advertisement. In order to give widest publicity in clearest terms, the advertisement should have been confined with prominence only for sale of Kalyan Mill land. In other words, it should not have been tagged/clubbed with the sale of other 4 lands belonging to other mills. The sole objective in this process is to invite prominence thereby attracting notice of more and more persons interested in purchase of land.

21. A single big advertisement for sale of land in question coupled with its advantages attached to the land should have been published not only in English language but in other regional languages all over the country in National newspapers as also in local daily regional papers in other part of the country. In addition, publicity on internet should have also been given. Indeed, the company could have and rather should have obtained opinion of experts in the field of advertising as to by which methods of advertising the more potential buyers can be attracted. The more is the publicity, the better is the participation of buyers. This infirmity in my view is yet another ground to vitiate the sale process.

22. In my view, there is one more serious infirmity which this Court has noticed in the sale process rendering the process bad in law. As taken note of supra, the two tenderers were allowed to submit the revised offer by letter dated 4.5.2004 (Annexure P-8/9). Minutes recorded on 7.5.2004 (Annexure R-I) would indicate that ASC having found that revised offer of Respondent No. 3 is higher than that of Petitioner, straightway excluded the Petitioner from participating in the negotiations process and only held negotiations with Respondent No. 3 who in their turn further revised their offer from Rs. 19.11 crores to Rs. 20,00,11,000/-. This in my view was not the correct and proper way of negotiations. Indeed, it was no case of negotiations at all, because there was nobody except one tenderer with whom the ASC indulged in so-called indoor negotiations. The object of negotiations is to allow each and every tenderer to participate in negotiations in presence of all tenderers. In other words, the ASC is under legal duty to hold negotiation process in presence of all tenderers till the highest price

is not finalized. All deliberations, offers, counter offers given by the tenderers must be made known to every tenderer who are participating in the tender process. It is only then each tenderer is able to know and effectively participate in negotiation process and is able to compete with his competitors for giving higher bid than what others have offered. It is this process which eliminates arbitrariness and favours to one tenderer to the exclusion of other. The main object of negotiations inter se all tenderers is to see who ultimately offers the highest bid. This can be done only when every tenderer is allowed to stand on one platform together and in presence of everybody they are able to offer their bid. Indeed, the view that I have taken is in accord with the view expressed by Division Bench of this Court in the case reported in *Malca Constructions (India) Pvt. Ltd. Vs. The Madhya Pradesh Housing Board, Bhopal and Others*, .

23. In view of aforesaid, it seems clear that ASC though held the Petitioners to be a valid tenderer but did not allow them to participate in so-called negotiations which ASC claimed to have held only with Respondent No. 3, in which Respondent No. 3 further revised their offer and raised it to Rs. 20,00,11,000/- from Rs. 19.11 crores. The reliance placed on the term in tender notice for doing such negotiations is held bad in law and cannot be given effect to. Such term, even if it exists in tender notice, is against the principle of fair play and reasonableness. It results in arbitrariness and encourages favour to chosen few behind the back of others. It is against the very object of holding negotiations, inter se all tenderers, I am, therefore, inclined to set aside the sale process on this ground as well.

24. Learned Counsel for the Respondents placing reliance on the so-called guideline issued by the Collector contended that the price obtained by the ASC (Respondents No. 1 and 2) is adequate and proper. The submission has absolutely no merit and hence, rejected. There lies a distinction between the real market price and hypothetical price of any land. The company being the seller of land must strive to get the real market price of the land rather than to rely upon the hypothetical guideline of Collector. It is a fact reality in the market that the prices of land in the commercial market has to be found out with reference to the utility of land, its situation, placement, etc. It has to be found out on the basis of the land sold in the same locality by other private parties.

25. Learned Counsel for the Respondent No. 3 then contended that Petitioner has no locus to file this writ because it is filed in the name of some consortium who had not submitted the tender. I find no merit in the submission. In the first place. Clause 2.1 of the tender notice permits filing of the tender by a consortium of persons/companies. Secondly, the party who had submitted the tender is also one of the Petitioners and lastly, in view of the nature of controversy involved in the case, this technical objection cannot be entertained which is otherwise devoid of substance being contrary to Clause 2.1 of tender notice.

26. In my considered view, the entire sale process undertaken by the Respondents No. 1 and 2 by forming a Committee called ASC (Asset Sale

Committee) for sale of land belonging to Kalyan Mill owned by company is not sustainable in law. It has several infirmities noticed supra and held to be fatal to the sale. It was a case where the persons responsible for disposal of largess of State failed in their duty to take care of State interest in its right perspective thereby putting the State to loss in terms of money. The entire sale was sought to be done in post haste manner and to favour Respondent No. 3 for the reasons best known. The land which has a potential to fetch much more value was being sold for much lesser value. At one time, this Court had thought of reconstituting the ASC in the larger interest of State. However, on being informed by the learned Counsel for the company that the members of Committee (ASC) are senior IAS officers holding very responsible and high post in Government of India and State, as also in Financial Institutions, this Court has thought it fit to repose confidence on their ability, acumen and integrity in accomplishing the resale process of the land in question.

27. In view of aforesaid discussion, it is not necessary for this Court to deal with one submission of learned Counsel for the Petitioner when he urged that offer of Respondent No. 3 being in the nature of conditional one, the same should have been rejected at its threshold.

28. It is a settled rule of law that powers of writ Court being extraordinary in nature, the same can be exercised to remedy the wrong done by the State authorities. Indeed, such powers are meant to only safeguard the larger interest of State. In other words, there are no fetters on the exercise of such powers once it is noticed by the High Court that the action impugned is irrational, arbitrary, illegal and likely to do more harm, if not set aside. It is for this reason and keeping in view these well settled principles of law, this Court suo motu took note of glaring infirmities surfaced on the sale process which are taken note of supra. The Petitioner as also the Respondent No. 3 being the tenderers were only interested in safeguarding their own interest in somehow acquiring the land rather than to safeguard the real interest of State largess.

29. This Court is possessed of powers in its extra ordinary jurisdiction to provide for conditions depending upon the facts and circumstances of the case and taking into considerations the nature of controversy involved. The conditions imposed by this Court are conceived in the best interest of the company to fetch the best and maximum price of the larges put for sale by the company. It is made clear that this will not come in the way of company in case if they are suggested and/or if they conceive any other better conditions in accomplishing the sale. This Court makes it absolutely clear that the members of ASC will ensure observance of transparency in the entire sale process to its highest level keeping in view the only objective of obtaining the maximum price for sale of land. It is made clear that in case if any deviation of any conditions is found to have been done by any member of ASC so as to jeopardize the interest of company for any extraneous considerations, then in such event any person directly and/or indirectly affected by the sale will be entitled to bring the same to the notice of this Court by way of

writ/contempt proceedings to enable this Court to examine the entire transaction in its right perspective. Needless to observe, the adverse action, if the deviation is proved shall follow against the person who is held responsible in accordance with law. This Court hopes that the members of ASC shall make sincere endeavour to realize their responsibility conferred upon them by the State and will accordingly act to maintain the highest degree of transparency in the entire deal.

30. In view of aforesaid detailed discussion, the petition succeeds and is allowed in part. Impugned decision taken by Respondents No. 1 and 2 (ASC) in its meeting held on 7.5.2004 (Annexure R-I) in accepting the offer of Respondent No. 3 i.e. Shalimar Housing Finance Limited, Indore for purchase of land belonging to Kalyan Mill, situated at 15, Shilnath Camp Indore for Rs. 20,00,11,000/- is hereby quashed/set aside by issuance of writ of certiorari. As a consequence, writ of mandamus is issued against the Respondents No. 1 and 2 to follow/comply/implement the conditions specified by this Court at the time of and/or while undertaking the process of resale of land in question i.e. land belonging to Kalyan Mill, situated at 15, Shilnath Camp, Indore:

1. That Respondents No. 1 and 2 will get the valuation done of the entire land put for sale i.e. land belonging to and recorded in the name of Kalyan mill situated at 15, Shilnath Camp, Indore with a sole objective of ascertaining the best maximum marketable price as on day which can be fetched by the company.

2. That the valuation will be got done by at least 3 independent Government approved valuers. Out of 3, one will be from outside State.

3. Needless to observe the valuers so appointed by company will be of proven ability of highest order in the profession and full secrecy shall be maintained of the valuation mentioned by each valuer.

4. The company will appoint experts in the field for suggesting the ways/methods as to how and by which methods the land in question, if sold can fetch maximum price in the market. It will be for the members of ASC to decide who should be appointed as an expert (whether local or outsider) who can in writing advise the company the ways/means by which the company will be able to fetch maximum price of land.

5. That advertisement will be published only in relation to sale of land belonging to Kalyan Mill. It shall be published in English and all Regional Languages prevalent in several States in country. In other words, it will not confine to only in English and Hindi languages but it will be also in other regional languages depending upon the State such as Gujrati, Tamil, Telgu, Malayalam and Marathi according to states.

6. That advertisement will give prominence to all details of land such as:

(i) Khasra numbers,

(ii) area in acres and in square feet,

(iii) details of benefits/advantages attached with the land namely exemption in payment of stamp duty, Immediate delivery of vacant possession, no encumbrance over the land and in its title, all permissions granted by State, the possible use of the land etc.,

7. That advertisement shall be published in all Editions of Economic Times, Times of India, Hindustan Times, Indian Express, Business India (Magazine), all regional/local daily News Paper having circulation in their respective States, Internet (as already directed by BIFR in their guidelines) including separate letter to concerned departments of each State as to whether they (State) are interested in acquiring land in State of M.P. for any project etc.

8. That negotiations shall be held by ASC in presence of all the tenderers on one day and at one time and at one place. In other words, every valid tenderer will be allowed an equal opportunity to increase/revise/modify their offer in presence of all other tenderers and the final bid shall be finalized only in presence of all the tenderers in favour of that tenderer who has offered highest bid. The ASC shall then maintain the details of the offer given by every tenderer in negotiations duly signed by each tenderer. The clause in the tender notice about the manner of holding negotiations be accordingly modified.

9. That no reserve price shall be either fixed or made known to any of the tenderer while quoting their offer. In other words, neither there will be any minimum price nor maximum disclosed to any buyer.

10. That the entire sale consideration shall be received only by Demand Drafts/ Bankers Cheque of any Nationalized Bank in favour of Company.

31. The aforesaid conditions will be in addition to those usual conditions which are already the part of tender notices to the extent necessary qua tenderers for being informed to them. In case of any overlapping, the conditions mentioned by this Court will prevail for being given effect to.

32. It is accordingly directed that company will forthwith refund the EMD deposited by Petitioner and Respondent No. 3 in terms of tender condition. It is also made clear that neither the Petitioner nor the Respondent No. 3 have acquired any right, advantage of any nature on account of passing of this order except their right to receive EMD. The office is directed to return the original record of this case produced by learned Counsel for the company for Courts perusal to counsel for company.

No costs.