
(2005) 07 GUJ CK 0089
In the Gujarat High Court

Case No : Official Liquidator Report No. 61 of 2005 in Company Petition No. 157 of 1995

Official Liquidator of Ahmedabad Mfg. and Calicoprinting Mills
Co. Ltd.

APPELLANT

Vs

Manager, IDBI

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12

Citation : (2008) 144 CompCas 807 : (2005) 63 SCL 304

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : A.C. Gandhi, K.R. Modh, Rajesh P. Mankad, D.S. Vasavada, Shelat and G.N. Shah, for the Respondent

Judgement

K.A. Puj, J.—The Official Liquidator has filed this report on 4-5-2005 seeking, inter alia, confirmation of sale of 2,30,327 Sq. Meters of free hold land or thereabout, bearing City Survey Nos. 382, 382/1 to 382/66 and all other assets of the Company situated at Anik Road, Chembur, Mumbai in favour of M/s. Rockline Construction Company of RNA House, Level III, 50 Veer Nariman Road, Fort, Mumbai - 400 023, for a consideration of Rs. 120.50 crores on the terms and conditions of the Tender Form produced at Annexure K to the report and/or on such further terms and conditions as this Court may deem just and proper or otherwise.

2. The Official Liquidator has also prayed for other directions with regard to ratification of action taken by the Sale Committee in not holding auction for residential plot situated at Diamond Garden, Chembur, Mumbai and ratification of the action taken by the Sale Committee in making ad hoc payment of Rs. 4,68,778 to M/s. MITCON Consultancy Services Ltd., against its bill for Rs. 10,33,187 for Valuation and title investigation report produced at Annexure G to the report and also with regard to seeking permission to make the payment of

balance amount of Rs. 5,64,409 to the said party, also with regard to the payment of Rs. 73,504 to M/s. Navnitlal & Co., being charges for advertisement expenses as well as ratification of action taken by the Official Liquidator in making the payment of Rs. 39,000 to "Green House Restaurant & Bar, Ville Parle, Mumbai" for hiring venue for auction and other incidental expenses for conducting the auction at Mumbai on 9-4-2005 and also with regard to making payment of Rs. 7,000 to Mr. P.C. Kavina, advocate against his bill dated 8-4-2005 and also with regard to ratification of action taken by him in making payment of Rs. 25,000 to Shri S.N. Rastogi, Valuer.

3. The main prayer in this report is with regard to confirmation of sale or otherwise in favour of M/s. Rockline Construction Company. The Official Liquidator has submitted in his report that on 9-4-2005, the offers received by the Official Liquidator pursuant to the advertisement issued, were placed before the Sale Committee at the venue of auction in Mumbai. The Official Liquidator has informed the members of the Sale Committee that in all 123 tender forms have been sold and five offers were received for Lot No. III i.e., Composite offer. He has further informed that because of the stay granted by the Bombay High Court in Notice of Motion No. 3071 of 1990 in Suit No. 329 of 1990, the auction for proposed sale of Lot No. II should not be proceeded with. The bidders for Lot No. II were allowed to participate in the auction for Lot No. I. Similarly, the bidders for Lot No. III were also allowed to participate for Lot No. I. Thereafter, the auction for Lot No. I started amongst the 9 bidders. It was announced by the Official Liquidator that lowest offer received for Lot No. I is Rs. 85 crores from M/s. Rockline Construction Company, Mumbai and highest offer of Rs. 91,66,650 was received for Lot No. I from Hindustan Petroleum Corporation Limited. After this announcement, the bidding process was started and at the conclusion of the meeting, the highest offer was of Rs. 120.50 crores from M/s. Rockline Construction Company, Mumbai and with that the auction proceedings were concluded. The Sale Committee has taken the decision that the offer of Rs. 120.50 crores from M/s. Rockline Construction Company, Mumbai should be placed before this Court for confirmation of sale or otherwise. The Sale Committee has also returned the Drafts of EMD to unsuccessful bidders and the draft of EMD of Rs. 5 crores of the successful bidder, i.e., M/s. Rockline Construction Company, Mumbai was retained by the Official Liquidator.

4. This Court has issued notice on 13-5-2005. Mr. G.N. Shah, learned advocate appearing on Caveat on behalf of HPCL waived service of notice. The Official Liquidator was directed to issue notice to all the participants who have participated in the inter se bidding for Lot Nos. I & III before the Sale Committee and also to the intending purchasers who want to participate in the inter se bidding before this Court. The Official Liquidator was further directed to inform the intending purchasers to deposit the EMD along with late entry charges @ 18 per cent p.a. and it was to be made clear that in any case, late entry charges would not be refunded.

5. Pursuant to the order passed by this Court on 13-5-2005, the Official Liquidator has issued letter on 3-6-2005 to 9 parties which are as under:

- (i) Mr. Pravin Kheni,
- (ii) M/s. Videocon Atithi Shelters Pvt. Ltd.,
- (iii) M/s. Hindustan Petroleum Corporation Limited.,
- (iv) M/s. Runwal Group,
- (v) M/s. Regency Construction Co.,
- (vi) M/s. Om Adhirath Properties Pvt. Ltd.,
- (vii) M/s. Gaurang Developers,
- (viii) M/s. Rahab Enterprises,
- (ix) M/s. Rockline Construction Co.

6. Out of the above 9 parties, nobody was present on behalf of parties mentioned at Serial Nos. 1, 2, 5 and 8. The Official Liquidator has pointed out that over and above these 9 parties, he has received letter from Lok Prakashan Ltd., expressing its desire to participate in the bid and demand draft of Rs. 5 crores has been given. However late entry charges have not been paid. Mr. Shaktisinh Gohil, learned advocate appearing for the said party has agreed to pay late entry charges as per direction given earlier by the Court in the order dated 13-5-2005. The Court has, therefore, made it clear that on payment of late entry charges the said party will be permitted to participate in the bid. The Official Liquidator has also pointed out that one other party, namely, Gaurang Developers to whom the notice was issued by the Official Liquidator has also expressed its desire to participate in the bid and a demand draft of Rs. 5 crores as well as late entry charges of Rs. 18,75,000 have been paid and hence the said party was also allowed to participate in the bid. The Official Liquidator has produced auction sheet, wherein two parties viz. Hindustan Petroleum Corporation Ltd., and Om Adhirath Properties Pvt. Ltd., have paid EMD as well as late entry charges on 22-6-2005. As far as Runwal Group is concerned, the EMD of Rs. 5 crores was paid earlier and late entry charges were paid on 23-6-2005. As far as Rockline Construction Company is concerned, since the said party was the highest bidder and their EMD was lying with the Official Liquidator, there was no question of payment of late entry charges.

7. The parties who have paid late entry charges have submitted that though in the order dated 13-5-2005, this Court has observed that late entry charges are non-refundable, however, they would like to address the Court on this issue and hence the Official Liquidator should not be allowed to appropriate this amount till this Court takes decision on this issue, after hearing the parties in this matter.

8. At this stage, Mr. K.S. Nanavati, learned Senior Advocate appearing for the highest bidder viz. Rockline Construction Company has submitted that his client

was not aware about the order passed by the Court on 13-5-2005 and that it has come to their knowledge only when the Official Liquidator issued letter on 3-6-2005. He has further submitted that when the said party stood as the highest bidder before the Sale Committee, there should not be any fresh bid before the Court. Hence, he has prayed for time to file further affidavit in the matter. The other parties who are present before the Court on 23-6-2005 have also prayed for the time and accordingly the matter was kept for inter se bidding on 30-6-2005.

9. On 30-6-2005, HPCL has filed its detailed affidavit. However, copy of the reply was served to the highest bidder on that very day and hence, they have requested to grant some time to file reply to the said affidavit of HPCL. The Court has also heard the parties on the issue regarding late entry charges. The matter was thereafter adjourned to 13-7-2005 for considering the issues and contentions raised by HPCL in its affidavit dated 28-6-2005 as well as the objections raised by the highest bidder against further bidding before the Court.

10. On 13-7-2005, an affidavit is filed on behalf of the highest bidder, namely, M/s. Rockline Construction Company. The Court has taken the decision that amount of late entry charges will not be refunded to the parties and the Court has also overruled the objections raised by the highest bidder, namely, M/s. Rockline Construction Company against the inter se bidding before the Court. The Court has also overruled the objections raised by HPCL for giving them preferential treatment being the Government Company and the properly in question being required by them for expansion and development of their Refinery project which is by and large in public interest. On 13-7-2005, the inter se bidding between the parties has started from 2.15 p.m. and it has lasted up to 5.00 O'clock. The highest offer was made by M/s. Gaurang Developers of Rs. 212 crores. The next lower offer was of Rs. 211.50 crores made by HPCL. Still, there was scope for further increase in the offer as indicated by Mr. D.S. Vasavada, learned advocate appearing for the Textile Labour Association. Mr. Shelat, learned advocate appearing for HPCL has also requested to adjourn the matter to tomorrow so that other instruction can be taken from the higher ups. Mr. Pavan S. Godiawala and Mr. A.C. Gandhi, learned advocates appearing for the respective parties have requested to keep this matter on 18-7-2005. Since all the advocates have jointly requested to keep this matter on Monday, it is adjourned to 18-7-2005 at 14.15 p.m. It was made clear that now the further jump would be of Rs. 1 crore.

11. On 18-7-2005, before further inter se bidding started amongst the parties, Mr. A.C. Gandhi, learned advocate appearing for M/s. Runwal Group who has participated in the bidding on 13-7-2005 has submitted that because of the steep increase in the bid price, his client does not want to further participate in the inter se bidding and hence, necessary order with regard to return of EMD as well as Late entry charges should be passed. However, the Court has made it very clear on earlier occasion that Late entry charges would not be refunded and hence, there is no question of returning the amount of late entry charges.

However, the EMD would be returned to all unsuccessful bidders when the bid is finalised by the Court.

12. So far as Lok Prakashan Ltd. is concerned, learned advocate Mr. Shaktisinh Gohil has submitted that his client has paid the EMD of Rs. 5 crores. However, late entry charges were not paid and hence, his client has not participated in the inter se bidding either on 13-7-2005 or even today also his client is not interested to participate and hence, EMD should be returned to his client.

13. M/s. Rockline Construction Company and M/s. Om Adirath Properties Pvt. Ltd. who have participated in the inter se bidding before the Court on 13-7-2005 are not present today. Even no one from M/s. Nanavati Associates who represents M/s. Rockline Construction Company before this Court is present. The Court has, therefore, proceeded on the footing that both these parties are no more interested in further inter se bidding amongst the bidders.

14. In the above view of the matter, out of the five parties who have participated on 13-7-2005, only two bidders now remain and they are M/s. Gaurang Developers who stood highest on 13-7-2005 making offer of Rs. 212 crores and HPCL who stood second making offer of Rs. 211.50 crores. The inter se bidding, therefore, started from Rs. 212 crores onwards at the next jump of Rs. 1 crore. Both the parties have slowly and gradually raised their offers and ultimately, HPCL has raised its offer to Rs. 239 crores. Mr. Pavan Godiawala has thereafter stopped raising further offer and wished Good luck to HPCL. Since there was no higher offer than Rs. 239 crores, the sale is decided to be confirmed in favour of HPCL.

15. Before recording the terms and conditions on which the sale is confirmed, it is necessary to deal with several issues raised by the parties during this proceeding. These issues are as under:

I. Once the sale is approved by the Sale Committee after undergoing the inter se bidding between the bidders, whether it is permissible to again hold inter se bidding amongst the bidders before the Court at the time when report for confirmation of sale is filed by the Official Liquidator ?

II. Whether HPCL being a Government Company or Public Sector Undertaking can claim any preferential treatment or privilege while making its offer for purchase of any property through Court auction?

III. Whether late entry charges collected by the Official Liquidator from the late entrants as a condition precedent for taking part in the inter se bidding either before the Sale Committee or before this Court are non-refundable ?

16. So far as the first issue is concerned, Mr. K.S. Nanavati, learned Senior Counsel appearing for M/s. Rockline Construction Company who stood highest bidder before the Sale Committee has raised the objection that once the Sale Committee has undergone the whole process of inter se bidding amongst the bidders who have made their offers and since M/s. Rockline Construction

Company stood as the highest bidder, there is no scope for further bidding/ auction before this Court. The sale of property/land in question was complete in all respect in the auction held on 9-4-2005 in presence of all concerned and in this view of the matter, no further auction, bidding offers may be accepted and/ or entertained by this Court. This objection raised by Mr. Nanavati is not tenable even for a moment. First of all, it is contrary to the terms and conditions of the Tender document. Condition No. 9 makes it abundantly clear that the final offer after inter se bidding so received will be placed before the High Court for sanction or otherwise. Even Condition No. 24 stipulates that the High Court has right to impose such other and further terms and conditions as the Court may deem fit and proper in the circumstances of the case may arise and such terms and conditions already specified will be binding on all the parties concerned. It is, therefore, clear that the inter se bidding has taken place before the Sale Committee is not final and it is always subject to confirmation of sale by this Court. Even otherwise, the whole idea of selling the property by auction is to fetch the maximum price. The outcome of the inter se bidding before the Court in the present case itself indicative of the fact that the highest bid before the Sale Committee was of Rs. 120.50 crores whereas in the inter se bidding before this Court has reached up to Rs. 239 crores. It has virtually become double.

17. In this view of the matter, objection raised by Mr. Nanavati is not sustainable and the same is rejected.

18. So far as the second issue raised by HPCL is concerned, looking to the present case, it becomes academic as the HPCL stands as the highest bidder in the inter se bidding before this Court and their highest offer of Rs. 239 crores has been accepted by the Court and sale is confirmed in their favour. However, the issue raised by them requires special attention. Mr. B.J. Shelat, learned advocate appearing for HPCL has submitted before the Court that HPCL is the only bona fide bidder genuinely interested in acquiring the subject land in Lot No. I for their own use, as the subject land is within Industrial Zone and adjacent to an existing Refinery at present. All other bidders were property developers, whose intention was only to make profits out of the transaction by way of obtaining proportionate Transfer of Development Rights (TDR). He has further submitted that for this purpose and in order to outbid HPCL, the Developers had formed a cartel. The land in question falls in Special Industrial I-3 Zone. The very inclusion of the subject land in I-3 Zone shows the intention of the Government that only industries can be developed in this plot of land. The present highest bidder proposes to use it for accommodating certain Slum residents for rehabilitation. The said highest bidder had earlier also used land to put up buildings for Slum Rehabilitation and obtained TDRs and money as compensation thereof from MMRDA and SRA of Mumbai. This is against public purpose specified viz. Industrial purpose and will defeat the very object for which that area has been earmarked.

19. Mr. Shelat has further submitted that the intention of the Government in

reserving this land as Special Industry Zone is to ensure genuine industrial development. HPCL (Mumbai Refinery) manufactures essential commodities (petroleum products) for the Country such as Petrol, Diesel, Kerosene, LPG, etc. to meet the demands of the motoring public and the households. He has further submitted that the quality of the product needs to be upgraded to EURO III and EURO IV norms in order to ensure that the products are even more environment friendly and in this regard a massive project called Green Fuels and Emission Control Project at a cost of Rs. 1,152 crores is being undertaken by HPCL at the Refinery. Simultaneously, the production capacity of the refinery also requires to be augmented, if the common customer is not to suffer by way of price increases. The quality improvements will directly result in more environment friendly fuels and thereby substantially reduce vehicular and other emissions to the air, leading to clean air in Mumbai and other areas. All of these purposes require additional land and the requirement is genuine and for environmental reasons. He has, therefore, submitted that HPCL is a genuine bidder for the purpose of improving the environment by improving the quality of the refinery products. HPCL is a Government Company u/s 617 of the Companies Act and is also a "State" under Article 12 of the Constitution of India. As against this, the developers' intention is to make profits out of the transaction and the said interest is a private interest as opposed to public interest.

20. Mr. Shelat has further submitted that the other bidders have recently undertaken such projects in a massive way with the MMRDA, and if residential apartments are built on the subject land, it is not advisable/ permissible as per safety requirements. Conversion of a Zone, even if done, will be illegal as it will be hazardous to the proposed residents who will be housed in the buildings proposed to be constructed on the lands of Calico and it will be against the public purpose. He has further submitted that the Environmental Regulations do not permit residential and housing colonies to be constructed within the vicinity of hazardous industries like petroleum refineries. It would be dangerous for the public and particularly those of the weaker section to be housed within the vicinity of various refineries and other industries adjacent to the subject land. He has further submitted that not only HPCL, but even BPCL and Tatas have their Major Refinery and Power Plant (Industries) situated within the vicinity of the subject land.

21. Mr. Shelat has further submitted that the Developers and Builders are not interested in the safety of the public at large, but are only interested in their personal profits. The Builders/Developers are only interested in the Transfer Development Rights from the subject land and only intended to profiteer. He has further submitted that the road leading to the Refineries of HPCL and BPCL as well as the Tata Power Plant are already heavily congested. If the land is permitted to be, used to set up some more residential buildings, then the present Road will become even more congested once the residents and their families move into the area. Thus, the emergency and fire services will not be able to reach the refineries in case of any fire incident and this could lead to a major

calamity.

22. Mr. Shelat has further submitted that none of the builders have sufficient financial liquidity to pay such a huge amount by themselves. It is only because they formed a cartel by agreeing to contribute proportionately that they are in a position to match the offer of HPCL. He has further submitted that the ultimate aim of Builders/Developers is to acquire the subject land as a joint venture and to develop and share profits jointly in the proportion of their contribution. The subject land is large enough to satisfy all the builders together. In this view of the matter, Mr. Shelat has strongly urged before the Court that it is just and necessary that no sanction be granted to the said sale in favour of the highest bidder and the subject land be directed to be sold to HPCL and sale may be sanctioned in its favour.

23. Mr. K.S. Nanavati, learned Senior Counsel appearing for M/s. Rockline Construction Company, highest bidder before the Sale Committee has placed on record affidavit-in-reply raising objections against the stand taken by HPCL before this Court. He has submitted that HPCL was also present through their representative at the site where the auction was held by the Official Liquidator. Not only that, they have also participated and since they could not outbid M/s. Rockline Construction Company in the said auction, now as an afterthought, they have made an application to this Court to permit them to raise their bids before this Court. He has further submitted that if HPCL is permitted to bid, then the sanctity of the auction sale itself would be jeopardised and entire process of auction which was held before the Official Liquidator and bid for the said plot, shall be put to question as the same shall raise doubts in the minds of the public, that in spite of there being a legal and valid auction concluded by the Sale Committee, there can be a second round of auction before this Court. Thereby nobody would take the auction sale by the Official Liquidator seriously and would wait and approach this Court when the matter for sanction of sale is put up before this Court for confirmation. This is against public interest and adversely affects entire auction process to be carried out through the Sale Committee.

24. Mr. Nanavati has further submitted that the auction was for all the parties and that there was no restriction on any one to participate in the said auction who fulfilled the terms and conditions of the said auction and, therefore, now it is not open on the part of HPCL to make an allegation of any cartel being formed merely because it could not succeed in the auction. All the bidders had liberty to bid amongst themselves and therefore it is not relevant who bid first and who bid subsequently. The material facts remain that HPCL was amongst bidders. It is also relevant to note that all the bidders are per se legal entities and have no connection whatsoever nature and just because the HPCL lost in the said auction it has now come out with the false allegation of a cartel, against all the bidders.

25. Mr. Nanavati has further submitted that HPCL want to expand their existing Refinery on the subject land with the sole purpose of making profit only despite the fact that HPCL is aware about the fact that area is a residential area and

there are many housing complexes including that of HPCL, they yet purport to create more pollution, and to pollute such an area is against the public interest. He has further submitted that HPCL is one of the most profitable Companies in India, and is a Government Company and shares of the same are listed on the Stock Exchange and it is, therefore, inappropriate for the HPCL to say that they are only being philanthropic and the rest of the bidders are in the business of making profits only. He has further submitted that the land in question being situated in Industrial Zone I-3, the residential activities are permitted in the said area as per Regulation No. 57 as per Development Control Regulations For Greater Bombay, 1991. In fact, the Government of Maharashtra is also promoting such activities to reschedule the project affected persons free of cost. It is also a part of the public policy that project affected persons should be allowed to have their own shelter, with a roof above them. In fact, Government of Maharashtra is also offering various subsidies in the Form of TDR to the developers who accommodate such project affected persons. He has further submitted that there is nothing wrong if the benefit of TDR is obtained by one, by developing/ utilising property acquired by him in pursuance of Development Control Regulations and as per the Government Resolution. In the vicinity of the subject land of Calico Mills recently more than 15,000 tenements have been constructed by the State of Maharashtra under Mumbai Urban Transport Project and Mumbai Urban Infrastructure Project. The said Project has been approved by the Government of India which is financed by World Bank. In view of the construction of the said tenements more than 15,000 families will be shifted in near future, out of the said 15,000 families more than 5,000 families have already shifted and started residing in the said area. He has further submitted that HPCL has not objected to the shifting of these 15,000 families in the said area and, therefore, now to raise an objection on the alleged ground of not permitting residential complex on this land is nothing but the futile exercise on the part of HPCL to any how stop the highest bidder before the Sale Committee to acquire the said plot.

26. Mr. Nanavati has further submitted that if HPCL is permitted to purchase the land in question, then the entire exercise of the auction will be futile and if HPCL wants to acquire the said land, it being a Government Company, certainly has other remedies such as land acquisition. If HPCL is allowed to acquire the said plot in this manner, then the same will amount to back door entry by HPCL and at the cost of public interest. He has further submitted that the main object for which public auction is held is to recover maximum amount from the properties of the Company which has been wound up, so that its Creditors can be paid from such amount as are due. Thus, no property can be given to any one particular bidder who is not the highest bidder merely because it happens to be a Government Company. HPCL should not be permitted to acquire this land even by paying the maximum price as it would affect the safety and security of the residents of the said area. Mr. Nanavati has, therefore, submitted that since M/s. Rockline Construction Company stood highest before the Sale Committee, no rebid should be permitted and even if it is permitted by this Court, the said

highest bidder should be given an opportunity to bid without prejudice to their rights and contentions.

27. Mr. A.C. Gandhi, learned advocate appearing for M/s. Runwal Group, Mr. Pavan S. Godiawala, learned advocate appearing for Gaurang Developers and the representative of M/s. Om Adirath Properties Pvt. Ltd. have also objected to any preferential treatment being given to HPCL and they have insisted that sale should be confirmed in favour of the highest bidder before this Court.

28. Frankly speaking, the Court is not supposed to pronounce any judgment on the basis of the rival submissions made by the parties on this issue as in the present case, there is no question of giving any preferential treatment to HPCL as the HPCL has stood as the highest bidder and its offer has been accepted by the Court. At the same time, the Court cannot ignore the issues raised by HPCL for consideration of this Court and in a given case due weightage can certainly be given to these issues. In a marginal case, even if HPCL would have offered little less price than other bidder, namely, M/s. Gaurang Developers, the Court would have inclined to accept the offer of HPCL. Looking to the HPCL being a Government Company, its capability to pay the price, its requirement to have additional land for development projects and land intended to be purchased being adjacent to its existing factory and many other factors which have been placed before the Court. As against this, M/s. Gaurang Developers who is next to HPCL is only 3 months old Partnership Firm. The Firm is created only for the purpose of taking part in the auction before the Sale Committee and before this Court. Three Companies are the Partners of the said Firm and there is no previous track record of the Partnership Firm. In such a situation, when the question of giving preference would arise, the Court would not have confirmed the sale in favour of such a new entity whose own credentials and creditworthiness are yet to be proved. When the court is exercising its discretion and adjudicating the issue arises before the Court, question of considerable public interest should also be taken into account. In deciding a question of considerable public importance relating to the principle and procedure for the sale of assets of a Company in liquidation as to whether the only object of such sale is to fetch a maximum price or whether the Court, in its discretion, having regard to the prevailing socio-economic questions, which are involved in a welfare State should apply the law in a pragmatic manner having regard to the realities and interest of the public and settled law clearly lay down that the Court is to see that a reasonable price is obtained and the rule is not so rigid that in every case it must be sold by public auction and fetch the highest price. The industry, commerce, commercial morality and public interest should also be taken into account before making any order. In this regard, the latest judgment of the Hon'ble Supreme Court in the case of Global Energy Ltd. v. Adani Exports Ltd. 2005 AIR SCW 2875 throws some light. This decision is of course in the context of granting exemption from payment of earnest money deposit to the Government Companies. However, these observations are equally applicable to giving some priority or preferential treatment to such Government companies

when there is some marginal difference between the two bidders. The Hon'ble Supreme Court has observed that a deposit of some amount of earnest money is a normal condition of tender. The object is that only such parties who are financially sound and are serious in getting the work or contract, should make a bid. Otherwise any number of persons who have no capacity, financial or otherwise, would like to take a chance by making a bid. Normally, State/Central Government Organizations or Central or State Public Sector Undertakings would not make a bid unless they are serious in getting the work. The shareholding of the Government (State or Central) in any Public Sector Undertakings is always more than 50 per cent. They cannot be equated with a Company whose net worth may be very small or may have a small shareholding. Therefore, the exemption granted in favour of State Government Organizations and Public Sector Undertakings from making deposit of earnest money of Rs. 30 lakhs was based upon a rational criteria and could not be faulted on any ground whatsoever.

29. Here in the present case, the first Valuation Report given by Valuer Shri S.N. Rastogi is of Rs. 43,37,06,250 for value of 24,78,322 Sq. Feet of land situated at Chembur, Mumbai. Since the Sale Committee has found the said valuation as far below than the prevailing market value of the land in the area of Chembur, Mumbai, the matter was referred to another Valuer, i.e., MITCON Consultancy Services Limited who has valued the land as measuring about 2,30,327 Sq. Mtrs. at Rs. 91.80 crores. The highest offer made before the Sale Committee by M/s. Rockline Construction Company at Rs. 120.50 crores and the Official Liquidator has submitted his report for confirmation or otherwise of this sale in favour of M/s. Rockline Construction Company. The Court has undertaken the exercise of inter se bidding between the bidders who have participated before the Sale Committee as well as the intending purchasers and invested considerable time so as to fetch the maximum price. At this stage, the submissions were made on behalf of HPCL to give them priority. However, the Court has considered that only in marginal case, the necessary discretion would be exercised by the Court. The resultant effect of the inter se bidding was that on 13-7-2005, the highest offer was received from M/s. Gaurang Developers at Rs. 212 crores and HPCL was also in the fray, over and above other three bidders. However, on 18-7-2005, when incomplete bid was started, other three bidders have walked out and from Rs. 212 crores onwards, the inter se bidding was started between HPCL and M/s. Gaurang Developers and ultimately, HPCL has made the offer of Rs. 239 crores beyond which M/s. Gaurang Developers has not raised its bid and the sale was confirmed. This fact itself shows that the Court has considered the reasonable price which can be fetched for this property and the Court is satisfied that the offer made by HPCL is quite just and proper and the same is required to be accepted and accordingly, it is accepted. Even at this stage, an attempt was made, of course, subsequently after the Court has pronounced that sale is confirmed in favour of HPCL subject to certain variation in the terms of Tender. M/s. Gaurang Developers has submitted before the Court that with such varied terms, they are prepared to raise their offer. The Court thereafter impressed

upon the learned Counsel Mr. Shelat for HPCL to stick to the original terms and for such a small marginal increase in the bid which may be indicated by M/s. Gaurang Developers, the Court has not thought it fit to rebid and the sale is confirmed in favour of HPCL.

30. So far as the third issue with regard to collection of late entry charges by the Official Liquidator is concerned, this Court has already taken the view earlier in the case of Official Liquidator of Patel Mills v. Dena Bank [O.L.R. No. 66 of 2003 dated 24-11-2003], that henceforth the Court will consider directing the parties coming with offers for purchase of the properties to any Company, who did not apply before the Sale Committee within the time stipulated in the advertisement, but who make offers thereafter, to pay late fee at the rate of 1.5 per cent p.m. on the HMD amount for the period from the last date for making application in response to the advertisement till the date on which the offer is made before the Sale Committee or before this Court and while calculating interest a part of the month shall be taken as a month. Such interest amounts shall be non-refundable and appropriated in the account of the Official Liquidator for payment of dues of the Secured Creditors and workers after meeting with the expenses of the winding up. The Court has also made it very clear that it is necessary to give such directions, otherwise the persons who submit their bids within the time limit stipulated in the public advertisement will suffer loss of interest on the EMD amounts, but the person who prefer to wait and watch and submit their offers thereafter would stand to gain by suffering such interest loss on the EMD amounts. Such a situation would worth to the disadvantage of the persons who apply within time and would advantage all those who join the competition late. It is in order to remove such anomaly that the Court has found it necessary to issue such directions.

31. There would not be any much difference between the persons who apply for the first time before the Court and the persons who have applied before the Sale Committee and after they were found to be unsuccessful bidders and have taken back their EMD from the Official Liquidator, and again joined the competition before the Court on receipt of the notice from the Official Liquidator. The persons who have paid EMD in time and was lying with the Official Liquidator, are not supposed to pay any late entry charges. Such late entry charges are collected only from those persons who join subsequently. This Court has considered this issue in the case of Official Liquidator of Aruna Mills Co. Ltd. v. Manager, UCO Bank [O.L.R. No. 52 of 2005 dated 27/28-6-2005] wherein it is observed that the whole idea of collecting late entry charges is to stop unscrupulous bidders, who would come before the Court to delay the proceeding. Even otherwise if such term and condition is not imposed, there is possibility of forming cartel amongst the bidders and as many persons as possible can come before the Court. There is no substance in the submission that the late entry charges is collected only with a view to compensate the highest bidder as the late entry charges are required to be paid by those persons who have not paid their HMD or received back the same after the auction is concluded by the Sale Committee in favour of the

highest bidder, subject to further confirmation by the Court. If the parties are really interested and are genuine to purchase the property by auction before the Court they undertake this additional burden on their shoulder and make their all efforts to purchase the properties by taking part in the inter se bidding before the Court. When they approach late to the Court, they are taking risk that in case they fail to become the successful bidder, the late entry charges paid by them would not be refunded. Even otherwise, before the Sale Committee no sooner they turn out to be unsuccessful bidder, they claim back their EMD from the Official Liquidator. Some of the bidders do not participate before the Sale Committee knowing fully well that the matter will come before the Court for confirmation of sale and at that time they participate. By adopting this course, they are withholding the EMD amount and only at the time of issuance of notice by this Court, they deposit EMD and in such a situation certain liability to pay the late entry charges will have to be discharged by them. As a matter of fact, in all these cases pursuant to the notice issued by this Court and even after the sale is approved, by the Sale Committee, the EMD is paid by the bidders on which late entry charges were claimed from them. Thus, by imposing this condition on late comers, all are treated equally, namely the persons who have paid EMD in time pursuant to the advertisement issued by the Official Liquidator and even those persons who have come before the Court for inter se bidding. The Court has, therefore, taken the view that there is no illegality or lack of any justification in collecting the late entry charges from the bidders who are late comers and they have availed the opportunity of participating in the inter se bidding before the Court.

32. In the present case, in the notice issued by this Court on 13-5-2005, it was made clear that in any case, late entry charges will not be refunded. Even before the inter se bidding was started, the Court has made it clear after hearing the parties that late entry charges will not be refunded. Despite this fact, all the five parties who have paid the late entry charges have participated in the inter se bidding and one party, i.e., Lok Prakashan Limited who has not paid the late entry charges, was not allowed to participate in the inter se bidding. The Court is, therefore, of the view that the parties who have paid late entry charges are not entitled to claim the refund of such late entry charges and their demand is, therefore, rejected.

33. In the above view of the matter, the Court hereby confirms sale of 2,30,327 Sq. Mtrs. of free hold land or thereabout, bearing City Survey Nos. 382, 382/1 to 382/66 and all other assets of the Company situated at Anik Road, Chembur, Mumbai in favour of Hindustan Petroleum Corporation Limited for a consideration of Rs. 239 crores on the terms and conditions as per the Tender Form at Annexure K to this report and on following other terms and conditions as this Court thinks it just and proper and in case any conflict between two, the following shall prevail:

(a) The sale is on as is where is and whatever there is basis.

(b) 25 per cent of the purchase consideration within 1 month and the balance amount of purchase consideration within 3 months thereafter will have to be paid by the purchaser.

(c) On payment of 25 per cent of sale consideration, HPCL is permitted to carry out the work for wire-fencing and/or Compound Wall at its own cost.

(d) It is open for HPCL to deploy its own security on receipt of the letter from the Official Liquidator so as to safeguard the property purchased by them today in Court Auction.

(e) Purchaser shall procure himself for transfer of land by a Deed of Conveyance from the Company through Official Liquidator and shall obtain necessary permission under the Land Laws from the competent authority, and shall obtain water, electricity, telephone connection and all other necessary amenities required by them at their cost, and shall obtain all other necessary permission/quotas, if any, as may be required, at their own cost and consequences.

(f) The Stamp duty, registration charges, and all other incidental charges thereto shall be borne by the purchaser.

(g) The property will be conveyed and assigned to the purchaser by the vendor who alone will execute the documents, if any, in favour of the purchaser. The purchaser shall not require the concurrence in such documents of any other person or persons. The vendor is selling the property as the Official Liquidator attached to this Court pursuant to the directions of the Court in the matter and as such will not give any warranty or indemnity of any kind, whatsoever.

(h) The purchaser shall be liable to pay all statutory dues, if any, due and payable on the properties of the subject company for the period after the date of winding up order. The payment of such dues for pre-Liquidation period shall be settled as per the provisions of the Companies Act, 1956. However dues, taxes, cess, if any, applicable on the sale of assets shall be paid by the purchaser.

(i) The properties shall be handed over to the purchaser forthwith on payment of sale price to the Official Liquidator and documents will also be executed in favour of the purchaser thereafter.

(j) If the purchaser will not pay the balance amount of purchase consideration to the Official Liquidator as directed by this Court in time, the Official Liquidator shall terminate the sale and forfeit the earnest money deposit. This condition and other conditions in respect of the payment of purchase consideration are without prejudice to the right of the Official Liquidator. If the vendor terminates the contract as aforesaid he will be entitled to put the properties for resale with the permission of this Court.

(k) The vendor has no documents or title deeds relating to the properties under sale with him. The purchaser is neither entitled to call for the production of or delivery of any of the documents not in his possession and shall not make any

requisition or take any objection in respect of such non-delivery thereof.

(l) The purchaser shall satisfy himself about the right and title of the properties after ascertaining from the concerned Registration Officers and other authorities and the vendor will not entertain any claim as regards to the right/title to the property after the confirmation of sale by this Court.

(m) The purchaser shall be deemed to have purchased the properties after complete examination & inspection of it and shall not be entitled to make any requisition or raise any objection as to the title or consideration of the property or any part thereof.

(n) The purchaser shall be liable to pay and shall pay full amount of taxes of all kinds, whatsoever which will have to be paid in respect of the sale of the assets or any taxes to be paid in this connection.

(o) From this date of confirmation of sale of the land in favour of the purchaser, the properties shall be at the sole risk, cost and account of the purchaser as regards the destruction or any damage by earthquake or any other natural calamities whatsoever.

(p) HPCL is permitted to carry out joint measurement at its own cost.

34. The sale consideration as and when received by the Official Liquidator from HPCL will be invested with IDBI, IIBI, State Bank of India, Punjab National Bank, Bank of India, ICICI Bank, State Bank of Saurashtra in equal proportion.

35. The Official Liquidator is hereby directed to return the EMD to the unsuccessful bidders within three days from today.

36. For the reasons stated by the Official Liquidator in paras 7 & 8 of the report, the action taken by the Sale Committee in not holding auction for residential plot situated at Diamond Garden, Chembur, Mumbai is hereby ratified.

37. The action of the Sale Committee in making ad hoc payment of Rs. 4,68,778 to M/s. MITCON Consultancy Services Ltd., against its bill for Rs. 10,33,187 for Valuation and title investigation report produced at Annexure G to the report is hereby ratified. The Court is, however, of the view that the bill for Rs. 10,33,187 raised by M/s. MITCON Consultancy Services Ltd. is on the higher side and some of the Secured Creditors have also submitted before the Court to this extent. Without going into that aspect at this stage, the Sale Committee is hereby directed to discuss this issue amongst the members of the Sale Committee and take appropriate decision in the matter.

38. The Court hereby ratifies the action of the Official Liquidator in making payment of Rs. 73,504 to M/s. Navnitlal & Co., being charges for advertisement expenses.

39. The Court hereby ratifies the action of the Official Liquidator in making payment of Rs. 39,000 to "Green House Restaurant & Bar, Ville Parle, Mumbai"

for hiring venue for auction and other incidental expenses for conducting the auction at Mumbai on 9-4-2005.

40. This Court hereby permits the Official Liquidator to make payment of Rs. 7,000 to Mr. P.C. Kavina, advocate against his bill dated 8-4-2005 for appearing on behalf of the Official Liquidator to argue Civil Application No. 26 of 2005 in C.A. No. 88 of 2004 in O.J. Appeal No. 39 of 2004 and for giving legal opinion in connection with the proposed sale of Diamond Garden land of the Company.

41. This Court hereby ratifies the action taken by the Official Liquidator in making payment of Rs. 25,000 to Shri S.N. Rastogi, Valuer. However, the Official Liquidator's action of not paying anything further to the said Valuer is not ratified. It is true that the Report submitted by him has been rejected by the Sale Committee. He has valued the property at Rs. 43,37,00,000 which is too low as compared to MITCON's valuation of 9190.88 lakhs, which also turns out to be too low while comparing the price of Rs. 239 crores fetched at the Court auction. Shri S.N. Rastogi has raised the bill of Rs. 1,65,660 as against which only an amount of Rs. 25,000 was paid, whereas MITCON has raised the Bill of Rs. 10,33,187 as against which an amount of Rs. 4,68,778 was already paid. One more aspect which is to be taken into consideration is that Shri S.N. Rastogi has made the valuation of plant and machinery as well as land and building and he has thrown light on the removal and theft of plant and machineries as well as building materials, which might possibly be not liked by the Official Liquidator or the Sale Committee. The Sale Committee is, therefore, directed to reconsider this issue of payment of Valuer's fees and take appropriate decision.

42. Before concluding this judgment, the Court considers its bounden duty to bring on surface the hidden and untold story of theft committed alarmingly on a large scale over the years and huge properties of the Company in liquidation, such as plants, machineries, office furnitures, fixtures, equipments, Tanks, Boilers, Pumps, Transformers, Electric Motors etc. are stolen away despite the fact that the Official Liquidator is put in charge and possession of all these properties and security personnels were deployed immediately after winding up order is passed by this Court. The Official Liquidator has never sought confirmation of sale of any of these items. Even in the present report also, very conveniently, he has sought the confirmation of sale of 2,30,327 Sq. Mtrs. of free hold land or thereabout and all other assets of the Company situated at Anik Road, Chembur, Mumbai, without indicating any of these other assets. It is true that the purchaser has mainly put its offer for purchase of land. The question still remains to be answered as to where all these assets have gone. Shri Rajendra R. Shah, Valuer has given his inventory Report of the assets of the Mumbai Unit of the Company in liquidation, on 6-5-1999. He has given very exhaustive report comprises of 69 pages covering details of each of the assets of the Mumbai Unit of the Company. Inventory of Buildings enumerates 166 buildings. Inventory of Plants, Machineries and other equipments enumerates Caustic-Soda and Chlorine Plant under which 165 items are listed, Poly-Vinyl Acetate Plant (PVA) under

which 44 items are listed, PVC and Bulk - PVC Plant (PVC Resin Plant) under which 213 items are listed, PVC compounding and processing Plant (C & P Plant) under which Calender Unit, Coating Laminating - Printing and Embossing Unit, Inspection Unit, General Purpose Equipments, Maintenance Workshop and Fitting Shop, Mixing Unit for Coating/Lamination Section, Pipe and Profile Unit, Compounding section, Electric Supply in C & P Unit and as many as 212 items are listed, Calcium Carbide Plant under which as many as 116 items are listed, Poly-Vinyl Propylene Plant (PVP) Pylot Plant under which 20 items are listed, Trichloro Ethylene Plant (TCE Plant), Acetelen Generation Plant under which 8 items are listed, Boiler house under which 10 items are listed, Pump house Spray-poud, Clariflocculator and Filter Plant, Central Mechanical Workshop, Weigh bridges, Pollution Control unit etc. are listed.

43. As against the above Inventory Report of 6-5-1999, Shri S.N. Rastogi, Chartered Engineer and Government Approved Valuer has given his Valuation Report for land and building and Plant & Machinery on 26-8-2004. He has valued the land at Rs. 43,37,00,000 whereas the Value of Building, Plant & Machinery is taken at Rs. Nil. So far as present condition of buildings is concerned, he has observed that over a period of time, in large number of cases, there are no A.C.C. Sheets which are either broken over the period of time or stolen away. Steel fabricated trusses, doors and window frames, steel doors and window shutters, which were easily removable have vanished. Later on Steel rods forming part of R.C.C. Columns, beams and foundations were removed by breaking them systematically. However, some of the structures are still standing in absolute depleted condition since they offered hardly any saleable material. The Staff Colony on the rear side over the hill bears a ghost look where all saleable articles and materials have been removed except multi-story R.C.C. Structures which have also been partly demolished. The entire area covered by the Unit now presents a flat landscape with debris all over the place waiting to be removed. In this view of the matter, the Valuer has observed that there is hardly any building left worth consideration and hence, he has estimated the fair market value of the buildings as Nil.

44. With regard to plant and machinery, Mr. Rastogi has observed in his report that over the years, the plant and machineries have been systematically removed and stolen. Small equipments like pumps motors etc. which could easily be carried away have been removed by loosening nuts and bolts. The heavier equipments which could not be bodily lifted have been removed in parts from parent equipments like Steel Heat Exchangers, Reaction Vessels, Holding Tanks etc. with the help of Gas Cutting equipments. Similarly, Steam Boilers and its components which are mounted on steel structures and platforms have been totally removed including supports, steel pipelines for process of Water, Steel, Chemicals, Gases etc. along with Valves have been taken away. Similarly, Electrical equipments and their accessories in High Tension and Low Tension Substations, Control Panels, Distribution Board and Motor Starters etc. have been removed and also power and distribution and lighting cables with copper

and Aluminium conductors have been dug up from the trenches and ground. Sophisticated Laboratory Testing Equipments - Imported and Indegenous - irrespective of their body construction material have been removed. He has, therefore, observed that as such none of the plant and machinery and equipments have been found at site. The estimated fair market value of the plant and machinery was, therefore, taken as Rs. Nil.

45. M/s. MITCON Consultancy Services Ltd. have given their Valuation Report only on land - immovable properties of the Company situated at Anik, Chembur, Mumbai on 5-1-2005. There is, therefore, no reference about plant and machinery in the said Report. They have, however, estimated the cost of damaged structures and other works at Rs. 10,50,000.

46. From the foregoing discussion, it appears to the Court that the Official Liquidator as well as the Security personnels deployed by him have totally failed to protect and safeguard the properties of the Company in liquidation. The Court is of the view that the Official Liquidator is not either competent to take care of the properties of the Company in liquidation or he had no desire to take any effective steps or his office might be involved in allowing such thefts, pilferages or similar such things. The Court is at pains to point out that the present one is not the solitary case. In many of the Companies in liquidation, similar such things are happening day in and day out. As soon as the winding up order is passed by the Court and the Official Liquidator is directed to take possession of the assets of the Company, all types of dirty games start. Taking possession, deploying security agencies, taking out inventories with the help of Valuer, inviting offers for sale of properties of the Company, modus operandi of auction proceedings before the Sale Committee headed by the Official Liquidator, placing reports before the Court without disclosing all proper and necessary facts and obtaining orders from the Court on such incomplete or ill-prepared and ill-equipped reports - are some of the issues which require urgent attention of all concerned. The role of the office of the Official Liquidator in the State is required to be closely watched and scrutinized by the Central Government, Ministry of Law and Company Affairs and if necessary, this task should be assigned to the Investigating Agency like CBI and based on its finding, appropriate corrective remedial and punitive actions are required to be taken forthwith. The period which may be contemplated by such inquiry is of last about ten years during which pursuant to the winding up orders passed by the Court, the affairs of the Companies in liquidation are being looked after by the Official Liquidator, his assistants as well as subordinates. This exercise would certainly bring some positive result and there will be total transformation of the Official Liquidator's Office which looks like "Butcher's House" at present will look like "Pilgrimage Place". The Registry is, therefore, directed to send writ of this order to the Central Government through Regional Director, Western Region, Mumbai for their perusal and for taking necessary steps.

47. With the aforesaid directions and observations, this report is accordingly

disposed of.