(1996) 07 CAL CK 0059

In the Calcutta High Court

Case No : BIFR No. 53 of 1988

United Bank of India APPELLANT

Vs

Official Liquidator RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Citation : (1999) 97 CompCas 861

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

Shyamal Kumar Sen, J.—This is an application for setting aside the sale already confirmed by order dated July 21, 1995. The facts involved in this application, inter alia, are that by an order dated September 4, 1992, passed by this court Kolay Iron and Steel Co. Ltd. was directed to be wound up and the official liquidator was appointed as liquidator thereof.

2. In terms of the said order dated September 4, 1992, the representatives of the official liquidator along with the representatives of the secured creditors, i.e., United Bank of India, Allahabad Bank and West Bengal Financial Corporation went to the factory premises of the said company (in liquidation) on September 18, 1992, for the purpose of taking over possession of the assets of the said company (in liquidation) but could not take over possession on that day. Again, on September 21, 1992, the representatives of the secured creditors went to the factory of the said company (in liquidation) and made inventory of the properties.

3. In a letter for direction dated April 16, 1992, filed by the official liquidator for appointment of a valuer, on or about June 4, 1993, this court was pleased to direct the secured creditors to pay a sum of Rs. 10,000 towards the cost of the valuation report and for advertisement of the sale and accordingly the official liquidator by his letter dated July 16, 1993, requested all the secured creditors to send him a sum of Rs. 10,000 towards the cost of valuation and advertisement for sale.

4. By an order dated August 20, 1993, Ajay Nath Ray, J. was pleased to appoint A.K. Dey of 33, Brabourne Road, Calcutta 1, valuer, for making valuation of the assets of the said company (in liquidation) and to file his report within six weeks from that date.

5. By an order dated July 22, 1994, Baboolall Jain J., as he then was, was pleased to appoint Mr. Bhaskar Sen, engineer and valuer, in place and instead of A.K. Dey for the purpose of making valuation of the assets of the said company (in liquidation) with a direction to the valuer to file his report within six weeks from the date of order.

6. On March 11, 1994, Ajay Nath Ray J. extended the time to file the valuer''s report by eight weeks.

7. On May 6, 1994, Baboolall Jain J., as he then was, extended the time to file the valuer''s report by a further eight weeks.

8. On March 6, 1995, the valuation report was submitted.

9. On March 30, 1995, Baboolall Jain J., as he then was, passed an order directing advertisement of sale notice and directed the matter to appear as "for sale" on May 5, 1995.

10. On April 20, 22, 1995, advertisements were published. No separate communication has been made with Allahabad Bank. Under Clause 11 of the terms of sale, the power of the court to set aside the sale even after confirmation and payment of purchase consideration was expressly reserved.

11. In terms of the said order dated March 30, 1995, the official liquidator published the sale notice once in Aajkal, once in The Telegraph and once in the Jansatta.

12. On or about May 12, 1995, the sale of the assets and properties of the said company (in liquidation) came up for hearing before B.L. Jain J., as he then was, when the court was pleased to cancel the sale in view of the facts that there were only two valid offers which were not backed by any pay order or bank draft and the price offered was too low in comparison to the valuation made by the valuer. By the said order the official liquidator was directed to seek further direction for advertisement of wider scale and for, this purpose the court directed the official liquidator to write to the secured creditor to obtain their views in the matter. The court directed the official liquidator to take out a letter for directions by June 6, 1995, and seek directions for fresh advertisement by fixing a fresh date for sale.

13. Pursuant to the said order dated May 12, 1995, on or about May 25, 1995, a notice was issued to all the secured creditors requesting them to attend the meeting of the official liquidator on May 30, 1995, at this office with regard to discussion of the agenda as contained in the said letter.

14. Pursuant to the said notice dated May 25, 1995, a joint meeting was held on

May 30, 1995, between the secured creditors and the official liquidator in which the representatives of the West Bengal Financial Corporation and United Bank of India were present. It is pertinent to note that in spite of such notice, no one was present on behalf of Allahabad Bank, one of the secured creditors.

15. On June 1, 1995, the official liquidator by his letter sent the copy of the said minutes of the meeting dated May 30, 1995, the court''s order dated May 12, 1995, and the inventory list made by the valuer to all the secured creditors of the said company (in liquidation).

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

17. Pursuant to the said order dated June 8, 1995, the official liquidator published the sale notice in three newspapers of Calcutta edition, one newspaper in Delhi edition and one newspaper in Bombay edition.

18. On June 28, 1995, advertisement for the sale was published. No particular notice was given to the Allahabad Bank.

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

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

21. On July 27, 1995, Allahabad Bank paid the money as required by the official liquidator.

22. On September 22, 1995, on behalf of Naffar Chandra Jute Mills Ltd., the sale matter was mentioned when the official liquidator was directed to take necessary police help if so required, for the purpose of making over possession.

23. By a letter dated October 10, 1995, the official liquidator informed all the secured creditors that since the purchaser has paid the entire consideration of sale, possession of all the assets and properties of the said company (in liquidation) would be handed over to the successful purchaser on October 26,

1995.

24. On October 24, 1995, one of the secured creditors, Allahabad Bank moved an application for setting aside the sale of movable and immovable assets of the said company (in liquidation) before the vacation Bench without any notice to the official liquidator when B. L. Jain J. as he then was, directed the matter to appear on October 26, 1995, before the regular Bench.

25. Since the regular Bench was not sitting on October 26. 1995, the determination of the regular company court was assigned to Mrs. Ruma Pal. J., for October 26, 27, 1995.

26. By a letter dated October 26, 1995, the learned advocate for Allahabad Bank intimated the official liquidator and the advocate-on-record for the purchaser that the application of Allahabad Bank, which was moved on October 24, 1995, before the vacation Bench will be moved on October 27, 1995, before Mrs. Ruma Pal J. and requested to maintain status quo and not to deliver possession of the assets and not to give any effect to the letter of the official liquidator dated October 10, 1995.

27. The copy of the affidavit and the copy of the judge''s summons of Allahabad Bank was served by the advocate-on-record for Allahabad Bank to the official liquidator on October 26, 1995, but the official liquidator could not stay his hands as his representatives had as pre-arranged left the office premises prior to receiving that letter.

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

29. On November 27, 28, 1995, the matter was heard by me. Several allegations have been made by the petitioner in this application on the basis of which prayer has been made for setting aside the sale.

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

31. The main contention of the learned advocate for the applicant is that by the order dated May 12, 1995, the offer of Naffar Chandra Jute Mills Ltd., for Rs. 60,00,000 was recorded as far too low in comparison with the valuation of Rs. 3,30,63,451, By the said order B.L. Jain J., as he then was, directed the official liquidator to obtain the views of the secured creditors including that of the applicant. The official liquidator was further directed to inform the applicant that the matter is to appear on June 8, 1995. It has been alleged that the official liquidator has failed to perform his obligations, namely, to secure the views of the Allahabad Bank for fresh advertisement and to further inform that the matter was to appear on June 8, 1995.

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

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

34. It has been alleged that the official liquidator failed to inform the bank to provide funds. After publication of the second set of advertisements the assets of the company (in liquidation) were sold on July 21, 1995, to Nafar Chandra Jute Mills Ltd. for a price of Rs. 65,00,000 only without notice to Allahabad Bank. It has further been alleged that the sale was confirmed without notice to the petitioner. It has also been alleged on behalf of the applicant that on July 25, 1995, the official liquidator obtained a signed copy of the minutes of the said order but failed to communicate the same to the applicant-bank when it wrote to the applicant''s office at 36, Strand Road, Calcutta-1, for payment of Rs. 11,377 towards the cost of advertisements without disclosing that the sale has already taken place. The applicant-bank obviously carried the impression that the advertisements were yet to be published and the official liquidator will apprise the same in due course.

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

36. On or about October 9, 1995, the date of handing over possession was fixed but later postponed. During the long vacation on or about October 10, 1995, the

official liquidator wrote to Allahabad Bank at 36, Strand Road, Calcutta-1, that the possession of the company (in liquidation) would be handed over to Nafar Chandra Jute Mills Ltd., on October 26, 1995, at 2 p.m. October 26, 1995, was the first day after the long vacation. On or about October 13, 1995, Allahabad Bank wrote to the official liquidator for sending a copy of the court''s order and it was sent on or about October 17, 1995.

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

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

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

40. It also appears that on June 8, 1995, when this court by its order fixed the date for sale of the assets and properties of the said company (in liquidation) on July 21, 1995, at 2.00 p.m., the learned advocate on record, who is at present the advocate on record for Allahabad Bank as well as United Bank of India, was present on behalf of one of the secured creditors, United Bank of India, so it is not the fact that the applicant-bank was not aware of the proceedings of the sale and the date fixed by this court for such sale.

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

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

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

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

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

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

setting aside of the sale. Had there been any higher offer, there could have been scope for fresh sale and bid in court as had been done in other cases but in the instant case since no higher offer was available, there was no scope for bid and sale in court.

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

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

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

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

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

(ii) The unreported judgment of the Division Bench of the Calcutta High Court Indus Electronics Ltd. (In liquidation), In re, decided on November 10, 1994 ; and

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

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

52. The courts are always inclined to obtain the highest price and even after the confirmation of sale, if higher offer is made, the courts are inclined to consider such higher offer. Unless there is some infirmity in the sale or irregularity in the conduct of the sale a mere higher offer at a later stage will not vitiate the sale. In this connection, the judgment and decision in Sarawan Kumar Agarwal v. Shrinenp Investment Ltd. [1990] 94 CWN 482 may be taken note of. In the aforesaid decision it was held in paragraph 43 of the judgment at page 500 as follows :

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

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

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

54. The Supreme Court, in paragraph 7 of the said judgment, has observed as follows AIR 1974 SC 1333 :

"Certain salient facts may be highlighted in this context. A court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer''s report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so, when the subject-matter is a specialised industrial plant, which has been out of commission for a few years, as in this case and buyers for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgment-debtor''s instance, have ''scare'' value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing court had admittedly declined to affirm the highest bids made on May 16, 1969, June 5, 1969, and August 28, 1969, its anxiety to secure a better price being the main reason. If court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgment-debtor''s plea for postponement in the expectation of a higher price in the future may strain the credibility of the court sale itself and may yield diminishing returns as was proved in this very case."

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

56. The Supreme Court, after considering the aforesaid decision in Navalkha and Sons Vs. Ramanuja Das and Others, , held and observed as follows (page 1335 of AIR 1974 SC) :

"Be it by a receiver, commissioner, liquidator or court, this principle must govern. This proposition has been propounded in many rulings cited before us and summed up by the High Courts. The expressions ''material irregularity in the conduct of the sale'' must be benignantly construed to cover the climax act of the court accepting the highest bid, Indeed, under the Civil Procedure Code, it is the court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply its mind to this aspect of the conduct of the sale may amount to material irregularity. Mere substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient. And where a court mechanically conducts the sale or routinely signs assent to the sale papers, not bothering to see if the offer is too low and a better price could have been obtained, and in fact the price is substantially inadequate, there is the presence of both the elements of irregularity and injury. But it is not as if the court should go on adjourning the sale till a good price is got, it being a notorious fact that court sales and market prices are distant neighbours. Otherwise, decreeholders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be subsequent events, not within the ken of the executing court when holding the sale, may prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable, conclude the sale. The court may consider the fair value of the property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndicate the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous post mortem is proper. If the court has fairly, even if silently, applied its mind to the relevant consideration before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of court sales will be introduced."

57. In the unreported judgment and decision in Indus Electronics Ltd. (In liquidation), In re decided on November 10, 1994, the Division Bench of this court also considered the question of inadequacy of price. In the said case the property was sold at a price of Rs. 14 lakhs, whereas the valuation exceeded Rs. 2 crores. However, since in spite of repeated opportunities to the secured creditors to bring higher offers, the secured creditors failed to bring any higher offer. The Division Bench did not consider it proper to interfere with the decision of the learned company judge. The SLP against the said judgment of the Division Bench was also dismissed. The Supreme Court while dismissing the SLP noted the fact that opportunities were given to the secured creditors to bring higher offers, but no higher offer could be brought.

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

59. In the instant case, there were due advertisements in all the leading

newspapers and sale was held after such advertisements. The allegation that the views of the secured creditors with regard to the advertisement could not be obtained, in my view, does not amount to irregularity so as to affect the sale particularly when no higher offer could be brought by the secured creditors.

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

61. Accordingly, in my view, no purpose will be served by passing an order for fresh sale.

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

63. There will be no order as to costs.

64. All interim orders stand vacated.

65. The official liquidator will retain his costs from the funds in his hands.

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

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