(2011) 09 SHI CK 0344

In the High Court Of Himachal Pradesh

Case No : Co. Appeal No. 3 of 2011 a/w Co. Appeal No. 4 of 2011

Valley Iron and Steel Company Ltd. APPELLANT

Vs

Him Ispat Ltd. (In Liquidation) and Another
 Pradeep Chandra Vs IFCI Limited and Others RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Citation : (2011) 09 SHI CK 0344

Hon'ble Judges : V.K. Sharma, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—These two appeals are being disposed of by a common judgment since identical questions of law and fact are involved.

2. Briefly stated, the facts, relevant for decision of the appeals, are that a Company known as M/s Him Ispat Ltd. (hereinafter referred to as the Company) was ordered to be wound up by judgment passed by the learned Company Judge of this Court on 8th November, 2001. The Company filed Appeal No. 4 of 2001, which was dismissed on 30th December, 2005. It is the admitted case of the parties that the Official Liquidator took over the assets of the company in terms of the winding up order in December, 2005. In the year 2008, one of the secured creditors, i.e. IFCI Ltd., filed Company Application No. 52 of 2008, seeking sale of the assets of the property so that these could be distributed amongst the secured creditors and if anything was left over, be paid to the unsecured creditors. On 4th January, 2010, the learned Company Judge in the presence of the counsel appearing for the promoter and guarantor of the company passed an order directing that the secured creditors should hold a meeting alongwith the Official Liquidator in the office of the Official Liquidator on 27th January, 2010, to chalk out the manner in which the sale of the assets of the company was to be carried out. It appears that prior to this meeting, M/s. Prashar & Company, which is an empanelled valuer, carried out the valuation of the assets of the company and submitted their valuation report on 13th October, 2008. In this valuation

report, the land of the company was shown to be 25 kanals and 6 marlas and valuation was done accordingly. The secured creditors did not have any objection to the report of the valuer. Thereafter, the secured creditors in their minutes proposed that the property be sold in four lots as follows:

1.

Land & building

Rs. 22.00 lacs

2.

Plant & Machinery

Rs. 34.00 lacs

3.

Fixed Assets & Scrap

Rs. 27.00 lacs

4.

Lease Machinery i.e. S Rolling

mill complete (IFCI Financed

under ELS Model No.: ZR-22B-50)

Rs. 9.00 lacs

5.

Total amount of 1 to 4

Rs. 92.00 lacs

3. The minutes were placed before the learned Company Judge, who vide his order dated 19th October, 2010, accepted the minutes and directed as follows:

....

Heard. I have considered the report of the OfficialLiquidator alongwith the minutes of the meeting held with the secured creditors. In view of the prayer made by the Official Liquidator in the report,the application is allowed and the sale of the assets,in full, of the Company in liquidation including the leased assets shall be effected and the sale proceeds shall be remitted to this Court and not to the applicant, as prayed in the application."

....

A perusal of the order of the learned Company Judge shows that he allowed the sale of the assets in full. Therefore, in a sense, it can be inferred that his permission was that either each lot could be individually sold or all the four lots could be sold as one composite lot.

4. Thereafter, another meeting of secured creditors took place on 15th November, 2010, wherein in compliance to the orders passed by the learned Company Judge, mode of publication of advertisement and the terms of the advertisement were approved. Pursuant to these orders, advertisement was issued for sale of 25 kanals and 6 marlas of land alongwith building constructed thereupon, the plant and machinery owned by the company and lying in the building, the fixed assets and scrap lying within the factory premises and also the machinery which has been leased out to the company by the IFCI, i.e., all the four lots.

5. It is not disputed that M/s. Valley Iron & Steel Company Limited, Appellant in Company Appeal No. 3 of 2011, were the highest bidders and they submitted a bid of Rs. 11.70 crores for purchase of all four lots which included 25 kanals and 6 marlas of land.

6. In the meantime, Shri Pradeep Chandra, promoter of the Company and also the guarantor to the banks had filed Company Application No. 52 of 2010 before the learned Company Judge. This application was prepared on 28th November, 2010, and filed on 2nd December, 2010, but was admittedly not listed in the court till 7th December,2010, when sale was carried out in which Appellant in Company Appeal No. 3 of 2011 was the highest bidder.

7. The Auction Purchaser filed an application for confirmation of the sale and for permission to deposit the balance sale consideration. On 6th January, 2011, the learned Company Judge permitted the Auction Purchaser to deposit the balance sale consideration within a period of one month. Various applications were filed and on 29th March, 2011, it was brought to the notice of the Hon''ble Company Judge that the entire land owned by the Company situated at Kandrori actually measured 51 kanals and only a part of it, i.e. 25 kanals and 6 marlas, were sold and, therefore, it was essential to sell the balance land. The learned Company Judge passed the following order:

....

In view of the order passed by this Court on October19, 2010 in Company Application No. 52 of 2008, publication was made for sale of the property. Whole property was not sold, but only part of it measuring 25 kanals 6 marlas was sold and the sale proceeds, as per the submission of the learned Counsel for the Official Liquidator, have been deposited in the Court. Now, further steps are to be taken by the Official Liquidator for the sale of balance assets, for which new notice needs be issued in the Newspaper, which shall be issued by the Official Liquidator. Necessary charges shall be deposited by the secured creditor with the Official Liquidator within two weeks and sale process shall be completed within six weeks thereafter and the money shall be deposited in the Court. It can be mentioned in the notice itself that in case any person is interested to buy the whole lot including the land already sold and gives a highest bid, the Official Liquidator shall consider the bid and may accept the same accordingly in the public interest. The money amounting to Rs. 11.70 crores, deposited by the auction purchaser be invested in the FDR in the name of the Registrar General so that it fetches interest also. Auction purchaser is also at liberty to make an offer to purchase of the whole property an dif some other person gives a bid for the purchase of whole assets, it can also be considered."

....

8. Aggrieved by this order, the Auction Purchaser has filed the appeal praying that because it had deposited a huge amount of 11.70 crores, the property which he had purchased, could not be put to sale again. Grievance of the Appellant Pradeep Chandra, who is the promoter and guarantor, is that the sale in favour of the Auction Purchaser should be set aside and the entire assets of the company should be sold again in one lot In the appeal filed by the Auction Purchaser, initially a stay order was granted on 28th April, 2011. This order was partly modified on 29th April, 2011, and only the final opening of the bid was stayed. On 20th May, 2011, the matter was again considered by this Court and after hearing both the parties, a detailed order was passed and the Division Bench modified the earlier orders to the following limited extent:

....

In our view, no prejudice will be caused to the Appellant in case such an order is passed. The rightsof the parties have to be determined after adjudication. Therefore, we allow the application to a very limited extent and modify the order dated29.4.2011 only to the extent that the applicant and the Official Liquidator and other secured creditor scan open the bids and declare who is a highestbidder. They can thereafter return the earnest money of the remaining bidders. This in no manner means that the bid of the highest bidder will benecessarily accepted nor will he have any right to claim that the property must be given to him. As observed the confirmation of the bid will abide bythe orders passed in the main appeal. The application is accordingly disposed of."

....

9. This order was passed basically on account of the fact that the learned Counsel for IFCI had informed the Court that he had spent Rs. 30 lacs for issuance of advertisement and in case bids were not opened then in all probability, persons would not come forward because their earnest money would remain blocked for a long time. The bids were actually opened on 24th May, 2011 and bids of five bidders, namely M/s Bohra Exports Pvt. Ltd., M/s Pramaki Finvest Pvt. Ltd., M/s Mahabali Balaji Traders Pvt. Ltd., M/s Valley Iron Steels Pvt Ltd. And M/s Stelco Ltd., were opened. The Auction Purchaser had only bid for the remaining about 26 kanals of land and his bid was for Rs. 81 lacs which meant that for the entire assets of the company, i.e. the composite property purchased earlier by it and 26 kanals of land later put to auction, his total bid

was Rs. 12,51,00,000/-. The other bidder, M/s. Mahabali Balaji Tradex Private Limited, had given a valid bid for Rs. 12,51,00,000/-for the entire composite land, i.e. the entire property purchased by the Auction Purchaser and balance 26 kanals of land put to auction later. Bids of two of the bidders, i.e. M/s Bohra Exports Pvt. Ltd. and M/s Pramaki Finvest Pvt. Ltd. were not accepted even though they have bid Rs. 14,30,50,000/-and Rs. 14,51,00,000/-respectively, because the original Demand Drafts were not enclosed with the offers and only photocopies of the Demand Drafts were enclosed. The only other bidder was M/s. Stelco Ltd. whose bid was for Rs. 12,50,00,000/-only. This, therefore, virtually mean that the bid of the Auction Purchaser and of M/s. Mahabali Balaji Tradex Private Limited were equal.

10. In terms of our order and as argued by Mr. R.L. Sood, learned Senior counsel appearing for the Auction Purchaser, the Official Liquidator should have only opened the bids and declared the highest bidder. When the bids were opened, M/s. Mahabali Balaji Tradex Private Limited increased its offer to Rs. 14,52,00,000/-. The Official Liquidator decided that the entire material be placed before the Hon''ble Court to seek permission for conducting inter se bidding amongst the bidders who had submitted their offers on that date.

11. During the course of this appeal, a number of company applications have been filed by the parties who are willing to submit higher bids and claim that they be permitted to take part in the bidding if the same is held again.

Company Application No. 32 of 2011

12. This application has been filed by M/s. Flat Steels Private Limited. The explanation given in the application is that the authorized signatory of the applicant-company started from Indore but could not reach the office of the Official Liquidator by 4 o''clock and therefore, on the next date, i.e., 24th May, 2011, he presented the bid to the Official Liquidator. Other than making a bald assertion that he started from Indore and could not reach Chandigarh, there is no explanation as to why the unnamed representative of the applicant-company could not reach Chandigarh on 23rd May, 2011, which was last date for opening the bids.

13. It would be pertinent to mention that advertisement was published on 28th April, 2011, and in the advertisement it was clearly mentioned that all the bids should be submitted latest by 4 p.m. on 23rd May, 2011. Now, if a party takes a chance of trying to reach the office of the Official Liquidator on the last date, he does so at his own risk and in case he could not reach the Official Liquidator''s office in time, his bid could not be considered and was rightly rejected. Therefore, this application is rejected.

Company Application No. 33 of 2011

14. This application has been filed by M/s. Symcom Impex Private Limited. According to the averments made in the application, the company was willing to

make an offer of Rs. 13.50 crores. In this application, there is no explanation as to why the bid was not submitted by the last date. Therefore, this application is also rejected.

Company Application No. 34 of 2011

15. This application has been filed by M/s. Pramaki Finvest Private Limited. As observed above, the bid submitted by it was actually the highest, i.e., Rs. 14,51,00,000/-. A draft of Rs. 3,00,00,000/-, required in terms of the advertisement, was not submitted by it, though a photo copy of a draft was submitted. The Official Liquidator rejected the bid on the ground that the photocopy of the draft could not be taken into consideration.

16. We are of the considered view that the decision of the Official Liquidator is correct. When there is a stipulation that a certain amount of money has to be deposited by way of earnest money, then either that money has to be paid in cash or in tangible terms, i.e, demand draft. The photocopy of the demand draft can never take the place of the draft. It has no value. Furthermore, we are aware that a photocopy can be manipulated and no party on the basis of a photocopy of a so called demand draft can be permitted to take part in the negotiations. If this is permitted in any given case, it could cause problems in many other cases, where the person who wants to delay the same, can make very high bids on the basis of such photocopied demand drafts which may turn out to be totally forged document. Therefore, we are of the considered view that this application also has to be rejected.

17. Furthermore, while submitting the photocopy of the demand draft, no plausible explanation was given. In a given case when a party claims that in transit or due to any other reason, the original has been lost and they can produce the duplicate demand draft immediately, the person holding the auction, in exceptional circumstances, may even consider a bid based on a photocopy of a demand draft, but there has to be some plausible and reasonable explanation. The explanation given by the applicant-M/s. Pramaki Finvest Pvt. Ltd. to the Official Liquidator was as follows:

....

Our inability to deposit demand draft with you alongwith this offer is because you have already sold to another party and collected full value from them without canceling the contract. If you are willing to consider our offer then we will immediately submit our draft in the court.

....

18. This clearly shows that the offer was not unconditional offer and according to the company, it was not depositing the original demand draft because the company had been sold to another party and till the contract is cancelled, they would not be willing to deposit the earnest amount of bidding This letter is dated 21st May, 2011, and bids were opened on 24th May, 2011. Even if the applicant

had submitted the original demand draft by 24th May, 2011, the applilcant might have had some case to be permitted to bid, but it cannot be permitted to bid when it had not deposited the earnest money at all.

Company Applications No. 43 and 46 of 2011

19. These applications have been filed by M/s. Deepak Goyal & Company, praying that they may be permitted to take part in bidding, if it takes place again. The applicant had not submitted any bid and, therefore, application filed by it is rejected. Demand draft, if any, furnished by M/s. Deepak Goyal & Company be returned to it.

20. This leaves us with the main issue as to whether the sale made in favour of the Auction Purchaser has become final and whether the learned Company Judge could have passed the order permitting not only the sale of the balance land measuring 26 kanals but also permitting the bidders to bid for the entire composite lot, i.e, the assets purchased by the Auction Purchaser and the remaining extra land discovered later on.

21. From the facts narrated above and the various orders which we have quoted, it is apparent that the intention of the Court, the Official Liquidator as well as the secured creditors was that the entire property of the company should be sold in one lot. Unfortunately the promoter and guarantor, who was represented by counsel on every hearing, did not bring it to the notice of the Court that assets of the company included 51 kanals of land and not 25 kanals 6 marlas of land as mentioned in the valuation report. For the reasons best known to the Appellant, Shri Pradeep Chandra, he chose to keep silent and even when an application was filed before the sale was actually conducted on 7th December, 2010, no efforts were made to get the description of the land corrected before the sale took place. The Auction Purchaser has deposited a sum of Rs. 11.70 crores which is not a small sum of money.

22. It is a well known fact that when properties are put to auction by the Court, they are in the nature of distress sales and more often than not it is very difficult to realize the actual market value of the property in such distress sales. This is because the parties, who bid at such auctions, are apprehensive that the sale may not be confirmed or even if it will be confirmed, it may take years for confirmation because usually lots of objections are filed in such cases. The parties play safe, and normally offer much less than what is the market value of the property. Auction sales, so held, cannot be set aside only on the ground that the value of the property is more than for what it has been auctioned, unless it is shown that fraud or misrepresentation has taken place or that the auction has not been properly advertised whereby the genuine buyers have not been given an opportunity to come forth and make their bids. As far as the present case is concerned, it is nobody''s case that the auction was not published in a proper manner. Therefore, in normal circumstances, the sale in favour of the Auction Purchaser should have been confirmed.

23. This Court, however, cannot close its eyes to what has happened subsequently. The total offer made by the Auction Purchaser was Rs. 12.51 crores. M/s. Mahabali Balaji Tradex Private Limited had also offered Rs. 12.51 crores but raised their offer to Rs. 14.52 crores, which offer has been matched by the Auction Purchaser. This clearly shows that there is a substantial difference between what was the actual bid and what was the real value of the property. We are, in the present case, dealing with the assets of a company which is in liquidation and, therefore, we have to take into consideration not only the manner in which the sale has been held but also the interest of the secured creditors and the employees whose claims rank pari passu with the secured creditors. We are also not unaware that most of the secured creditors are public sector banks and the money actually belongs to the public. When there is conflict between individual interest and public interest, then public interest must take precedence over individual interest.

24. A number of decisions have been cited before us and we also draw support from the observations made by the Apex Court. The first judgment cited before us is Navalkha and Sons Vs. Ramanuja Das and Others, which dealt with a similar situation where the assets of the company were sold. The Apex Court held that where the terms of the order of the Court/the advertisement/the auction commissioner provided that the auction/sale would be subject to the confirmation by the court, then no right is vested in the Auction Purchaser till the sale is confirmed. This is in contradistinction to the auction/sales carried out in terms of Order 21 of the Code of Civil Procedure. The following observations of the Apex Court are apposite for the purpose of decision of this case:

6. The principles which should govern confirmation of sales are well established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offer or does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy it self that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion.

....

25. Thereafter, the Apex Court in Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, went to the extent of holding that even a sale which had been confirmed could be set aside by the High Court when there was a specific condition in the terms and conditions of the sale which empowered the Court to set aside the sale even though it was confirmed in the interests of creditors, contributories and all concerned and/or public interest. (emphasis supplied)

26. A similar matter came up for consideration before the Apex Court in Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, . In the case before the Apex Court, the auction-sale was conducted after adequate publicity. The sale was confirmed by the High Court and after three months, objections were filed. The Apex Court held that once a sale had been confirmed, then no objections would normally lie against the same except on the limited ground of fraud. However, this decision has to be read in the peculiar facts of this case, where the sale had been confirmed after three months and no objections had been filed during this period. Objections were filed after three months and that too by persons, who were not present at the time of auction. In the present case also, we have not entertained the applications filed by the persons, who were either not present at the time of auction or whose bids were incomplete at the time of auction.

27. There can be no quarrel with the settled proposition of law that there has to be an end to sale proceedings and sale proceedings cannot continue infinitely because if Courts permit this to happen, then it would be impossible to recover the real value of the property. It would be appropriate to refer to the following observations of the Apex Court in Valji''s case supra:

28. If it is held that every confirmed sale can be setaside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-salewas done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, alleligible persons can come and bid for the same, andthey are themselves to be blamed if they do not come forward to bid at the time of auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud orsome collusion. However, if the price offered afterthe auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.

....

30. in the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction)the auction is not complete and no rights accrue until the

sale is confirmed by the said authority. Ponce, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

28. In FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, even a confirmed sale was set aside, but on the ground that certain facts which were necessary for the proper valuation of the movable and immovable properties were not brought to the notice of the Court and, therefore, not incorporated in the terms of the sale. In the present case, it has been urged that since the total land was 51 kanals and not 25 kanals and 6 marls, it has affected the total valuation.

29. On the other hand, Mr. R.L. Sood, learned Senior Counsel, argued that non-inclusion of this 25 kanals of land did not, in any manner, affect the value of the land, which was purchased by the Auction Purchaser. It is not disputed before us that the building, plant machinery etc. all stand on the 25 kanals and 6 marlas of land, which was sold initially to the Auction Purchaser. The balance 26 kanals is vacant land and no material has been placed on record to show that this has, in any way, affected the valuation of the earlier part.

30. The Apex Court in Shradhha Aromatics Private Limited Vs. O.L. of Global Arya Industries Limited and Others, was dealing with a case where sale of the assets of a company (which had been wound up) was made by way of auction. The highest bid was accepted by the Company Judge and on an intervention made before the Apex Court, it set aside the sale because the intervener offered a price which was seven times higher than the offer made by the highest bidder. The Apex Court also devised a formula of compensating the original Auction Purchaser and the Auction Purchaser was awarded five lacs as compensation.

31. The overview of the entire law laid down by the Apex Court indicates that the Apex Court has clearly held that before confirmation, the High Court has powers to review the sale and decide whether the sale has to be confirmed or not on many grounds. After confirmation, normally no intervention would be called for unless it is shown that fraud has taken place or as in the Shradhha Aromatics case, the offer made in Court shows that the difference of amount is substantial.

32. Mr. R.L. Sood, learned Senior Counsel, has made a submission before us that in light of what has been stated in Shradhha Aromatics case, his clients are willing to match the offer of M/s. Mahabali Balaji Tradex Private Limited and also make a bid of Rs. 14.52 crores. He, therefore, submits that the sale may be confirmed in favour of the Auction Purchaser for this amount. On the other hand Mr. Tarlok Chauhan, learned Counsel appearing on behalf of M/s. Mahabali Balaji Tradex Private Limited, submits that let inter se bidding be carried out between the eligible bidders as on 24th May, 2011, so that higher amount is received by the secured creditors. Mr. Manish Jain, learned Counsel appearing on behalf of IFCI Ltd., states that he has no objection if rebidding be done, but it be done in Court and property should not be re-advertised.

33. We, in our earlier order, have noted that the costs of the advertisement etc., in the present case, amounted to Rs. 30 lacs. In case the sale in favour of the Auction Purchaser is set aside and the sale/auction of the property has to be advertised again, then it will again entail expenditure of a huge amount of money. Earlier twice the property has been advertised and out of the sale proceeds, a large chunk is taken away as the costs of advertisement. We also cannot shut our eyes to the fact that more the auction is delayed, the more are the administrative expenditures, which are taken away by the Official Liquidator for watch and ward etc. of the factory.

34. Though, as held by us above, there is nothing illegal in the manner in which the company was purchased by the Auction Purchaser, but keeping in view the fact that now a substantially higher offer has been received and the offer of the Auction Purchaser is itself indicative of the fact that the real value of the property was not realized at the time of its auction. The amounts involved are not small and are substantial. As held by the Apex Court, public interest has to be kept foremost in minds and public interest requires that the highest amount should be recovered for distribution amongst the creditors of the company in accordance with law.

35. We, therefore, in the peculiar facts and circumstances of the case, direct the Appellant-Auction Purchaser and M/s. Mahabali Balaji Tradex Private Limited to submit their offers in sealed bids to be opened in this Court latest by 28th September, 2011. Since the Appellant has already deposited a sum of Rs. 11.76 crores and M/s. Mahabali Balaji Tradex Private Limited has deposited a sum of Rs. 3 crores, the bid of M/s. Mahabali Balaji Tradex Private Limited shall only be considered, if it alongwith its bid, submits a demand draft in favour of the Official Liquidator for a sum of Rs. 8.76 crores. In case, the bid of the Auction Purchaser is the highest, then obviously no further action will be required. However, in case the bid of M/s. Mahabali Balaji Tradex Private Limited is higher than that of the Auction Purchaser, then the Auction Purchaser will have to be compensated.

36. In an auction conducted under the provisions of Order 21 of the Code of Civil Procedure, if within fifteen days of the auction, the owner of the property/ judgment debtor offers to pay the auction amount plus 5%, then the sale is automatically set aside. Keeping in view the fact that there is no judgment debtor in the present case, we feel that compensation of approximately 2.5% would be adequate compensation payable in such a case, which works out to approximately Rs. 30 lacs. We are also fixing this amount as the compensation, because if re-advertisement takes place, it will entail expenditure of approximately Rs. 30 lacs.

37. We are making it clear that the opening of the bids on 28th September, 2011, shall be restricted to the Auction Purchaser and M/s. Mahabali Balaji Tradex Private Limited and no other person shall be permitted to take part in the bid.

38. In view of the compensation that we have fixed, Mr. R.L. Sood, learned Senior Advocate, prays that instead of payment of compensation, his client would be satisfied, in case he be given a leeway or buffer of Rs. 30 lacs over and above his bid, that is to say that if the bid of M/s. Mahabali Balaji Tradex Private Limited is higher by an amount of Rs. 30 lacs or less, then the Auction Purchaser shall be considered to be the highest bidder. However, if the difference is Rs. 30,00,001/- or more, then it shall be M/s. Mahabali Balaji Tradex Private Limited, who will be the highest bidder.

39. Since, fresh bidding has been ordered, the Auction Purchaser or M/s. Mahabali Balaji Tradex Private Limited cannot be denied the interest on their deposits of Rs. 11.76 crores and Rs. 3 crores, respectively, because, now they have to bid afresh and this interest portion is not being taken into consideration while calculating the bid amount.

List on 28th September, 2011 at 3.30 p.m., when the bid shall be opened.

Company Application No. 49 of 2011

40. Disposed of in view of the main orders passed.

41. Both the appeals are disposed of in the aforesaid terms. An authenticated copy of this order be supplied to the parties by the Court Master on 20.09.2011 by 4.30 p.m.

