

(2005) 10 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No. 11 of 2005 in Company Application No. 650 of 2004 and C.A. No. 72 of 2005 in C.A. No. 775 of 2003 in C.P. No. 228 of 1999

Winsome Yarns Ltd.

APPELLANT

Vs

Punjab Wireless Systems Limited (in Liquidation) and Others

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Companies (Court) Rules, 1959 — Rule 272, 273, 6, 9
Companies Act, 1956 — Section 3, 433, 434, 447, 455

Citation : (2006) 129 CompCas 41 : (2005) 141 PLR 689

Hon'ble Judges : Virender Singh, J;N.K. Sud, J

Bench : Division Bench

Advocate : L.M. Suri and Deepak Suri and Neeraj Khanna, for the Appellant; Alok Jain, for Respondent No. 1, Manish Jain, for Respondent No. 9, Vivek Bhandari, for Respondent No. 10 and S.C. Nagpal, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—This is hotly contested matter anent the post-auction jurisdiction of Company Judge to set aside a confirmed sale on the basis of a higher offer.

2. The facts of the case are set down as under:

Winsome Yarns Limited, (auction purchaser) through the instant appeal has impugned the order of the learned Company Judge dated 30.3.2005 whereby the confirmed auction sale has been set aside and Official Liquidator has, been directed to undertake the exercise of reauction of Lot Nos. 17, 19 and 20 of Punjab; Wireless Systems Limited (for brevity, PUNWIRE), in liquidation.

The Company in liquidation namely PUN WIRE had gone into rough weather which resulted in filing of a winding up petition before the Company Judge bearing C.P. No. 226 of 1999 Under Sections 433 and 434 of the Companies Act,

1956 (for brevity, (he Act). The learned Company Judge appointed a provisional Liquidator vide order dated 27.7.2000. Thereafter, the said petition was allowed on 1.2.2001 and Official Liquidator attached to the Court was appointed as the Liquidator. After the order of winding up, the Official Liquidator sought permission to sell the assets and the properties of PUN WIRE by moving an application registered as C.A. No. 775 of 2003. The Said application was allowed on 4.1.2003. Thereafter, a Sale Committee (for brevity the Committee) was constituted to work out the modalities for auctioning of the properties of the ; PUN WIRE which comprised of Official Liquidator and representatives of secured creditors. It was decided that the assets and properties of PUNWIRE were to be auctioned by inviting sealed tenders in the office of Official Liquidator by creating separate lots as prepared by the Sale Committee. A valuation report is also prepared. A tender notice was consequently floated on 15.6.2004 which was published on 25.6.2004 in various leading newspapers viz, the Economic Times (All India Edition), Times of India (All India Edition), The Tribune (All edition), Punjab Kesri (Hindi), Ambala, Delhi and Jalandhar editions and Jagbani (Punjabi) Jalandhar edition. According to the tender notice, the properties and assets of the PUNWIRE were divided into 25 lots. The reserve price of each lot along with earnest money in respect thereof was also specified. The date of opening the tenders was also fixed. The requirement as per the tender notice was that the tenderers were required to submit separate tender for each lot along with earnest money through Bank Draft in favour of the Official Liquidator. The Official Liquidator and the committee were given the power to reject any offer without assigning any reason and also allow inter-se bidding amongst participating bidders, if necessary .The sale was, however, to be subject to confirmation by the Company Judge. As per the terms and conditions of the tender notice, the bid for complete factory premises or all assets at B-53, B-55, B-76 and B-77 was to be given preference for which earnest money required to be deposited was Rs. 2 crores and reserve price was fixed at Rs. 25 crores: The appellant Was one of the tenderers for the following three lots:-

- (i) Lot No. 17 (consisting of land and building);
- (ii) Lot No. 19 (consisting of furniture);
- (iii) Lot No. 20 (consisting of air conditioners).

The other bidders who had submitted their tenders were M/s Star Point Financial Services Ltd. and M/s S.K.Khaitan and Company. Both these bidders were for Lot No. 17. The Official Liquidator opened the tenders in the presence of the Committee in respect of Lot No. 17 which was for B-77, Industrial Area, .Phase VII, S.A.S. Nagar (Mohali). The appellant had offered Rs. 3.15 crores for the land and building against the reserve price of Rs. 3 crores. The Committee thought that since no tender was received for machinery, it would be difficult to sell the land of this building because the machines would be required to be shifted to another building which would cause damage to the machinery. The decision was deferred by the Committee for some time pending consideration of the tenders in

respect of furniture and fixtures. Thereafter, the tender in respect of Lot Nos. 19 and 20 comprised of furniture and air conditioners was also opened. The appellant had offered 4.50 lacs for Lot No. 19 against the reserve price of Rs. 4 lacs. It is relevant to mention here that the other tender in respect of Lot No. 19 submitted by one Rajdhani Cables (India) was not found to be qualified for the reason that no negotiable instrument of any cash showing the payment of earnest money was attached. With regard to Lot No. 20 which comprised of air conditioners, the appellant had offered Rs. 15.50 lacs against the reserve price of Rs. 2 lacs. This bid was subject to the condition that Lot No. 17 be also sold to it at the price offered by it. The Sale Committee had expressed its opinion that the appellant may be asked to increase its bid for Lot No. 17, 18 and 20 to at least Rs. 5 crores. The appellant was, therefore, asked to come forward for further negotiations in that regard.

The Official Liquidator then moved an application on 30.9.2004 u/s 455 of the Act read with Rules 6 and 9 of the Companies (Court) Rules, 1959 (for short the Rules), requesting the Court to call the prospective bidders namely the appellant, M/s Star Point Financial Services Pvt. Ltd., Panchkula and M/s S.K. Khaitan and Company for inter-se bidding with regard to land and building comprising in Lot No. 17. In respect of Lot No. 19, a recommendation was made to consider the offer received by the Official Liquidator by the appellant. With regard to Lot No. 20, the Official Liquidator stated in the aforesaid application that the appellant had offered Rs. 15.50 lacs but with certain conditions. It was also mentioned in the said application that the offer of the appellant was sent back with a counter offer of the Committee to give a bid of Lot Nos. 17, 19 and 20 collectively at least for Rs. 5 crores.

The secured Creditors also stepped in before the learned Company Judge before the confirmation of the sale. These are Indian Overseas Bank - respondent NO.2, Canara Bank-respondent No. 3, State Bank of Patiala-respondent No. 5, State Bank of India-respondent NO.6; and 1DB1 "Bank-respondent No. 7. A joint reply was filed before the learned Company Judge by the said secured creditors asserting that they hold the second charge on the fixed assets of the PUNWIRE along with Deutsche Bank respondent No. 4. A prayer was made before the learned Company Judge by the secured creditors that machinery attached to the plots and building comprised in Plot No.B-77 (Lot No. 17) should be sold first to avoid any payment of rent, shifting expenses etc.

On 10.12.2004, inter-se bidding was then held between the appellant and M/s Star Point Financial Services Limited in respect of Lot No. 17. M/s Star Point Financial Services Limited made an offer of Rs. 3.15 crores". The appellant had an edge of higher bid by offering Rs. 3.16 crores. The Official Liquidator supported the view of the appellant in respect of Lot No. 17 and made a prayer that the offer of Rs. 3.16 crores should be accepted. The learned Company Judge-, thus, confirmed the sale in favour of the appellant vide order dated 10.12.2004]

The appellant thereafter moved an application for clarification of the order with regard to the confirmation of the sale in respect of Lot Nos. 19 and 20. On 13.1.2005, it was made clear by the learned Company Judge that the sale in favour of the appellant of above said two Lots has also been confirmed vide order dated 10.12.2004.

The aforesaid three lots were confirmed for a total sum of Rs. 3.36 crores and the split up is as under:

Lot No. 17 - Rs. 3.16 crores Lot No. 19 - Rs. 15.50 lacs

Lot No. 20 - Rs. 4.50 lacs

The appellant made the total payment on 13.12.2004 .with a request to hand over the possession on that date. On 16.12.2004, the possession of Lot No. 17 which includes the land, building and partitions was given to the appellant. Possession of air conditioners, furniture etc. comprised in Lot No. 19 and 20 was also given. The other assets, which were found at the spot and had not been sold off, were also given to the appellant, being the auction, purchaser, on superdari by the Official Liquidator.

It is thereafter that on 28.1.2005, M/s Sun Group Enterprises Pvt. Ltd. (for short the Sun Group), respondent No. 10 moved an application Under Rule 9 of the Rules offering to purchase the entire assets of PUN WIRE as a going concern for Rs. 12 crores. A notice of the application was given to the appellant which submitted its detailed reply reiterating that there was no occasion to reopen the chapter at that stage as the sale has already been confirmed. The learned Company Judge vide order dated 28.1.2005 directed the Sun Group to deposit a sum of Rs. 2 crores with the Official Liquidator within a stipulated period and restrained the Official Liquidator from executing the sale deed in the meanwhile in favour of the appellant.

Thereafter on 11.2.2005, PUNWIRE Employees Union (for short the Union) through its President and General Secretary also filed objections praying for modification/re-calling/setting aside the order of confirmation of sale on the ground that u/s 529A of the Act, the dues of the employees are at par with the dues of the secured creditors and thus, they are to be treated pari-passu along with them. The grouse shown by the Union was that the Official Liquidator had not associated it as no communication was ever received by the Union in connection with the sale of assets of PUNWIRE. The stand of the Union was also repudiated by the appellant.

The learned Company Judge vide impugned order dated 30.3.2005, set aside his earlier order of confirmation of sale dated 10.12.2004 in favour of the appellant and directed it to hand over the possession of Lot Nos. 17, 19 and 20 to the Official Liquidator.

3. Hence this appeal by Auction Purchaser.

4. While admitting the appeal, this Court vide order dated 29.4.2005 had directed the Official Liquidator not to take any action against the auction purchaser i.e. appellant. The appellant was also restrained from creating any further encumbrance on the property or changing its nature. The appellant challenged the aforesaid interim order before the Hon"ble Apex Court vide SLP No. 10990 of 2005 and the same was dismissed on 12.5.2005.

5. Another fact which needs to be mentioned is that initially the Union was not arrayed as one of the respondents in the instant appeal but during the proceedings on an oral request made by Mr. S.C. Nagpal, Advocate appearing for the Union, vide order dated 5.4.2005, the Union through its President was impleaded as respondent No. 11. The appellant then placed on record the amended grounds of appeal by moving separate application registered as Company Misc. No. 68 of 2005 and the same was allowed.

6. During the pendency of the appeal another application was also moved by the Union bearing Company Misc. No. 80 of 2005 Under Rule 9 pointing out that M/s Star Point Financial Services Pvt. Ltd. and M/s S.K. Khaitan had, in fact, been propped up by the appellant/auction purchaser only to give a semblance of competition before the Company Judge with the intention of getting the sale for inadequate price confirmed. It is claimed that M/s Star Point Financial Services Pvt. Ltd. is in fact a sister concern of the appellant which is evident from the fact that the telephone connection installed at residential address of M/s Star Point Financial Services Pvt. Ltd. (House No. 680 Sector 6, Panchkula) is the same as shown in the telephone directory for M/s Winsome Yarns Limited, the appellant herein. It is, therefore, alleged the appellant has played a fraud upon the Court. The allegations were however controverted by the appellant stating that no fraud has been played on the Court at any stage and in fact one Mr. D.R. Aggarwal who is Director with M/s Star Point Financial Services Pvt. Ltd. was a former employee of M/s Winsome Yarns Ltd. and after his retirement as an advisor from the said company, he is still continuing with the same number and he has now joined as Director with M/s Star Point Financial Services Pvt. Ltd.

7. We have heard Mr. L.M. Suri, learned Senior Advocate assisted by Mr. Deepak Suri and Mr. Neeraj Khanna, Advocates for the appellant-auction purchaser, Mr. Alok Jain, Advocate for Official Liquidator-respondent No.1, Mr. Manish Jain, Advocate for IFC1, the main secured creditor-respondent No. 9, Mr. Vivek Bhandari, Advocate for M/s Sun Group Enterprises Pvt. H Ltd.-respondent No. 10 and Mr. S.C. Nagpal, Advocate for PUN WIRE Employees Union-respondent No. 11. With their assistance, we have gone through the entire record available to us.

8. Mr. Suri vehemently contends that the order passed by the learned Company Judge is without jurisdiction as after confirmation of sale by the Court the Company Court has no jurisdiction to entertain further higher bids for the already auctioned property as it becomes functus-officio and does not have the power to review or recall the order of confirmation of sale. In other words, it is claimed that the Company Judge can recall or review his earlier order only at a stage

prior to the confirmation of sale and not thereafter. Mr. Suri dwelling upon his arguments then contends that in the case in hand * even the possession had been handed over to the appellant which creates third party rights over the auctioned property. The appellant had even raised loans from different quarters to run the business smoothly and therefore in the present set of circumstances the impugned order passed by the Company Judge setting aside the confirmed sale is not sustainable.

9. Mr. Suri then submits that the appellant was also the successful bidder in the interse bid by the Company Judge himself and it is only thereafter that it had paid the entire sale consideration and was put in possession of the property. Even the formalities for transfer had been completed. The Official Liquidator had issued by "No Objection Certificate" to the PSIEC to execute the transfer document in favour of the appellant. The appellant had also paid all the requisite charges for the transfer. Since it was a lease hold property, only a lease deed was required to be prepared in respect of transfer.

10. Challenging the very maintainability of the application, Mr. Suri contends that Sun Group had woken up all of a sudden from slumber on one fine morning i.e. 28.1.2005 and offered a lumpsum price of Rs. 12 crores for the entire assets (25 lots) of PUNWIRE as a going concern, which was much below the reserve price and still the learned company Judges took cognizance and restrained the Official Liquidator from executing the transfer deed in favour of the appellant. According to Mr. Suri, the application by Sun Group was misconceived on the face of it as its intentions were not honest and it deserved to be rejected at the very threshold by the learned Company Judge. It is only during the pendency of the proceedings and after having obtained the interim order restraining the Official Liquidator from executing the transfer deed, the Sun Group had filed an affidavit on 10.2.2005 bifurcating its bid lotwise including Lot Nos. 17, 19 and 20 which are the sirbject matter of the present appeal. According to the learned counsel, even in this affidavit the Sun Group had clearly stated that the bid was for purchasing the entire assets en bloc so that the production could be restarted. This, according to the learned counsel, clearly shows that the real intention of Sun Group was not to buy Lot Nos. 17, 19 and 20 but to scuttle the sale already confirmed in favour of the appellant. ,

11. Referring to the marginal difference of price with regard to Lot Nos. 17, 19 and 20, Mr. Suri contends that the learned Company Judge has failed to appreciate that even as per the revised offer giving lotwise bifurcations, the offer of the Sun Group, for these three lots was higher by Rs. 20.65 lakhs only; and this difference, not being; substantial, should not have influenced the mind of the learned Company, Judge to review ;his order confirming the sale especially when the prices of the immovable; properties are known to rise on day to day basis and therefore, a higher offer of just negligible margin after three months is of no consequence. Thus, the learned counsel contends that even ,the revised bid ought to have been rejected at the very outset. He points put that it; was, at a

much later stage that petitioner's oral bid of Rs. 3.75 crores for Lots No. 17, 18 and 20, had been entertained.

12. Mr. Suri highlighted another material aspect submitting that before the sale was confirmed in favour of the appellant, no one had ever-alleged any irregularity, fraud or inadequacy of price. It is only after the issuance of the, "No Objection Certificate" by the Official Liquidator to PSIEC for transfer of the property, the, present application has been filed and even in this application, there is no allegation of irregularity or fraud and therefore, mere inadequacy of the price, and that too not in specific terms could not be a ground to reopen a confirmed court sale. The learned counsel in support of his contentions relies upon the judgment of Hon'ble Apex Court rendered in *Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others*, .

13. Mr. Suri then submits that even otherwise the secured creditors who are the most affected persons holding a charge on the, property are supporting the case, of the appellant throughout and Union (respondent No, II) could not intervene in this case during the sale as there, is no such provision in the Company law that the workmen have to be associated for the purpose of sale. A workman steps in only at the stage of disbursement of the dues where he has the preferential right over a secured creditors as envisaged in Section 529-A of the Act. According to Mr. Suri, the advertisement of sale notice was given in various leading newspapers and the Union at one stage had even approached the Official, Liquidator to defer the sale process. A letter in this regard was also received in the office of Official Liquidator on 9.7.2004 requesting him to suspend/defer the sale of assets of PUN WIRE in view of the reference made to the BIFR. The Official Liquidator in his written response had directed the Union to approach Court for the reason that he had already taken steps, for the sale of assets in pursuance of the directions of this Court. Thereafter an application registered as C.A. No, 444 of 2004 was moved by the Union and the same was dismissed on 23.8.2004 by the Company Judge. This all goes to show that the Union was aware of the fact that the sale proceedings were going on before the Company Judge and therefore, any objection by it after the sale was confirmed in favour of the appellant should not have been entertained by the learned Company Judge. The learned counsel has taken us through the relevant portion of impugned judgment where an observation has been made in favour of the workmen observing that their interest "is not inferior to the interest of secured creditors in the company under liquidation and therefore, the earlier order dated 10.12.2004 requires to be recalled. According to the learned counsel, the finding of the Company Judge in favour of workmen is not only contrary to the provisions of Company law but also runs counter to the facts.

14. Mr. Suri then submits that the Misc. application moved by the Union to create an impression that a fraud has been played upon the Court by the appellant by introducing .M/s, Stai; Point Financial Services Pvt. Ltd. as one of the .bidders to show competitive bidding whereas aforesaid Star Point is the sister concern of

the appellant, has in fact no substance in it as the bidding was conducted by the Company Court himself in which no one else except the appellant, M/s Star Point Financial Services Pvt. Ltd. and one M/s S.K. Khaitan and Copipany had participated. There is neither any allegation nor any finding by the Court that the appellant or M/s Star Point had entered into any arrangement to prevent any other person from participating in the open bidding. Even otherwise, a Company is a legal person having its separate distinct entity and can act as such.

15. Mr. Suri then submits that the learned Company Judge has not correctly appreciated the judgment of Hon ble Apex Court reported in Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, for the reason that in aforesaid case, there was a specific condition No. 11 in the terms and conditions of the sale which had empowered the court to set aside the sale even though it was confirmed. Besides this another additional factor in Divya's case (supra) was, that neither the possession of auctioned property had been handed over nor the sale deed had been executed and in these peculiar circumstances, the sale already confirmed was set aside. But in this particular case, the possession of the property stood already handed over to the appellant and all the steps for transfer of property including the deposit of fees etc. had also been taken. Therefore, the view taken in Divya's case (supra) rather comes to the aid of the appellant for reaffirming the earlier order dated 10.12.2004 confirming the sale.

16. Mr. Suri lastly contended that there has to be finality to the sales by public auction. There can always be one or other intervene with a higher bid after the auction and if the courts were to act on such offers, the process of auction Will become unending. Seen from this angle as well, the impugned order deserves to be set aside.

17. On the basis of the aforesaid submissions, Mr. Suri prays for setting aside the impugned order of the learned Company Judge dated 30.3.2005 with a prayer that the order dated 10.12. 2004 clarified on 13.1.2005 be reaffirmed.

18. Repudiating the contentions of learned counsel for the appellant, Mr. Vivek Bhandari, learned, counsel for Sun Group submits that Rule 9 of the Company Rules envisages vast powers with the Company Court to intervene even after the sale is confirmed and at times even after the possession of the property is also handed over to the auction purchaser. The Company Judge being the custodian of the Company in liquidation has to watch the interest of the secured and unsecured creditors and therefore, an attempt should be made by the Company Judge to fetch the maximum price for its assets regardless of the stage of proceedings. Relying heavily on the decision of this Court rendered in M/s Oswal Agro Furnace Limited (in liquidation) C.A. No. 608 of 2003 decided on 8.12.2003, Mr, Bhandari contends that the confirmed sale was set aside by this Court merely on the basis of inadequacy of price relying upon Divya's case (supra). He has also referred to the relevant observations made therein to strengthen his submissions. According to Mr. Bhandari, the Company Judge, never becomes functus officio, as contended by Mr. Suri arid is fully competent to reverse/set

aside his earlier order of confirmation of sale on this ground.

19. Mr. Bhandari then contends that once the Company Judge is of the view that the earlier sale which was confirmed was not proper the same can be set aside even after handing over of possession. In support of his contentions, Mr. Bhandari relies on two judgments of Apex Court rendered in *Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others*, *Union Bank of India Vs. Official Liquidator H.C. of Calcutta and Others*, . Dwelling upon his arguments, Mr. Bhandari further submits that in *Divya's case (supra)*, the observation of the Hon"ble Apex Court with regard to handing over of possession is just a obiter-dicta whereas in the aforesaid judgments, the Hon"ble Supreme Court has dealt with this aspect in detail and therefore, this view, being ratio decidendie would prevail. Even otherwise there is no reference to these judgments in *Divya's case (supra)*. Making the aforesaid two judgments as his sheet anchor, Mr. Bhandari wants to submit that the Company Judge has rightly set aside the confirmed sale in this case.

20. On merits, Mr. Bhandari submits that the application moved by Sun Group on 28.1.2005 before the Company Judge giving an offer of Rs. 12 crores indicates that prior to that they had sent a letter dated 18.1.2005 to the Punjab Government to obtain a, stay of further proceedings for sale of assets because the Official Liquidator was already in the process of selling the assets of PUNWIRE on piecemeal basis and after receipt of the reply from the Secretary, Industries Punjab on 27.1.2005, the representatives of the Sun Group had approached the Official Liquidator through written request and apprised him that they were ready to purchase the entire assets of the PUN WIRE consisting of 25 lots. Thereafter, the Company Court was moved by filing the present application on 28.1.2005 showing its desire to buy the entire assets of PUNWIRE as a going concern and the same was entertained subject to depositing of Rs. 2 crores with the Official Liquidator. During the course of proceedings an additional affidavit was filed by Sun Group in which a revised bid for all the 25 lots including lot Nos. 17, 19 and 20 was submitted. According to Mr. Bhandari, simply because in the last para of the aforesaid affidavit it has been averred that the bids have been submitted with a view to purchase the entire assets enbloc would not make any difference as the intention of the Company was to upgrade the assets and restart the production. Intention of Sun Group was to re-employ even the workers of PLTNWIRE. According to learned counsel, the fact remains that the bid offered by the Sun Group for Lot Nos. 17, 19 and 20 in any case was higher than the bid given by the appellant and therefore, the Company Judge after entering into detailed discussion especially on the aforesaid three lots has come to the conclusion that the confirmed sale is liable to be set aside.

21. Stretching the wings of his arguments, Mr. Bhandari then contends that even though the bid offered by Sun Group was higher than the accepted bid of the appellant, still the learned Company Judge has not confirmed the sale in its favour. He has merely ordered that the re-auction of three Lot Nos. 17, 19 and

20 at the expense of the Sun Group and even interest on loans raised by the appellant is to be borne by it. Therefore, the appellant possibly should not have any grouse to it as the chapter is still open and the appellant can enter into re-auction by putting its claim alongwith other bidders.

22. Mr. Nagpal representing Union (respondent No. 11) also joins issue and vehemently submits that the order of the learned Company Judge deserves to be upheld as the interest of the workmen, being in no way different from the interest of the secured creditors, has not been taken care of by the Official Liquidator as he has failed to associate the workmen in the process of sale of the assets of the Company in liquidation.

23. Mr. Nagpal submits that by virtue of Section 529-A of the Act, the status of the workman is at par (*pari-passu*) with secured creditors and thus, the workmen, like the secured creditors were required to be associated with the sale of the assets of the company in liquidation as well as at the time of its confirmation. This has not been done in the present case. Mr. Nagpal then contends that there are about 500 workers who have been rendered jobless, out of whom some have already died and that the proposal made by the Sun Group is in fact in the interest of the workmen as they have been assured of re-employment and this fact alone should tilt the balance in favour of Sun Group.

24. Another aspect touched by Mr. Nagpal is that it was the duty of the Official Liquidator to join the employees of PLTNWIRE during the sale proceedings in as much as he should have put up the valuation report before them so that they could visualize as to what was best for them and if they had any objection to the said valuation report, they could knock at the door of Company Judge showing their grouse. The workmen were the affected party as they after being rendered jobless were waiting for their dues. Therefore, the interest of the workmen has not been properly watched by the Official Liquidator in this case and for this reason also, the sale confirmed in favour of the appellant was liable to be set aside. In support of his submissions, the learned counsel again relies upon the judgment of Hon'ble Apex Court rendered in *Textile Labour Association and Anr. v. The Official Liquidator and Anr.* J.T. 2004 (Suppl.I) S.C. 1.

25. Mr. Nagpal then submits that the appellant has intentionally not arrayed the Union as one of the respondents in the instant appeal. The Union itself had to move an application for being impleaded in the present case and after the said application was allowed, the appellant had amended the grounds of appeal. This also smacks of the malafide intention of the appellant.

26. Another argument advanced by Mr. Nagpal is that the other two bidders who had joined the auction are no one else but the sister concerns of the appellant company and therefore, there was no competitive bidding in this case and a fraud has been played upon the Court. It is, therefore, alleged that the auction has not fetched the proper price for the assets of the company in liquidation which is adverse to the interest of the workmen and the auction, therefore,

deserves to be set aside on this ground as well. In support of this contention, he has placed reliance on the judgment of the Supreme Court in *Gurmukh Singh Vs. Amar Singh*,

27. With regard to inadequacy of price, Mr. Nagpal adopts the offer made by the Sun Group and fairly states that Union was not able to bring a better buyer.

28. On the question of possession, Mr. Nagpal submits that only symbolic possession was given to the appellant and not the physical possession and therefore, there is no flaw in the impugned order.

29. Mr. Munish Jain appearing for the secured creditors, on the other hand, has supported the case of the appellant and submits that earlier also when the sale was confirmed by the Company Judge, the secured creditors had preferred no objection to its confirmation. The order of setting aside the confirmed sale, according to Mr. Jain, is not sustainable as the same is adverse to the interest of secured creditors.

30. Mr. Jain then submits that a workman is not a secured creditor for all purposes by virtue of Section 529A of the Act. He steps in only at the time of disbursement of dues and at that stage, he indeed has a preferential right over the secured creditors. Prior to that the Official Liquidator for all intents and purposes represents the workman before the Company Judge and safeguards his interest. In support of his contentions, Mr. Jain has relied upon the following judgments:-

1. *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, .

2. *International Coach Builders Ltd. Vs. Karnataka State Financial Corpn.*, .

3. *Andhra Bank Vs. Official Liquidator and Another*, ;

31. On the basis of the aforesaid submissions, Mr. Jain submits that the impugned order is liable to be set aside and the sale already confirmed by the Company Judge in favour of the appellant deserves to be reaffirmed.

32. Mr. Alok Jain appearing for the Official Liquidator also supports the case of the appellant tooth and nail and submits that there is no irregularity committed by the Official Liquidator on any count at any stage in as much as he had been apprising the Company Judge of all the events before the sale was confirmed and the Company Judge had taken the same into account before confirming the sale in favour of the appellant.

33. After hearing the rival contentions of the parties, the following two core questions crop up for consideration in the instant appeal:-

i) Whether the Company Judge was justified in setting aside his own order of confirmation of sale merely on account of inadequacy of price after the possession was handed over to the appellant auction purchaser, and if so, then

under what circumstances?

ii) Whether the workmen/employees of the Company (in liquidation) have to be treated at par with secured creditors so as to be associated by the Official Liquidator in the process of sale of Company ?

34. We have felt the necessity of reproducing the operative part of the order confirming the sale. The same reads as thus:

"Thus court has ordered the winding up of the Company by allowing C.P. No. 226 of 1999. The Official Liquidator was further directed to sell the assets and properties of the company in liquidation by accepting the prayer made in C.A. No. 775 of 2003, vide order dated 4.1.2003, a sale committee was constituted for the auction of the properties of the Company in liquidation, which comprised of the representatives of the secured creditors and the Official Liquidator. The auction of the assets of the, company was conducted by inviting sealed tenders in the office of the official liquidator, Chandigarh in respect of the separate lots as prepared by the sale committee, the tenders, were opened" on 20.6.2003, 27.7.2003 and 28.7.2003 in the presence of all the members of the sale committee and the representatives of the prospective buyers and in that regard details have been furnished in the application. All those proceedings have been placed on record and exhibited as Annexure A-2. In respect of land and building situated at B-77, Phase VII, Industrial Area, Mohali, highest bid of Rs. 3,14 crores was received from M/s. Winsom Yarns Limited. The sale committee has recommended that the offer of the auction purchaser may be retained and same decision may be taken in respect of furniture and fixture and other misc. items as those items have to be disposed of for handing over the vacant possession of the property to the auction purchaser." It is appropriate to mention that during the course of hearing M/s Star Points Financial Services Pvt. Ltd. from Calcutta made an offer of 3.15 crores which has further been topped by a higher bid of 3.16 crores. It is further appropriate to mention that the intervener has deposited a sum of Rs. 25 lacs as an Earnest amount to seek eligibility to participate in the bid. No other higher bid was received.

Learned counsel for the Official Liquidator has prayed that the highest bid of the auction purchaser deserves to be accepted as no other higher bid has been offered. It has further been pointed out that steps will soon be taken for floating the tenders in respect of lot No.18.

Mr. B.B. Bagga appearing for respondent Nos. 1 to 6 has raised an objection that as a matter of policy moveable items like machinery and plants should have been sold first because after sale of land and building those items have to be shifted to a rented place which would incur unnecessary expenses on the company¹ in liquidation which in turn has to be paid by the secured creditors. Therefore, the learned counsel has submitted that confirmation of sale of land and property styled as B-77,, Phase VII, Industrial Area, Mohali be .deferred till sale process, is finalised in respect of the moveable items including plant and machinery etc.

After hearing the: counsel for the parties, I am of the considered view that sale in favour of the auction purchaser deserves to be confirmed because it has been pointed out by the learned counsel for the Official Liquidator that according to the valuation report, the value of moveable property which include machinery plant etc, is about 20 lacs. Therefore, the meagre expenses in the shape of payment may have to be incurred for securing the same elsewhere. At the same time, a substantive amount would fall in the hand of the Official Liquidator for its disbursement in accordance with law to the secured creditors and Ors. Therefore, the objection raise cannot be sustained.

In view of the above, the sale is confirmed in favour of the auction purchaser namely Winson Yarns Ltd. subject to, the condition that the sale is on where is, whatever is, wherever is basis. Let all steps be taken by the auction purchaser to deposit the balance amount within a period of 30 days from today. However, the amount deposited by the intervener namely M/s Star Point Financial Pvt. Ltd. and M/s S.K. Khaita. Pvt. Ltd. Co. be returned forthwith which is retained in form of Bank Drafts, which are attached to the papers supplied to this Court in sealed covers. On the direction issued, the Bench Secretary has opened the envelops and handed over the respective drafts to the respective learned counsel."

35. The aforesaid order was ultimately clarified with regard to Lot Nos. 19 and 20 on 13.1.2005 as there was some ambiguity with regard to confirmation of sale qua these two lots.

36. We have perused, the, impugned order dated 30.3.2005 also. The learned Company Judge has referred to Rule 272 of Rules viz-a-viz Section 447 of the Act with regard to effect of winding up order and then relying upon Navalkha and Sons Vs. Ramanuja Das and Others, , Union Bank's case (supra), Allahabad Bank's case (supra) and Divya's case (supra) ultimately set aside the confirmed sale. The relevant observations anent to the controversy involved in this case for reference are reproduced as, under:-

"The following circumstances may persuade, the Court to lean in favour of the auction purchaser:-

(a) participation in the tender proceedings in accordance with the time table notified by the Official Liquidator;

(b) on -time" payment of earnest money and on confirmation vide order dated 10.12.2004, payment of whole amount on 13.12.2004;

(c) approval to disburse loan by Canara Bank to the extent of Rs. 1.61 crores dated 21.12.2004;:

(d) approval for disbursement of term loan of Rs. 1.30 crores being share of the State Bank of Patiala (Annexure A-14) with C.A. No. 94 of 2005 dated 4.1.2005;

(e) agreement to mortgage the purchased land and building of Lot No. 17 with Canara Bank and the State Bank of Patiala;

(f) delivery of possession of land and building comprised in lot No. 17, the , furniture comprised in lot No. 19 and the air conditioners comprised in lot No. 20;

(g), the price, offered is more than the reserve price. As far lot No. 17, the reserve price, is Rs. 3 crore, for lot No. 19 Rs. 4 lacs and for lot No. 20 Rs. 15 lacs. The price offered and accepted is Rs. 3.16 crores, Rs. 4.5 lacs and Rs. 15.5 lacs and the total comes to Rs. 3.36 crores.

The following factors may persuade the Court to lean in favour of the intervener:-

(a), participation at the stage when the proceedings are pending, although confirmation has been made on December 10, 2004 in respect of lot nos. 17, 19 and 20 in favour of the auction purchaser;

(b) Rs. 3.36 crores for lot Nos. 17, 19 and 20 as a lump sum price as against the offer of the auction purchaser of Rs. 3.36 crores. All liquidation expenses and interest incurred on the loan approved upon released by the Banks is undertaken to be paid back. The possibility of reviving the company back to its life by making higher offer to purchase the whole company;

(c) more effective care of the secured and unsecured creditors as well as of the workmen;

(d) views of the employees union with regard to sale have not been ascertained.

The auction purchaser has offered the highest bid of Rs. 3.14 crores for land and building and in respect of lot No. 17. The Official Liquidator had listed only three bidders namely, (a) auction purchaser, (b) M/s Star Point Financial Services Limited and (c) S.K. Knaitan and Company and a prayer was made to the Court to consider the offers received by the Official Liquidator for sale of land and building from the aforementioned three firms/companies. On 10.12.2004 inter-se bidding was held to the Court between the two participants who were the auction purchasers and M/s Star Point Financial Services Limited. Against the offer of Rs. 3.14 crores M/s Star Point Financial Services Limited made an offer of Rs. 3.15 crores which was further toppled by the auction purchaser by offering higher bid of Rs. 3.16 crores. According to the advertisement reserve price for Lot No. 17, was Rs. 3.00 crores. Similarly in respect of Lot Nos. 19 and 20, a reserved price of Rs. 4.00 lacs and 15.00 lacs respectively was kept. The auction purchaser in their tender for Lot No. 20, which: comprises of air conditioners, had offered Rs. 15.50 lacs on the condition that: Lot No. 17 be sold to it at the price offered by it. It has also made an offer in respect of Lot No. 19 for which it had offered; Rs. 4.50 lacs. It is; evident that Lot No. 17, which comprises of land and building is the prime Lot. The Official Liquidator received only three offers and in the inter-se bidding, only two bidders, namely, auction purchaser and M/s Star Point Financial Services Limited participated. This fact further shows that the auction purchaser succeeded in confirmation of sale at an inadequate price. It is true that wide publicity had been given and there might be delay on the part of intervener, namely, Sun Group Enterprises (P) Limited in making the offer, hiking the bid

much higher. During the course of arguments, Mr. Bhandari has offered Rs. 3.75 crores for all the three lots as against Rs. 3.36 crores, for which the sale has been confirmed in favour of the auction purchaser. There is thus a difference of Rs. 39 lacs. The learned counsel further make a statement to compensate the auction purchaser for all the expenses towards interest on financial damages suffered by them after taking into possession of the property. It appears to me that such a huge difference in the price of lot Nos. 17, 19 and 20 can not be incidental. It has been repeatedly laid down by the Supreme Court that the Court is the custodian of the assets of the property of the company on behalf of the secured and unsecured creditors as well as the workmen and it is the obligation of the court to ensure that maximum price is fetched for the property and the assets of the company. Therefore, I am inclined to recall the order of confirmation dated 10.12.2004 made in favour of the auction purchaser.

I am further of the view that the workmen have over riding claim to that of the secured creditors as provided by Section 529A of the Act. The dues claimed by the workmen and that due to the secured creditors are to be treated pari. The dues of the workmen have to be treated as prior to all other dues. The Official Liquidator has failed to associate the workmen in the process of sale of the company. The interest of the workmen is in no way insignificant than the interest of the secured creditors of the company under liquidation. For that reason also, the order dated 10.12.2004 requires to be recalled.

The argument of Dr. Singhvi, learned counsel for the auction purchaser, that inadequacy of price can not be considered as a basis for setting aside the confirmed bid or that there should be some element of perversity or unfairness in conducting the auction, in view of the law laid down in various paragraphs quoted from the judgment of the Hon'ble Supreme Court in the cases of Union Bank of India's case (supra). Divya Manufacturing Company Pvt. Ltd's case (supra) and Allahabad Bank's case (supra), cannot be accepted. It is true that the reserve price and the price according to the valuation report are less than the price offered by the auction purchaser but it appears to be equally true that the land and the building price of lot No. 17 is worth much more as the difference is huge.

The other argument based on the judgment of the Supreme Court in the case of State of Punjab v. Yoginder Sharma Onkar Rai and Co. and Ors., (1996)6 Supreme Court Cases 173, can not also be accepted because in that case the controversy related to the auction of liquor vend in the State of Punjab. There is no provision equivalent to Rule 272 of the Rules requiring that the sale by the Official Liquidator or the agent appointed by the Court is subject to confirmation by the Court. There can not be parallel situation between the sale of liquor vend and the present case. Therefore, I regret my inability to read the aforesaid judgment for the purpose of applying the same to the facts of the present case.

I am unable to persuade myself to the argument that there is any malafide on the part of interveners to come up with the higher price in respect of Lot Nos.

17, 19 and 20. There is no nexus between the interveners and those who are placed in core Group, as is sought to be projected during the course of arguments.

After the arguments were heard and orders reserved another application being C.A. No. 228 of 2005 has been filed for enhancing the bid in respect of Lot No. 23 However, in the present case, the dispute is in respect of Lot Nos. 17, 19 and 20 Therefore, the application is not maintainable and the same is accordingly dismissed.

"For the reasons stated above, the order of confirmation dated 10.12.2004, as clarified on 13.1.2005, is set aside, The auction purchaser, namely, M/s Winsome Yarns Limited are directed to hand over the possession of Lot Nos. 17, 19 and 20 to the Official Liquidator immediately. As per the undertaking of the intervener namely Sun Group Enterprises (P) Limited the auction purchaser would be entitled to recover the amount of interest paid by it to the bank on the loan taken by it on actual basis. Such bill in respect of the interest shall be presented to the Official Liquidator within one week from today and the Official Liquidator shall ensure the payment of the aforesaid bill from the interveners to the auction purchaser. It would be appropriate for the Official Liquidator to undertake the exercise of re-auction of Lot Nos. 17, 19 and 20. The expenses for re-auction shall be borne by the interveners, namely M/s Sun Group Enterprises (P) Ltd."

37. Let us delve into the first question posed by us. We further divide this proposition in two parts; one is that after the sale is confirmed, can the same be set aside on inadequacy of price, if so, then under what circumstances; the second part is that as to whether the confirmed sale can be set aside by the Company Judge after the possession of the property has been handed over pending execution of sale/transfer deed.

38. The first aspect is now well settled in Divya's case (supra) where the Hon'ble Supreme Court has observed that the Court is competent to set aside/review the order of confirmation of sale on inadequacy of price. We may note here that the main factor which prevailed with Hon'ble Supreme Court in Divya's case (supra) was that the fresh offers received was indicating that the earlier offer was totally inadequate of price. Another fact which is worth noticing is that in Divya's case (supra) neither the possession had been handed over nor the sale deed executed. Besides this, there was a clause in the terms and conditions for sale reflecting that the sale could be reopened. The said clause was as under:-

"11. The Hon'ble High Court may set aside the sale in favour of purchaser/purchasers even after the sale is confirmed and/or purchase consideration is paid on such terms and conditions as the Court may deem fit and proper for the interest and benefit of creditors, contributories and all concerned and/or public interest."

39. In Oswal 's case (supra), this Court while relying upon Divya 's case (supra) had set aside the confirmed sale observing that the price offered by another

Company (M/s KRBL Ltd.) was higher by Rs. one crore. It is pertinent to mention here that in Oswal's case (supra), the possession was not handed over to the auction purchaser.

40. What emerges from the reading of the aforesaid judgments is that inadequacy of the price alone can be a ground for setting aside the confirmed sale but this factor is to be examined by the Company Judge on the basis of the facts of each case. We will be appreciating this aspect while discussing the merits of the present case at the appropriate stage.

41. Let us now advert to second part with regard to setting aside of the confirmed sale after the possession is handed over to the auction purchaser as is the factual position in the instant case.

42. In Allahabad Bank's case (supra) relied upon by Mr. Bhandari, the Apex Court set aside the confirmed sale even after the possession was handed over observing that the Division Bench of Calcutta High Court had over looked the irregularities simply on the ground that the possession was given. The observation in para No. 20 to mis effect is reproduced as under:-

"20. The observation of the Division Bench in the order under appeal that the sale was conducted with undue haste is very appropriate. So are the other critical observations that the Division Bench made, which we have quoted above. It could not but have been obvious to the Division Bench, therefore, that there was every possibility that the sale had not procured the best possible price. Even so, the Division Bench did not interfere with the order of sale, because, in its view, the second respondent had been allowed by the Banks to take possession of the assets and properties and to incur expenditure. In our view, the Division Bench was in error."

43. It is under these circumstances that the Hon'ble Supreme Court had ultimately given directions to recover the possession from the auction purchaser after setting aside the confirmed sale.

44. In Union Bank's case (supra), another judgment cited by Mr. Bhandari, when the entire purchase price was paid by the auction purchaser i.e. M/s Indrani Soft Drinks, the Official Liquidator had informed the auction purchaser that the possession will be handed over in course of the day. It was at that stage that the Union Bank of India had intervened on the ground of inadequacy of price and asked for staying of the operation of the earlier order passed by the Company Court confirming the sale. The Company Judge observed that the offer matches with the valuation report and the grievance of inadequacy of the prices cannot be accepted and for this reason the sale was ordered to be given final shape. The grouse shown by the appellant Bank was that the Company's assets were sold at a throw away, price and therefore, the order of confirmation of sale be set aside. Countering the arguments advanced by Bank, the auction purchaser had submitted that inadequacy of price is no ground for interference. However, the gross irregularity observed in the aforesaid case by Hon'ble Supreme Court was

that the valuation report was kept as a secret and confidential document and without disclosing valuation report to the creditors and without fixing the reserved price, the properties were auctioned and the sale was confirmed. In this eventuality, the approach of the Company Judge was considered to be unjustifiable holding that it is against the judicial standard and the normal procedure"for auctioning the immovable property of the Company which is to be wound up. Another observation made by the Apex Court was that there was non application of mind to the valuation report.

45. The essence of the aforesaid observations made by the highest court of the land, lead us to draw a conclusion that in a given set of circumstances the entire proceedings leading to the confirmation of sale can be reversed or set aside but it does not lay down the proposition that the sale can be set aside on mere asking. In other words, there cannot be any hard and fast rules to say that a confirmed sale can not be set aside after the possession has been delivered and sale deed executed. There is no strait formula in this regard. This depends upon the facts of each case.

46. Another equally important point for consideration is as to whether the Company Judge can go on entertaining higher offers after confirmation of sale or this process has to end at some stage and attain finality? The instant answer would be that this process cannot hang fire for unlimited period may be that the aim is to fetch the maximum price which is ultimately in the interest of secured and unsecured creditors. Otherwise the auction purchaser would never get the fruits even after being declared the highest bidder or the entire amount having been deposited by him. We appreciate this aspect yet from another angle which: is in the larger interest of the company in liquidation. If the auction purchaser is not sure about the confirmation of his sale despite it being hammered down in his favour, the true auction purchaser will not enter into arena of bidding by investing huge amount because of the uncertainty and this situation would certainly run adverse to the interest Of the company in liquidation. Therefore, at some point of time; the sale has to reach its finality.

47. In the light of the aforesaid observations, we are now appreciating the case in hand.

48. Let us examine in the first instance as to whether, the order of the Learned Company Judge confirming the sale is in conformity with the principles laid down in Navalliha's case (supra)which are well established and in fact reiterated in all the judgments of Apex Court cited by both the sides

49. While referring to Rule, : 273, of, .Company, (Court) Rules, their Lordships in Ngvalkha 's case, (supra.) while discussing other two Judgments rendered in Gordhan Das Chunilaly. Sriman Kanthimathinatha 286 and Ratnaswami Pill0i,v.,Sabapati Piilai A.I.R 318 6 as under:-

"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 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 itself 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. In *Gordhan Dass Chuni Lal Dakuwala v. T. Sirman Kanthimathinaha Pillai*, it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the court is the custodian of the interest of the company and its creditors and the sanction of the court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the company and its creditors as well. This principle was followed in *Ratnaswami Pillai v. Sadapathy Filial and S. Soundararajah, Roshan and Co.* In *A. Subbaraya Mudaliar v. K. Sundararajan*, it was pointed out that the condition of confirmation by the court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received (Emphasis supplied).

50. In brief the facts in *Navalkha's* case (supra) were that when the final of Rs. 8.82 lacs was concluded in favour of the appellant (M/s Navalkha and Sons) and the learned Company Judge had directed the appellant to make the balance payment on a stipulated date, the balance payment was made by the auction purchaser one day prior to the stipulated date and it was at that stage that an application was moved by one Padam Chand Aggarwal offering Rs. 10 lacs. In the said application, a complaint was made that there was no adequate publicity of the sale and the applicant had come to know of the advertisement very late. He also offered that he was willing to participate in the open bid with Rs.,10 lacs as initial bid. The learned Company Judge rejected his request and ordered the confirmation of sale. Against the said order, aforesaid intervener filed an appeal with the same objection that the earlier auction could not get the adequate price of the property. The appeal was allowed by Letters Patent Bench and the earlier order was set aside. Showing his grouse against the order of Division Bench, M/s Navalkha filed the appeal in the Hon"ble Supreme Court and their Lordships while agreeing with the judgment of the Division Bench observed at under-

"7. In the present case, the Division Bench has come to the conclusion that

publicity was not as wide as originally proposed by the Commissioners in their affidavit. The publication was made in four dailies namely The Hindu, Indian Express, the Hindustan Times and The Statesman. There was no publication in the Times of India. Further out of the four newspapers in which publication was made only in two there were two insertions and in the remaining two there was only one insertion. This was contrary to what the Commissioners have promised in their affidavit dated July 8, 1964. No doubt, other efforts were made for giving publicity but these efforts were not sufficient to attract more than one offer. When the case came for confirmation on December 24, 1964 there was an application by Babu Khan that the property was of much higher value and that fresh offers must be invited again with wider publicity. There is also the affidavit of the State Government dated August 29, 1963 in which the value of the property, was shown as Rs. 13,40,000/-. Besides, on that very day, one Gopaldas Darak had come before the Court with a higher offer showing his bonafides and earnestness by depositing more than one lakh of rupees. He came with the complaint that there was no sufficient publicity as to attract people from the north and that as soon as he came to know he gave his offer. In these circumstances the learned Single Judge was right in expressing his reluctance to confirm the offer of Navalkha and Sons. He therefore, decided to Wave an open bid as between the appellant and Darak in the Court itself on that very day. The complaint of Padam Chand Agarwal is that the second step taken by the Single Judge of holding an auction without giving wide publicity was not justified in law. Rule 273 of the Companies (Court) Rules provides that all sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct. It appears that on April 17, 1964 at the instance of the Official Liquidator and at the instance of a contributory the Court had approved of the terms and conditions of sale which provide calling of sealed tenders. On December 24, 1964 the learned Judge realised the inefficacy of this Course and decided to abandon the original procedure and put the properties to auction. But having made up his mind to resort to auction the learned Judge confined the auction to only two persons namely the previous tenderer and the fresh tenderer. The auction in question no doubt was conducted in a public place but it was not a public auction because it was not open to the general public but was confined to two named persons. Secondly it was not held after due publicity. It was held immediately after it was decided upon. It is, therefore, obvious that the sale in question was not a public sale which implies sale after giving notice to the public wherein every member of the public is at liberty to participate. No doubt, the device resorted to considerably raised the previous bid yet it was not an adequate price having regard to the market value of the property to which reference has already been made. The denial of opportunity to purchase the property by persons who would have taken part in the auction bid but for want of notice is a serious matter. In our opinion the learned Judge having decided on December 24, 1964 that the property should be put to auction should have directed auction by public sale instead of confining it to two persons alone. Since there was want of publicity and there was lack of opportunity to the public to take part in the

auction the acceptance of the highest bid by the learned Judge was not a sound exercise of discretion. It is contended on behalf of the appellant that confirmation was discretionary with the Court and the Division Bench ought not have interfered with the discretion exercised by the Judge unless the Judge has gone wrong on principle. As already pointed out the learned Company Judge having decided to put the property to auction went wrong in not holding the auction as a public auction after due publicity and this has resulted in prejudice to the Company and the creditors in that the auction did not fetch adequate price. The prejudice was inherent in the method adopted. The petition of Padam Chand Agarwal also suggests that want of publicity had resulted in prejudice. In these circumstances the Company Judge ought not to have confirmed the bid of the appellant in the auction held on December 24, 1964. We are accordingly of opinion that the Division Bench was right in holding that the order of the Company Judge dated February 19, 1965 should be set aside and there should be fresh sale of the property either by calling sealed tenders or by auction in accordance with law. The tender will be called or the auction will take place with the minimum offer or with the starting bid of ten lakh rupees."

51. In the present case there is no such like situation. Before the sale was confirmed, the valuation report was produced before the concerned court. On an application moved by the Official Liquidator bearing C.A. No. 75 of 2003, the learned Company Judge vide order dated 4.1.2003 had also constituted a Committee for the auction of the properties which comprised of representatives of the secured creditors and the Official Liquidator. The auction of the assets of the company was then conducted by inviting sealed tenders in the office of Official Liquidator. All tenders were opened on three different dates in the presence of the members of the sale committee and the representatives of the prospective buyers. Another interesting aspect is that the matter was even re-examined by the sale committee after the bid of Rs. 3.16 crores was received from the appellant and it recommended that the offer of the appellant (auction purchaser) may be retained for some time so that some decisions could be taken in respect of furniture and fixtures. Since the sale committee had suggested that the appellant be asked to offer Rs. 5 crores at least for the aforesaid three lots, the appellant was asked to come forward for further negotiations. However, no other party come forward with an offer exceeding the bid of the appellant.

52. An objection was raised at one stage by the secured creditors to the effect that the items like machinery and plants should be sold first because after the sale of land and building, those items had to be shifted to a rented place which would involve unnecessary expenses on the company in liquidation which shall have to be borne by the secured creditors and therefore, a prayer was made that the sale process be deferred till finalising the sale of moveable items including the plant and machinery etc. The learned Company Judge over-ruled this objection by observing that according to the valuation report, value of the property which includes machinery and plant etc. is about Rs. 20 lacs only and the expenditure involved in securing the same elsewhere would be quite meagre.

Ultimately, the sale was confirmed in favour of the appellant. From the aforesaid ? factual backdrop, one aspect at least is very clear that the learned Company Judge did not find any irregularity at any stage which could possibly create any hindrance in confirming the sale and therefore, it was confirmed. We have also re-examined the entire aspects and are of the view that the confirmation of sale was in fact in conformity with the well established guidelines/ principles governing the confirmation of sale as enumerated in Navalkha "s case (supra).

53. We shall now deal with the second aspect with regard to subsequent events when on 28.1.2005 Sun Group intervened by moving an application before the Company Judge bearing C.A. No. 775/04 making an offer of Rs. 12 crores for buying the entire assets of PUNWIRE as a going concern which include land and building situate at B-77, Phase 7, Industrial Area, Mohali. The relevant para No. 14 of the said application is reproduced as under for reference :-

"That as the case was coming up for hearing on 28.1.2005, the applicant was not in a position to submit the bid before the Liquidator due to paucity of time and was advised to approach this Hon"ble Court directly.

Therefore, now the applicant hereby makes an offer of Rs. 12 crores for the entire assets of M/s PUNWIRE as a going concern, this includes the land and building situated at B-77, Phase VII, Industrial Area, Mohali.

Since the sale deed of the said property has not yet been executed and therefore in view of the judgment of Apex Court in Divya Manufacturing Company (P) Ltd., the bid being submitted by the applicant can be considered".

54. The aforesaid application was entertained on the same day by the learned Company Judge and notice thereof was given to the appellant and to the Official Liquidator. In the meanwhile, the Official Liquidator was restrained from continuing with other proceedings in favour of appellant.

55. In our considered view, the aforesaid application moved by Sun Group, in fact, should have been rejected outrightly on the ground that offer of Rs. 12 crores for the entire assets of PUNWIRE was less than even the half of the reserve price. On this score alone, it deserved dismissal. Another interesting feature in the said application is that Sun Group had not shown any keenness to buy lot Nos. 17, 19 and 20 disclosing any price higher than the amount for which the bids of the appellant were finalised. A perusal of the record shows that during the proceedings, an affidavit was filed on 11.2.2005, by one Maj. Gen. Amar Singh Sehgal (Retd.) Director and Authorised signatory of Sun Group in which it had revised its bids for certain lots including lot Nos. 17, 19 and 20 but again in para No. 6 of the aforesaid affidavit it was stated that all the bids were submitted with a view to purchase the entire assets en bloc. For reference, the said para is reproduced thus:-

"6. That it is submitted that these bids have been submitted by the Sun Group

Enterprises Pvt. Ltd. with a view to purchase the entire assets en bloc to be able to upgrade the assets and restart the production."

56. Even otherwise from this affidavit it is clear that the revised bid for the three lots was Rs. 356.85 lakhs only. The offer of Rs. 3.75 crores appears to have been given orally at some subsequent stage.

57. Although we have already observed that the aforesaid application of Sun Group deserved outright rejection, we proceed to consider as to whether the consideration for which the sale had been confirmed earlier was inadequate and as to whether the offer given by Sun Group for three lots during the course of proceedings can be said to be substantially high so as to set aside the confirmed sale on the ground of inadequacy of price. As per the documentary evidence, the total difference with regard to the aforesaid three lots comes to Rs. 29 lacs only which is hardly 8/9 percent of the earlier bid confirmed in favour of the appellant. This in any manner cannot be treated to be a jump in the bid which would warrant the setting aside of the confirmed sale. Another fact which is worth consideration is that the offer is made after two months of the confirmed sale and during this period, the market price of the property may well have gone up to that extent. This is a very common phenomenon as far as immovable property is concerned.

58. Let us now examine the present case in the light of observations made in Divya's case (supra) on which reliance was made by Sun Group even in its initial application dated 28.1.2005. The following are the main distinguishable factors:

Divya "s case Present case i) The possession was not handed over i) The possession was handed over. ii) There was a clause (Clause No. I 1) ii) There is no such clause. in the sale agreement, iii) The jump of the bid was 50 percent iii) It is hardly 9 percent.

59. Even if we ignore the first two situations viz the condition in the terms of sale or handing over of possession or execution of the sale deed in favour of the auction purchaser, we are still of the considered view that the price on which the sale in favour of the appellant was confirmed cannot be said to be inadequate even in the face of the offer now given by Sun Group. The increase is not substantial enough so as to set aside the confirmed sale and that too after the possession was handed over and thereafter, the appellant had even raised loans from Banks. Any undertaking by the Sun Group to pay back the actual paid interest on the loan amount is of no consequence and it cannot deter the confirmed sale for the reason that it does not take into account the value of the effort put in by auction purchaser to set up new project. We are not in agreement with the view taken by learned Company Judge in this regard.

60. We shall now be appreciating the present case in the light of two judgments Union Bank and Allahabad Bank's cases (supra) cited by Mr. Bhandari and also referred to in the impugned order.

61. As already discussed hereinabove, in Allahabad Bank's case (supra), the Apex Court had set aside the confirmed sale after the possession was handed over observing that the High Court had over looked the irregularities. A careful perusal of the aforesaid judgment indicates that there were many gross irregularities which were in fact over looked by the High Court (Calcutta High Court). In the case in hand, the situation is altogether different. No one had come forward to show any irregularity. The record reveals that the Official Liquidator had been seeking direction on each and every aspect from the court before the sale was confirmed. The Sale Committee constituted by the Court had also been observing all the proceedings throughout and at no stage any irregularity was pointed out.

62. In Union Bank's case (supra) the grouse shown by the intervening Bank (Union Bank of India) was that the property was being sold at a throw away price and the valuation report was kept as a secret and confidential document without disclosing it to the creditors. Even the reserve price was not fixed. On these grounds, the confirmed sale was set aside at the stage of handing "over of possession to the auction purchaser. In the present case, that is not the situation at all. The valuation report was very much before the learned Company Judge. It was not kept as a secret document at any stage. The Sale Committee which represented the secured creditors had also perused the same and thereafter, open auction was held. It is nobody's case that the valuation as per this report was not proper. It is also not in dispute that the accepted bid of the appellant auction purchaser was higher than the value determined in the valuation report.

63. We are, therefore, of the considered view that the aforesaid two judgments relied upon by Mr. Bhandari and referred to by Company Judge in its impugned order are distinguishable on facts. We may also observe that the learned Company Judge has also referred to the aforesaid two judgments (Union Bank and Allahabad Bank's cases (supra) with regard to the broader principles regarding confirmation of sale without considering their applicability to the facts of the present case.

64. The impugned order shows that the learned Company Judge has taken into account the following four factors leaning in favour of the Sun Group (the intervenor):

(a) participation at the stage when the proceedings are pending, although confirmation has been made on December 10, 2004 in respect of lot Nos. 17, 19 and 20 in favour of the auction purchaser;

(b) Rs. 3.75 crores for lot Nos. 17, 19 and 20 as a lump sum price as against the offer of the auction purchaser of Rs. 3.36 crores. All liquidation expenses and interest incurred on the loan approved and released by the Banks is undertaken to be paid back. The possibility of reviving the company back to its life by making higher offer to purchase the whole company;

(c) more effective care of the secured and unsecured creditors as well as of the

workmen;

(d) views of the employees union with regard to sale have not been ascertained.

65. So far as factors enumerated in clause "c" and "d" are concerned, we shall be dealing with them separately when we delve into discussion with regard to Section 529A of the Act. But at the same time we are also of the firm view that the other two factors which have been considered by the learned Company Judge with advantage in favour of the Sun Group (intervener) are in fact of no help to it.

66. What weighted mainly with the learned Company Judge is the possibility of reviving of the company to its life by making higher offer to purchase the whole company. This observation, according to us, again is not appealing if seen in the flash back of the facts especially when the offer is given by Sun Group to buy the entire assets of the company for just Rs. 12 Crores which is less than 50% of the reserve price. The revised bid by splitting up different price in the shape of an affidavit given on 11.2.2005 is again a very clever move to scuttle the confirmed sale for one reason or the other. In most of the lots, Sun Group has shown its offer much less than the reserve price whereas for lot Nos. 17, 18 and 19 and mainly for lot No. 17 (land and building), the bid is marginally increased. Another interested feature is that for lot Nos. 1 to 6, (B-53, Phase-6, Mohali), lot Nos. 21, 22 (B-77, Phase 7, Mohali) and lot No. 24 (the stocks), no separate bid has been offered at all. This appears to be a clear attempt to grab the entire assets of the PUNWIRE at a throw away price by scuttling down the confirmed sale in favour of the appellant. The intention of Sun Group does not seem to be not fair from the very beginning. We see this aspect from another angle also. Tirrie and again reference has been made to the suggestion of the Sales Committee that the auction purchaser be asked to enhance his bid, of Rs. 5 crores for three lots in question. It is significant to note that even the offer made by Sun Group for three lots was to the tune of Rs. 3.56 crores which was only marginally higher than the amount offered by the auction purchaser and much below and amount of Rs. 5 crores suggested by the Sales Committee. No where in its initial application for setting aside the confirmed sale or in the affidavit an offer of Rs. 5 crores is made. It is, therefore, clear that even as per the respondents, Rs. 5 crores was not the realistic price of three lots in question. This crucial aspect knocks at the bottom of the case to conclude that the offer given by Sun Group is not substantially higher. There should be no haggling like public marts before the Company Court otherwise all confirmed sales will be set aside even on marginally higher offer. A realistic and pragmatic approach is expected.

67. In M/s Kayjay Industries's case (supra), their Lordships of Hon'ble the Supreme Court while confirming the sale in favour of the auction purchaser which was set aside by the High Court observed that if Court sales are too frequently adjourned with a view to obtaining still a 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. After reiterating the principles governing

confirmation of sale in Navlkha's case (supra), their Lordships in para No. 9 of the judgment observed as under:-

"Be it by a receiver, commissioner, liquidator or court this principle must govern. This proposition has been propounded in many ruling cited before us and summed up by the High Courts. The expression "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 a 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. Here, 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, this 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, decree holders 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 considerations 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."

68. It was also observed in the aforesaid judgment that mere inadequacy of price cannot demolish every court sale. The relevant para for reference is reproduced as under

"So viewed, we are satisfied that the district Court had exercised a conscientious and lively discretion in concluding the sale at Rs. 11.5 lakhs. If the market value was over 17 lakhs, it is unfortunate that a lesser price was fetched. 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 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 is not easy even for apparently affluent businessmen. The sale, proceedings had been pending too long and the first respondent could not, even when given the opportunity, produce buyers by private negotiation. Not even a valuer's report was produced by him. We are satisfied that the District Judge had committed no material irregularity in the conduct of the sale in accepting the highest offer of the appellant on September 3, 1969."

69. As a sequel to the aforesaid discussion, we are of the considered view that the impugned order of learned Company Judge setting aside the confirmed sale on the ground of inadequacy of the price is not sustainable. We accordingly reverse the same.

70. We now advert to the second core question with regard to the status of workmen/ employees of the Company (in liquidation). Submission of Mr. Nagpal, representing the Union is that the workmen have to be treated pari-passu with the secured creditors and for this reason they should have been associated by the Official Liquidator in the process of sale. Although we have reproduced the operative part of the impugned order of the learned Company Judge but for re-appreciating the present issue, we have felt the necessity of reproducing the relevant observation, may be at the cost of repetition:-

"I am further of the view that the workmen have over riding claim to that of the secured creditors as provided by Section 529A of the Act. The dues claimed by the workmen and that due to the secured creditors as provided by Section 529A of the Act. The dues claimed by the workmen and that due to the secured creditors are to be treated pari-passu. The dues of the workmen have to be treated as prior to all other dues. The Official Liquidator has failed to associate the workmen in the process of sale of the company. The interest of the workmen is in no way insignificant than the interest of the secured creditors in the company under liquidation. For that reason also, the order dated 10.12.2004 requires to be recalled."

71. Before advert to the question we may notice the relevant provisions of Section 529 and 529-A of the Act which read as under:-

"529. Application of insolvency rules in winding up of insolvent companies.-

1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to-

a) debts provable;

b) the valuation of annuities and future contingent liabilities; and

c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent;

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security;-

a) the liquidator shall be entitled to represent the workmen and enforce such charge;

b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for purposes of Section 529A.

2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claim against the company as they respectively are entitled to make by virtue of this section;

3) For the purpose of this section, Section 529A and Section 530-

a) *****

b) *****

c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of-

i) the amount of workmen's dues and

ii) the amounts of the debts due to the secured creditors.

529A. Overriding preferential payment.-

Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-

a) workmen's dues; and

b) debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pari passu with such dues.

shall be paid in priority to all other debts.

2) The debts payable Under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they

shall abate in equal proportions.

72. A plain reading of the aforesaid two sections makes it clear that the workmen have the over riding preferential right with regard to the debts due to the secured creditors. It cannot be said that the workmen have to be treated pari-passu with the secured creditors for all purposes. The judgment rendered in Textile Labour's case (supra) relied upon by Mr. Nagpal would not advance his case as in the aforesaid case, their Lordships have also held that the effect of Sections 529 and 529-A of the Act is that the workmen of the Company becomes secured creditors by operation of law to the extent of workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors u/s 529-A to the extent of the workmen dues. It is further observed that the purpose of Section 529-A is to ensure that the workmen should not be deprived of their legitimate claims in the event of liquidation of the company and assets of the company would remain charged for the payment of the worker's dues and such charge will be pari-passu with the charge of the secured creditors. It is further observed in the aforesaid judgment that u/s 529-A the dues of the workers and debts due to the secured creditors are to be treated pari-passu and rather have priority over all other dues.

73. In International Coach Builders Ltd. Vs. Karnataka State Financial Corpn., , the Apex Court while dealing with Sections 529 and 529A has held that the Liquidator is the representative of the workmen so far as their preferential right over the secured creditors with regard to the dues are concerned. The relevant observation in para No. 17 is reproduced as under:-

"As a result of the proviso added in Section 529, the security of every secured creditor is deemed to be subject to a "pari passu" charge in favour of the workmen to the extent of. the workmen's dues [called "workmen's portion", as defined in Sub-section (3)(c) therein. It is further provided that, where the secured creditor, instead of relinquishing his mortgage and proving his debt, opts to stand outside the winding up proceedings and realise his security, the Official Liquidator shall be entitled to represent the workmen and enforce such charge and that any amount realised by enforcement of such charge shall be applied rateably by the Official Liquidator for the discharge of workmen's dues. It is true that even the amended provision does not give the liquidator an independent right of enforcing the charge by selling the security against which such charge is created.- Nonetheless, it creates a "pari-passu" charge in favour of the workmen to the extent of their dues and makes the liquidator the representative of the workmen to enforce such a charge. By reason of Clause (c) of the newly added proviso, so much of the debt due to the secured creditor opting to realise security as could not be realized because of the specially created rights in favour of the workmen, or the amount of the workmen's portion in the security, whichever is less, shall rank pari passu with the workmen's dues u/s 529-A. Section 529-A provides for overriding preferential payments of workmen's dues

and unrealised portion of the secured creditor's dues, as provided in Clause (c) of the proviso to Section 529."

74. In a latest judgment rendered by the Apex Court in *Andhra Bank Vs. Official Liquidator and Another*, , while discussing Sections 529 and 529A of the Act, their Lordships have held as under:-

"The language of Section 529-A is also clear and unequivocal, in terms whereof the workmen's due or the debts rank Under Clause (c) of the proviso to Sub-section (1) of Section 529 *pari passu* with such dues shall have priority over all other debts. Once the workmen's portion is worked out in terms of proviso (c) of Sub-section (1) of Section 529, indisputably the claim of the workmen as also the secured creditors will have to be paid in terms of Section 529-A."

75. Following the ratio of aforesaid judgments, it can be now safely concluded that workmen have to be treated *pari-passu* with the secured creditors so far as their dues are concerned. They have even the preferential right. But at the same time, there is no provision in the Act or the Rules requiring the Official Liquidator to associate the workmen in the process of sale of the Company. In other words, the interest of the workmen is to be watched by the Official Liquidator only when the sale is confirmed and even thereafter until the stage for distribution of dues to the secured creditors and the workmen is reached. We, are therefore, of the view that the observation made by the learned Company Judge as referred to above, in favour of the workmen considering as one of the grounds for setting aside the sale is contrary to the law. We, accordingly, reverse the said view.

76. Although we have answered the main two core questions arising in this appeal for our consideration yet to be fair to Mr. Nagpal we deal with his other objections as well.

77. It is borne out from the record that the Union had moved an application before Company Judge raising certain objections. The same was dismissed on 23.8.2004. From this it can be safely inferred that the workmen were already in the know of the fact that sale process was on, even though the Official Liquidator had not associated them. Even at that stage they did not put forward their claim for being associated with the sale. Therefore, on facts, the case of union is on a very slippery footing.

78. The other argument advanced by Mr. Nagpal to the effect that the Union was irritially not arrayed as respondent in the instant appeal and for this reason the Union had to move an application for being impleaded as one of the parties carried no substance in it for the reason that after we had allowed the application of the Union for being impleaded as one of the respondents, the appellant had amended the grounds of appeal. This oh jection, therefore, being hyper-technical and having no affect on the merits of the case, deserves to be rejected.

79. We, also do not find any force in another submission of Mr. Nagpal which was otherwise highlighted by him in his separate application asserting that the only

other bidders namely M/s Star Point Financial Services Pvt. Ltd. and M/s S.K. Khaitan and Company are the sister concerns of the appellant and therefore, the appellant has played a fraud upon the Court.

80. We do not find any merit in this contention of the respondent/Union. It is not in dispute that the auction notice was circulated in all the leading newspapers and the auction proceedings were held under the supervision of the Sales Committee. In fact the final bidding was conducted by the Company Court itself. Thus, merely because the appellant and one of its sister concern had participated in the bidding before the Company Court cannot lead to the inference that they had played a fraud upon the Court. It has been correctly pointed out that every Company is a legal juridical person and has a separate distinct identity. There is neither any allegation nor any finding by the Court that the appellant and its sister concern had entered into any arrangement of preventing any other person from participating in the open auction or the bidding before the court. Even otherwise no person has raised any grievance that it was prevented from participating in the auction. The decision of the Supreme Court in Gurmukh Singh's case (supra) is clearly distinguishable on facts and has no applicability to this case. In that case two persons had entered into an agreement that one of them would participate in a public auction for sale of evacuee property on behalf of both of them. It was agreed that the property would be shared equally by both of them. The person participating in the public auction gave highest bid and acquired the property and sale in his favour was confirmed. He, however, did not transfer one half of the property to the other person as per the agreement and therefore, a suit for specific performance of contract was instituted. The suit was resisted by the successful bidder stating that the contract was void ab-initio being contrary to the public policy. However, the suit was decreed and the appeals against the same were dismissed by the District Court and the High Court. The Supreme Court also dismissed the appeal by observing that an agreement between A and B to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. But if there is an agreement between all the competing bidders at the auction sale forming a ring to peg down the price and to purchase the property at knock out price, the purpose or design of the agreement is to defraud the third party. In the present case, it is not the factual position. As already observed, the appellant and its sister concern had not entered into any agreement to prevent any other bidder to come forward and participate in the open auction to avoid competitive bidding. The objection raised by Mr. Nagpal, in our view, is only to raise a storm in a tea cup having no after-effect.

81. We may also point out that on the question of inadequacy of price, Mr. Nagpal has merely relied upon on the offer made by respondent No. 10. He has fairly pointed out that there is no other material on record to show that any other person was willing or ready to buy the lots in question at a price higher than the accepted bid of the auction purchaser. Since we have already discussed this issue

in detail, we need not comment upon it once again. After considering the pros and cons at a great length and examining the entire case on facts we are of the view that no doubt the learned Company Judge has made an endeavour commensurate with the object desired to be achieved viz to fetch maximum price for the assets of the Company in liquidation but there appears to be no concrete material for disturbing the sale already confirmed. The net result is that the impugned order dated 30.3.2005 is hereby set-aside and the earlier order dated 10.12.2004 which is further clarified on 13.1.2005 confirming the sale is restored.

82. Vide order dated 28.1.2005, the Official Liquidator was restrained from taking any further action with regard to the sale, he may now proceed in completing all the requisite formalities in favour of the auction purchaser.

83. A sum of Rs. 2 crores which was ordered to be deposited by respondent No. 10 with the Official Liquidator shall now be returned to it on an application to be moved in this regard. Any interest if accrued there upon, shall also be paid to respondent No. 10 along with the aforesaid amount.

The amount, thus, stands allowed.

No costs