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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/297(CHE)/2021 IN CP/350/IB/2018

*(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule
11 of NCLT Rules, 2016)*

Along with

IA(IBC)/235(CHE)/2022 IN CP/350/IB/2018

*(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule
11 of NCLT Rules, 2016)*

In the matter of M/s. Praiseworthy Infra Private Limited

MR. PANKAJ KUMAR

No.129, Permbalu Chetty Street,
Old Washermanpet,
Chennai – 600 021

MRS. CHANDRA

No.129, Permbalu Chetty Street,
Old Washermanpet,
Chennai – 600 021

... Applicant

-Versus-

M/S. PRAISEWORTH INFRA (P) LIMITED

Through its Liquidator
C. Ramasubramaniam
'Raji'; 3B1, 3rd Floor, Gaiety Palace,
No. 1L, Blackers Road, Mount Road,
Chennai – 600 002

... Respondent / Resolution Professional

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : H. Mubena Almas, Advocate
For Respondent : Raj Jhabakh Advocate

Order pronounced on 12th October 2023

ORDER

Per: VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IA(IBC)/297(CHE)/2021 is an application filed by the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- i. Direct the Respondent Liquidator to arrange for all the requisite documents to the Petitioners including but not excluding
 - i. Sale Certificate dated 30.08.1965 registered as Doc. No. 422 of 1965 at SRO Sembium in favour of Vishinodoss (Vishnudoss) Giridharidoss under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954.*
 - ii. Death Certificate of Vishinodoss (Vishnudoss) Giridharidoss*
 - iii. Legal Heirship Certificate of Vishinodoss (Vishnudoss) Giridharidoss*
 - iv. An individual patta for the auction property in the name of M/s. Praiseworth Infra (P) Lrd. For Survey No.1062**

in relating to the properties proposed to be purchased and subsequently transfer the same to that of the Petitioners.

ii. Alternatively

i. Direct the Respondent Liquidator to refund to the 1st Petitioner the Earnest Money Deposit to the tune of Rs.1,03,38,750/- along with total sum of Rs.2,15,08,125/- together with interest at 18% per annum from the date of this petition paid towards the auction purchase; AND

ii. Direct the Respondent Liquidator to refund to the 2nd Petitioner the Earnest Money Deposits to the tune of Rs.42,45,000/- along with the total sum of Rs.1,14,92,500/- together with interest at 18% per annum from the date of this petition paid towards the auction purchase.

2. IA(IBC)/235(CHE)/2022 is an application filed by the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read Rule 11 of NCLT Rules, 2016 seeking reliefs as follows;

a. Declare the two communications dated 19.03.2021 sent by the Respondent Liquidator addressed to the Petitioners as illegal, unlawful, non – est and not valid in law.

b. Consequently direct the Respondent Liquidator to

i. Refund to the 1st Petitioner, the Earnest Money Deposit (EMD) amounting to Rs.1,03,38,750/- along with the aggregate sum of Rs.2,15,08,125/- totaling to Rs.3,18,46,875/- together with interest @ 18% p.a. from

08.02.2021, the date on which IA/267/2021 was filed by the Petitioners before this Honourable Tribunal and

ii. Refund to the 2nd Petitioner, the Earnest Money Deposit (EMD) amounting to Rs.42,45,000/- along with aggregate sum of Rs.1,14,92,500/- totaling to Rs.1,57,37,500/- together with interest @ 18% p.a. from 08.02.2021, the date on which IA/267/2021 was filed by the Petitioners before this Honourable Tribunal

c. Pass such other order(s) that this Honourable Tribunal may deem fit, proper and necessary under the circumstances of this case and render justice.

3. The Corporate Debtor viz. M/s. Praiseworth Infra (P) Ltd was ordered for Liquidation by this Tribunal vide order dated 19.02.2019 and the Respondent herein viz. Mr. C. Ramasubramaniam was appointed as the Liquidator in respect of the Corporate Debtor.

4. It is submitted that the Liquidator had issued advertisement in Business Standard (English) and Maalai Malar (Tamil) for e-auction of the secured immovable and movable properties / assets owned by the Corporate Debtor. Pursuant to the same, the Applicants herein individually submitted their tender forms on 18.03.2020.



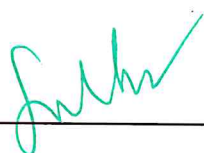
5. It is submitted that both the applicants paid the Earnest Money Deposit (EMD) with the Liquidator. The E-auction was conducted and the Applicants herein were declared as the successful bidder by the Liquidator vide email dated 21.03.2020. Thereafter on 23.03.2020, the Applicants deposited a further sum of Rs.1,65,08,125/- (1st Applicant) and Rs.64,92,500/- (2nd Applicant) to the Liquidator.

6. It is submitted that the Applicants sought legal opinion from their advocates on the proposed purchase of the auction properties. The advocate intimated the Applicants that the marketable title of the said property cannot be opined as substantial chunk of documents and papers relating thereto have not been furnished. Accordingly on 11.04.2020, the Applicant forwarded the list of documents to the Liquidator.

7. It is submitted that on 12.06.2020, the Liquidator informed and updated the Applicant that the proposed property has been attached with the DRT and that the process for lifting the said attachment is going on. It was also informed that the original documents are currently available with the DRT. On 09.07.2020, the Liquidator wrote a letter to

the Applicants requesting to pay the remaining 75% of the sale consideration on or before 18.07.2020. The Applicants vide letters dated 11.07.2020 and 13.07.2020 requested for six months in making payment of the remaining 75% of the sale consideration. However, the Liquidator in reply stated that no extension can be granted and that the Applicants are required to remit the balance amount on or before 25.07.2020, failing which the EMD will be forfeited.

8. It is submitted that on 27.07.2020 Applicants wrote to the Liquidator seeking extension till 31.08.2020. Further, the Applicants deposited a sum of Rs.1 Crore to the Liquidator as Sale consideration for the proposed purchase of auction properties. It is submitted that the Applicants vide email dated 05.08.2020 requested the Liquidator to furnish the missing papers and documents. The Liquidator informed the Applicants that the documents are available with the Bank and the same can be verified by the Applicants. The Liquidator also informed Applicants to deposit the balance amount on or before 31.08.2020 failing which EMD amount will be forfeited.



9. It is submitted that on 30.08.2020, the advocates of the Applicants, after perusing the extracts from the Town Survey Land Register for Survey No. 1062 informed the Petitioners that T.S. Nos. 35, 36, 37 and 38 are in the joint name of several individuals, including M/s. Praiseworth Infra (P) Ltd. and opined that in order to avoid the inevitable legal hurdles and defects in ownership title, the appropriate and correct Town Survey Numbers should be indicated in the respective Sale Deeds of the properties.

10. It is submitted that on 14.09.2020, the DRT passed an order in MA/90/2020 in OA No. 693/2016 lifting the attachment / injunction order and thereby releasing the properties proposed to be purchased. It is submitted that subsequently, vide Email dated 23.09.2020, the Applicant requested the Liquidator to intimate the status of the pending documents, and vide Email dated 03.11.2020, reminded him of the unreasonable and inordinate delay in furnishing the requisite documents to the Applicant.

11. It is submitted that the Liquidator and the Applicants vide Letters dated 06.11.2020 and 09.11.2020 respectively requested the Tahsildar,

Madhavaram Taluk to appoint a Surveyor, and issue individual patta in connection with Survey No. 1062 in the name of M/s. Praiseworth Infra (P) Ltd. Subsequently, on 16.12.2020, the Liquidator made an RTI Application seeking information regarding Survey No. 1062, Block 0049, Ward 50, Madhavaram (Ward C). In connection with the aforesaid, the Tahsildar, Madhavaram Taluk vide Reply Letter dated 17.12.2020 indicated that:

- (i) The Sale Certificate dated 31.08.1965 with Doc. No. 422 of 1965 registered at SRO Sembium was not available with them and it was mutilated in the office of the Sub Registrar; and
- (ii) In the (i) absence of basic documents available, (ii) absence of proceedings in the old registers maintained at the survey department and (iii) in the light of the fact that in the village Adangal, the name of Vishnudoss alone has been mentioned, no other connected records are not available with them at all.

12. It is submitted that Applicants sent Mails via Registered Post on 20.12.2020 to the Respondent Liquidator summing up the list of documents not provided by him despite several requests and reminders, both orally and in writing, and stating that any inability to proceed further with the execution of the registration and sale deed would solely



be on account of the fact that the property would not have a clear and marketable title and not because of any inadequate and insufficient funds on the part of Mr. Pankaj Kumar and Ms. Chandra to complete the sale. In connection therewith, the Respondent Liquidator vide communication dated 05.01.2021 to the Applicants informed that the documents sought are very old documents and they are not in possession of the Liquidator.

13. It is submitted that, aggrieved by the actions and conduct of the Respondent Liquidator, the Applicants sent individual Legal Notices to the Respondent Liquidator on dates 17.01.2021 and 18.01.2021 calling upon the Respondent Liquidator to either furnish the documents requested by the Applicants for ascertaining the marketable title of the auction properties, or refund the entire monies deposited along with an interest at the rate of 18% p.a. Since there was no reply from the Liquidator, the Applicants filed IA(IBC)/267/CHE/2021 before this Tribunal.

14. It is stated that thereafter, the Liquidator vide his letter dated 19.03.2021, forfeited the entire amount paid by the Applicants due to



non-payment of the Balance Sale consideration amount. Aggrieved by the said action of the Liquidator, the Applicant filed IA(IBC)/235/CHE/2022 before this Tribunal.

15. The Learned Counsel for the Applicants in support of their contention has relied upon the following case laws;

- (i) **V. Sridhar v. Authorized officer, Indian Bank;** *AIR 2018 Mad 87* – In order to state that mere mentioning of ‘as is where is condition’ is insufficient.
- (ii) **V. Samandham v. Punjab National Bank** – *2017 AIR CC 2266* – In order to state that as per Section 55 of Transfer of Property Act, it is the duty of the seller to produce all title deeds in possession.
- (iii) **Mohd. Shariq v. Punjab National Bank and others** – *2023 SCC OnLine SC 392* – In order to state that if there are bonafide defence is raised – forfeiture of EMD is not valid.
- (iv) **D. Karthikeyan v. The Chairman, Indian Bank and Ors.** – *Hon’ble Madras High Court in WP No. 35513 of 2019* – In order to state that the seller should disclose all material information regarding property sold.
- (v) **Paramount Construction Company v. Authorized Officer, Punjab National Bank and Others** – *Hon’ble High Court of Karnataka in WP No. 33034 of 2019* – In order to state that ‘As is where is basis, and as is what is basis’ does not mean

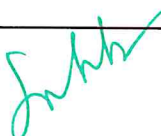
auction purchaser could not be put in possession of property which is not free from encumbrance:

- (vi) **Bharat Bhagnani v. Vinod Kumar Kothari, Liquidator – NCLT Kolkata Bench in IA/930/2020** – In order to state that NCLT has powers to refund forfeited EMD.

REPLY OF THE LIQUIDATOR

16. The Learned Counsel for the Liquidator submitted that the Applicants participated in the e-auction sale process with full knowledge and acceptance of the terms governing the said auction process. As such the Applicants had consented to the terms and conditions.

17. It is submitted that the sale notice was issued on 22.02.2020 and auction was conducted 20.03.2020. The condition of auction sale was that the interested purchasers shall themselves satisfy about the right and title of the property / properties from the concerned authority and no claim shall be entertained by the Liquidator after the auction. It is seen from the averments made in the application that the Applicants did not make any efforts to satisfy the title prior to the auction. It is stated that the Applicants had sought for additional time for balance of sale



consideration post auction and the allegation as to lack of title was raised only when the Liquidator declined to extend the time for payment of balance sale consideration.

18. It is submitted that the terms and conditions of the auction sale include but not limited to, terms such as, "AS IS WHERE IS", "AS IS WHAT IS" AND "WHATEVER THERE IS BASIS" and on confirmation of sale, the Purchaser shall deposits 25% of Sale Price (including EMD) immediately and balance sale consideration within 90 days of the date of such demand provided that payment made after 30 days shall attract interest @ 12% as per the Sub Regulation 12 of the Regulation 1 of the Schedule of IBBI(Liquidation Process) Regulation, 2016. It is submitted that it was mentioned in the Tender document that the sale shall be cancelled if the payment is not received within 90days and the amount will be forfeited.

19. It is submitted that the Applicants should have ascertained the clear and marketable title prior to bidding and ought not to have participated in the bidding process if they were not fully satisfied with

the devolution of title. Further, it is submitted that even the averments as to lack of title appears to be *prima facie* untenable. It is submitted that the Liquidator is bound to forfeit the EMD if the Applicants fail to pay the complete sale consideration within the prescribed period.

20. It is submitted that the Liquidation process is a highly regulated process and is required to be completed within prescribed time frame, and is intended at securing the interest of all the stakeholders including creditors, employees and Government and any delay in completing the Liquidation Process within the prescribed time frame will result in irreparable injury and losses to all the stakeholders. It is submitted that failure on the part of the Applicants to complete the sale by paying the full sale consideration and demand for return of EMD will further cause irreparable injury and hardship to the stakeholders.

FINDINGS OF THIS TRIBUNAL

21. Heard the submissions made by the Learned Counsels for the Applicants and Liquidator.

22. In the present case the e-Auction sale notice was issued on 22.02.2020. The auction was conducted 20.03.2020. In the terms and conditions of the Tender Form in Clause No. 12 it was mentioned as follows;

- *The successful bidder shall deposit 25% of sale consideration (including EMD), by way of a DD/NEFT/RTGS to the Liquidator within 24 hours.*
- *The balance amount of the sale consideration payable shall be paid by the purchaser within 90 days from the date of E-Auction notice provided that payment made after 30 days shall attract interest @ rate of 2% as per Sub Regulation 12 of Regulation 1 of Schedule 1 of IBBI (Liquidation Process) Regulations, 2016 as amended from time to time.*

23. Further, in Clause 4 of the Tender Document, it was stated as follows;

“AS IS WHERE IS BASIS” AND “AS IS WHAT IS” AND WHATEVER THERE IS BASIS” as such sale is without any kind of warranties and indemnities.

24. It is clear from the averments made in the Application that the Applicants did not make any effort to satisfy the title prior to the auction. It was only after participating in the e-auction and after being

emerged as the successful bidder, the Applicants sought legal opinion and additional documents pertaining to the ^{H/Re/S} ~~title~~ from the Liquidator.

25. In the letter dated 05.01.2021 sent by the Liquidator to the Applicants, it was clearly stated by the Liquidator as under;

Please also note the following points which are vital in the entire transaction.

1. *The document you are seeking is a great grandmother document and the mother document, Present Sale deed and all other documents where already been shared to your good self including the Extract of the Town land Survey register which also carries the owners name. All these title deeds are more enough to execute a valid sale in favour of you.*

2. *Moreover SBI is in physical possession of the said property for last 3 years and I as a IRP/RP/liquidator have taken the control and custody of the premises from the consortium banker during 2018 itself and almost two years were over after that. In this regard, I am to state I am legally entitled to execute a valid Sale deed in favour of you without any disruption to the usage of the property. As stated above, as a court appointed officer (Appointed by Honourable NCLT Chennai) I am legally entitled to execute a sale deed in favour of you and it will constitute a valid title document in favour of you without any legal impediment.*

3. *Also the Encumbrances made by the bankers which were reflecting with the DRT's name has been cleared by filing an application with Debt Recovery Tribunal (DRT) and a fresh EC*

has been obtained with no encumbrances and with the name of the Praiseworth Infra Private Limited

4. All the revenue records issued by the Tahsildar were in the name of the Praiseworth Infra Private Limited.

5. Last but not least, the Adangal and the Extract of the Town land survey register and all other title documents are in proper and reflects the true owner of the property viz. Praiseworth Infra private limited and the tide cannot be questioned for a mere sake that a very old document was found missing.

In this regard, since as per the terms of the sale notice and as per Regulation 33 sub regulation (12), of IBBI Liquidation Process Regulations, 2016, the balance sale consideration needs to be remitted by the highest bidder within 90 days time. For the kind information of your good self, the time period for completion of sale has already been lapsed.

Further in addition to the above, considering the interest of the stakeholders and also for the buyer, if any Legal Opinion is required for confirming on the title deed of the properties of the CD, the same can also be obtained by the undersigned and will be shared to you, upon your confirmation.

Meanwhile, we, Kindly request you to proceed for payment of the balance sale consideration, within 14 days from the date of receipt of this letter, failing which the money already paid by you will be forfeited and will not be returned back as per the provisions of the Code and as per the terms stated in the e-auction notice.

Please note that we have given extensions considering the Covid 19 Pandemic situation and cannot give further extensions any more.

Please consider this as our final intimation for remittance of the balance sale consideration by your good office.

26. In spite of the aforementioned letter addressed by the Liquidator, the Applicants never paid the balance sale consideration amount. Hence, the Liquidator on 19.03.2021 forfeited the entire amount paid by the Applicants i.e. Rs.1,57,37,500/- by the 1st Applicant and Rs.3,18,46,875/- by the 2nd Applicant.

27. The grounds raised by the Applicants that as per Section 55 of Transfer of Property Act, it is the duty of the seller to produce all title deeds in possession, cannot be made applicable to an auction sale purchase made under IBC, 2016. The Liquidator cannot be asked to produce the documents which are not in his possession. Further, the Applicants knowing fully well the terms and conditions of the Tender Documents, cannot say that there is a defect in the title of the Corporate Debtor, after participating in the e-auction and becoming the successful bidder.

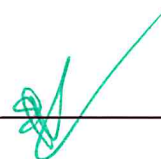

28. Clause 38 of the Tender document provides a declaration by the bidder that he has read the entire terms and conditions of the sale and terms and conditions of the tender document which the Applicants had

unconditionally agreed and confirmed that they are bound by the said terms and conditions.

29. We find it apt to refer to the Judgment of Hon'ble NCLAT in the matter of **Westcoast Infraprojects Pvt. Ltd. Vs. Mr. Ram Chandra Dallaram Choudhary** in *Company Appeal (AT) (Insolvency) No. 1258 of 2022*, wherein it was held as under;

28. It is further pleaded that ultimately the revenue record was also corrected in the name of Anil Limited. We are of the view that issue raised by the email dated 17th June, 2022 by the Appellant that name of the land is not in the name of the corporate debtor is only a ruse not to make payment within time allowed by law. Admittedly, the land was in the name of Anil Products Limited which was the earlier name of the Corporate Debtor changed in to Anil Limited. The title of the land shall be of the corporate debtor Anil Limited by change of the name the title to the land will continue with the corporate debtor and the earlier name of the corporate debtor in the revenue record has no bearing in the title. We thus are satisfied that there was neither defect in the title nor the fact that process of change of the name in the revenue record was underway was any reason for Appellant not to make the payment of balance consideration within time.

32. We thus are satisfied that issues regarding entry in the revenue record, permission of the Deputy Collector for sale were issues which had no effect on the title of the corporate debtor and the issues were raised by the Appellant to avoid payment of balance amount and to buy time in which Appellant failed. We do not find any substance in the submissions that there was defect in title.



30. Thus, we are of the view that when the clauses of the Tender Document as noted above, clearly empower the Liquidator to forfeit the EMD and any payment made in event default is committed by the Highest Bidder, no exception can be taken to the action of the Liquidator in cancelling the sale and forfeiting the amount deposited by the Applicants. Therefore, we are not inclined to entertain the present Application.

31. Accordingly, IA(IBC)/297(CHE)/2021 and IA(IBC)/235(CHE)/2022 stand **dismissed**.



— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond