

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 848 of 2024 &
I.A. No. 7183 of 2024

(Arising out of Order dated 24.04.2024 along with corrigendum order dated 26.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division bench, (Court-II), Kolkata in IA(IB) No.592/(KB)/2024 in CP(IB) No.218/(KB)/2023)

IN THE MATTER OF:

IDFC First Bank Ltd.

...Appellant

Versus

Seikh Abdul Salam, Resolution Professional
of Jai Gokul Towers Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Abhinav Vashisht, Sr. Advocate with Ms. Jagriti Ahuja, Mr. Ajay Monga, Adv. Geetansh Kathuria, Mr. Sameer Goel and Adv. Abhilasha Sharma, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Piyush Sachdev, Mr. Ishaan Saha and Ms. Malavika Chandramouli, Advocates.

With
Company Appeal (AT) (Insolvency) No.1009 of 2024

(Arising out of Order dated 24.04.2024 along with corrigendum order dated 26.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division bench, (Court-II), Kolkata in IA(IB) No.592/(KB)/2024 in CP(IB) No.218/(KB)/2023)

IN THE MATTER OF:

Quest Queen Vista LLP

...Appellant

Versus

Seikh Abdul Salaam, RP
Jai Gokul Towers Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Mr. Gaurav Yadav, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Piyush Sachdev and Mr. Ishan Saha, Advocates.

Mr. Abhinav Vashisht, Sr. Advocate with Ms. Jagriti Ahuja, Mr. Ajay Monga, Adv. Geetansh Kathuria, Mr. Sameer Goel, Advocates for R2.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed against the same order dated 24.04.2024 passed in IA(IB)No.592/(KB)/2024 in CP (IB) No. 218/(KB)/2023. By the impugned order the application filed by the Resolution Professional (“**RP**”) being IA(IB) No.592/(KB)/2024 has been allowed. Aggrieved by which order these Appeal(s) have been filed. The order dated 24.04.2024 was corrected by corrigendum order dated 26.04.2024.

2. Company Appeal (AT) (Ins.) No. 848 of 2024 has been filed by IDFC First Bank Ltd., who was Respondent No.1 in IA(IB)No.592/(KB)/2024. Company Appeal (AT) (Ins.) No.1009 of 2024 has been filed by Quest Queen Vista LLP, who was Respondent No.2 in IA(IB)No.592/(KB)/2024. In the Appeal on 01.05.2024, an interim order was passed directing *status quo*, with regard to possession of the assets.

3. Brief facts of the case, necessary to be noticed for deciding the Appeal are:

- (i) IDFC First Bank Ltd. (hereinafter referred to as the “**Financial Creditor**”) has sanctioned Term Loan of Rs.25 crores to Monotona Tyres Ltd. (the “**Borrower**”). The

Corporate Debtor (“**CD**”) – M/s Jai Gokul Towers Pvt. Ltd. was one of the Guarantors of the Term Loan Facility. Under the Facility Agreement in October 2017, immovable property described in Schedule-5 bearing Municipal Holding No.43/72; Mondalghanti (presently known as 1, Kaxi Nazrul Islam Avenue), under Municipal Ward No.13 formerly 26 was included. A Mortgage Deed was also executed on 01.02.2018. The CD also had 1/6th share in mortgaged property.

- (ii) Financial Creditor had filed a Commercial Suit (L) No.310 of 2018 against Monotona Tyres Ltd. and others for recovery of dues in which a consent term as submitted on 04.04.2018 and the same was taken on record and a Decree dated 04.04.2018 was passed, under which Defendant Nos.1 to 10 were ordered to jointly and severally pay to the Plaintiff a sum of Rs.30,06,68,557/- being the principal amount with Rs.1,52,87,671/- as interest till 29.02.2018 with certain other amounts. Consent Decree was passed High Court of Judicature at Bombay. Commercial Execution Application (L) No.1765 of 2018 was filed in pursuance of Decree of the High Court dated 04.04.2018 for execution of the Consent Decree, which was allowed by the High Court. The Financial Creditor filed an application before the High Court for transfer of all proceedings from High Court of Bombay to DRT Mumbai. On 04.04.2019, the execution proceedings were transferred to

the DRT Mumbai, which issued a Recovery Certificate on 19.02.2021 in favour of Financial Creditor.

- (iii) Recovery Officer of DRT issued proclamation of sale notice on 08.09.2023 for sale of subject land. On 10.10.2023, Title Suit No.1179 of 2023 was filed by Jai Badrinath Niketan and Jai Raghuvir Enclave (P) Ltd. before the Court of Civil Judge (Sr. Divn.), 2nd Court Barasat against certain debtors of the Appellant. An interim stay was sought, which was refused by the Learned Lower Court on 10.10.2023.
- (iv) Bids were invited by the Recovery Officer till 06.10.2023. On 12.10.2023, the Recovery Officer declared Quest Queen Vista LLP as Successful Auction Purchaser, who was directed to deposit 25% of the sale consideration. On 20.11.2023, sale in favour of Auction Purchaser was confirmed and Registry was directed to issue ITCP-18 and ITCP-20 in favour of the Auction Purchaser.
- (v) On 20.11.2023, the order of Calcutta High Court in CO No.4004 of 2023 was placed, which was passed on 01.11.2023 where the Calcutta High Court has restrained the issuance of Sale certificate. Recovery Officer taking note of the order of the Calcutta High Court passed an order with direction in respect of ITPC-18 and ITPC-20 be kept in abeyance till next date.

- (vi) Against the CD, an application under Section 7 was filed by Miller Traders Pvt. Ltd., which came to be heard by the NCLT Kolkata Bench. On 01.01.2024, the Adjudicating Authority while admitting Section 7 application declared moratorium under Section 14 and appointed Seikh Abdul Salam as the IRP.
- (vii) On 06.03.2024, the Recovery Officer passed an order with respect to sale of mortgaged property conducted on 11.10.2023 and affirmed on 20.11.2023 in favour of Auction Purchaser. The RP wrote to the DRT informing the DRT about the CD and the moratorium. The Calcutta High Court subsequently by an order dated 12.03.2024 recalled the order dated 01.11.2023. On 14.03.2024, the Recovery Officer issued ITCP-20 in favour of Auction Purchaser and directed the Financial Creditor to handover original chain of documents. The DRT also directed to handover possession. Auction Purchaser took possession on 16.03.2024.
- (viii) IA(IB)No.592/(KB)/2024 was filed by the RP before the Adjudicating Authority pleading that confirmation of sale in favour of Auction Purchaser is null and void and direction be issued to restore possession of the premises to the RP. On 21.03.2024 Certificate of Sale dated 14.03.2024 was also executed. On the application filed by the RP, notices were issued by the NCLT. After hearing both the parties, the

Adjudicating Authority by the impugned order has allowed the application. The Adjudicating Authority held that declaration of confirmation of sale and issuance of sale certificate in favour of the Auction Purchaser is made post initiation of CIRP, hence, bad in law. It was held by the NCLT that Auction Purchaser will derive no right/ title/ interest in the CD's property. In Paragraphs-24 and 25, the Adjudicating Authority directed following:

“24. We find that the declaration of confirmation of sale and issuance of sale certificate in favour of the Quest Queen Vista LLP, the Successful Auction Purchaser is made post initiation of CIRP and commencement of moratorium which is in blatant violation of Section 14 of IBC and therefore bad in law. The confirmation of sale and the sale certificate issued in violation of Moratorium are declared null and void. Hence, we deem it appropriate to ignore the order declaring confirmation of sale and the sale certificate in question and direct the RP in exercise of power and in terms of Section 14 of the IBC to take back possession of the Corporate Debtor's share in the titled property that is jointly owned. We therefore, allow the prayers 'IX. (a)', 'IX. (b)' and 'IX.(c)' of this application in full.

25. We further hold that Quest Queen Vista LLP will derive no right / title / interest in the Corporate Debtor's Property. The Liquidator shall be at liberty to retain possession of the questioned property till liquidation process is over.

- (ix) Aggrieved by the said order these two Appeal(s) have been filed.

4. We have heard Shri Abhinav Vashisht, learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No. 848 of 2024; Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No. 1009 of 2024; and Shri Abhijeet Sinha, learned Senior Counsel appearing for the RP.

5. The submissions made by learned Counsel for the Financial Creditor as well as Auction Purchaser being similar, we refer to the same as submissions of the Appellant.

6. Learned Counsel for the Appellant submits that the impugned order of the Adjudicating Authority declaring that Auction Purchaser shall not derive any title, is erroneous. The sale proclamation was issued by Recovery Office of the DRT and in the auction sale held on 11.10.2023, Auction Purchaser emerged as Successful Auction Purchaser on reserve price of Rs.32.03 crores. The Auction Purchaser having paid the entire amount as per Schedule-II of the Income Tax Act, 1961, the Recovery Officer confirmed the sale on 20.11.2023 and the sale become absolute. The direction to keep in abeyance the issuance of sale certificate does not in any manner take away the right and title of the Auction Purchaser. The Corporate Insolvency Resolution Process (“**CIRP**”) against the CD was admitted on 01.01.2024, i.e. subsequent to sale confirmation. Hence, Section 14 of the IBC shall have no effect on the sale proceedings, which was conducted by Recovery Officer of the DRT. The Recovery Officer on 20.11.2023 has kept the issuance of sale certificate in abeyance on the basis of interim order passed by the Calcutta High Court on 01.11.2023,

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which was subsequently recalled and sale certificate was issued on 14.03.2024. The Adjudicating Authority had no jurisdiction to hold the sale as null and void, whereas the sale took place much before the initiation of CIRP and also stood confirmed in accordance with the provisions of Income Tax Act, 1961 much before initiation of CIRP. The application filed by the RP before the Adjudicating Authority was misconceived and Adjudicating Authority erred in allowing the application. The Adjudicating Authority in its judgment has observed that declaration of confirmation of sale and issuance of sale certificate in favour of the Auction Purchase are post initiation of CIRP, which observation is factually incorrect. Confirmation of sale was made on 20.11.2023 and the issuance of sale certificate was only ministerial act with regard to sale. The Adjudicating Authority has relied on judgment of the Hon'ble Supreme Court in ***Indian Overseas Bank vs. M/s. RCM Infrastructure Ltd. & Anr. – (2022) 8 SCC 516***, which judgment was not applicable in the facts of the present case. The judgment of the Hon'ble Supreme Court in ***Indian Overseas Bank*** was a case where the Hon'ble Supreme Court was considering the provisions of SARFAESI Act, 2002 and Security Interest (Enforcement) Rules, 2002. In the context of the aforesaid Rules, the observation was made by the Hon'ble Supreme Court, which has no application in the present case. Learned Counsel for the Appellant submits that the sale in the present case has been conducted under the provisions of Recovery of Debts and Bankruptcy Act, 1993 read with Income Tax Act, 1961 and under statutory provision of Second Schedule of the Income Tax (Second Schedule Part-III), the

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confirmation of sale has become absolute. Admittedly in the present case, the sale was confirmed on 20.11.2023 and the CIRP having commenced on 01.01.2024, has no effect on the sale, which has become absolute. The Adjudicating Authority has erroneously held that issuance of sale certificate and sale confirmation is in violation of Section 14 of the IBC. Learned Counsel for the Appellant in support of his submissions has relied on certain judgments of the Hon'ble Supreme Court, which we shall refer to hereinafter.

7. Shri Abhijeet Sinha, learned Senior Counsel appearing for the RP supported the impugned order and submits that issuance of sale certificate in Form ITCP-18 and ITCP-20 were part of Income Tax Act and Recovery Officer himself has issued the Issuance Certificate vide its order dated 14.03.2024, which ITCPs having been issued in March 2024, i.e. subsequent to initiation of CIRP, it cannot be said that sale was complete before 01.01.2024. After initiation of CIRP against the CD on 01.01.2024, the RP proceeded to take possession. The Recovery Officer in its order dated 06.03.2024, itself has noted that moratorium has been declared on 01.01.2024. Despite having been aware of the order of NCLT dated 01.01.2024, the Recovery Officer passed an order on 06.03.2024 directing issuance of sale certificate, which was in clear breach of moratorium under Section 14 of the IBC. The CD has its undivided 1/6th interest in the property and the CD has the right in law to occupy every square inch of the said property. The order dated 06.03.2024 of the DRT, directing issuance of ITCP-18 and ITCP-20 in respect of the said property is in the

teeth of moratorium under Section 14. As per Section 54 of the Transfer of Property Act, 1882, conclusion of auction, payment of consideration and confirmation of sale does not amount to conclusion of the sale or transfer of title from the CD to Respondent No.2. Learned Counsel for the Respondent also placed reliance on certain judgments of the Hon'ble Supreme Court, which we shall refer to hereinafter.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. In pursuance of Compromise Decree passed by the Bombay High Court, the Execution Application filed by the Financial Creditor was transferred to DRT-1, Mumbai. Recovery Certificate was issued in favour of the Financial Creditor on 19.02.2021. Sale proclamation was issued on 08.09.2023. In auction sale held on 11.10.2023, the Auction Purchaser was declared as Successful Auction Purchaser. The Recovery Officer of the DRT by an order dated 20.11.2023 has confirmed the sale and while confirming the sale, the Recovery Officer also issued direction to issue Form ITCP-18 and ITCP-20. The copy of the order of Recovery Officer has been brought on the record as Annexure A-16 to the Appeal. Operative portion of the order dated 20.11.2023 is as follows:

20/11/2023	Roznama R.P No. 65/2021 Resumed, Adv. Mr. Rajesh Nagory along with Adv. Ms. Bhagyashree Shukla I/b Naik & Naik Co. present for the Certificate Holder. Adv. Mr. T. N. Tripathi present for the Certificate Debtor No. 2 to 8 & 10.	Next Date
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Exh.52	Order passed on Separate Sheet. <u>Operative Part of the order:</u> Applications filed by the Certificate Debtor No.2 to 8 & 10 marked as exhibit 27, 32 & 46 are rejected. Further, as per record now there is no application pending for setting aside the sale under Rule 60, 61, & 62 of Second Schedule of Income Tax Act before this Tribunal, and Auction Purchaser has already deposited the sale proceeds along with poundage fees. Hence, Sale of the mortgaged property, i.e., "All that piece and parcel of land or ground thereto containing/admeasuring about 41 cottahs 02 chittacks and 12 sq. ft. forming part of dag nos.61, 63, 64 & 65 under R.S. Katian no.152 (LR nos.1147, 1148 & 1149) in Mouza Mondalghanti under P.S. Airport in the District North 24 Parganas presently known and numbered as municipal holding no.43/72, Mondalghanti (properly known as 1, Kazi Nazrul Islam Avenue) under municipal Ward no.26 within the limits of Rajarhat-Gopalpur Municipality TOGETHER WITH B+G+6 storied building having total cover area of about 1,11,068 Sq. Ft. standing thereon with present and future structures standing on the land TOGETHER WITH all the development right, present and future FSI/FAR, messauges, tenements, hereditaments, structures, sewers, drains, ways, ditches watercourses, premises" held on 11.10.2023 through open public e-auction is confirmed in favour of the Auction Purchaser Quest Queen LLP Pvt. Ltd. Registry is directed to issue ITCP 18 & ITCP 20 in favour of Auction Purchaser and also directed to deposit the poundage fees of Rs. 32,03,100/-in Government account."	
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10. After passing of the aforesaid order, it was noticed by the Recovery Officer that an order passed by Calcutta High Court dated 01.11.2023 was placed before him, where the Calcutta High Court restrained the

issuance of Sale certificate in respect of ground and top floors of the building. Noticing the interim order, Recovery Officer has kept in abeyance issuance of ITCP-18 and ITCP-20. The Auction Purchaser has deposited the entire auction amount, which is recorded in the order dated 20.11.2023 and after Recovery Officer further held that there being no application pending for setting aside the sale under Rule 60, 61 & 62 of Second Schedule of Income Tax Act and Auction Purchaser has already deposited the entire amount, sale is confirmed. Sale proclamation and entire proceedings of the auction took place in the present case under the statutory provisions of the Recovery of Debts and Bankruptcy Act, 1993. Section 29 of the Recovery of Debts and Bankruptcy Act, 1993 provides as follows:

“29. Application of certain provisions of Income-tax Act.—The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the “assessee” shall be construed as a reference to the defendant under this Act.

11. Second Schedule of the Income Tax Act, 1961, which deals with ‘Procedure for Recovery of Tax’, Part III of Second Schedule deals with ‘Attachment & Sale of Immovable Property’. ‘Sale and proclamation of sale’ are issued in Rule 52. Rule 56 provides that sale shall be by public

auction to the highest bidder and subject to confirmation by the Tax Recovery officer. Rule 56 is as follows:

“56. Sale to be by auction.—The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53.

12. Rules 60 and 62 deal with ‘Application to set aside sale of immovable property on deposit’ and ‘Setting aside sale where defaulter has no saleable interest’ and Rule 63, which is relevant in the present case is as follows:

“63. Confirmation of sale.—(1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.”

13. Rule 65 deals with ‘Sale certificate’. The scheme as contained in Rule 63 clearly indicates that Tax Recovery Officer shall make an order confirming the sale, and, thereupon, the sale shall become absolute.

Although, Rule 65 provides for sale certificate, but Rule 65 sub-rule (2) clearly indicates that certificate shall state the date on which the sale became absolute. Thus, the day on which sale became absolute is the date of confirmation of sale. Rule 65 is as follows:

“65. Sale certificate.—(1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser. (2) Such certificate shall state the date on which the sale became absolute.”

14. We have noticed above that although in the order dated 20.11.2023, the Recovery Officer also directed for issuance of ITCP-18 and ITCP-20, but noticing the interim order of the Calcutta High Court of 01.11.2023, it directed to keep in abeyance the issuance of ITCP-18 and ITCP-20. The order dated 01.11.2023, was subsequently recalled by the Calcutta High Court and thereafter the sale certificate was issued by the Recovery Officer on 14.03.2024. Admittedly, the CIRP of the CD commenced on 01.01.2024. The question, thus, for consideration is as to whether on the date when CIRP commenced the subject properties were assets of the CD. The subject properties shall be assets of the CD provided sale in favour of Auction Purchaser has not become absolute. Learned Counsel for the Respondent has laid much emphasis on issuance of sale certificate on 14.03.2024 by Recovery Officer in favour of Auction Purchaser, which was subsequently to 01.01.2024. The judgment on which reliance has been placed by the Adjudicating Authority as well as learned Counsel for the Respondent is ***Indian Overseas Bank vs. M/s.***

RCM Infrastructure Ltd. & Anr. – (2022) 8 SCC 516, we need to notice the said judgment in some detail. The above was a case where Bank has issued a notice under Section 13(2) of the SARFAESI Act, 2002. On 27.09.2018, the Bank issued an e-auction notice to recover the public money availed by the CD. A petition under Section 10 of the IBC was filed by the CD on 22.10.2018. E-auction was held on 12.12.2018 and 13.12.2018, sale was confirmed in favour of the Successful Auction Purchaser. Successful Bidder paid 25% of the bid amount and was directed to pay balance 75% of the amount within 15 days. The Auction Purchaser prayed for extension of time, which was extended till 08.03.2019. On 03.01.2019, Section 10 petition was admitted, by virtue of which moratorium under Section 14 was imposed. The Appellant Bank also filed a claim in Form-C and during the pendency of the CIRP, remaining 75% of the amount accepted by the Bank. The NCLT in the above case by order dated 15.07.2020 has set-aside the sale of the assets, against which the Appeal was filed in NCLAT, which was dismissed and the matter was taken in the Hon'ble Supreme Court. In the above background, the Hon'ble Supreme Court had occasion to consider as to whether sale was complete on its confirmation on 13.12.2018. In Paragraph-28, following was observed:

“28. It is the contention of the appellant Bank that the sale in question was complete on its confirmation on 13-12-2018 and as such, the admission of the petition on 3-1-2019 by the learned NCLT would not affect the said sale. Relying on the provisions of Section 54 of the TP Act, the learned Solicitor General submitted that merely because a part of the payment was received

subsequently after initiation of CIRP, it will not deprive the appellant Bank from receiving the said money in pursuance of the sale which has already been completed. A reliance in this respect is placed on various judgments of this Court.”

15. The Hon’ble Supreme Court has noted in the said judgment that the Bank has accepted the balance amount on 08.03.2019, i.e. after initiation of CIRP and under the scheme of Rules 8 and 9, the sale stand completed on 08.03.2019. In Paragraphs-32, 34 and 35, following was held:

“32. It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. The sale would be complete only when the auction-purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the said Rules.

34. Undisputedly, in the present case, the balance amount has been accepted by the appellant Bank on 8-3-2019. The sale under the statutory scheme as contemplated under Rules 8 and 9 of the said Rules would stand completed only on 8-3-2019. Admittedly, this date falls much after 3-1-2019 i.e. on which date CIRP commenced and moratorium was ordered. As such, we are unable to accept the argument on behalf of the appellant Bank that the sale was complete upon receipt of the part-payment.

35. In view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Sarfaesi Act is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the Sarfaesi Act once CIRP was initiated and the moratorium was ordered.”

16. Now, we need to notice the statutory scheme under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Rule 9, which is relevant is as follows:

“9. Time of sale, issue of sale certificate and delivery of possession, etc. - (1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002)].

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]:

Provided further that if the authorized officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).].

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).] and the property shall be resold and the defaulting

purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorized officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.”

17. When we look into Rule-9 sub-rule (6), the confirmation of sale and issuance of sale certificate is when the terms of payment have been complied. Thus, confirmation of sale by the secured creditor in terms of the payment is also one of the essential condition and in the scheme of the above Rule, only if the terms of payment are complied with, the sale certificate is to be issued and sale is complete. In the above case, the Hon’ble Supreme Court has held that since payments were accepted by the Bank on 08.03.2019, i.e. subsequent of initiation of moratorium, the sale was not complete on 03.01.2019. In the above view of the matter, the Hon’ble Supreme Court has dismissed the Appeal and affirmed the orders of NCLT and NCLAT. The above judgment was on its own facts

and has no application in the present case, where sale is governed by statutory provisions of Income Tax Act Second Schedule.

18. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in **B. Arvind Kumar vs. Govt. of India and Ors. – (2007) 5 SCC 745**, where the Hon'ble Supreme Court has held that sale certificate is issued only when sale has become absolute and the sale certificate is merely the evidence of the title acquired by the purchaser. In Paragraph-12 of the judgment, following was held:

“12. The plaintiff has produced the original registered sale certificate dated 29-8-1941 executed by the Official Receiver, Civil Station, Bangalore. The said deed certifies that Bhowrilal (father of the plaintiff) was the highest bidder at an auction-sale held on 22-8-1941, in respect of the right, title, interest of the insolvent Anraj Sankla, namely, the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs 8350 was accepted and the sale was confirmed by the District Judge, Civil and Military Station, Bangalore on 25-8-1941. The sale certificate declared Bhowrilal to be the owner of the leasehold right in respect of the suit property. When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorised by the court, does not require registration. Section 17(2)(xii) of the Registration

Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer.”

19. The Hon'ble Supreme Court in ***The State of Punjab and Anr. vs. M/s Ferrous Alloy Forgings P. Ltd. and Ors. – (2024) SCC OnLine SC 3372***, while dealing with the Order XXI Rule 94 of the CPC, which is more or less similar to the scheme under the Income Tax Act, 1961 Second Schedule, laid down following in Paragraphs-13, 14 and 16:

“**13.** The short question that falls for our consideration in this appeal is whether it is mandatory for the successful auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act and the Registration Act.

14. This Court in *Municipal Corporation of Delhi v. Pramod Kumar Gupta*, (1991) 1 SCC 633 : AIR 1991 SC 401, after examining the relevant provisions of Order XXI of the Code of Civil Procedure, observed that the title to the property put on auction sale passes under the law when the sale is held. The owners and certain other interested persons are afforded opportunity under the CPC to assail the sale and make a prayer for setting aside the sale on certain enumerated grounds. However, once such objections are disposed of without disturbing the sale, the sale stands confirmed under Order XXI Rule 92 of the CPC. Thereafter, the sale certificate is issued under Order XXI Rule 94. The Court observed that this chronology of events made it clear that the transfer becomes final when an Order under Rule 92 of Order XXI is made and the issuance of a sale certificate under Rule 94 is only a formal

declaration of the effect of such confirmation. Such issuance of certificate does not create or extinguish any title and thus would not attract any stamp duty which is applicable *qua* an instrument of sale of immovable property.

16. In *B. Arvind Kumar v. Govt. of India*, (2007) 5 SCC 745, this Court observed that when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Although in the said case, the sale certificate was registered yet this Court proceeded to observe that a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of Section 17(1) of the said Act.”

20. In Paragraph-17, it was again reiterated that sale certificate issued to the Purchaser is only evidence of such title and does not require registration. In Paragraph-17, following was held:

“17. The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act. It is not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the competent

authority after all the objections against the sale have been disposed of.”

21. The above two judgments of the Hon’ble Supreme Court fully support the submissions of the Appellant that on confirmation of the sale, title has to be passed and property stands vested in the Purchaser. To the similar effect is another judgment of the Hon’ble Supreme Court in ***Pattam Khader Khan vs. Pattam Sardar Khan and Anr. – (1996) 5 SCC 48***, where in Paragraph-11 of the judgment the Hon’ble Supreme Court held following:

“11. Order 21 Rule 95 providing for the procedure for delivery of property in occupation of the judgment-debtor etc., requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Rule 94 of Order 21. There is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it is obligatory on the court though, to issue the certificate. That may, for any reason, get delayed. Whether there be failure to issue the certificate or delay of action on behalf of the court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which have no bearing on the limitation prescribed for the application under Article 134. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of a sale certificate is not “sine qua non” of the application, since both these matters are with the same court. The starting point of limitation for the application being the date when the sale becomes absolute i.e. the date on which title passed, the evidence of title, in the form of sale certificate, due from the court, could always be supplied later to the court to satisfy the requirements of Order 21 Rule 95. See in this regard *Babulal Nathoolal v. Annapurnabai* [AIR 1953 Nag 215 : ILR 1953 Nag 557] , which is a pointer. It therefore becomes clear that the title of the court auction-purchaser becomes complete on the confirmation of the sale under Order 21 Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgement of a fact already accomplished, stating as to what stood sold. Such act of the court is pristinely a ministerial one and not judicial. It is in the nature of a formalisation of the obvious.”

22. The Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs. Pramod Kumar Gupta – (1991) 1 SCC 633*** considering the scheme under Order XXI Rule 92 and 94 of the CPC laid down following in Paragraph-5:

“5. An examination of the relevant provisions of Order XXI of the Code of Civil Procedure will show that the title to the property put on auction sale passes under the law when the sale is held. The owners and certain other interested persons are afforded opportunity under the Code to make a prayer for setting aside the sale on enumerated grounds, and after all such matters are disposed of without disturbing the sale, the sale is confirmed under Rule 92. The relevant part of Rule 92 reads as follows:

“92. *Sale when to become absolute or be set aside.*—(1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the court shall make an order confirming the sale, and thereupon the sale shall become absolute.”

The stage for issuing a certificate of sale arises only thereafter, and Rule 94 states:

“94. *Certificate to purchaser.*—Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.”

It is manifest that the title passes under the auction sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the certificate issued under Rule 94, the court is formally declaring the effect of the same and is not extinguishing or creating title. The object of issuance of such a certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof as also the date when the sale becomes absolute. The use of past tense in the rule stating that the sale “became” absolute, is consistent with this interpretation. The certificate, therefore, cannot be termed to be an instrument of sale so as to attract Section 147 of the Delhi Municipal Corporation Act. The appeal is accordingly dismissed with costs.”

23. The above judgment of the Hon'ble Supreme Court, when applied in the facts of the present case and the statutory scheme under which the sale was conducted, it is clear that on confirmation of sale on 20.11.2023,

title passed on Auction Purchaser and issuance of sale certificate, which was kept in abeyance on account of the interim order passed by the Calcutta High Court, cannot postpone the passing of the title on the date of confirmation of the sale, i.e. 20.11.2023. The submission of learned Counsel for the Respondent that since sale certificate was issued by DRT on 14.03.2024, that should be treated as date on which sale was completed, cannot be accepted. Issuance of sale certificate in the facts of the present case has no effect on sale becoming absolute on 20.11.2023 itself.

24. The Adjudicating Authority in applying the judgment of the Hon'ble Supreme Court in ***Indian Overseas Bank vs. M/s. RCM Infrastructure Ltd. & Anr.*** for holding that sale was not complete in the present case, committed an error. Further, Adjudicating Authority in Paragraph-24 has observed that declaration of confirmation of sale and issuance of sale certificate in favour of Quest Queen Vista LLP is made post initiation of CIRP, which observation has been made in Paragraph-24 as noted above. The above observation cannot be said to be correct, since, admittedly confirmation of sale was made on 20.11.2023 by the Recovery Officer by an order as noted above. The Adjudicating Authority failed to consider the effect of confirmation of sale, which was prior to CIRP commencement and the effect of the sale confirmation. The sale confirmation and issuance of sale certificate has been kept in same bucket by the Adjudicating Authority for coming to the conclusion that both were subsequent to CIRP commencement, which was on 01.01.2024, which is

factually incorrect. We, thus, are satisfied that Adjudicating Authority committed error in allowing the application filed by the RP. The subject properties having already been sold and sale confirmation has been made in favour of the Auction Purchaser on 20.11.2023, i.e. much before commencement of the CIRP on 01.01.2024, moratorium had no effect on the sale having already become absolute. The order dated 24.04.2024 passed by Adjudicating Authority is unsustainable.

25. In result, both the Appeal(s) are allowed. The order dated 24.04.2024 is set aside. IA(IB) No.592/(KB)/2024 filed by the RP is dismissed. Pending IAs, if any, are also disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

11th March, 2026

Ashwani