



2024:DHC:8398



\$~J-12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment pronounced on: 29.10.2024**+ **O.M.P.(EFA)(COMM.) 6/2016**

DAIICHI SANKYO COMPANY LIMITEDDecree Holder
versus
MALVINDER MOHAN SINGH AND ORS.Judgement Debtors

Presence:

Mr. Arvind K. Nigam, Sr. Adv. along with Mr. Giriraj Subramaniam, Mr. Nabik Syam, Ms. Samridhi Hota, Mr. Shivam Chanana, Ms. Anindita Barman, Ms. Astha Ahuja, Ms. Shyra Hoon, Mr. Tanmay Arora, Mr. Agnish Aditya and Mr. Siddhant Juyal, Advs.

Mr. Varun Garg, Adv. for JD Nos.1, 4 and 15.

Mr. Vikas Dutta, Mr. Siddharth Silwal, Advs. for RSSB/applicant in EX. APPL.(OS) 1096/2024

Mr. Rajiv Nayar, Sr. Adv., Mr. Abhinav Vashisht, Sr. Adv. along with Mr. Sanjeev Sharma, Mr. Vaibhav Kakkar, Ms. Saumya Sud, Ms. Vaishali Goyal, Ms. M.D. Gupta and Ms. Akshita Sachdeva, Advs. for Fortis Healthcare Ltd.

Ms. Malvika Trivedi, Sr. Adv. and Ms. Devina Sehgal, Adv. for EA No.1525/2023.

Mr. Ashish Dholakia, Sr. Adv. along with Mr. Sandeep Das, Ms. Anandini Rathore, Mr. Tejasvi Mahajan and Ms. Ananya, Advs. for Religare Enterprises.

Mr. Aditya Dewan and Mr. Parth Tiwari, Advs. for JD Nos.6 to 8.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

EX. APPL.(OS) 31/2020 (under Order XXI read with Section 151 of the Code of Civil Procedure for directions and necessary orders)

1. The present application under Order XXI Rule 66 read with Section



151 of the CPC *inter-alia* seeks sale of the “Fortis” Trademark, owned by RHC Healthcare Management Services Private Limited (judgment debtor No.22).

2. The present execution proceedings are in the background of a judgment dated 31.01.2018, affirming an award dated 29.04.2016 and dismissing the objections against enforcement of the said award, filed by the judgment debtors. The award has admittedly attained finality and is to be executed as a decree of this Court.

3. The joint and several liability of the judgment debtors as on date is stated to be to the tune of around Rs.4900 Crores. Learned senior counsel for the decree holder submits that despite best efforts, only a small fraction thereof has been realized by the decree holders so far.

4. It is further submitted that if the Fortis Trademark is allowed to be auctioned, it expects atleast an amount in the range of Rs.191.5 Crores to be realized.

5. Learned senior counsel for the applicant has relied upon Order XXI Rule 66 of the CPC which deals with the procedure to be followed in the event of proclamation of sale of assets of a judgment debtor by public auction. The relevant format of the proclamation is prescribed in Form-29, Appendix-E of the CPC. The said form also prescribes a format of the “schedule of property” which is to be made a part of the proclamation.

6. Earlier there was an impediment on the auction of Fortis trademark on account of objections raised by the Fortis Hospitals Ltd. However, in these proceedings learned counsel for the Fortis Hospitals Ltd. submit that there is no objection on its part to the auction of the Fortis Trademark and it is requested that this Court may proceed to decide the present request of the



decree holder without being impeded on account of any objection that may have been raised by the Fortis Hospitals Ltd. in the past by way of any objection under Order XXI Rule 58 or otherwise. The said statement is taken on record.

7. Learned counsel for the decree holder submits that in terms of the Order XXI Rule 66 of the CPC, it is not required for this Court to fix any upset price or reserve price qua the proposed sale of the Fortis trademark. In this regard, reliance has been placed on **Kailasam v. T.K. Muthusamy** (1990) SCC OnLine Mad 596, **P. Bahuleyan v. Moossa E.P.** 2005 SCC OnLine Ker 482, **B. Susila and another v. Saraswathi Ammal and others** 1968 SCC OnLine Mad 226 and **Kuppammal v. Devendra Iyer**, 1957 SCC OnLine Mad 34.

8. It is noticed that even the statutory schedule prescribed in Appendix-E of the CPC does not refer to any upset price or reserve price and only refers to “the value of the property as stated by the decree holder” and “the value of the property as stated by the judgment debtor”.

9. Learned counsel for the judgment debtors do not oppose the proposed auction of the Fortis marks. In fact, it is the common case of all the parties that by virtue of judgment dated 22.09.2022 passed by the Supreme Court in **M/s Daiichi Sankyo Company Limited v. Malvinder Mohan Singh & Ors.** 2022 SCC OnLine SC 1281 it was specifically directed by the Supreme Court that certain properties of the judgment debtors including the Fortis trademark, shall be available to the executing court and shall abide by such directions of the executing court as it may pass.

10. The only controversy raised by the judgment debtor nos.19 and 22 is as regards the valuation of the concerned Fortis trademark.



11. It is contended that prior to the conduct of auction, an Auditor be appointed to carry out the valuation so that the optimum valuation thereof can be determined.
12. I find no merit in the aforesaid contention of the judgment debtors.
13. The judgment debtors have not been able to point out any legal basis which mandates carrying out an elaborate valuation exercise, which would further delay the realization of amount/s by the decree holder. Also, since the sale of the concerned asset (viz. the Fortis trademark) is to be carried out by the proclamation through public auction, inherently, the optimum price would be discovered as a result of the auction process.
14. It is also noticed that there are a number of valuation reports already on record, with divergent valuations being accorded to the trademark. This divergence is inherent in view of the nature of the asset sought to be auctioned and the nature of the differing methodologies adopted to value the same.
15. In the circumstances, this Court does not find it apposite to accede to the request of the judgment debtors that an auditor/valuer be appointed prior to the conduct of auction.
16. Needless to say, it shall be open to the judgment debtors to themselves get a valuation conducted and inform “the value of the property as stated by the judgment debtor”. The said information will necessarily be included in the schedule of property forming part of the proclamation as per the statutory format. Likewise, it would be open for the decree holder to mention “the value of the property as stated by the decree holder” which also would be included in the said schedule.
17. In the circumstances, the following directions are issued:



- (i) The concerned Joint Registrar (Judicial) of this Court shall proceed with the public auction of the aforesaid asset of the judgment debtors viz. the Fortis trademark, and shall issue a proclamation, as contemplated in Order XXI Rule 66 of the CPC read with the format appended as Serial No.29 to Appendix – E of CPC.
- (ii) The ‘schedule of the property’ shall be duly filled up, taking into account the information supplied by the decree holder and the judgment debtors, including “the value of the property as stated by the decree holder” and “the value of the property as stated by the judgment debtor”.
- (iii) The Joint Registrar (Judicial) will proceed with the public auction with a view to invite maximum bidders and will give due publicity to the proclamation with a view to encourage participation of maximum bidders.
- (iv) The Joint Registrar (Judicial) will, in consultation with the decree holders and the judgement debtors, firm up the terms and the timeframe for the public auction.
- (v) Upon the highest bid being finalized, the highest bidder shall deposit 25% of the bid price by way of a bank draft/banker’s cheque in the name of “Registrar General, Delhi High Court” on the day being declared as highest bidder and, in any case, not later than two days therefrom.
- (vi) The highest bidder shall deposit the balance bid amount with the Joint Registrar (Judicial) in the name of the “Registrar General, Delhi High Court” of this Court within 60 days from the finalization of the bid.



2024:DHC:8398



- (vii) The original document/s in respect of the asset shall be produced by the parties before Joint Registrar (Judicial), as and when directed.
- (viii) The parties shall assist the Joint Registrar (Judicial) in executing the auction sale.
- (ix) The Joint Registrar (Judicial) shall submit a report to the Court upon conclusion of the above process. The sale shall thereafter be confirmed and concluded after receipt of permission of the Court.
18. If there is any objection/s, *inter-alia*, as regards the valuation of the concerned asset (Fortis trademark), the same shall be duly considered by the Court prior to confirmation of sale.
19. List before the concerned Joint Registrar (Judicial) on 21.11.2024.
20. List in Court for further proceedings on 17.01.2025.

SACHIN DATTA, J

OCTOBER 29, 2024/cl